

Assessment of Findings Summary Report: Virginia ID/DD Providers' Compliance with the HCBS Settings Regulation

Executive Summary

The Virginia Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Medical Assistance Services (DMAS) developed an online self-assessment survey tool for providers to evaluate their current level of compliance with the requirements of the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) settings regulation as part of its statewide transition plan. DBHDS distributed the survey link and related instructions via a targeted provider e-mail distribution list and posted notice and the survey link to its website. Between December 30, 2014 and March 31, 2015, DBHDS received 321 completed surveys. The majority of providers responding to the survey were Residential and Day Support providers, with some also providing Prevocational and Group Supported Employment services. Responses represented each of Virginia's major geographic regions. Results were analyzed by provider type according to whether their setting "fully meets," "could meet with some adjustments," or "does not meet" the HCBS settings requirements. Some inferences were drawn from accompanying text comments.

The majority of all providers indicated that their setting "fully meets" the settings requirements across all categories surveyed. However, comments revealed considerable misunderstanding or misinterpretation of the requirements. Among those providers who acknowledged that their settings did *not* meet the requirements or could meet the requirements with some adjustments, the two areas most frequently cited were absence of a legally enforceable lease agreement with eviction protection and appeals processes and lockable living units with individual access to keys. Also frequently cited was the need for greater integration in the community and absence of individual control of schedule and daily activities. There were also significant differences among providers about the specific expectations and requirements of the regulation in regard to the identified areas.

Individual choice of settings, providers, and services was most often indicated by the existence of signed forms on file. Protection of an individual's right to privacy, dignity, respect, and freedom from coercion and restraint was most often referenced by completed staff training and posting of human rights notices, etc. in common areas. Responses also seem to indicate uncertainty about whether individuals are being offered meaningful choices and suggest a lingering paternalistic approach to how services are delivered. In some cases, provider rules directly conflicted with the philosophy of presumed competence and principles of person-centeredness.

Further, distinction between an individual's *presence* in the community and *full integration and interaction* seems to be an area where additional education is needed. However, a number of responses demonstrated knowledge, understanding, and thoughtful application of the underlying principles of the HCBS regulation. Responses also showed that some providers are utilizing creativity in person-centered approaches and have committed to adjusting their service models to move toward full compliance with the settings requirement. Site visits paired with targeted training and technical assistance will be an important component in achieving full understanding of the broader purpose and context of the regulation, aided by extensive stakeholder engagement and collaboration.

Introduction

In January 2014, the Centers for Medicare & Medicaid Services (CMS) issued a final rule for Home and Community-Based Services (HCBS) that requires states to review and evaluate HCBS settings, including residential and non-residential settings. The HCBS final regulation, published January 16, 2014 and available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>, required states to prepare and submit a Statewide Transition Plan. As part of the Intellectual Disability, Developmental Disability, and Day Supports waivers' Transition Plan regarding the settings requirements for the final regulation the Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Medical Assistance Services (DMAS) agreed to develop and share with stakeholders and providers a summary report of the following assessment activities and outcomes:

- Assessment of waiver regulations
- Assessment of related DBHDS regulations and policies
- Provider self-assessment

Additionally, this report describes the process and opportunities for providers to receive education, training, and technical assistance in order to comply with the CMS HCBS settings requirements per the new federal regulations.

Assessment of Waiver Regulations

Virginia's regulations for the above three waivers have not yet been modified to address the HCBS settings rule. The redesign of the three waivers for individuals with ID/DD is continuing to move forward. When the redesign process concludes, DBHDS and DMAS will amend the CMS applications and draft new regulations. The new regulations, which should be drafted in 2016, will incorporate the HCBS settings rule.

Assessment of Related DBHDS Regulations and Policies

DBHDS Licensing regulations are in the process of being revised. The internal DBHDS workgroup has nearly completed their efforts to create "Emergency Regulations," which will incorporate elements of the HCBS settings rule. These will then progress through the state administrative process for approval of emergency regulations before becoming final. This process can take up to a year to obtain the necessary levels of approval.

Provider Self-Assessment

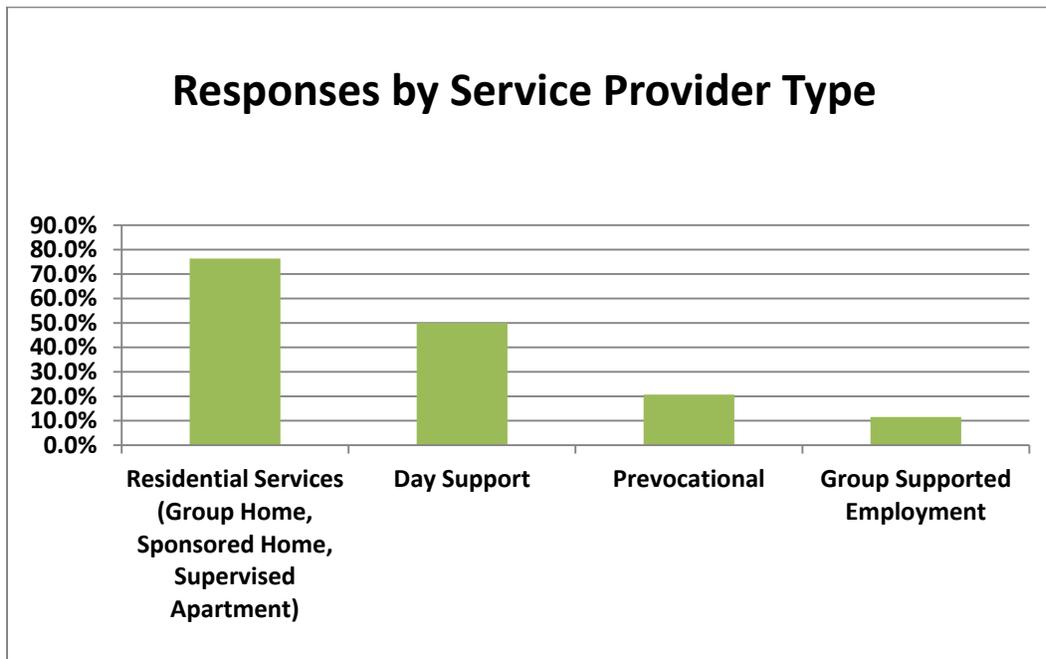
The Transition Plan for these waivers required service providers of the following services to complete an on-line self-assessment:

- Residential support (inclusive of Group Home, Sponsored Home, and Supervised Apartment settings)
- Day Support
- Prevocational
- Group Supported Employment.

The self assessment consisted of 15 questions related to the HCBS settings rule requesting the providers' assessment of whether their setting "fully meets," "could meet with minor adjustments," or "does not meet" the settings requirements (Exhibit A). In addition, each question was accompanied by a text box for the provider to elaborate on the nature of their compliance with the element. Between December 30, 2014 and March 31, 2015, 321 Intellectual Disability, Developmental Disability and Day Support waiver providers submitted their self assessments. . The results are as follows. The vast majority of respondents were providers of residential services; however, many provide more than one service. Figure 1 shows the responses according to type of service provided.

Figure 1
Services Provided

Services Provided	Responses	Count
Residential Services (Group Home, Sponsored Home, Supervised Apartment)	77.22%	244
Day Support	48.10%	152
Prevocational	19.30%	61
Group Supported Employment	11.08%	35

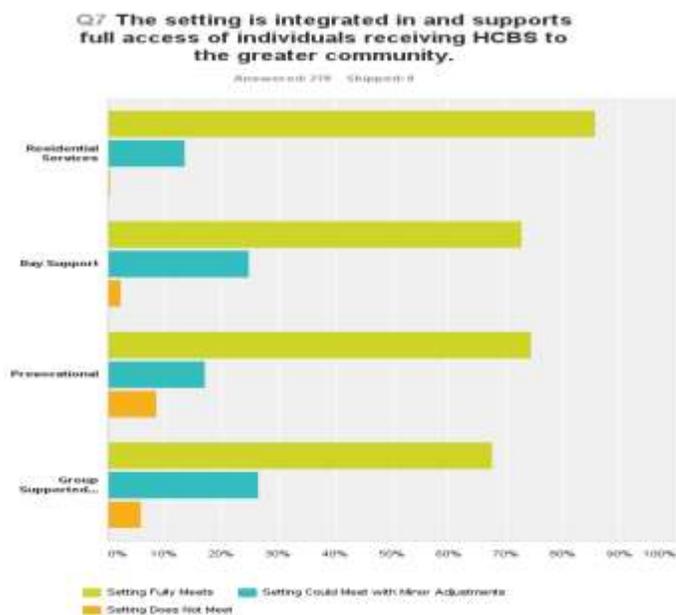


Questions and Responses Related to Elements of the HCBS Settings Rule Requirements

1. *“The setting is integrated in and supports full access of individuals receiving HCBS to the greater community.”* The majority of providers indicated that their setting “fully meets” this element of the settings requirements, although a number of providers did indicate that minor adjustments would be required in order to fully comply. The responses per service type are detailed in Figure 2.

Figure 2

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	86.42% 210	12.76% 31	0.82% 2	243
Day Support	72.03% 103	24.48% 35	3.50% 5	143
Prevocational	73.58% 39	16.98% 9	9.43% 5	53
Group Supported Employment	68.42% 26	23.68% 9	7.89% 3	38



In addition, providers were asked to respond to the following related question, *“Explain how integrated into the “greater community” your setting is and what type of supports you offer to allow individuals full access to the “greater community.”*

Many Day Support providers responded similar to this provider, “Currently, individuals participate in volunteer activities such as Meals on Wheels, light housekeeping at local businesses, delivering newspaper to the animal shelter, and assembling care packages for inmates, and involved in marketing task for several businesses.” However, others supporting a particular segment of the population indicated limitations as in this provider’s response, “Due to the high number of medically fragile individuals, many supported in wheelchairs, transportation is an issue and limits community integration. Small groups have the opportunity to go into the community once a week and two specialty programs three times a week, but the percentage of our participants with community access is small.”

Typical residential provider responses included:

- “Individuals participate in choosing activities in which they have interest.”
- “Individuals have access to the "greater community" in settings they choose, including but not limited to eating at restaurants they enjoy, attending church if so desired, attending music gatherings, vacations, shopping for items, going to movies, choosing where to receive medical/dental services, walking on trails (exercise), etc.”
- “Individuals participate in choices, and the provider supports the individual through dignity of risk.”
- “Each resident participates in weekly grocery shopping, running their new errands, shopping at local store, as well as participating in community events at the civic center, community library, church, parks and recreation, and have their choice for a community outing with our activities facilitators at their request. Residential Supervisor prepares an activity calendar per month of up-coming events that help the residents choose what activities they would like to complete.”

Some residential and day services providers acknowledged the need for adjustments in their focus, “All groups are integrated into the community regularly, however the frequency could be increased and the duration extended.”

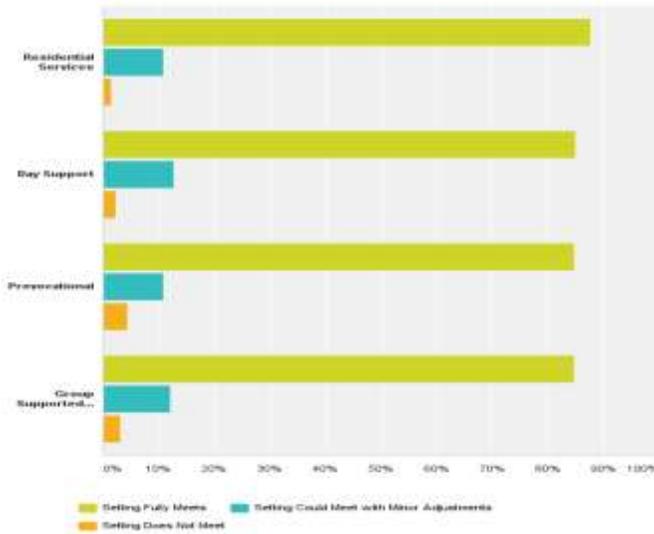
Prevocational service providers are often additionally challenged, “As a site-based prevocational program, we currently do not offer services which involve access to the greater community.”

2. “The setting was selected by the individual from among options including non-disability specific settings.” Most providers (82.6% - 87.6%) indicated that their setting fully meets this requirement. The responses per service type are detailed in Figure 3.

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	87.60% 212	9.92% 24	2.48% 6	242
Day Support	82.64% 119	13.19% 19	4.17% 6	144
Prevocational	84.62% 44	9.62% 5	5.77% 3	52
Group Supported Employment	86.49% 32	8.11% 3	5.41% 2	37

Q8 The setting was selected by the individual from among options including non-disability specific settings.

Answered: 778 Skipped: 0



The related question for this item was, “*Explain what kind of documentation you keep to show that the individual chose to receive services in your setting and that the individual's choice of you as a provider was based on the individual's needs, preferences, and (if applicable) resources for available room and board.*”

Overwhelmingly, the responses to this open-ended question merely indicated that individuals signed a Provider Choice form presented to them by the Support Coordinator.

- “The CSB Support Coordinator has control of the residential providers that individuals are offered.”
- “Case Managers coordinate tours for individuals seeking services of various Waiver programs available.”
- “Individuals complete a tour of the program in which there is a full review of services, supports, and options provided.”
- “At the support coordination level, individuals are given a provider choice list and the opportunity to visit whomever they choose.”

A number of providers indicated that they have on file the individual’s ISP, which shows needs and preferences.

Some providers of residential services even indicated that individuals “were allowed choices of which Group Home that they wanted to live in and they choose to live at our Group Home” or, “The individual visited several different group homes before selecting current residence.”

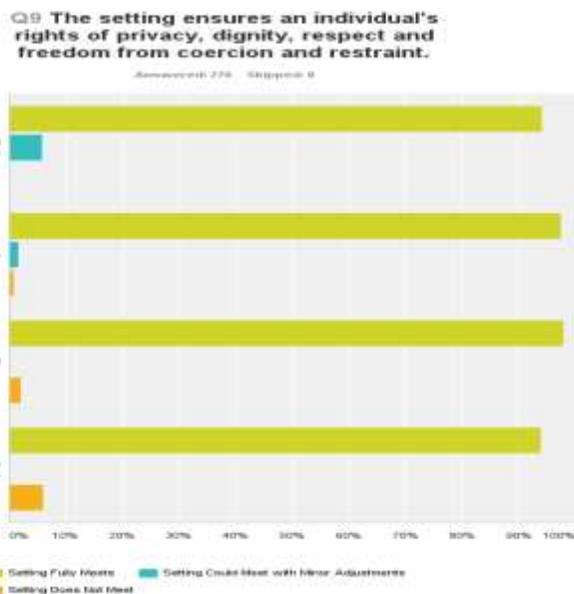
Day support providers similarly stated, “When individuals are interested in attending our day support program, they are given a tour, are offered to visit the program to determine if it is a good match for them. Support coordinators facilitate tours and visits with other day support programs to help them find a good match.”

Clearly, there needs to be more education for both providers and support coordinators about offering choices of non-disability settings options. One provider summed this up with, “We have documentation that supports our clients’ individual choices to participate in our program, however, we are not always aware of non-disability settings options they may have had.” It is acknowledged that this must be a meaningful choice: in order to live in a typical apartment complex, there must be appropriate supports, including rent subsidies; in order to participate in non-disability specific day activities, those choices must also be available.

3. “The setting ensures an individual's rights of privacy, dignity, respect and freedom from coercion and restraint.” Probably due to the emphasis on these concepts from DBHDS Office of Licensing, Human Rights and Division of Developmental Services “person-centered practices” training, the responses for “setting fully meets” are very high (91.8% - 95.7%). The responses per service type are detailed in Figure 4.

Figure 4

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	95.10% 233	4.90% 12	0.00% 0	245
Day Support	95.74% 135	3.55% 5	0.71% 1	141
Prevocational	96.30% 52	0.00% 0	3.70% 2	54
Group Supported Employment	91.89% 34	0.00% 0	8.11% 3	37



Further elaboration was requested to, “*Explain how your agency ensures that an individual's rights of privacy, dignity, respect and freedom from coercion and restraint are protected in your settings.*”

The vast majority of respondents indicated that they provide annual training in Human Rights and Behavioral Management for all staff and that they have posted the State Human Rights notice. In addition, many affirmed that, according to state regulations, all human rights allegations are investigated and entered into the Computerized Human Rights Investigation System and all staff

members involved in human rights allegations are trained, terminated, coached, advised, or in some cases placed on administrative leave, as appropriate.

Many providers indicated that the individuals being supported receive verbal instruction at the annual person-centered planning meeting on their rights of privacy, dignity respect and freedom from coercion and restraint and a form is signed stating all was understood.

A number of residential providers affirmed their commitment to individual privacy through statements similar to the following:

- “Our residents are provided their own bedrooms for privacy.”
- “Individuals who share a bedroom choose to share.”
- “All of our group homes have private bedrooms. Staff are expected to knock and inquire if they can enter all bedrooms.
- “Clients are addressed on a first name basis. We knock on their door before entering their room. For individuals with roommates, we assure one person is getting dressed or undressed at a time to ensure privacy. We encourage individuals in the home to knock on doors before entering. They are allowed privacy while making telephone calls. They are also allowed privacy when they receive visitors.”

Regarding restraints, common responses included:

- “The individuals we serve are treated as others would like to be and are not "persuaded" to do anything they have not indicated they do not want to do unless it is a health and safety, such as an emergency drill.”
- “Physical restraints are an absolute last resort when working with the people and staff is trained in TOVA techniques. Mechanical restraints are not available.”
- “Our organization obtains permission from the LHRC before applying restraint(s). Our organization ensures, through work and training of employees, that each individual's rights of privacy, dignity, respect and freedom from coercion or unapproved use of restraint are met. Restraint that is not approved through the LHRC is only used when imminent danger or safety risks are present.”
- “Our direct support staff and our managers are trained in MANDT, Human Rights, Positive Behavioral Supports, and person-centered philosophy.”

Several Day Support providers indicated that:

- “Respecting an individual’s rights is monitored very closely at every level. We have a written behavior policy that forbids coercion and restraint. Violation of an individual’s Human Rights by staff in any way is grounds for disciplinary actions including termination of employment.”
- “We insure privacy by having doors on every bathroom which are closed whenever they are in use. This includes using the facilities independently or with staff assistance if required, clothing that may require changing, washing up, etc.”
- “Medications are given in the nursing clinic and not the program rooms. Only one person at a time receives medications. There are offices and a conference room always available if an individual would like a private conversation with someone.”

Some very positive responses include:

- “We hold bi-weekly house meetings where their rights are discussed. Typically, we select one human right to go over with the individuals at each meeting. We try to educate the individuals in ways they easily understand, through role modeling and simplified language.”
- “We believe and tell every employee that we work for the individual, they are our "bosses" and if at any time the individual says or demonstrates that the employee is not a good match the staff is removed from providing their care.”

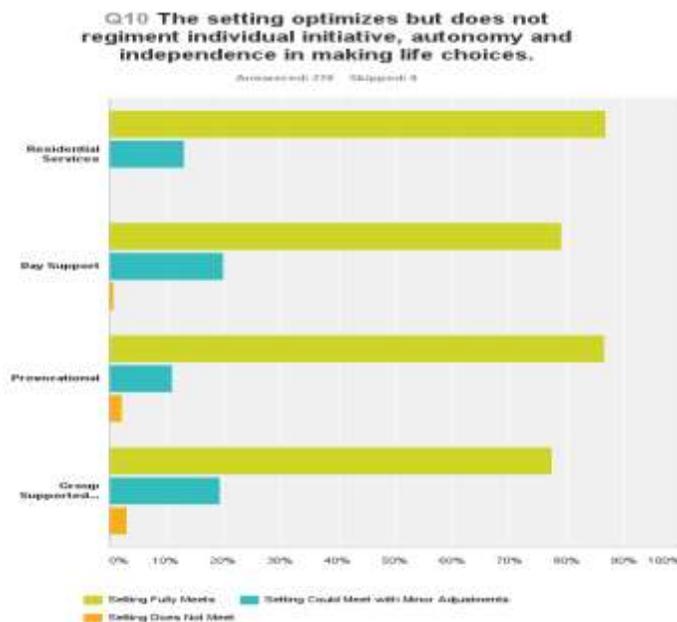
An acknowledgement of the need to improve in order to comply with the settings requirement:

- “All bedroom doors do not lock; will update. Can be corrected by replacing the necessary door locks with keyed locks that allow individual and appropriate staff to have a key except in cases where variance is requested due to an individual's medical condition.”

4. “The setting optimizes but does not regiment individual initiative, autonomy and independence in making life choices.” The responses range from a high of 88% for residential services fully meeting this criterion to 5.5% of group supported employment providers indicating that they do not currently meet. The responses per service type are detailed in Figure 5.

Figure 5

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	88.07% 214	11.93% 29	0.00% 0	243
Day Support	79.02% 113	19.58% 28	1.40% 2	143
Prevocational	86.27% 44	9.80% 5	3.92% 2	51
Group Supported Employment	77.78% 28	16.67% 6	5.56% 2	36



Response was requested to the following related question, “How does your agency optimize, and not regiment, an individual's initiative, autonomy, and independence in making life choices, including but not limited to daily activities, their physical environment and with whom to interact?”

Provider responses to this question almost universally indicated an understanding that choice is an important value and an expectation. Many referenced subscribing to person centeredness and individuals having input into their person-centered plans. Many included responses similar to, "Individuals are always given a choice or given a choice daily." Examples of choices afforded individuals were typically of the nature of small or routine choices vs. larger "life choices."

Some typical group supported employment provider responses:

- "Job tasks are rotated among employees based on choice. Work stations are rotated periodically to enhance integration opportunities. Individuals give input in satisfaction surveys."
- "For our Group Supported Employment setting the individuals were actively involved with choosing RSVP's enclave site as their preferred job setting. They were also actively involved in choosing their work days and work hours. They decide what to do on their breaks, what to eat for lunch, and with whom they spend their lunch and break times, just like the rest of the mall employees."

A Prevocational services provider stated that, "Individuals have the opportunity to choose whether they want to participate with us, what job tasks they want to try and what department/location, and have various opportunities to interact with others of their choosing."

Day support providers' responses included acknowledgement that center-based Day Support services present a challenge with fully living up to HCBS settings rule choice expectations:

- "Upon request or when there seems to be a challenge, individuals are offered the choice to change locations program locations or not to be associated with a given individual. Individuals choose if they would like to participate in community activities or not. Options are provided daily. We are currently working to create scheduling that will operate similar to a quarterly schedule of college classes. These classes will be selected by the individuals semi-annually."
- "Our agency is currently working to improve in this area. Currently, at our Agency Day Services program individuals are placed within clusters or suites. This arguably prohibits the individual's autonomy and independence."
- "We make every effort to meet this requirement. There are times when an individual chooses an activity in a community location, but we do not have enough staff to accommodate the choice. There are other times when an individual would like to participate in a volunteer activity on a given day, but the volunteer pool is already full, so the individual must wait until the next available spot. We are transitioning to a fully community-based program where the staff-to-individual ratio will ideally be 1:1 and in no case more than 1:3. This will eliminate the staffing issues."
- "Do not have staff resources to support separate activities for each enrollee. Individuals choose from an array of activities, on site and/or in the community daily. With whom one interacts is based on activity selected and individuals may change activities in order to increase/decrease interaction with specific others. Staff support is provided based on need and rapport. Nothing is regimented except program start/stop & lunch times."

Residential providers typically stated that individuals are offered choice in clothing, food, activity, where to sit, etc. on a daily basis. Some other common responses included:

- Individuals are encouraged to participate in selecting places to eat, recreational activities, what restaurants to visit, etc. They utilize the internet, newspapers, yellow pages, etc. to aid in

making their choices. They participate in selecting what day to engage in the activity. They choose who they want as partners or with whom they want to engage in activities.

- Residents are free to decorate their bedrooms in any way they choose as long as it does not pose a danger to their health and safety. They choose the outings and activities they participate in and are offered education and guidance in making personal decisions. They are never required to attend any outing and/or activity, but are always offered the opportunity to choose events to attend. Residents are welcome to have guests in their home at any time and are free to visit with family and friends when they so choose.

Some residential providers qualified their responses with references to program rules, indicated that further expansion of choice is needed, or otherwise acknowledged challenges to be met:

- “Residents are informed by our approved rules of conduct what is expected of them to reside in the program.”
- “We need work on this area.”
- “We do our best to offer limited options because all would be overwhelming. Instead of where do you want to eat, we ask would you like to go to A, B or C, which we know are places they like. Like in almost all waiver settings, it is challenging to create opportunities for quality relationships with the general public. We try to frequent places with the general public as part of our activities in hopes natural relationships will occur.”
- “Per licensing/DMAS schedules regulate certain daily tasks that we must do. When regulations are changed to be more in-line with the final rule, we should have no problem adjusting likewise.”
- “It is only when a health and safety issue arises as a result of a refusal or other matter that supportive interventions are provided. Individuals are given the opportunity to go places of their chosen that we feel are safe.”

One commonality noted was the use of the word “allow,” as in “Our agency **allows** our clients to choose.” This perhaps unrecognized paternalism is evidence that more work needs to be done with providers.

However, on a positive note a few responses did demonstrate an understanding of this element’s underlying principle:

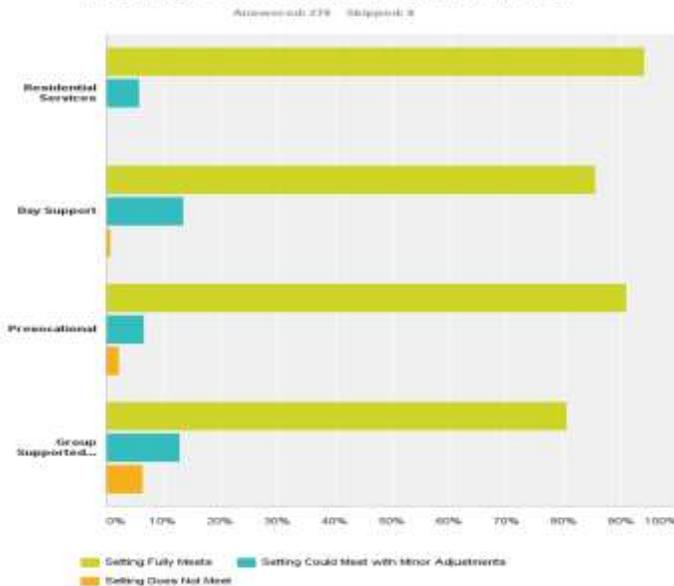
- “We have been very clear with staff that we will not tolerate things that we have seen/heard sometimes from the community such as “bedtime”, labels, “staff area,” “staff bathroom,” “allow.” We are very clear with the fact that we work in *their* home, they do not live in *our* facility! We balance between the structure a person may need and the independence and autonomy they may desire/need/are capable of having.”
- “Individuals who have a difficult time living with more than 1 person have been offered an opportunity to live in an apartment setting.”

5. “Setting facilitates individual choice regarding services/supports and providers.” Again, the highest percentage of providers indicating that their setting fully meets was residential providers and the highest percentage of providers indicating that their setting does not meet was group supported employment providers. The responses per service type are detailed in Figure 6.

Figure 6

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	92.98%	7.02%	0.00%	242
Day Support	83.92%	15.38%	0.70%	143
Prevocational	88.24%	9.80%	1.96%	51
Group Supported Employment	80.00%	14.29%	5.71%	35

Q11 Setting facilitates individual choice regarding services/supports and providers.



Additional detail was requested in the form of, “How does your agency facilitate the individual's choice regarding services/supports and providers?”

Most providers indicated that choices are offered during the person-centered planning meeting and that the meeting is an opportunity for the support coordinator to ask the individual if he/she wishes to continue services at the present providers or pursue services from another agency. That meeting is also an opportunity for individuals to be reminded of their rights and be informed that they have the right to accept or refuse services.

Some provider responses seemed to indicate that choice was primarily a matter of the initial choice of provider: “Choices were made when individuals previewed programs and decided to move here.” Also, the term “allow” showed up again: “We allow the individual to choose what services and supports they would like or not like.” Other frequent statements included, “Individuals are informed that they are free to choose a new provider at any time.”

Some common themes in Day Support providers’ responses:

- “We help many of our individuals move on to work programs or day programs that would be more appropriate to meet their needs.”
- “Following a request to move to another service [within the same agency], a team meeting, which includes the individual and authorized representative, as appropriate, is called to

determine if the desired program is appropriate to meet the needs and desired outcomes of the individual. Once consensus of the team is reached and space and resources are available, transition to the new program service is initiated. Should an individual wish to leave this provider, referrals are made to the desired service(s)."

- "Individuals may express their preference as to who they want on their service delivery team and individuals may invite anyone they want to their PCP meetings.
- "When individuals indicate they are dissatisfied, staff investigate why and determine what actions need to be taken to ensure individual satisfaction. Individuals are encouraged to communicate their wants and needs daily. They are encouraged to "take ownership" of their program."

Several group supported employment responses were:

- "Individual service plans focus on personal growth and development of skills at the setting that increases their ability to make informed choices."
- "The individual chooses if they would like to work as shifts are available."

Residential service providers' responses included:

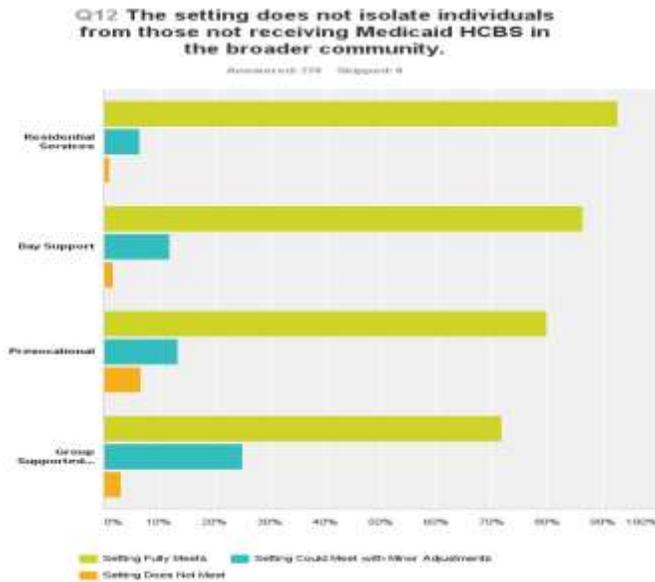
- "Agency supports the Individual's choice regarding services/supports providers when possible."
- "We ask, "Are you satisfied with the services provided by this agency?" We also inform the client and/or representative of the fact that other providers provide the same residential service."
- "Our group home residents chose their rooms. They have their own rooms. They have computers with internet and various other electronic games and devices in the home and day program. They choose and control their schedule especially on the weekends. We are constantly asking our individuals what they want to do. Our individuals choose when and where they want to go."
- "Should an individual or their guardian/AR request an alternative service, the agency will support that decision and assist and advocate for the individual to seek other opportunities."
- "Our agency educates staff on how to inform the individual of their rights. We practice it in our services, team meetings, through our advocates and guardians."
- "All individuals participate in developing their personal profile and outcomes in their person-centered plan. They make choices and or receive the necessary support in making choices regarding places they wish to visit in the community and within the program. If an individual is unable to communicate their choices/desires, staff utilizes the "Personal Profile" and usually a Communication Chart, which provides valuable information about his/her preferences."
- "Each year our agency administers a satisfaction survey for all the individuals in the programs to gauge their satisfaction level of their services/supports and gives them the opportunity to express any dissatisfaction with their services. It also facilitates a conversation regarding their preferences in their services received. If an Individual does not like their residential or day placement, the agency works cooperatively with the team to take the individual on tours to other programs and will also help with gathering information for a referral packet to other programs."

On a very positive note, one residential provider stated, "Individuals living in the home are part of the interview process when new staff are added."

6. “The setting does not isolate individuals from those not receiving Medicaid HCBS in the broader community.” The responses per service type are detailed in Figure 7.

Figure 7

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	92.12%	6.64%	1.24%	241
Day Support	84.62%	12.59%	2.80%	143
Prevocational	76.47%	17.65%	5.88%	51
Group Supported Employment	69.44%	27.78%	2.78%	36



Providers elaborated on this item by responding to, “How does your agency ensure that individuals receiving Medicaid HCBS are not isolated from others not receiving Medicaid HCBS in the broader community?”

A significant number of providers misinterpreted this question as being about the funding source (Medicaid vs. non-Medicaid funded supports) or discrimination against individuals with disabilities. Such responses as, “We provide the same and inclusive setting for all of our individuals who are approved for admission to our program regardless of income/funding,” “We do not isolate Medicaid clients from other clients not receiving Medicaid,” and “This facility is an equal opportunity facility and does not discriminate in any way” are illustrative of this misunderstanding.

Some very common responses limited references to community integration/involvement to going shopping, attending church, eating out, and going to doctors. Another frequently used term, which emphasizes the differences in perception of individuals with disabilities involvement with their community from that of those without disabilities, is “community outings” as in, “Individuals are routinely taken on community outings where they are permitted to interact with others not receiving Medicaid HCBS.” Since most of those providers felt that their setting fully meets this element of the settings requirements, additional provider education is clearly needed.

Some did realized that their “setting could meet with modifications,” or “setting does not meet” and acknowledged that work is needed. Several outlined steps planned to resolve isolation issues, including relocating some individuals to non-clustered residences.

Some representative responses for Group Supported Employment providers included:

- Our employment settings are in community-based and integrated settings.
- In our Group Supported Employment setting, the persons served work at the mall. Though they receive 100% supervision and supports from a job coach, they work in an integrated work setting with their coworkers and interact regularly with the general public. They receive a competitive hourly wage for their work.
- We foster interactions between individuals receiving services and other employees at their job sites. At one job site, several individuals participate in the Very Special Arts Theater. The employees of the company in which they work, attend the plays and even bring flowers for the individuals after the performance. This is just one example of the relationships that have developed. Individuals eat in the company lunch rooms and participate in company events.

Prevocational provider responses:

- We are an integrated work environment providing clients frequent contact with those with and without disabilities. Our commercial environment provides above minimum wage, minimum wage and piece rated jobs and employs persons with and without disabilities.
- Our prevocational service has two fully integrated opportunities for individuals where the individuals are an integral part of the business and work side by side with other employees.

Some responses from Day Support providers that seemed to meet the mark included:

- Activities range from volunteering, shopping, eating out, going to farms, museums, musical events, lunch connection groups, bowling, movies, parks, etc. Some of our outings connect with community members directly, such as volunteering and assisting community with food distribution together, ordering for themselves at restaurants, interacting with waiters and cashiers to pay for themselves with support from staff. We have community members who come to our site to connect with individuals in the program, as well as to offer activities, classes etc. (e.g., yoga class, Zumba, foreign language, safety, health and nutritional information, volunteering).
- The day support program is located in the community and is within less than a mile to numerous retail businesses, restaurants, recreational facilities, libraries, museums, community centers, parks, churches, hospitals and fire/police stations. The setting is located on a public transportation bus line. The program has adequate vehicles to provide transportation to various sites in the community. Individuals currently participate in activities with citizens of the area. As an example, some seniors have joined a group at a local Sportsplex for an exercise program.

Some responses that are representative of residential services providers’ replies that will require further technical assistance:

- All of our homes are in neighborhoods in residential areas.
- All programs are located in the larger community. The group homes are located in communities, on streets with neighbors. People living in the group homes attend church services, go to the movies, participate in community activities.
- Individuals are integrated in the community on a regular basis via shopping, dining out, events and recreational activities.

- The agency ensures that individuals receiving Medicaid HCBS communicate with the individuals that are not receiving Medicaid HCBS by transporting them in the community to see other individuals as well as other individuals not receiving Medicaid HCBS, visiting them in the broader community.
- Individuals travel to their Day Supports and are exposed to the broader community. They also go on Community Outings during the week and on weekends. We are not in a gated community so they are a part of the community. They attend local churches, shop at local shopping malls and are not isolated in the broader community.
- This provider allows the individuals to attend outside community events and special Olympics activity.

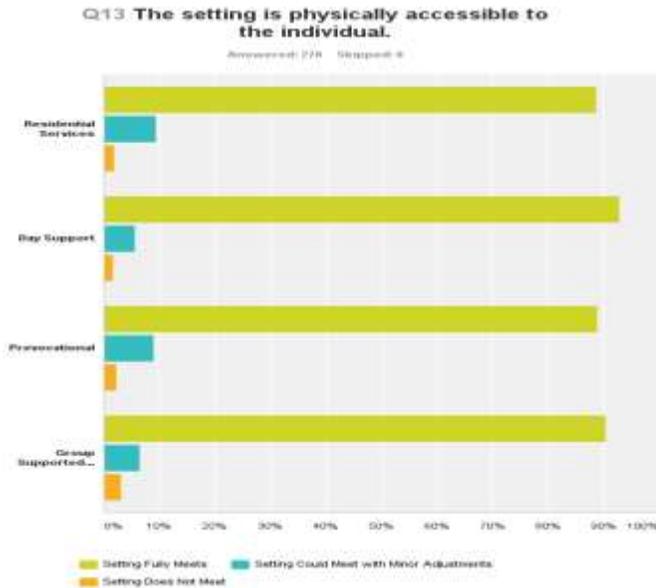
Other residential service providers may be closer to meeting the intent of this element of the settings requirements by fostering natural supports and actively promoting relationships between the individuals they support and community members not paid to be in their lives:

- The individuals live in aesthetically beautiful and safe town home within the community. They are given the opportunities to engage in various community activities and they receive services and supports while in the community. The individuals have the opportunity to establish natural support system through various community functions such as churches and social events such as dances, parties, community parades, etc. Two third of the population of individuals in our program are engaged in supportive employment services through agencies of their choice. They also have control of their personal resources and finances. The individuals enjoy and exercise the same rights as individuals not receiving Medicaid HCBS.
- This agency has been dedicated to facilitating relationships on behalf of the individuals with others who are "not paid" to spend time with them, such as church, participating in the local community garden, and the neighborhood community center.
- Individuals have the opportunity to not only participate in activities that may be planned by staff but they are encouraged to participate in activities that are of their preference as well, which may include time spent with family/friends outside of their home.

7. “The setting is physically accessible to the individual.” As this is required by DBHDS Office of Licensing, it is likely that the high percentages of “setting fully meets” reported here are fairly accurate. The responses per service type are detailed in Figure 8.

Figure 8

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	90.04%	8.30%	1.66%	241
	217	20	4	
Day Support	93.71%	4.90%	1.40%	143
	134	7	2	
Prevocational	90.20%	5.88%	3.92%	51
	46	3	2	
Group Supported Employment	91.43%	2.86%	5.71%	35
	32	1	2	



Details were sought in the form of responding to the following question, *“What steps has your agency taken to ensure that the service setting is ADA compliant and physically accessible to individuals you support?”*

Many providers cited their compliance with DBHDS licensing regulations, which require accessibility. Others mentioned being accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), OSHA compliant, and/or ADA compliant. A few larger providers mentioned having safety/accessibility committees that meet regularly throughout the year to perform inspections and address program specific accessibility needs. A few providers acknowledged not being fully accessible/ADA compliant, but either stated that that was due to the needs of the individuals they support (e.g., “Currently, we do not have any individual in our service setting who requires the use of wheelchairs. If we do, we will make the necessary environmental modifications, such as installation of ramps, accessible living arrangements, etc.) to meet the needs of the individual,” or that they were in the process of making necessary adjustments and modifications. Most stated that they had accessibility features such as accessible parking, wheelchair ramps, and accessible bathrooms with grab bars. One response revealed a broader way of thinking about accessibility: “Each Direct Support Professional is an advocate for individuals with disabilities. Before an activity is planned DSPs ensure that the accommodations can meet the need of the individuals.”

Most Day Support providers made comments similar to these:

- The facility is equipped with ramps, wide door openings, and disability accessible bathrooms.
- We have wheelchair vans/buses for our day program. We have wheelchair accessible bathrooms for men and women.
- The Day Support building is ADA compliant and has been inspected by a city building inspector.

Some responses from Pre-vocational providers included:

- The setting is physically accessible, including access to bathrooms and break rooms, and appliances, equipment, and tables/desks and chairs at a convenient height and location, with no obstructions such as steps, lips in doorway or narrow hallways.

- Environmental and architectural modifications have been made as identified to assist individuals in accomplishing work, i.e., jigs, lowered tables, modified staplers. Accessibility is reviewed annually to identify barriers and plans of action to correct are developed. Compliance with the Accessibility Plan and completion of removal of any barriers is monitored.

A sampling of typical responses from Residential services providers includes:

- This agency ensures that all individuals don't have limitations within their homes. If a particular individual chooses the home, it will be customized to fit their needs. Currently, nobody that resides in the homes requires the use of a wheelchair, wheelchair van or bathroom equipment.
- Doors were widened, ramps installed, and bathrooms modified to accommodate individuals. This agency invested substantially in making our group homes accessible. We have substantially remodeled four of our group homes to create roll-in showers, installed ramps, handrails, lowered counters, and widened doorways. We have used grant funds to obtain a number of vehicles with lifts which can transport wheelchairs. We sold a two story home we had owned for years and moved the residents to a one level ranch which has all of the above renovations.
- House provides ADA complaint accessibility to individuals as needed. There is a chair lift and walk-in shower for individuals with mobility issues. There is also a wheelchair in the company van to accommodate individuals within the community.

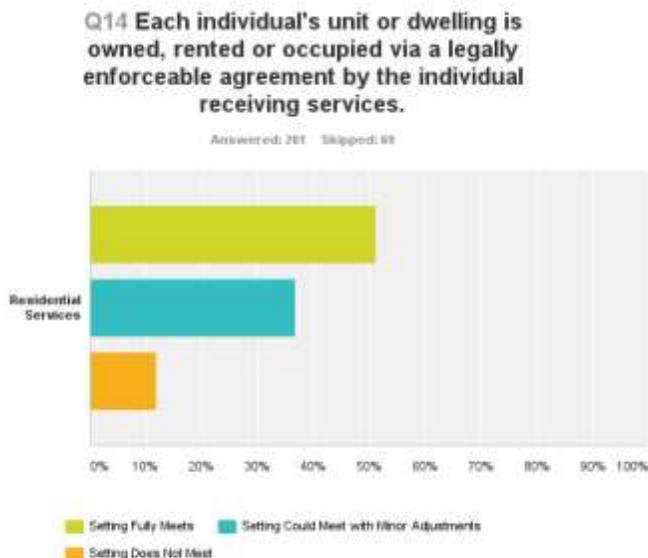
Residential Support Providers' Questions

The remaining three items were geared only for providers of residential support services to complete.

8. "Each individual's unit or dwelling is owned, rented or occupied via a legally enforceable agreement by the individual receiving services." The responses are detailed in Figure 9.

Figure 9

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	53.19% 125	35.74% 84	11.06% 26	235



Greater detail was required in the form of a response to, “What kind of provisions related to your setting's eviction or service termination process are detailed in your setting's lease, service/participation agreement, or other legally enforceable agreement that is given to the individual? How comparable are the eviction provisions and protections to Landlord/Tenant laws of your jurisdiction?”

A large number of providers acknowledged that additional work in this area is required and many indicated that it will be forthcoming:

- Our attorney is drafting a lease agreement for us currently.
- To date, there are no legally enforceable agreements with the individuals or their authorized representatives.
- We do not have leases in place at this time for all residences. Our goal is to have all in place by 3/1/15 and they will address all areas listed.
- Individuals residing in apartments have a lease with each landlord that is legally binding. Group homes as a whole have a lease with the owner, but the individuals residing in them do not have individual leases.
- We currently have a Discharge Policy in the event of dismissal however there is no legal financial agreement subject to eviction in the form of a lease at this time.

Some may already be in compliance with responses such as:

- All of the individuals we serve in our four apartment programs are party to leases they have signed with the apartment landlords.
- This agency's sister company provides property management services for our residential homes. As such, leases and agreements are managed by the sister company and are comparable to industry standards.

Others seemed to feel that their “setting fully meets” this requirement; however responses such as these may indicate a need for further technical assistance:

- In the individuals application and in our policies and procedures and placement agreement conditions for the individual being discharged from the program are discussed
- Individuals are not required to sign a lease and have the ability to vacate at any point without monetary penalty. ARSS has a "no fail" policy and only terminate service when instructed by a medical professional that ARSS can no longer meet the needs of said individual.

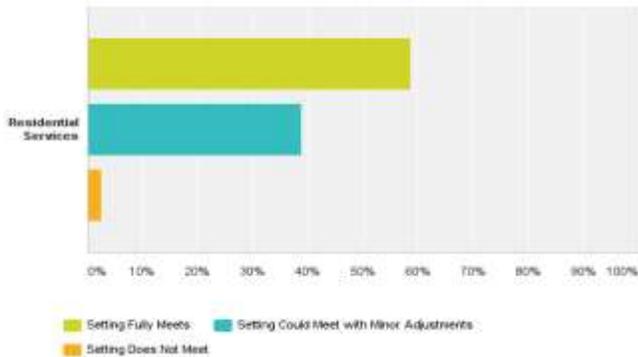
9. “The individual has privacy in his/her sleeping or living unit; units have lockable entrances with keys for the individual and only appropriate staff; individual has choice of roommate; individual has freedom to furnish and decorate his/her living unit.” The responses are detailed in Figure 10.

Figure 10

	Setting Fully Meets	Setting Could Meet with Minor Adjustments	Setting Does Not Meet	Total
Residential Services	59.49% 141	37.97% 90	2.53% 6	237

Q15 The individual has privacy in his/her sleeping or living unit; units have lockable entrances with keys for the individual and only appropriate staff; individual has choice of roommate; individual has freedom to furnish and decorate his/her living unit.

Answered: 393 Skipped: 67



Further elaboration was requested in the form of a response to, *“Explain how your setting ensures that the individual has privacy in his/her sleeping or living unit. Describe how you ensure that each individual has a key to his/her living unit (and only appropriate staff as well). Explain how you ensure that individuals select their own roommate. Explain policies regarding individuals decorating and/or furnishing their own rooms as desired.”*

Again, while the majority of providers seemed to feel their setting fully meets, over one third acknowledged that some adjustments would be necessary in order to comply with this element. Nearly all providers indicated that individuals have the freedom to furnish/decorate their living spaces according to their preferences. Many providers indicated that individuals currently have private rooms or, if they have a roommate, it is by choice.

A number of the providers that indicated “setting fully meets” responded to the request for additional information with responses similar to:

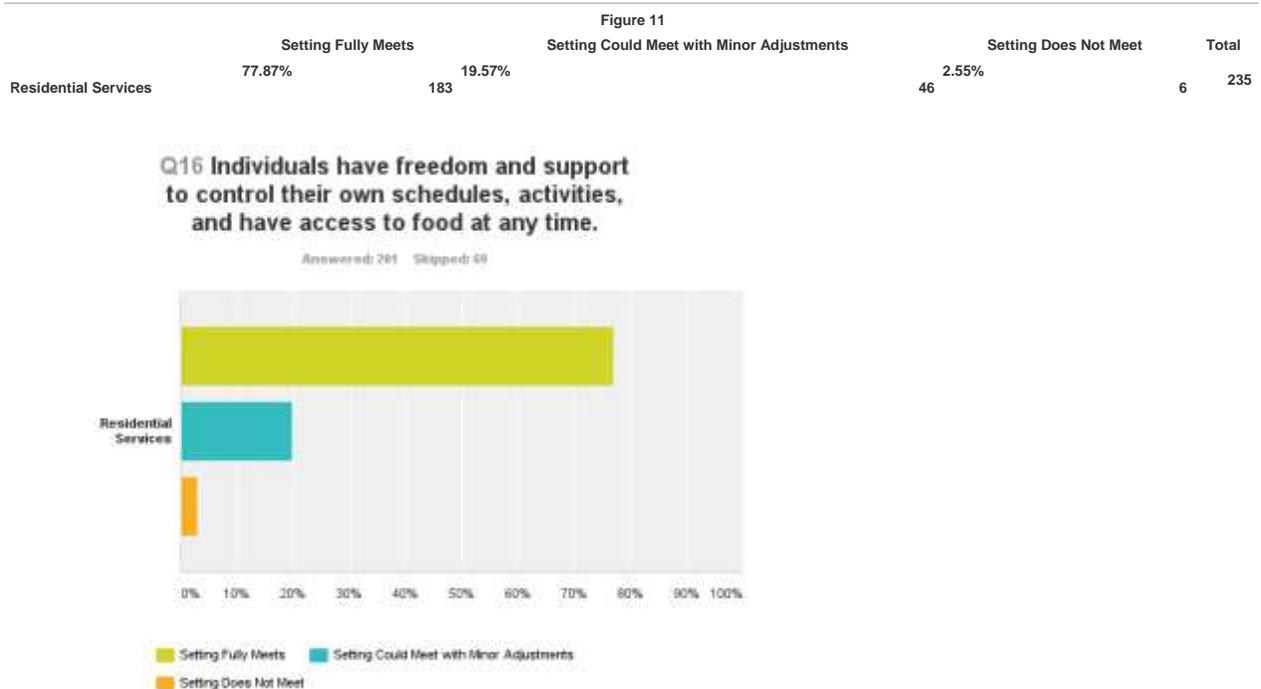
- In our setting we have keyed each individual’s room and also supplied them with a "Privacy Sign." The individuals also received the option to have or not have a roommate and are aware, if they agree to have a roommate but their feelings change, that the agency will work as fast as possible to reassign them.
- All individuals have their own private bedroom with key to lock their door. Each individual is free to decorate his or her rooms as desired.

Some providers responded that their “setting fully meets” or “could meet with minor adjustments,” but their additional explanation reveals the need for additional technical assistance as to what this would mean in practice. A number seemed to believe that the requirement that individuals have their own keys is dependent on individual choice, while others expressed confusion as to how to implement this given the level of disability of the individuals they support.

- Keys upon request: We meet that standard as far as the individuals are able. We have yet to document the individual choice of wanting keys for their rooms

- All individuals have private rooms. Some have keys (based on choices and abilities). Individuals are encouraged and supported to decorate their personal spaces.
- We have questions regarding this point. The individuals who reside here are incapable of managing and not losing a key or lack the skill for locking/unlocking doors.
- The individuals we serve are not capable of using a key to their living unit. They are completely wheelchair-to-bed-bound.
- Individuals are allowed to keep their doors closed when sleeping for privacy. Individuals each have their own rooms. All are encouraged to bring in furnishing of their choice.

10. "Individuals have freedom and support to control their own schedules, activities, and have access to food at any time." The responses are detailed in Figure 11.



Response was requested to the following related question, "Explain how your setting ensures that individuals have the freedom and support to control their own schedules and activities, have access to food 24/7, and are able to have visitors of their choosing at any time."

Most respondents indicated that individuals do have access to food 24/7, have the freedom to control their own schedules and activities and are able to have visitors of their choosing. There were a number of providers that acknowledged that, because of the medical needs of those they support, access to food is limited. Some indicated that there are rules about where food may be stored in order control pests. Some responded that access to visitors must take into consideration the rights of other individuals in the home. Finding the balance between these "important to" and "important for" considerations will be the challenge for all providers as they seek to implement the HCBS settings requirements per the final regulations. Some representative responses follow.

- Because the current residents have some form of memory challenges, the organization prepares 3 meals per day. The residents can choose to eat or not eat with the group and can come and eat later. The kitchen is cleaned after each meal and any leftover food is put in its proper place. Each resident has a cabinet in the kitchen to place his/her own food, snacks, and extra drinks, to eat at any time. The residents are asked not to store food in his or her sleeping unit.
- The agency operates on an open door policy with friends and family. However, its best practice for family and friends to call after sleeping hours to ensure that another individual isn't alarmed by a door bell or knock. Individuals have the access to all food 24/7, however staff will accompany individual to make good decisions in food choices. Certain items could be in a closet and the individual just needs to ask staff in order to retrieve the items and ensure that they are in within the dietitian recommendations
- Our clients have access to the refrigerator within the residence at all times; although, clients are encouraged to reach out to staff to have the support of staff with making meals, if making meals poses a challenge for the client. The residences provide breakfast, lunch, and dinner and two very appetizing snacks, all of which is scheduled and posted on a daily menu. Clients have the right to request food outside of these scheduled times and will be permitted to eat; however, staff will support the client physically and emotionally to address if the food they have received is filling, varied, appetizing and warmed to the appropriate temperature, which could lead to why the client wants more food outside of the schedule.
- Food is available but due to diets and medical restrictions it is not available to all individuals at all times. Visitors are welcome. We also encourage visitors (person who we know that have known the individuals for a long time) to visit and participate in activities.
- When consumers are limited on their access to food or beverages for medical reasons, this should be documented in the client record and periodically reviewed. We will review our records to insure that documentation exists and that reviews are planned and conducted.
- Majority of our individuals are tube feed through a gastrostomy tube or a jejunostomy tube. They are on a scheduled feeding as ordered by the physician.
- We do have some limitations as established through program rules approved by the Local Human Rights Committee.
- The individuals are free to have visitors of their choosing at anytime so long as the visitor does not pose a threat to anyone. The individuals have access to food 24/7 so long as there are no dietary restrictions, nutritional management concerns or behavior support concerns relating to food that would warrant restriction.
- Individuals could cause harm or death to self if they are allowed access to food due to aspiration, allergies, choking, diabetes, ability to open containers, lack of ability to operate feeding pump due to physical limitations and cognitive ability. Many of the individuals have multiple handicapping conditions and are required to be positioned, due to their inability to manipulate their bodies, constrictions of limbs and hands, which will physically prohibit their manipulation of feeding supplies, i.e., feeding pump, extension tube, and inability to pour or measure the appropriate amount of food.
- Individuals have access to the home's kitchen and food at any time although there may be certain safety guidelines in place to prevent self injury for certain individuals who have a diagnosis such as: Polydipsia and Type II Diabetes. In these cases, the individuals' ISPs do reflect the need for staff support and monitoring to ensure the health and safety of each individual.
- Our individuals can have visitors in their bedrooms, family room, etc. They cannot have their guest enter another person's room without permission. Our individuals have had their parents

visit at midnight. Our staff know that the group home is their home and it's our job to ensure they live the life they choose.

Some providers that may require additional technical assistance in this area provided responses such as:

- Transportation may be limited, and currently no visitors are permitted after 10 p.m.
- Normal visiting hours are between 9:00 am and 8:30 pm Monday – Friday and 9:00 am and 8:30 pm on Saturday & Sunday.
- They are not capable of controlling their own schedules. They have access to food 24/7. They have scheduled visits as to protect the privacy of peers.

Process and Opportunities for Providers to Receive Further Education Regarding Compliance with the HCBS Settings Requirements

The self-assessments summarized above have been relayed to DBHDS Office of Licensing Specialists, so that they may follow up with providers with whom they work. Licensing Specialists will review the content of the assessments, determine the likely accuracy of the responses, and advise providers about areas in which they may need to improve in order to come into full compliance with the requirements of the final regulations. Licensing Specialists will do this as they conduct annual visits to providers over the course of the next year. Information about providers in need of technical assistance will be conveyed to DBHDS Community Resource Consultants for follow up. Similarly, providers not licensed by DBHDS will have their self-assessments reviewed by Community Resource Consultants and receive assistance from these staff as well.

Not all waiver providers responded to the directive to complete the self assessment. Approximately 200 providers did not respond to the survey. DBHDS Division of Developmental Services staff is in the process of contacting those providers that did not respond initially and reminding them of the requirement to respond to the survey.

The Community Resource Consultants conduct quarterly regional meetings with case management staff and similar meetings with provider agency representatives. They will be addressing general findings contained in this report at those meetings, as well as providing Q&A sessions regarding compliance with the HCBS regulations in order to increase the knowledge base and further conformity with CMS's expectations.

The DBHDS Division of Developmental Services' Policy Analyst made a presentation about the CMS HCBS settings requirements and the federal regulations at the April meeting of The Advisory Consortium for Intellectual and Developmental Disabilities (TACIDD), an open meeting for stakeholders across the state. The presentation included updated information about the requirements in general and CMS's latest interpretive guidance regarding implementation in day settings in particular, as well as DMAS's and DBHDS's plans for advancing compliance and receiving stakeholder input through the use of the soon-to-be-constituted Compliance and Monitoring Team, which will meet semi-annually to receive a progress update and advise DMAS and DBHDS regarding transition plan implementation. The initial convening of the Compliance and Monitoring Team is scheduled for June 25, 2015. This will involve a WebEx presentation in order to involve as many stakeholders as possible.

Individuals, family members and other stakeholders will have the opportunity to provide input to DBHDS regarding providers' compliance with the settings rule and needed technical assistance via the following numbers:

- In Richmond: 804-774-4474
- Toll Free: 844-419-1575

Final Summary

The first phase of provider assessment, the self-assessment phase, has been nearly completed. The following types of provider settings were instructed to complete the self-assessment:

- Residential
 - Group Homes
 - Sponsored Homes
 - Supervised Apartments
- Day Support
 - Prevocational
 - Day Support
 - Group Supported Employment

From the responses received the following was learned:

- Most settings *could* meet requirements with some modifications
- Some settings will require additional analysis to determine if they do not and cannot meet requirements or would require *heightened scrutiny*.

These elements were not found to be present in all settings:

- Options for a private room/apartment in a residential setting
- Lease, residency agreement, etc. in place to provide protections against eviction
- Privacy in sleeping/living units, including lockable entrance doors and choice of roommates
- Freedom and support to control own schedules/activities
- Access to food and visitors at any time
- Process for modifying the rules or documenting individual-specific restrictions
- Process for modifying the requirements or documenting individual-specific restrictions
- Individual services received in the community with the same degree of access as individuals not receiving Medicaid home and community-based services
- Services are able to be selected by the individual from among setting options, including non-disability specific settings
- Services integrated in and accessible to the greater community
- Services promote opportunity to seek employment, work in a competitive integrated setting, and fully engage in community life.

Providers reported the following as areas as most frequently “not met” or “could meet with modifications:”

- Areas most frequently reported “not meeting” or “could meet” include:
- Lease agreement w/ eviction protections, appeals
- Lockable living units with access to keys
- Greater community integration
- Individual control of schedule activities
- Access to food anytime.

Also, the requirement for individual choice of settings, providers, and services was reported most frequently to be demonstrated via signed forms and the protection of individuals’ rights to privacy, dignity, respect, and freedom from coercion and restraint was generally indicated to be met through staff training or posting of human rights information, etc. in common areas.

Thus, many providers’ responses to the survey may be overly optimistic or based on an incomplete understanding of the expectations associated with the HCBS settings rule. Other responses revealed a somewhat paternalistic approach to service delivery, some rules in conflict with person-centeredness, and uncertainty regarding the meaning of offering meaningful choices. However, further planned technical assistance from DBHDS Office of Licensing and Division of Developmental Services staff will surely enhance understanding and result in most providers’ eventual compliance with CMS’s expectations.

Relevant “take-aways” of the survey include:

- Additional DBHDS/DMAS education and guidance is needed regarding specific requirements to address areas of misinformation/misinterpretation
- Additional education is needed to help providers distinguish between an individual’s *presence* in the community and *participation* in the community
- Thoughtful and creative approaches are needed to help providers adjust their service models
- Site visits, targeted training technical assistance, and stakeholder engagement/collaboration will help to achieve an understanding of the broader purpose and context of the settings rule.

Thus far DBHDS Office of Licensing site visits have revealed similar areas of challenge as noted in provider self-assessments. In addition, the Licensing Specialists are capturing data on providers that did not complete their self assessments.

Upcoming transition plan activities include:

- Dissemination of a letter to waiver individuals/family members via support coordinators/case managers about the HCBS settings rule and the means to communicate with DBHDS regarding provider compliance (dedicated phone lines)
- DBHDS Community Resource Consultants’ delivery of provider training and technical assistance following site inspections
- Provision of each effected provider agency, by July 6, 2015, with a planning document related to the HCBS settings rule in order to facilitate their development of an action plan that requires the provider to specify how they will achieve, improve, or maintain compliance with the settings rule. This will be a useful tool for DBHDS staff working with providers going forward.
- Ongoing stakeholder engagement via the Compliance and Monitoring Team.