



## HCBS Worksheet for Assessing Services and Settings

**How to use this worksheet:** This worksheet is intended to help State agencies, community members, and other stakeholders in reviewing the array of settings where home and community-based services (HCBS) are currently provided in their states prior to submission of the State's transition plan. This guide should help determine which settings meet the new requirements of home and community based settings, which settings do not meet the requirements, which settings may meet the requirements with changes, and which settings are presumed to be not HCBS but for which the state may decide to submit evidence to CMS for review under the 'heightened scrutiny' process. All states with 1915(c) waivers or 1915(i) and 1915(k) state plan amendments up for renewal or amendment before March 17, 2015 must submit a Transition Plan with that renewal or amendment submission. Within 120 days of the submission of that renewal or amendment, the state must submit a Transition Plan covering ALL the 1915(c), (i), and (k) home and community-based services in their state. If a state does not have an HCBS program up for renewal or amendment before March 17, 2015, they must submit a Transition Plan covering all HCBS services by that date. All new waiver or state plan amendment applications must be compliant upon submission. In the Transition Plan, which must be posted for public comment (see below), advocates and stakeholders should seek to ensure that the state has accurately identified settings and addressed them appropriately.

The worksheets lay out five key steps for analyzing settings and services against the requirements of the HCBS rule. Guiding questions, as provided by CMS, are included in helping with this analysis. Note that guidance has only been released for residential settings so far; this document will be updated as non-residential setting guidance is provided. As explained below, every transition plan will have the opportunity for public input and these worksheets are meant to provide another tool in that process. For additional resources, the CMS rule and guidance can be accessed at [www.medicaid.gov/hcbs](http://www.medicaid.gov/hcbs).

**Public Notice:** Under [§441.301](#) and [§441.710](#) of the HCBS rule, the state is required to provide at least a 30 day public notice and comment period regarding the transition plan(s) that the State intends to submit to CMS for review and consideration. Among its requirements, the State must at a minimum provide two statements of public notice and public input procedures, ensure the full transition plan is available to the public for public comment, and provide CMS with a summary of comments received during the public notice period.

**STEP 1:** Determine if the state has appropriately identified settings that are NOT a home and community-based as determined by the HCBS rule

**STEP 2:** Determine if the state has appropriately identified settings that are PRESUMED to have the qualities of an institution and are not home and community-based

**STEP 3:** Determine if the state's services are administered in accordance with the new HCBS rule requirements for the person-centered planning process (also called plan of care)

**STEP 4:** Determine if the state's settings and services meets the new regulatory requirements for HCBS

**STEP 5:** Determine if the state's provider owned or controlled settings meet the new regulatory requirements for HCBS

**STEP 1: Determine if the state has appropriately identified settings that are NOT home and community-based settings as determined by the HCBS rule**

<b>RULE</b> 1915c: §441.301l(5) 1915i: §441.710(a)(2) 1915k: §441.530(a)(2)	<b>YES</b>	<b>NO</b>	<b>Identify the setting(s) by name or location</b>
A nursing facility?			
An institution for mental diseases?			
An intermediate care facility for individuals with intellectual disabilities?			
A hospital?			

Compare this list to the settings included in the assessment the state submits in the Transition Plan for appropriate identification. Note: The rule prohibits funding HCBS in these settings under 1915(c), 1915(i), or 1915(k). It does not prohibit the state from funding these settings under other authorities in the Medicaid state plan.

**STEP 2: Determine if the state has appropriately identified settings PRESUMED to have the qualities of an institution and therefore are not home and community-based settings.**

<b>RULE</b> 1915c:§441.301(c)(5)(v) 1915i:§441.710(a)(2)(v) 1915k: §441.530(a)(2)(v)	<b>CMS GUIDANCE</b>	<b>YES</b>	<b>NO</b>	<b>Identify the setting(s) by name or location</b>
Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment				
Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution				
Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.	<ul style="list-style-type: none"> <li>• The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.</li> <li>• People in the setting have limited, if any, interaction with the broader community.</li> <li>• Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).</li> <li>• Examples: -Farmstead or disability-specific farm</li> </ul>			

	<p>community</p> <ul style="list-style-type: none"> <li>- Gated/secured “community” for people with disabilities.</li> <li>- Residential schools</li> <li>- Multiple settings co-located and operationally related (i.e., operated and controlled by the same provider) that congregate a large number of people with disabilities together and provide for significant shared programming and staff, such that people’s ability to interact with the broader community is limited.</li> </ul>			
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Compare this list to the settings included in the assessment the state submits in the Transition Plan for appropriate identification. In order to receive reimbursement for these settings, the State must overcome heightened scrutiny by the Secretary of HHS, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and does have the qualities of home and community-based settings. For more information about the heightened scrutiny process, see **§441.301(c)(5)(v)**.

### STEP 3: Determine if the state’s services are administered in accordance with the new HCBS rule requirements for the person-centered planning process (also called plan of care)

RULE	CMS GUIDANCE	YES	NO	State has standards? Y/N/Need to Address. If standards exist, cite them
The person-centered planning process:				
<p>1915c: §441.301(c)(1)(i) 1915i: §441.725(a)(1) 1915k: §441.540(a)(1)</p> <p>Includes people chosen by the individual.</p>				
<p>1915c: §441.301(c)(1)(ii) 1915i: §441.725(a)(2) 1915k: §441.540(a)(2)</p> <p>Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions</p>	<ul style="list-style-type: none"> <li>• Can the individual identify other providers who render the services s/he receives?</li> <li>• Does the individual know how and to whom to make a request for a new provider?</li> </ul>			
<p>1915c: §441.301(c)(1)(iii) 1915i: §441.725(a)(3) 1915k: §441.540(a)(3)</p> <p>Is timely and occurs at times and locations of convenience to the individual.</p>				
<p>1915c: §441.301(c)(1)(iv) 1915i: §441.725(a)(4) 1915k: §441.540(a)(4)</p> <p>Reflects cultural considerations</p>	<ul style="list-style-type: none"> <li>• Is informal (written and oral) communication conducted in a language that the individual understands?</li> </ul>			

<p>of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with §435.905(b) of this chapter.</p>				
<p>1915c: §441.301(c)(1)(v)  1915i: §441.725(a)(5)  1915k: §441.540(a)(5)</p> <p>Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.</p>	<ul style="list-style-type: none"> <li>• Is information about filing a complaint posted in an obvious location and in an understandable format?</li> <li>• Is the individual comfortable discussing concerns?</li> <li>• Does the individual know the person to contact or the process to make an anonymous complaint?</li> <li>• Can the individual file an anonymous complaint?</li> </ul>			
<p>1915c: §441.301(c)(1)(vi)</p> <p>Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In</p>				

<p>these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.</p>				
<p>1915c: §441.301(c)(1)(vii) 1915i: §441.725(a)(6) 1915k: §441.540(a)(6)</p> <p>Offers informed choices to the individual regarding the services and supports they receive and from whom</p>				
<p>1915c: §441.301(c)(1)(viii) 1915i: §441.725(a)(7) 1915k: §441.540(a)(7)</p> <p>Includes a method for the individual to request updates to the plan as needed.</p>	<ul style="list-style-type: none"> <li>• Can the individual express satisfaction with the provider selected or can the individual ask for a meeting to discuss a change?</li> </ul>			
<p>1915c: §441.301(c)(1)(ix) 1915i: §441.725(a)(8) 1915k: §441.540(a)(8)</p> <p>Records the alternative home and community-based settings that were considered by the individual.</p>				

**Compare the results of this checklist list to the person-centered process and plans the state currently implements. If there are discrepancies or weaknesses in the process, the state should propose improvements in the Transition Plan.**

## STEP 4: Determine if the state’s settings and services meet the new regulatory requirements:

RULE	CMS GUIDANCE	YES	NO	State has standards? Y/N/Need to Address If standards exist, cite them
<p>1915c: §441.301(c)(4)(i) 1915i: §441.710(a)(1)(i) 1915k: §441.530(a)(1)(i)</p> <p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<ul style="list-style-type: none"> <li>• Does the individual regularly access the community and is s/he able to describe how s/he accesses the community, who assists in facilitating the activity and where s/he goes?</li> <li>• Is the individual aware of or does s/he have access to materials to become aware of activities occurring outside of the setting?</li> <li>• Does the individual shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as the individual chooses?</li> <li>• Does the individual come and go at any time?</li> <li>• Does the individual talk about activities occurring outside of the setting?</li> </ul>			
<p>1915c: §441.301(c)(4)(ii) 1915i: §441.710(a)(1)(ii) 1915k: §441.530(a)(1)(ii)</p> <p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The</p>	<ul style="list-style-type: none"> <li>• Was the individual given a choice of available options regarding where to live/receive services?</li> <li>• Was the individual given opportunities to visit other settings?</li> <li>• Does the setting reflect the individual’s needs and preferences?</li> <li>• Was the individual given a choice of a roommate?</li> <li>• Does the individual talk about his/her roommate(s) in a positive manner?</li> </ul>			

<p>setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<ul style="list-style-type: none"> <li>• Does the individual express a desire to remain in a room with his/her roommate? How is it made clear that the individual is not required to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.?</li> <li>• Does the individual's schedule vary from others in the same setting?</li> <li>• Does the individual have access to such things as a television, radio, and leisure activities that interest him/her and can s/he schedule such activities at his/her convenience?</li> <li>• Do married couples share or not share a room by choice?</li> <li>• Does the individual know how s/he can request a roommate change?</li> </ul>			
<p>1915c: 441.301(c)(4)(iii)  1915i: §441.710(a)(1)(iii)  1915k: §441.530(a)(1)(iii)</p> <p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<ul style="list-style-type: none"> <li>• Does the individual have a checking or savings account or other means to control his/her funds?</li> <li>• Does the individual have access to his/her funds?</li> <li>• How is it made clear that the individual is not required to sign over his/her paychecks to the provider?</li> <li>• Is health information about individuals kept private?</li> <li>• Are schedules of individuals for PT, OT, medications, restricted diet, etc., posted in a general open area for all to view?</li> <li>• Are individuals, who need assistance with grooming, groomed as they desire?</li> <li>• Are individuals' nails trimmed and clean?</li> <li>• Do individuals greet and chat with staff?</li> <li>• Do staff converse with individuals in the setting while providing assistance and during</li> </ul>			

	<p>the regular course of daily activities?</p> <ul style="list-style-type: none"> <li>• Does staff talk to other staff about an individual(s) as if the individual was not present or within earshot of other persons living in the setting?</li> <li>• 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'?</li> <li>• Are individuals wearing bathrobes all day long?</li> <li>• Are individuals dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences?</li> <li>• Are individuals prohibited from engaging in legal activities?</li> </ul>			
<p>1915c: 441.301(c)(4)(iv)  1915i: §441.710(a)(1)(iv)  1915k: §441.530(a)(1)(iv)</p> <p>Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<ul style="list-style-type: none"> <li>• Does the individual work in an integrated community setting?</li> <li>• If the individual would like to work, is there activity that ensures the option is pursued?</li> <li>• Does the individual participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual?</li> <li>• Does the individual have a meal at the time and place of his/her choosing?</li> <li>• Can the individual request an alternative meal if desired?</li> <li>• Are snacks accessible and available anytime?</li> <li>• Does the dining area afford dignity to the diners and are individuals not required to wear bibs or use disposable cutlery, plates and cups?</li> </ul>			

<p>1915c: §441.301(c)(4)(v)  1915i: §441.710(a)(1)(v)  1915k: §441.530(a)(1)(v)</p> <p>Facilitates individual choice regarding services and supports, and who provides them.</p>	<ul style="list-style-type: none"> <li>• Does documentation note if positive interventions and supports were used prior to any plan modifications?</li> <li>• Are less intrusive methods of meeting the need that were tried initially documented?</li> <li>• 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?</li> <li>• Individuals furnish and decorate their sleeping and/or living units in the way that suits them.</li> <li>• Are the individuals' personal items, such as pictures, books, and memorabilia present and arranged as the individual desires?</li> <li>• Do the furniture, linens, and other household items reflect the individual's personal choices?</li> <li>• Do individuals' living areas reflect their interests and hobbies?</li> </ul>			
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**If NO to any of the above questions, the State's transition plan needs to propose improvements or changes, and timelines and milestones for implementing those changes.**

## STEP 5: Determine if the state’s provider-owned or controlled settings meet the new regulatory requirements:

RULE	CMS GUIDANCE	YES	NO	State has standards? Y/N/Need to Address If standards exist, cite them
<p>1915c: §441.301(c)(4)(vi)                      1915i: §441.710(a)(1)(vi)                      1915k: §441.530(a)(1)(vi)</p>				
<p>(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>	<ul style="list-style-type: none"> <li>• Does the individual have a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement?</li> <li>• Does the individual know his/her rights regarding housing and when s/he could be required to relocate?</li> <li>• Do individuals know how to relocate and request new housing?</li> <li>• 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?</li> </ul>			
<p>(B) Each individual has privacy in their sleeping or living unit:</p>	<ul style="list-style-type: none"> <li>• Does the individual have a private cell phone, computer or other personal communication device or have access to a telephone or other</li> </ul>			

	<p>technology device to use for personal communication in private at any time?</p> <ul style="list-style-type: none"> <li>• Is the telephone or other technology device in a location that has space around it to ensure privacy?</li> <li>• Do individuals' rooms have a telephone jack, WI-FI or ETHERNET jack?</li> <li>• Can the individual close and lock the bedroom door?</li> <li>• Can the individual close and lock the bathroom door?</li> <li>• Do staff or other residents always knock and receive permission prior to entering a bedroom or bathroom?</li> <li>• Are cameras present in the setting?</li> <li>• Is the furniture arranged as individuals prefer to assure privacy and comfort?</li> <li>• Do staff or other residents always knock and receive permission prior to entering an individual's living space?</li> <li>• Does staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the individual?</li> <li>• Is assistance provided in private, as appropriate, when needed?</li> </ul>			
<p>(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	<ul style="list-style-type: none"> <li>• Do individuals have full access to typical facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable</li> </ul>			

	seating in the shared areas? <ul style="list-style-type: none"> <li>• Do State regulations prohibit individuals' access to food at any time?</li> <li>• Do the individuals in the setting have different haircut/hairstyle and hair color?</li> </ul>			
(D) Individuals are able to have visitors of their choosing at any time.	<ul style="list-style-type: none"> <li>• Do State laws require restrictions such as posted visiting hours or schedules?</li> <li>• Is the furniture arranged to support small group conversations?</li> <li>• Do individuals come and go at will?</li> <li>• Are individuals moving about inside and outside the setting as opposed to sitting by the front door?</li> <li>• Is there a curfew or other requirement for a scheduled return to the setting?</li> </ul>			
(E) The setting is physically accessible to the individual.	<ul style="list-style-type: none"> <li>• Are there gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting?</li> <li>• Are individuals receiving Medicaid Home and Community-Based services facilitated in accessing amenities such as a pool or gym used by others on-site?</li> <li>• Is the setting 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</li> </ul>			

<p>elevator to ameliorate the obstruction?</p> <ul style="list-style-type: none"><li>• For those individuals who need supports to move about the setting as they choose, are supports provided, such as grab bars, seats in the bathroom, ramps for wheel chairs, viable exits for emergencies, etc.?</li><li>• Are appliances accessible to individuals (e.g. the washer/dryer are front loading for individuals in wheelchairs)?</li><li>• Are tables and chairs at a convenient height and location so that individuals can access and use the furniture comfortably?</li><li>• Do individuals in the setting have access to public transportation?</li><li>• Are there bus stops nearby or are taxis available in the area?</li><li>• Is an accessible van available to transport individuals to appointments, shopping, etc.?</li><li>• Are bus and other public transportation schedules and telephone numbers posted in a convenient location?</li><li>• Is training in the use of public transportation facilitated?</li><li>• Where public transportation is limited, are other resources provided for the individual to access the broader community?</li></ul>			
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If NO to any of the above questions, the state's transition plan needs to propose improvements or changes, and timelines and milestones for implementing those changes.

**Additional Guidance:** Any modification of the additional conditions under Step 4 must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

**RULE**

1915c: §441.301

1915i: §441.710

1915k: §441.530

The following requirements must be documented in the person-centered service plan upon any modification of the additional conditions:

- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- 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 a 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 is still necessary or can be terminated.
- Include informed consent of the individual.
- Include an assurance that interventions and supports will cause no harm to the individual.

**FINAL STEP! Be sure to use your completed worksheet to weigh in with your State agency on their assessment process and transition plan during the public comment period! Visit [HCBSadvocacy.org](http://HCBSadvocacy.org) for more information on how to participate in your state.**