

Home and Community-Based Settings Requirements

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Background

- On January 16, 2014, the Centers for Medicare & Medicaid Services (CMS) published a final rule that established, among other things, acceptable qualities and characteristics of settings for Medicaid HCBS provided under 1915(c) waivers.
- Reference 79 FR 2948 -3039 (January 16, 2014), codified at, 42 CFR § 441.301(c)(4)
- The settings must have these qualities and characteristics for a provider of services to receive payment, whether or not the provider owns or controls that setting.

Requirements

- All providers that are specified in the Scope section of bulletin 59-16-14 must provide Home and Community-Based Services (HCBS) in settings that satisfy the requirements set forth in the regulations established in the final rule, whether or not the provider owns or controls that setting.
- If the settings do not satisfy requirements, then the provider may not bill for, and will not receive payment for, HCBS that are rendered to Medical Assistance recipients in those non-compliant settings.

Excluded Settings

- 42 CFR § 441.301(c)(5) lists the settings below as unallowable settings in which to provide HCBS:
 - (i) *A nursing facility;*
 - (ii) *An institution for mental diseases;*
 - (iii) *An intermediate care facility for individuals with intellectual disabilities;*
 - (iv) *A hospital; or*
 - (v) *Any other locations that have the qualities of an institutional setting as determined by the Secretary [of the federal Health and Human Services]*

Generally-Applicable Requirements

- In accordance with 42 CFR § 441.301(c)(4)(i) - (c)(4)(v): *Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary [of the federal Health and Human Services] determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:*

Generally-Applicable Requirements, continued:

- *(i) 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.*
- *(ii) 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.*

Generally-Applicable Requirements, continued:

- *(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.*
- *(iv) 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.*
- *(v) Facilitates individual choice regarding services and supports, and who provides them.*

Requirements for Provider-Owned or Controlled Residential Settings



Requirements for Provider-Owned or Controlled Residential Settings

- *(v) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:*
 - *(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.*

Provider Owned or Controlled Residential Requirements (continued)

- *(B) Each individual has privacy in their sleeping or living unit:*
 - *(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.*
 - *(2) Individuals sharing units have a choice of roommates in that setting.*
 - *(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.*
- *(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.*
- *(D) Individuals are able to have visitors of their choosing at any time.*

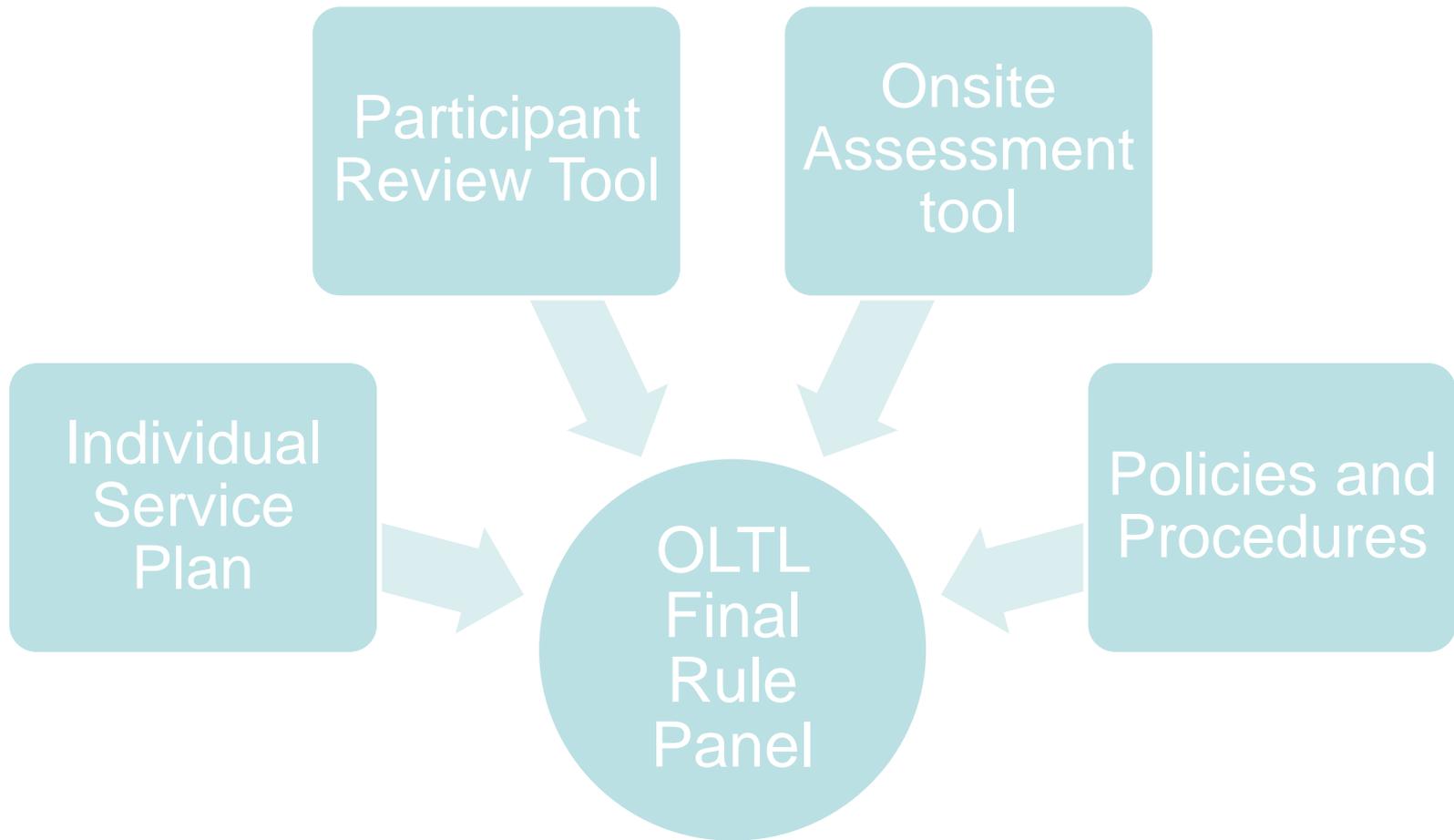
Provider Owned or Controlled Residential Requirements (continued)

- *(E) The setting is physically accessible to the individual.*
- *(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), 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:*
 - *(1) Identify a specific and individualized assessed need.*
 - *(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.*
 - *(3) Document less intrusive methods of meeting the need that have been tried but did not work.*

Provider Owned or Controlled Residential Requirements (continued)

- *(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.*
- *(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.*
- *(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.*
- *(7) Include the informed consent of the individual.*
- *(8) Include an assurance that interventions and supports will cause no harm to the individual.*

How is OLTL going to determine site compliance?



Onsite Assessment Tool

6	The residential setting provides the individuals with the options for available living units. (42 CFR 441.301(c)(4)(ii))	Yes	No	N/A	Unable to determine	Panel Determination
a.	Can individuals choose a private room or a shared room, consistent with resources available?					
Comments:						

4	The setting ensures the individuals rights of dignity and respect. (42 CFR 441.301(c)(4)(iii))	Yes	No	N/A	Unable to determine	Panel Determination
a.	Does the setting assure that staff interacts and communicates with individuals respectfully and in a manner in which the person would like to be addressed?					
Comments:						

What does the OLTL Panel do?

- The OLTL HCBS Final Rule Panel will work together to review agency policies and procedures, Participant Review Tools, onsite assessment tools, and Individual Service Plans to determine compliance with the HCBS Final Rule.
- This may entail request(s) for additional policies and procedures from the provider, or contacting the provider to ask for clarification on issues.
- OLTL will issue decision letters to applicable sites.

Heightened Scrutiny

- OLTL is developing a process to work with provider sites who could be submitted to CMS for approval under heightened scrutiny.

What can providers do?

- If a provider has a setting they feel falls into the provider-owned and controlled residential setting that OLTL may not be aware of, they may submit policies, procedures, handbooks, lease agreements, etc. to RA-PWHCBSFinalRule@pa.gov.
- If a provider is providing HCBS services in an unallowable setting and wishes to dis-enroll from OLTL waivers, they should contact both RA-PWHCBSFinalRule@pa.gov as well as Provider Enrollment at 1-800-932-0939 to complete this process.

Questions?