

**Regulatory Requirements for Home and Community-Based Settings:**

For 1915(c) home and community-based waivers and, for 1915(i) State plan home and community-based services, home and community-based settings must have all of the following qualities defined at §441.301(c)(4) and §441.710 respectively, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- 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.
- 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 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.
- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- 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.
- Facilitates individual choice regarding services and supports, and who provides them.
- In a provider-owned or controlled residential setting, in addition to the qualities specified above, the following additional conditions must be met:
  1. 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.
  2. Each individual has privacy in their sleeping or living unit:
    - Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
    - Individuals sharing units have a choice of roommates in that setting.
    - Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
  3. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
  4. Individuals are able to have visitors of their choosing at any time.
  5. The setting is physically accessible to the individual.

6. Any modification of the additional conditions specified in items 1 through 4 above, 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:
  - 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 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 the informed consent of the individual.
  - Include an assurance that interventions and supports will cause no harm to the individual.

**Settings That are Not Home and Community-Based:**

For 1915(c) home and community-based waivers, settings that are not home and community-based are defined at §441.301(c)(5) as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

For 1915(i) State plan home and community-based services, settings that are not home and community-based are defined at §441.710(a)(2) as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

**Settings that are Presumed to have the Qualities of an Institution:**

For 1915(c) home and community-based waivers, section 441.301(c)(5)(v) specifies that the following settings are presumed to have the qualities of an institution:

- 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, or
- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

For 1915(i) State plan home and community-based services, section 441.710(a)(2)(v) specifies that the following settings are presumed to have the qualities of an institution:

- 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, or
- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

## Incorporation of Heightened Scrutiny in the Standard Waiver Process

State develops initial, amendment or renewal application which includes state process for ensuring ongoing compliance with the HCB setting requirements



State identifies, adds or changes standard (s) (e.g., licensing, certification, etc.) for providers to permit settings presumed to have qualities of an institution



State demonstrates that it has excluded settings that are institutional in nature inside a licensing or certification standard in the application



State determines is HCBS and documents justification for CMS in applying heightened security



State submits application for public comment



State incorporates input from public comment period and provides summary of disposition of that input into the waiver application



State posts the final document for public transparency and submits to CMS



CMS reviews application and applies heightened security to identified settings and makes final determination



CMS accepts HCB setting status



CMS identifies settings presumed institutional not identified in the application



CMS denies HCB status

Approval of this aspect of the application

Informal RAI



Resolved\*



Approval

Unresolved

Formal RAI



Resolved\*

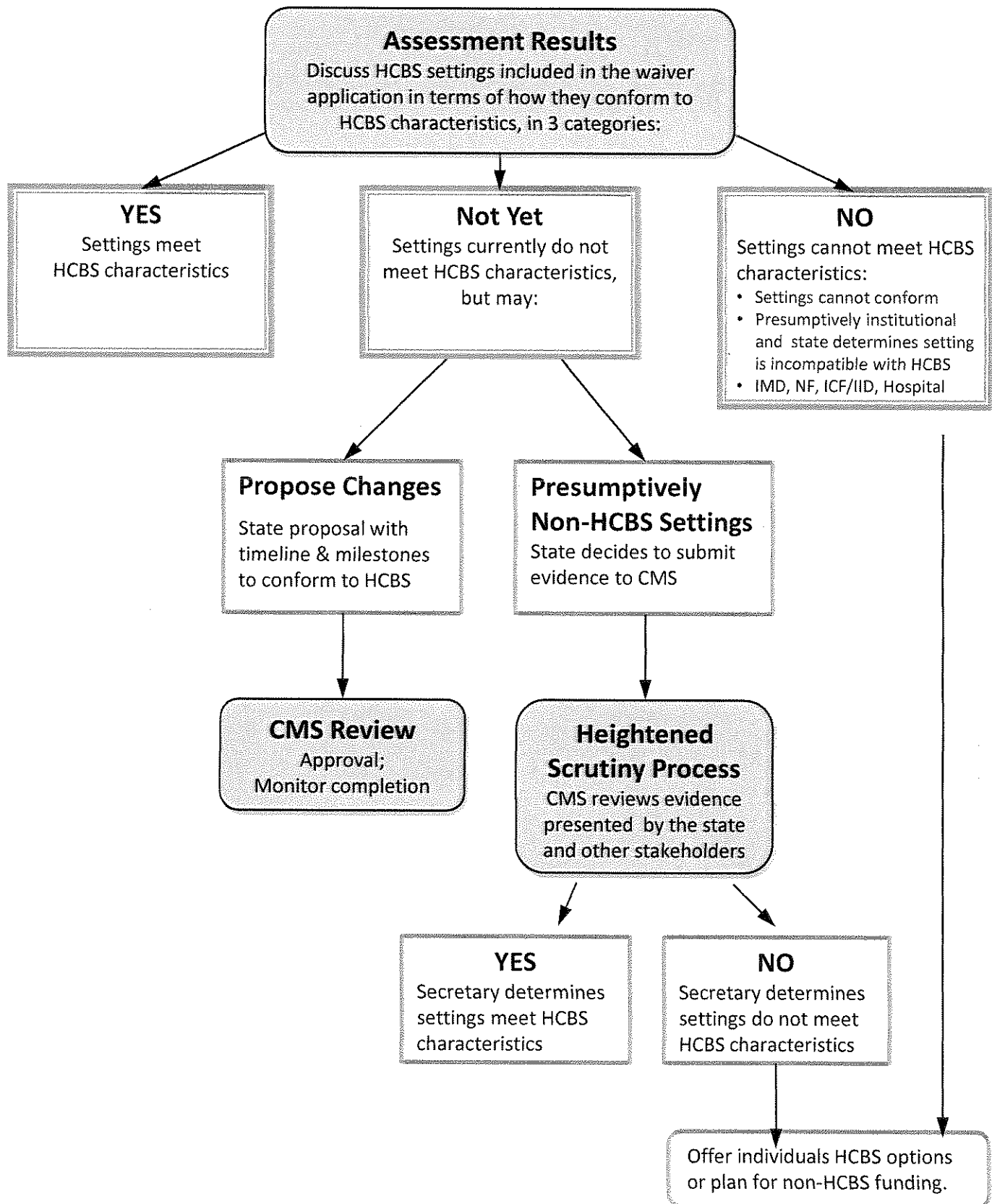
Approval

Unresolved

Disapproval

\*Substantive changes will require a public comment period

# STEPS TO COMPLIANCE FOR HCBS SETTINGS REQUIREMENTS IN A 1915(c) WAIVER and 1915(i) SPA



NOTE: Substantive changes in a 1915(c) HCBS Waiver Transition Plan will require public comment.

**GUIDANCE ON SETTINGS THAT HAVE THE EFFECT OF ISOLATING  
INDIVIDUALS RECEIVING HCBS FROM THE BROADER COMMUNITY**

The purpose of this guidance is to provide more information to states and other stakeholders about settings that have the effect of isolating individuals receiving HCBS from the broader community.

The final rule identifies settings that are presumed to have institutional qualities and do not meet the rule's requirements for home and community-based settings. These settings include those in a publicly or privately-owned facility that provide inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS. A state may only include such a setting in its Medicaid HCBS programs if CMS determines through a heightened scrutiny process, based on information presented by the state and input from the public that the state has demonstrated that the setting meets the qualities for being home and community-based and does not have the qualities of an institution. (For more information about the heightened scrutiny process, see Section 441.530(a)(2)(v) Home and Community-Based Setting).

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- 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.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

The following is a non-exhaustive list of examples of residential settings that typically have the effect of isolating people receiving HCBS from the broader community. CMS will be issuing separate guidance regarding non-residential settings.

- **Farmstead or disability-specific farm community:** These settings are often in rural areas on large parcels of land, with little ability to access the broader community outside the farm. Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals. Individuals typically live in homes only with other people with disabilities and/or staff. Their neighbors are other individuals with disabilities or staff who work with those individuals. Daily activities are typically designed to take place on-site so that an individual generally does not leave the farm to access HCB services or participate in community activities. For example, these settings will often provide on-site a place to receive clinical (medical and/or behavioral health) services, day services, places to shop and attend church services, as well as social activities where individuals on the farm engage with others on the farm, all of whom are receiving Medicaid HCBS. While sometimes people from the broader community may come on-site, people from the farm do not go out into the broader community as part of their daily life. Thus, the setting does not facilitate individuals integrating into the greater community and has characteristics that isolate individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.
- **Gated/secured “community” for people with disabilities:** Gated communities typically consist primarily of people with disabilities and the staff that work with them. Often, these locations will provide residential, behavioral health, day services, social and recreational activities, and long term services and supports all within the gated community. Individuals receiving HCBS in this type of setting often do not leave the grounds of the gated community in order to access activities or services in the broader community. Thus, the setting typically does not afford individuals the opportunity to fully engage in community life and choose activities, services and providers that will optimize integration into the broader community.
- **Residential schools:** These settings incorporate both the educational program and the residential program in the same building or in buildings in close proximity to each other (e.g. two buildings side by side). Individuals do not travel into the broader community to live or to attend school. Individuals served in these settings typically interact only with other residents of the home and the residential and educational staff. Additional individuals with disabilities from the community at large may attend the educational program. Activities such as religious services may be held on-site as opposed to facilitating individuals attending places of worship in the community. These settings may be in urban areas as well as suburban and rural areas. Individuals experience in the broader community may be limited to large group activities on “bus field trips.” The setting therefore compromises the individual’s access to experience in the greater community at a level that isolates individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.

- 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. Depending on the program design, this could include, for example, group homes on the grounds of a private ICF or numerous group homes co-located on a single site or close proximity (multiple units on the same street or a court, for example). In CMS' experience, most Continuing Care Retirement Communities (CCRCs), which are designed to allow aging couples with different levels of need to remain together or close by, do not raise the same concerns around isolation as the examples above, particularly since CCRCs typically include residents who live independently in addition to those who receive HCBS.



## **Exploratory Questions to Assist States in Assessment of Residential Settings**

This optional tool is provided to assist states in assessing whether the characteristics of Medicaid Home and Community-based Services, as required by regulation, are present. The information is organized to cite anticipated characteristics and to provide suggested questions to determine if indicators of that characteristic are present.

**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 the individual.**
  - Was the individual given a choice of available options regarding where to live/receive services?
  - Was the individual given opportunities to visit other settings?
  - Does the setting reflect the individual's needs and preferences?
- 2. The individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.**
  - 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?
  - Is the individual aware of or does s/he have access to materials to become aware of activities occurring outside of the setting?
  - Does the individual shop, attend religious services, schedules appointments, have lunch with family and friends, etc., in the community, as the individual chooses?
  - Does the individual come and go at any time?
  - Does the individual talk about activities occurring outside of the setting?
- 3. The individual is employed or active in the community outside of the setting.**
  - Does the individual work in an integrated community setting?
  - If the individual would like to work, is there activity that ensures the option is pursued?
  - Does the individual participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual?
- 4. The individual has his/her own bedroom or shares a room with a roommate of choice.**
  - Was the individual given a choice of a roommate?
  - Does the individual talk about his/her roommate(s) in a positive manner?

- Does the individual express a desire to remain in a room with his/her roommate?
  - Do married couples share or not share a room by choice?
  - Does the individual know how s/he can request a roommate change?
5. The individual chooses and controls a schedule that meets his/her wishes in accordance with a person-centered plan.
- How is it made clear that the individual is not required to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.?
  - Does the individual's schedule vary from others in the same setting?
  - 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?
6. The individual controls his/her personal resources.
- Does the individual have a checking or savings account or other means to control his/her funds?
  - Does the individual have access to his/her funds?
  - How is it made clear that the individual is not required to sign over his/her paychecks to the provider?
7. The individual chooses when and what to eat.
- Does the individual have a meal at the time and place of his/her choosing?
  - Can the individual request an alternative meal if desired?
  - Are snacks accessible and available anytime?
  - Does the dining area afford dignity to the diners and are individuals not required to wear bibs or use disposable cutlery, plates and cups?
8. The individual chooses with whom to eat or to eat alone.
- Is the individual required to sit at an assigned seat in a dining area?
  - Does the individual converse with others during meal times?
  - If the individual desires to eat privately, can s/he do so?
9. Individual choices are incorporated into the services and supports received.
- Do Staff ask the individual about her/his needs and preferences?
  - Are individuals aware of how to make a service request?
  - Does the individual express satisfaction with the services being received?
  - Are requests for services and supports accommodated as opposed to ignored or denied?
  - Is individual choice facilitated in a manner that leaves the individual feeling empowered to make decisions?
10. The individual chooses from whom they receive services and supports.
- Can the individual identify other providers who render the services s/he receives?
  - Does the individual express satisfaction with the provider selected or has s/he asked for a meeting to discuss a

- change?
  - Does the individual know how and to whom to make a request for a new provider?
- 11. The individual has access to make private telephone calls/text/email at the individual's preference and convenience.
  - Does the individual 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?
  - Is the telephone or other technology device in a location that has space around it to ensure privacy?
  - Do individuals' rooms have a telephone jack, WI-FI or ETHERNET jack?
- 12. Individuals are free from coercion.
  - Is information about filing a complaint posted in an obvious location and in an understandable format?
  - Is the individual comfortable discussing concerns?
  - Does the individual know the person to contact or the process to make an anonymous complaint?
  - Can the individual file an anonymous complaint?
  - Do the individuals in the setting have different haircut/hairstyle and hair color?
- 13. The individual, or a person chosen by the individual, has an active role in the development and update of the individual's person-centered plan.
  - Is/are the individual/chosen representative(s) aware of how to schedule Person-Centered Planning meetings?
  - Can the individual explain the process to develop and update his/her plan?
  - Was the individual present during the last planning meeting?
  - Did/does the planning meeting occur at a time and place convenient for the individual to attend?
- 14. The setting does not isolate individuals from individuals not receiving Medicaid HCBS in the broader community.
  - Do individuals receiving HCBS live/receive services in a different area of the setting separate from individuals not receiving Medicaid HCBS?
  - Is the setting in the community among other private residences, retail businesses?
  - Is the community traffic pattern consistent around the setting (e.g. individuals do not cross the street when passing to avoid the setting)?
  - Do individuals on the street greet/acknowledge individuals receiving services when they encounter them?
  - Are visitors present?
  - Are visitors restricted to specified visiting hours?
  - Are visiting hours posted?
  - Is there evidence that visitors have been present at regular frequencies?
  - Are there restricted visitor's meeting area?
- 15. State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices.

- Do State regulations prohibit individuals' access to food at any time?
  - Do State laws require restrictions such as posted visiting hours or schedules?
  - Are individuals prohibited from engaging in legal activities?
16. The setting is an environment that supports individual comfort, independence and preferences.
- Do 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?
  - Is informal (written and oral) communication conducted in a language that the individual understands?
  - Is assistance provided in private, as appropriate, when needed?
17. The individual has unrestricted access in the setting.
- Are there gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
  - Are individuals receiving Medicaid Home and Community-Based services facilitated in accessing amenities such as a pool or gym used by others on-site?
  - 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 elevator to ameliorate the obstruction?
18. The physical environment meets the needs of those individuals who require supports.
- 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.?
  - Are appliances accessible to individuals (e.g. the washer/dryer are front loading for individuals in wheelchairs)?
  - Are tables and chairs at a convenient height and location so that individuals can access and use the furniture comfortably?
19. Individuals have full access to the community.
- Do individuals come and go at will?
  - Are individuals moving about inside and outside the setting as opposed to sitting by the front door?
  - Is there a curfew or other requirement for a scheduled return to the setting?
  - Do individuals in the setting have access to public transportation?
  - Are there bus stops nearby or are taxis available in the area?
  - Is an accessible van available to transport individuals to appointments, shopping, etc.?
  - Are bus and other public transportation schedules and telephone numbers posted in a convenient location?
  - Is training in the use of public transportation is facilitated?
  - Where public transportation is limited, are other resources provided for the individual to access the broader

community?

20. The individual's right to dignity and privacy is respected.

- Is health information about individuals kept private?
- Are schedules of individuals for PT, OT, medications, restricted diet, etc., posted in a general open area for all to view?
- Are individuals, who need assistance with grooming, groomed as they desire?
- Are individuals' nails trimmed and clean?

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

- Are individuals wearing bathrobes all day long?
- Are individuals dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences?

22. Staff communicates with individuals in a dignified manner.

- Do individuals greet and chat with staff?
- Do staff converse with individuals in the setting while providing assistance and during the regular course of daily activities?
- 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?
- 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'?

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 an individual are supported by an assessed need and justified in the person-centered plan.

- Does documentation note if positive interventions and supports were used prior to any plan modifications?
- Are less intrusive methods of meeting the need that were tried initially documented?
- 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?

2. Individuals have privacy in their sleeping space and toileting facility.
  - Is the furniture arranged as individuals prefer and does the arrangement assure privacy and comfort?
  - Can the individual close and lock the bedroom door?
  - Can the individual close and lock the bathroom door?
  - Do staff or other residents always knock and receive permission prior to entering a bedroom or bathroom?
3. The individual has privacy in his/her living space.
  - Are cameras present in the setting?
  - Is the furniture arranged as individuals prefer to assure privacy and comfort?
  - Do staff or other residents always knock and receive permission prior to entering an individual's living space?
  - Does staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the individual?
4. The individuals have comfortable places for private visits with family and friends.
  - Is the furniture arranged to support small group conversations?
5. Individuals furnish and decorate their sleeping and/or living units in the way that suits them.
  - Is the individuals' personal items, such as pictures, books, and memorabilia are present and arranged as the individual desires?
  - Does the furniture, linens, and other household items reflect the individual's personal choices?
  - Do individuals' living areas reflect their interests and hobbies?
6. There is a legally enforceable agreement for the unit or dwelling where the individual resides.
  - Does the individual have a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement?
  - Does the individual know his/her rights regarding housing and when s/he could be required to relocate?
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.
  - Do individuals know their rights regarding housing and when they could be required to relocate?
  - Do individuals know how to relocate and request new housing?
  - Does the written agreement includes language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws?