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Are You In or Out?
What the Home and Community-Based Services 'Settings' Rule Means to Assisted Living Facilities in Medicaid

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ARALA members who participate in the Medicaid Living Choices program[1] should have by now received a survey (attached) to help the state determine whether they are a home and community-based services "setting." More precisely, the survey is a starting point, and it is not definitive in and of itself. It is an effort by the Arkansas Division of Aging and Adult Services to get the "lay of the land" as to the current state of compliance.

The survey was prompted by the issuance by the Centers for Medicare and Medicaid Services (CMS) of a Final Rule on home and community-based (HCBS) settings and other issues on January 10, 2014. An astounding five years of deliberations went into the rule, with ARALA and many other groups on all sides of the various issues submitting comments.

The rule addresses requirements for home and community-based services (HCBS) provided through the following four subprograms within Medicaid:

- ●1915(c) waivers
- ●1915 (i) state plan services
- ●1915 (k) "Community First Choice" state plan services
- ● 1115 Demonstration Waivers (indirectly)

NOTE: Even if you don't participate in the Living Choices waiver, you may want to review this article because you may be indirectly affected by the HCBS Final Rule, particularly if you care for those persons with chronic mental illness who will be in the state's proposed Medicaid 1915(i) home and community-based program. 1915(i) is a much more flexible program than RSPMI, but all persons in 1915(i) must receive services in a home and community-based setting. CMS is to provide future

[1] The Office of Long Term Care has taken the position that ALF Is and RCFs are not eligible to participate in waiver programs.

guidance on exactly what that means as to residential vs. day programs, so at this time the full impact is not known. You will want to be familiar with the basic concepts contained below as this issue evolves.

The Final Rule covers a lot of ground surrounding home and community-based services. In case you are interested only in some parts of the rule, here is a breakdown of how this article is organized:

HCBS SETTINGS

The most anticipated part of the Final Rule defines what CMS considers to be a "home and community-based setting." If your provider operation does not qualify as a HCBS setting, then the state will not be permitted to reimburse you through the above programs. That does not mean that you could not receive funding under some other Medicaid non-HCBS program, if one is available, but is a significant issue for ALF providers, since they are funded under a 1915(c) waiver program in Arkansas called Living Choices.

Nationwide, the number of providers affected is not clear, but the potential market is large. By 2009, 37 states included ALFs under their Section 1915(c) waivers, another seven included them under their Medicaid state plans, and four used a Section 1115 demonstration waiver.

Why is CMS doing this?

An important question is why did CMS decide to issue the rule? What was the problem that needed to be fixed? In answering this question, CMS went back to the history of Medicaid home and community-based waivers, which were established beginning in 1981 under Section 1915(c) of the Social Security Act. Waivers were designed to provide alternatives to institutionalization in nursing homes and institutional care facilities for intellectual disabilities. "Over time," CMS says, "a variety of settings were developed to serve individuals in need of long term services and supports, and questions arose as to whether certain settings presented true alternatives to institutions." In other words, CMS believes some settings are not truly home and community-based in nature and thus do not qualify for reimbursement under these programs.

The guiding principle: CMS expects HCBS beneficiaries to have the same access to broad community involvement and independence as non-Medicaid HCBS beneficiaries do.

What happens if you fail to qualify as a HCBS setting?

CMS makes a point of clarifying that although some settings now receiving HCBS waiver funding may no longer qualify under the Final Rule, that does not mean that they cannot receive other non-HCBS Medicaid funding. For any ARALA Living Choices providers who cannot meet the Final Rule, that would seem to leave Medicaid Personal Care as the only option, which is more limited than Living Choices.

The lengthy run-up to the Final Rule saw CMS and stakeholders embroiled in debates about which particular settings were or were not home and community-based. For example, was assisted living going to be in or out? In issuing the Final Rule, CMS explained its approach as "moving away from defining home and community-based settings by 'what they are not,' and toward defining them by the nature and quality of individuals' experiences." Thus, many assisted living facilities will qualify as home and community-based, while others may not.

How does the Final Rule impact assisted living?

As a basic premise, assisted living facilities are allowable HCBS settings: "Assisted living facilities are not excluded from being considered home and community-based if they are structured and operate in a manner that adheres to the requirements set forth in this rule." (79 Fed. Red. 2972). Most assisted living facilities in Arkansas probably can meet the rule. Those that will have potential trouble are those (1) located in the same building as a nursing home (or other facility providing inpatient treatment); or (2) located on the grounds of, or immediately adjacent to, a public institution. The same goes for those facilities that are reconditioned nursing homes or similar structures with an institutional character. However, CMS left a crack in the door for the state to overcome the "presumption" in all these various cases, if they pass "heightened scrutiny" by CMS (discussed below).

The HCBS "Settings" Rule in a Nutshell

What follows are the final requirements CMS developed for HCBS settings.

Basic requirements to qualify as a home and community-based setting

To be considered "home and community-based," a setting must have all of the following qualities:

1. The setting is integrated in and supports full access to the greater community, including opportunities to seek employment, engage in community life, control personal resources, and receive services in the community to the same degree as individuals not receiving Medicaid HCBS.

2. The individual selects the setting from options that include non-disability specific settings and an option for a private unit in a residential setting. The setting options are documented in the person-centered service plan and are based on the individual's needs and preferences, and, for residential settings, the individual's resources for room and board.

3. The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

4. The setting optimizes individual initiative, autonomy, and independence in making life choices.

5. The setting facilitates individual choice regarding services and supports, and who provides them.

6. Other qualities CMS determines are appropriate, based on an individual's person-centered service plan.

Additional requirements for provider-owned or controlling settings

If a setting is owned or controlled by a provider, it must have the above qualities PLUS these:

1. The dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement that provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law;

2. Each individual has privacy in their sleeping or living unit, including choice of roommate and lockable entrance doors; and

3. Individuals have the freedom and support to control their own schedules and activities and have access to food[2] at any time;

4. Individuals are able to have visitors of their choosing at any time; and

5. The setting is physically accessible to the individual.

Modifications: Any modification of these additional requirements must be supported by a specific assessed need and justified in the individual's person-entered service plan. A "company policy" or "house rule" cannot suffice to limit these rights. The documentation regarding the modification must include the following requirements:

- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the condition that is directly proportionate to the specific assessed need.
- Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- Include established time limits for periodic reviews to determine if the modification still necessary or can be terminated.
- Include the informed consent of the individual.
- Include an assurance that interventions and supports will cause no harm to the individual.

[2] The "access to food" requirement does not mean that facilities have to provide 24-hour dining services. CMS has clarified that the "access to food" requirement can be met by, for example, giving individuals the opportunity to choose the foods they eat, store food in their rooms, eat in their rooms, and decide when to eat. CMS does not believe that the requirement is met by giving an individual "the choice of a snack bar or a pitcher of water and crackers." CMS has written that individuals "should not be presented with narrow options, decided by someone else, without input from the individual." 79 Fed.Reg. 2965-66.

Settings that are *not* home and community-based

The following settings will NOT be considered "home and community-based":

1. A nursing facility.
2. An institution for mental disease.
3. An intermediate care facility for individuals with intellectual disabilities.
4. A hospital.

Settings that are '*presumed*' not to be home and community-based

The Final Rule contains a "presumption" that the following types of settings will not considered home and community-based:

1. A setting housed jointly in a publicly or privately operated facility that provides inpatient institutional treatment.
2. A setting on the grounds of, or immediately adjacent to, a public institution.
3. Any other setting that has the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS.

In the proposed rule, CMS used the phrase "disability-specific facility" to describe a type of facility that might not be considered home and community-based. This raised fears for many providers serving primarily elderly or those with disabilities, whether in residential care/assisted living or in HUD housing complexes or similar arrangements. Due to the numerous comments received in opposition, CMS abandoned that phrase and substituted number 3 above: *"any other setting that has the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS."* It is not clear what this means, and CMS has promised future guidance. (79 Fed. Reg. 2968)

Extensive debate centered on whether the presumption against HCBS status should apply to situations where providers, sometimes at the state's urging, have converted portions of nursing homes into assisted living. CMS recognized that many providers have diversified their properties so that they "could be used to develop managed residential communities, individual homes or cottages, or other independent living options where assisted living or home care services could be delivered in accordance with an individualized person-centered plan." (79 Fed. Reg. 2970-71)

However, CMS presumes that they are not home and community-based:

> We recognize that repurposing existing building structures is a tool used to control costs. However, we believe that such structures should not be a state's first option when looking to increase the pool of community-based residential settings. Such structures were often

> built and operated in such a way that they inherently hinder individuals from participating in the broader community, and reduce individuals' control of how and where they receive services. (79 Fed. Reg. 2971)

CMS did reiterate that "there may be circumstances where such a setting could be repurposed in a way that it would meet the requirements for HCB settings and would no longer have the characteristics of an institution." It will be up to the state to submit evidence that such a setting no longer possesses the characteristics of an institution.

A state cannot include in its state plan HCBS, HCBS waiver, or Community First Choice option a setting presumed not to be home and community-based unless the state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution. CMS must then find, based on a *heightened scrutiny* review of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution.

Hot-Button Settings Issues

Below are several other controversial "settings" issues addressed in the Final Rule:

Private rooms and roommate choices

CMS also received many comments on whether individuals should have the right to a private room. Once again, CMS moderated its approach from the Proposed Rule:

> We have clarified that we are not requiring that every individual receiving HCBS have their own bedroom when receiving residential services. The rule is requiring that individuals be provided options of residential settings, including an option of a private room. This rule does not require every provider to have a private room option. Instead it requires the State to ensure that there are private room options available within a state's HCBS program. (79 Fed. Reg. 2964)

In short, the burden is on the state, not providers, to make sure there are private room options available in some congregate settings, though not in all.

If a provider does have both private and shared rooms, it does not mean that the individual must be allowed a private room. This was a key issue that CMS finally clarified:

> We agree with the commenters that the financial resources available to an individual may impact the options available to a particular individual, and we have changed the regulatory text to make that clear. (79 Fed. Reg. 2964)

CMS goes on to explain that what is important is whether the individual has freedom of choice in WHO their roommate is. Providers will need to be extremely diligent in following this requirement and

documenting it. A shared bath between adjoining rooms is acceptable, provided the choice of roommate is followed. (79 Fed. Reg. 2965)

Although CMS acknowledges that Medicaid does not pay for room and board, its position is that it is not regulating room and board. It is merely looking at all the features of a facility, including roommate choice, to determine whether the facility is indeed a "home and community-based setting."

No restricted visiting hours

CMS seems to be taking a hard line on no visiting hours. A provider who felt restricted hours were necessary for some individuals would have to follow an individualized "modification" requirement discussed above. (79 Fed. Reg. 2966)

Assisted living bundle—must the services be separate from the housing?

During the comment period, there was concern that CMS would require that provision of Medicaid home and community-based services be separated from the housing provider, because some argued that is an institutional model and restricts client choice. Taking that position would have been extremely disruptive to assisted living, a model that combines the housing with services. The same concerns were raised with regard to the adult day care model. After receiving "thoughtful comments," CMS backed away from this approach:

> "The final rule clarifies that when an individual chooses to receive home and community-based services in a provider owned or controlled setting where the provider is paid a single rate to provide a bundle of services, the individual is choosing that provider, and cannot choose an alternate provider, to deliver all services that are included in the bundled rate." (CMS Fact Sheet, Jan. 10, 2014)

That also bodes well for the Arkansas Payment Improvement Initiative, which relies on the concept of bundled payments; and for providers, for whom bundled payments are administratively less burdensome.

Employment and training settings (day programs) -- future guidance

CMS has clarified in the Final Rule that requirements for HCBS apply to all settings where individuals receive HCBS-- including employment and training settings, such as day programs. It is not enough that the residential setting complies. This raises a number of thorny questions and seems sure to generate much more discussion. CMS will provide additional guidance to address the implications of the regulation for non-residential settings.

Requirements for state compliance and transition

Much confusion has surrounded the transition requirements. Generally speaking, when submitting a new HCBS waiver or state plan, the state must demonstrate that it is in compliance at the time of submission. For renewals or amendments, the state has 120 days to submit a transition plan to bring settings into compliance. For currently approved HCBS waivers and state plans, the state must submit a transition plan within one year from the effective date of the act, which will fall on March 17, 2015.

What this seems to mean for Living Choices providers, is that by no later than March 17, 2015 the state must quickly complete the surveys, then submit to CMS the following information: which ALFs are in compliance; which ALFs are not in compliance; and which ALFs are in the "heightened scrutiny" category. For those not in compliance, and any for which CMS does not accept the state's evidence under "heightened scrutiny, the state will have to either stop funding those facilities through the Living Choices waiver or follow a transition plan accepted by CMS. If the transition plan involves any additional costs to accomplish the transition, the costs will either have to be borne by providers or funds appropriated by the General Assembly.

A state must provide a 30-day public notice and comment period on the transition plan(s) the state intends to submit to CMS. The process must include at least two statements of public notice and public input procedures, the state must ensure the full transition plan is available for public comment, and the state must consider and modify the plan as appropriate based on comments received. With the proposed transition plan, the state must submit to CMS evidence of the required public notices, a summary of the public comments received, reasons why comments were not adopted, and any modifications to the plan based on the comments. The state can implement the transition plan once it is approved by CMS.

CMS expects states to transition to the new settings requirements in as brief a period as possible, and to demonstrate substantial progress during any transition period. CMS will afford states a maximum of five years, during which time it must demonstrate substantial progress. CMS assures states that it will work closely with states as they consider how to best implement these provisions. CMS also promises to issue future guidance on requirements for transition plans.

Person-Centered Service Plans

The Final Rule also contain requirements for "person-centered service plans" in the three HCBS programs. This is a process which focuses on the individual's needs and choices. The individual directs or is at the "center" of the planning process, which may also include a representative of the individual's choice and others, including providers, chosen by the individual to contribute to the process.

The process must result in a plan that meets certain minimum requirements, including individual goals and preferences regarding community participation, employment, income and savings, health care and wellness, and education. The plan should reflect the services and supports (paid and unpaid), who provides them, and whether an individual chooses to self-direct services.

Section 1915(i) State Plan HCBS

The Final Rule fleshes out requirements for Section 1915(i), the HCBS state plan option that Congress passed in 2005, and amended under the Affordable Care Act in 2010. The rule offers states the option to provide expanded home and community-based services and to target services to specific populations.

The chief advantage of Section 1915(i) is that it finally allows states to provide true home and community-based services to adults with chronic and serious mental illness. Under 1915(c), states were unable to obtain HCBS waivers for this population because they could not show that Medicaid would otherwise be paying for their care in an institution ("institutional level of care"). This was because of the federal rule denying payment in such settings for adults 21-64.

Under 1915(i), Congress removed the institutional level of care requirement as long as the person's income does not exceed 150% of the federal poverty level. If an individual's income exceeds 150% of FPL, up to 300% of FPL, they must be eligible for services under an existing 1915(c) waiver.

For the state plan HCBS option, eligibility is based upon several different factors that are either specified by the law or that a state may define. These factors include financial eligibility, the establishment of needs-based criteria, an individualized functional assessment, and the state option to offer benefits differing in type, amount, duration or scope to specific populations. As with other state plan services, the benefits must be provided statewide, and states must not limit the number of eligible people served.

The Final Rule allows coverable services under 1915(i) to include any of the services permitted under section 1915(c) HCBS waivers, such as case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and other services requested by the state agency and approved by CMS. The services may not include payment for room and board. States may also provide the following services to individuals with chronic mental illness: day treatment, psychosocial rehab, clinic services and other services requested by the state and approved by CMS.

Arkansas has issued a proposed rule that would use 1915(i) to replace the existing state plan service known as RSPMI.

Section 1915(c) HCBS Waiver Changes

The Final Rule makes several important changes to the 1915(c) HCBS waiver program. These changes are discussed in the following paragraphs.

Ability to combine target groups under one waiver

The Final Rule permits, but does not require, states to combine target groups within one HCBS waiver. Prior to that change, a single 1915(c) HCBS waiver could only serve one of the following three target groups:

- Older adults, individuals with disabilities, or both;
- Individuals with intellectual disabilities, developmental disabilities, or both; or
- Individuals with mental illness.

This change will allow states to design a waiver that meets the needs of more than one target population. If a state chooses to combine more than one target group under a single waiver, the state must assure CMS that it is able to meet the unique service needs of individuals in each target group, and that each individual in the waiver has equal access to all needed services.

Effective date of waivers

CMS clarified guidance that HCBS waiver amendments with substantive changes may only take effect on or after the date the amendment is approved by CMS. Substantive changes include, but are not limited to: elimination or reduction in services; changes in qualifications of service providers; constriction in eligible populations; reduction in amount, duration, or scope of any service; change in rate methodology, and other modifications as determined by the Secretary. Substantive changes also must be accompanied by information on how the state has assured smooth transitions and minimal adverse impact on individuals impacted by the change.

Public input for certain waiver changes

The Final Rule requires states to provide public notice when they propose substantive changes to their methods and standards for setting payment rates to providers for services.

States must also establish public input processes specifically for new waivers and for proposed substantive changes to existing waivers. The state must fully describe the public input process in its waiver application and must use such process for waiver policy development. The process must be sufficient to ensure meaningful opportunities for input from individuals served or who are eligible to be served. A state must provide the public with no less than thirty (30) days in which to provide input on a waiver prior to implementation of the change or submission to CMS, whichever comes first.

Additional information about the Final Rule can be found on the CMS website at http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html

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Laura Morgan, *How the New HCBS Rules Will Reshape Community-Based Services*, Open Minds, February 26, 2014.

HCBS Provider Self Assessment

Setting Name: **Person completing survey:**

Setting Address: **Telephone Number:**

Number of Beds in Setting: **Email Address:**

Characteristics that are expected to be present in all home and community-based settings and associated traits that individuals in those settings might experience:

1. **The setting was selected by individuals.**
    a. Do you give individuals the choice of available options regarding where to live?
    ☐Yes ☐No
    b. Do you give individuals opportunities to visit other settings?
    ☐Yes ☐No
    c. Do the settings reflect an individual's needs and preferences?
    ☐Yes ☐No
2. **Individuals participate in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.**
    a. Do individuals regularly access the community and would they be able to describe how they access the community?
    ☐Yes ☐No
    b. Do individuals have a choice of who assists in facilitating the activity and where they go?
    ☐Yes ☐No
    c. Do individuals shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as they choose?
    ☐Yes ☐No
    d. Do individuals come and go at any time?
    ☐Yes ☐No
    e. Do individual talk about activities occurring outside of the setting?
    ☐Yes ☐No
3. **Individuals are employed or active in the community outside of the setting.**
    a. Do individuals work in integrated community settings?
    ☐Yes ☐No
    b. If an individual would like to work, is there activity that ensures the option is pursued?
    ☐Yes ☐No
    c. Do individuals participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual?
    ☐Yes ☐No
4. **Individuals have their own bedrooms or share a room with a roommate of choice.**
    a. Do you give individuals a choice of a roommate?
    ☐Yes ☐No
    b. Do individuals talk about their roommate(s) in a positive manner?
    ☐Yes ☐No
    c. Do individuals express a desire to remain in a room with their roommate?
    ☐Yes ☐No
    d. Do married couples share or not share a room by choice?
    ☐Yes ☐No
    e. Do individual know how they can request a roommate change?
    ☐Yes ☐No

5. **Individuals choose and control a schedule that meets their wishes in accordance with a person-centered plan.**
    a. Do you make clear to individuals they are not required to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.?
    ☐Yes ☐No
    b. Does the individual's schedule vary from others in the same setting?
    ☐Yes ☐No
    c. Do individuals have access to such things as a television, radio, and leisure activities that interest them and can they schedule such activities at their convenience?
    ☐Yes ☐No
6. **Individuals control their personal resources.**
    a. Do individuals have a checking or savings account or other means to control their funds?
    ☐Yes ☐No
    b. Does the individual have access to their funds?
    ☐Yes ☐No
    c. Do you make clear to individuals they are not required to sign over their paychecks to the provider?
    ☐Yes ☐No
7. **Individuals choose when and what to eat.**
    a. Do individuals have a meal at the time and place of their choosing?
    ☐Yes ☐No
    b. Can individuals request an alternative meal if desired?
    ☐Yes ☐No
    c. Are snacks accessible and available anytime?
    ☐Yes ☐No
    d. Does the dining area afford dignity to the diners and are individuals not required to wear bibs or use disposable cutlery, plates and cups?
    ☐Yes ☐No
8. **Individuals choose with whom to eat or to eat alone.**
    a. Are individuals required to sit at an assigned seat in a dining area?
    ☐Yes ☐No
    b. Do individuals converse with others during meal times?
    ☐Yes ☐No
    c. Do individuals have the choice to eat privately?
    ☐Yes ☐No
9. **Individual choices are incorporated into the services and supports received.**
    a. Does staff ask individuals about their needs and preferences?
    ☐Yes ☐No
    b. Do individuals know how to make a service request?
    ☐Yes ☐No
    c. Do individuals express satisfaction with the services being received?
    ☐Yes ☐No
    d. Do you accommodate requests for services and supports?
    ☐Yes ☐No
    e. Do you facilitate choice in a manner that leaves individuals feeling empowered to make decisions?
    ☐Yes ☐No
10. **Individuals choose from whom they receive services and supports.**
    a. Can individuals identify other providers who render the services they receive?
    ☐Yes ☐No
    b. Do individuals express satisfaction with the provider selected or have they asked for a meeting to discuss a change?

☐Yes ☐No

c. Do individuals know how and to whom to make a request for a new provider?
☐Yes ☐No

11. Individuals have access to make private telephone calls/text/email at the individual's preference and convenience.

a. Do individuals have a private cell phone, computer or other personal communication device or have access to a telephone or other technology device to use for personal communication in private at any time?
☐Yes ☐No

b. Is the telephone or other technology device in a location that has space around it to ensure privacy?
☐Yes ☐No

c. Does the individual's room have a telephone jack, WI-FI or ETHERNET jack?
☐Yes ☐No

12. Individuals are free from coercion.

a. Is information about filing a complaint posted in an obvious location and in an understandable format?
☐Yes ☐No

b. Are individuals' comfortable discussing concerns?
☐Yes ☐No

c. Do individuals know the person to contact or the process to make an anonymous complaint?
☐Yes ☐No

d. Can individuals file an anonymous complaint?
☐Yes ☐No

e. Do individuals in the setting have different haircut/hairstyle and hair color?
☐Yes ☐No

13. Individuals, or a person chosen by the individual, have an active role in the development and update of the individual's person-centered plan.

a. Do individuals know how to schedule Person-Centered Planning meetings?
☐Yes ☐No

b. Can individuals explain the process to develop and update their plan?
☐Yes ☐No

c. Were individuals present during the last planning meeting?
☐Yes ☐No

d. Do you make the planning meeting occur at a time and place convenient for individuals to attend?
☐Yes ☐No

14. The setting does not isolate individuals from individuals in the broader community not receiving Medicaid HCBS.

a. Do individuals receiving HCBS live in a different area of the setting separate from individuals not receiving Medicaid HCBS?
☐Yes ☐No

b. Is the setting in the community among other private residences, retail businesses?
☐Yes ☐No

c. Is the community traffic pattern consistent around the setting (e.g. individuals do not cross the street when passing to avoid the setting)?
☐Yes ☐No

d. Do individuals on the street greet/acknowledge individuals receiving services when they encounter them?
☐Yes ☐No

e. Are visitors present?
☐Yes ☐No

f. Are visitors restricted to specified visiting hours?
☐Yes ☐No

g. Are visiting hours posted?

☐Yes ☐No

h. Is there evidence that visitors have been present at regular frequencies?
☐Yes ☐No

i. Are visitors restricted to specific meeting areas?
☐Yes ☐No

15. Facility protocols or practices do not limit individuals' choices.

a. Do your protocols or practices prohibit individuals' access to food at any time?
☐Yes ☐No

b. Do your protocols or practices require restrictions such as posted visiting hours or schedules?
☐Yes ☐No

c. Are individuals prohibited from engaging in legal activities?
☐Yes ☐No

16. The setting is an environment that supports individual comfort, independence and preferences.

a. Do you make sure individuals have full access to typical facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas?
☐Yes ☐No

b. Do you make sure all communication (written and oral) is conducted in a language that the individual understands?
☐Yes ☐No

c. Do you provide assistance in private, as appropriate, when needed?
☐Yes ☐No

17. Individuals have unrestricted access in the setting.

a. Do you have gates, Velcro strips, locked doors, or other barriers preventing individuals to enter or exit from certain areas of the setting?
☐Yes ☐No

b. Do you make sure individuals receiving Medicaid Home and Community-Based services can access amenities such as a pool or gym used by others on-site?
☐Yes ☐No

c. Do you make sure the setting is physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting or, if they are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstruction?
☐Yes ☐No

18. The physical environment meets the needs of those individuals who require supports.

a. Do you provide needed supports to individuals to assist them to move about the setting as they choose, such as grab bars, seats in the bathroom, ramps for wheel chairs, viable exits for emergencies, etc.?
☐Yes ☐No

b. Do you make sure appliances are accessible to individuals (e.g. the washer and dryer are front loading for individuals in wheelchairs)?
☐Yes ☐No

c. Do you make sure tables and chairs are at a convenient height and location so that individuals can access and use the furniture comfortably?
☐Yes ☐No

19. Individuals have full access to the community.

a. Do individuals come and go at will?
☐Yes ☐No

b. Do you make sure individuals can move about inside and outside the setting as opposed to sitting by the front door?
☐Yes ☐No

c. Is there a curfew or other requirement for a scheduled return to the setting?
☐Yes ☐No

d. Do individuals in the setting have access to public transportation?
☐Yes ☐No

e. Are there bus stops nearby or are taxis available in the area?
☐Yes ☐No

f. Do you make sure a van is available to transport individuals to appointments, shopping, etc.?
☐Yes ☐No

g. Do you make sure bus and other public transportation schedules and telephone numbers are posted in a convenient location?
☐Yes ☐No

h. Do you facilitate training in the use of public transportation?
☐Yes ☐No

i. Do you make sure other resources are provided for individuals to access the broader community where public transportation is limited?
☐Yes ☐No

20. Individual's rights to dignity and privacy are respected.

a. Do you keep health information about individuals private?
☐Yes ☐No

b. Do you post schedules of individuals for PT, OT, medications, restricted diet, etc., in a general open area for all to view?
☐Yes ☐No

c. Do you make sure individuals, who need assistance with grooming, are groomed as they desire?
☐Yes ☐No

d. Do you make sure individuals' nails are trimmed and clean?
☐Yes ☐No

21. Individuals who need assistance to dress are dressed in their own clothes appropriate to the time of day and individual preferences.

a. Do individuals wear their bathrobes all day long?
☐Yes ☐No

b. Do you make sure individuals are dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences?
☐Yes ☐No

22. Staff communicates with individuals in a dignified manner.

a. Do individuals greet and chat with staff?
☐Yes ☐No

b. Do staff converse with individuals in the setting while providing assistance and during the regular course of daily activities?
☐Yes ☐No

c. Does staff talk to other staff about an individual as if the individual was not present or within earshot of other persons living in the setting?
☐Yes ☐No

d. Does staff address individuals in the manner in which the person would like to be addressed as opposed to routinely addressing individuals as 'hon' or 'sweetie'?
☐Yes ☐No

Characteristics that are expected to be present in all provider-owned or controlled home and community-based settings and associated traits that individuals in those settings might experience:

1. **Modifications of the setting requirements for individuals are supported by an assessed need and justified in the person-centered plan.**
    a. Does documentation note if positive interventions and supports were used prior to any plan modifications?
    ☐Yes ☐No
    b. Do you document less intrusive methods of meeting the need that were tried previously?
    ☐Yes ☐No
    c. Does the plan includes a description of the condition that is directly proportional to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause the individual harm?
    ☐Yes ☐No
2. **Individuals have privacy in their sleeping space and toileting facility.**
    a. Do you make sure furniture is arranged as individuals prefer, and does the arrangement assure privacy and comfort?
    ☐Yes ☐No
    b. Can individuals close and lock the bedroom door?
    ☐Yes ☐No
    c. Do staff or other residents always knock and receive permission prior to entering a bedroom or bathroom?
    ☐Yes ☐No
3. **Individuals have privacy in their living space.**
    a. Do you have cameras present in the setting?
    ☐Yes ☐No
    b. Do you make sure the furniture is arranged as individuals prefer to assure privacy and comfort?
    ☐Yes ☐No
    c. Do staff or other residents always knock and receive permission prior to entering an individual's living space?
    ☐Yes ☐No
    d. Does staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with individuals?
    ☐Yes ☐No
4. **Individuals have comfortable places for private visits with family and friends.**
    a. Do you make sure the furniture is arranged to support small group conversations?
    ☐Yes ☐No
5. **Individuals furnish and decorate their sleeping and or living units in the way that suits them.**
    a. Are individuals' personal items, such as pictures, books, and memorabilia present and arranged as the individual desires?
    ☐Yes ☐No
    b. Do the furniture, linens, and other household items reflect the individual's personal choices?
    ☐Yes ☐No
    c. Do individuals' living areas reflect their interests and hobbies?
    ☐Yes ☐No
6. **There is a legally enforceable agreement for the unit or dwelling where the individual resides.**
    a. Do individuals have a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement?
    ☐Yes ☐No

b. Do individuals know their rights regarding housing and when they could be required to relocate?
☐Yes ☐No

7. Individuals are protected from eviction and afforded appeal rights in the same manner as all persons in the State who are not receiving Medicaid HCBS.

a. Do individuals know their rights regarding housing and when they could be required to relocate?
☐Yes ☐No

b. Do individuals know how to relocate and request new housing?
☐Yes ☐No

c. Does the written agreement include language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws?
☐Yes ☐No