

**Office of Long-Term Living
Systemic Assessment of Compliance with HCBS Regulations**

An initial assessment of regulations and bulletins was conducted to determine alignment with the federal requirements. This assessment was conducted jointly by the Offices of Long Term Living (OLTL) in collaboration with the Bureau of Human Services Licensing (BHSL) and the Department of Aging (PDA). The results of this assessment are included in Table 1 below.

All current OLTL regulations, bulletins and waiver service definitions that pertain to services delivered through OLTL’s 1915 (c) waivers were reviewed in their entirety. All documents reviewed that contain information that complies or conflicts with the federal HCBS regulations are reflected in Table 1. All documents reviewed that are not listed in Table 1 were determined to be silent with regard to the federal HCBS regulations. A list of all documents reviewed is available in Table 2 at the end of this Appendix.

Table 1 Documents that contain information that complies or conflicts with the federal HCBS regulations					
#	Federal Rule [Reference]	Section [Description]	Compliance Demonstration [Specific Regulation Language]	Compliance Assessment 1) Conflicts with federal settings requirements, 2) Remains silent on the specific qualities, 3) Fully Compliant, 4) Partially Compliant	Remediation Approach [Remediation approach description]
1	441.301(c)(5) Unallowable Settings	Home and Community-Based Settings do not include a nursing facility, institution for mental diseases, ICF/ID and hospitals.		2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
2	441.301(c)(5)(v) Settings Presumed Not Eligible	Settings in a publicly or privately owned facility that provide inpatient treatment.		2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
3	441.301(c)(5)(v) Settings Presumed Not Eligible	Settings on the grounds of or immediately adjacent to a public institution		2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
4	441.301(c)(5)(v) Settings Presumed	Settings that have the effect of isolating individuals receiving		2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with</i>

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	Not Eligible	HCBS from the broader community of individuals not receiving HCBS			<i>stakeholder input that will improve outcomes for individuals</i>
5	441.301(c)(4)(i) All Settings Must Meet the Following Qualifications	The setting is integrated in and supports full access 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 HCBS.	55 Pa. Code 2390.158: The facility shall provide services including work experience and other developmentally oriented, vocational training designed to develop the skills necessary for promotion into a higher level of vocational programming or competitive community-integrated employment 55 Pa. Code 2380.188: The facility shall provide opportunities and support to the individual for participation in community life, including work opportunities.	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
6	441.301(c)(4)(ii) All Settings Must Meet the Following Qualifications	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.	05-10-06, 51-10-06, 52-10-06, 55-10-06, 59-10-06 - Individual Service Plan Development, Review and Implementation Procedures for OLTL Home and Community-Based (HCBS) Services	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
7	441.301(c)(4)(iii) All Settings Must Meet the Following Qualifications	The setting ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint.	As indicated in the waivers, OLTL does not permit or prohibits the use of restraints or seclusion	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
8	441.301(c)(4)(iv)	The setting optimizes, but does	55 Pa. Code chapter 52-LONG-TERM LIVING HOME AND COMMUNITY-	4.) Partially Compliant	<i>Policies and revised service</i>

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	All Settings Must Meet the Following Qualifications	not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to: daily activities, physical environment, and with whom to interact.	<p>BASED SERVICES FOR ALL PROVIDERS</p> <p>6 Pa. Code 11, 6 Pa. Code 21 § 11.123. Core services for Adult Day (4) <i>Therapeutic activities.</i> Activities shall be an integral part of the care plan for the individual. The planning of activities shall reflect professional understanding of the needs and abilities of the clients. Activities, while reflecting awareness of impairment, shall emphasize the individual client’s strengths and abilities so they can contribute to client feelings of accomplishment.</p> <p>(i) <i>Scope.</i></p> <p>(A) The center shall provide for a balance of purposeful activities to meet the client’s interrelated needs and interests—including social, intellectual, cultural, economic, emotional, physical and spiritual.</p> <p>(B) Provision shall be made for individuals to participate at their optimal level of functioning and to progress according to their own pace.</p> <p>(C) Activities shall be designed in a holistic manner to promote personal growth and enhance the self-image or to improve or maintain the functioning level of clients, or both. Activities may offer opportunities to:</p> <p>(I) Maintain lifelong skills.</p> <p>(II) Learn new skills and gain knowledge.</p> <p>(III) Challenge and tap potential abilities.</p> <p>(IV) Participate in activities of interest.</p> <p>(V) Improve capacity for independent functioning.</p> <p>(VI) Develop interpersonal relationships.</p> <p>(VII) Develop creative capabilities.</p> <p>(VIII) Improve physical and emotional well-being.</p> <p>(IX) Be exposed to and involved in activities and events within the greater community.</p> <p>(X) Experience cultural enrichment.</p> <p>(XI) Have fun and enjoyment.</p>		<i>definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>

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			<p>(D) Activity programming shall take into consideration individual differences in health status, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement. Activities may include:</p> <p>(I) Individualized activities. (II) Small and large group activities. (III) Active and spectator participation. (IV) Intergenerational experiences. (V) Involvement in community activities and events. (VI) Outdoor activities as appropriate. (VII) Opportunities to voluntarily perform services for individuals and the center, and community groups and organizations.</p> <p>(E) Clients shall be encouraged to take part in activities, but may choose not to do so or to choose another activity. Reasons for nonparticipation shall be evaluated to determine whether they are due to personal preference or indicate a need for change in activity.</p> <p>(ii) <i>Schedule.</i></p> <p>(A) Planned activities shall be available whenever the center is in operation. (B) A monthly calendar of activities shall be prepared and posted in a visible place. (C) Group daily activities shall be posted in a prominent, convenient and visible place. (D) The activities schedule shall be coordinated with other services offered at the center and with other staff persons</p> <p>05-10-06, 51-10-06, 52-10-06, 55-10-06, 59-10-06- Individual Service Plan Development, Review and Implementation Procedures for OLTL Home and Community-Based (HCBS) Service</p> <p>The SC reviews the Level of Care Assessment and CMI with the</p>		

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			<p>participant and actively engages the participant to identify OLTL HCBS Waiver and non- Waiver/Program services that will best meet his/her needs, goals, and preferences.</p> <p>The SC discusses with the participant the services and supports that are available in the participant's area.</p> <p>The SC must discuss the participant's strengths, including existing support systems, participant's capabilities (physical, emotional, intellectual, etc), skills and available community resources. These must be incorporated into the ISP.</p> <p>The ISP must address the preferences of the participant. When having the discussion and review of a participant's identified unmet needs, the SC will listen to the participant express how they prefer to have those identified unmet needs met. This may include, but is not limited to, agency staff and informal or natural supports such as friends, family, neighbors, local businesses, schools, civic organizations, community resources, and/or volunteer organizations.</p> <p>The ISP must be individualized for the participant and account for the participant's preferences. "</p>		
9	441.301(c)(4)(v) All Settings Must Meet the Following Qualifications	The setting facilitates individual choice regarding services and supports, and who provides them.	<p>05-10-08, 51-10-08, 55-10-08, 59-10-08</p> <p>Office of Long-Term Living Home and Community-Based Program Policy Clarification Update- Provide Choice Protocol</p> <p>"OLTL has developed a standard form for all home and community-based service programs. The form is called "Service Provider Choice Form". All Service Coordinators (SC) must present and explain the form to participants at the time of the Individual Service Plan (ISP) development and at each subsequent re-evaluation.</p> <p>The Service Provider Choice Form will provide information to participants that they may receive both service coordination and choose waiver services from different providers or from the same</p>	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>

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			provider, based on their preference. In addition, participants have the right to change providers at any time.”		
10	441.301(c)(4)(vi)(A) Requirements for Provider-owned or Controlled Home and Community-Based Residential Settings	In a provider-owned or controlled residential setting, 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 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.	55 Pa. Code §2600.25. Resident-home contract. (a) Prior to admission, or within 24 hours after admission, a written resident-home contract between the resident and the home shall be in place. The administrator or a designee shall complete this contract and review and explain its contents to the resident and the resident’s designated person if any, prior to signature.	4. Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals.</i>
11	441.301(c)(4)(vi)(B)(1) Requirements for Provider-owned or	In a provider-owned or controlled residential setting, each individual’s unit has an entrance		2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with</i>

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	Controlled Home and Community-Based Residential Settings	door lockable by the individual, with only appropriate staff having keys to the door.			<i>stakeholder input that will improve outcomes for individuals</i>
12	441.301(c)(4)(vi)(B)(2) Requirements for Provider-owned or Controlled Home and Community-Based Residential Settings	In a provider-owned or controlled residential setting, individuals sharing units have a choice of roommates.	.	2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
13	441.301(c)(4)(vi)(B)(3) Requirements for Provider-owned or Controlled Home and Community-Based Residential Settings	In a provider-owned or controlled residential setting, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.		2.) Remains silent on the specific qualities	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals.</i>
14	441.301(c)(4)(vi)(C) Requirements for Provider-owned or Controlled Home and Community-Based Residential Settings	In a provider-owned or controlled residential setting, individuals have the freedom and support to control their own schedules and activities and have access to food at any time.	Residential Habilitation Service Definition: “Both licensed and unlicensed settings must be community-based as well as maintain a home-like environment. A home-like environment provides full access to typical facilities found in a home such as a kitchen and dining area, provides for privacy, allows visitors at times convenient to the individual, and offers easy access to resources and activities in the community. Residences are expected to be located in residential neighborhoods in the community. Participants have access to community activities, employment, schools or day programs. Each facility shall assure to each participant the right to live as normally as possible while receiving care and treatment. Home and Community character will be monitored by OLTL’s Office of Quality Management, Metrics and Analytics through ongoing monitoring. Additionally, Service Coordinators will monitor the community character of the	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>

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			<p>residence during regularly scheduled contact with residents. Results of this monitoring will be reported to OLTL. Service Coordinators assist participants in transitioning to homes of their own. Settings cannot be located on the grounds of a Nursing Facility, Intermediate Care Facility (ICF) or Hospital. Instead they must be located in residential neighborhoods in the community.</p> <p>Transportation is provided as a component of the Residential Habilitation service, and is therefore reflected in the rate for Residential Habilitation. Providers of (unlicensed and licensed) Residential Habilitation are responsible for the full range of transportation services needed by the individuals they serve to participate in services and activities specified in their individual support plans (ISPs). This includes transportation to and from day habilitation and employment services. "</p>		
15	441.301(c)(4)(vi)(D) Requirements for Provider-owned or Controlled Home and Community-Based Residential Settings	In a provider-owned or controlled residential setting, individuals are able to have visitors of their choosing at any time.	Residential Habilitation Service Definition: "Both licensed and unlicensed settings must be community-based as well as maintain a home-like environment. A home-like environment provides full access to typical facilities found in a home such as a kitchen and dining area, provides for privacy, allows visitors at times convenient to the individual, and offers easy access to resources and activities in the community."	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals</i>
16	441.301(c)(4)(vi)(E) Requirements for Provider-owned or Controlled Home and Community-Based Residential Settings	In a provider-owned or controlled residential setting, the setting is physically accessible to the individual.	§ 2600.81. Physical accommodations and equipment. (a) The home shall provide or arrange for physical site accommodations and equipment necessary to meet the health and safety needs of a resident with a disability and to allow safe movement within the home and exiting from the home	4.) Partially Compliant	<i>Policies and revised service definitions will be drafted with stakeholder input that will improve outcomes for individuals.</i>

Table 2 All documents reviewed as part of the Systemic Assessment	
Document Reviewed	Waiver(s) the Document Pertains To
55 Pa. Code chapter 52-LONG-TERM LIVING HOME AND COMMUNITY-BASED SERVICES FOR ALL PROVIDERS http://www.pacode.com/secure/data/055/chapter52/chap52toc.html	All services provided in Aging, Attendant Care, CommCare, OBRA, and Independence waivers
6 Pa. Code 11, 6 Pa. Code 21-OLDER ADULT DAILY LIVING CENTERS-LICENSURE AND OPERATION REQUIREMENTS http://www.pacode.com/secure/data/006/chapter11/chap11toc.html	Adult Daily Living Services in the Aging, CommCare, OBRA, and Independence waivers
55 Pa. Code Chapter 2390 – Vocational Facilities http://www.pacode.com/secure/data/055/chapter2390/chap2390toc.html	Prevocational Services in the Independence and OBRA waivers
6 Pa. Code 21. Domiciliary Care Services for Older Adults. http://www.pacode.com/secure/data/006/chapter21/chap21toc.html	Dom Care settings in the Aging, Attendant Care, and OBRA waivers
55 Pa. Code chapter 2380- ADULT TRAINING FACILITIES http://www.pacode.com/secure/data/055/chapter2380/chap2380toc.html	Licensed Adult Daily Living Services in CommCare, Independence, and OBRA waivers
55 Pa. Code chapter 2600-PERSONAL CARE HOMES http://www.pacode.com/secure/data/055/chapter2600/chap2600toc.html	Residential Habilitation services in the CommCare and OBRA waivers
05-10-06 , 51-10-06 , 52-10-06 , 55-10-06 , 59-10-06 - Individual Service Plan Development, Review and Implementation Procedures for OLTL Home and Community-Based (HCBS) Services	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers.
05-10-08 , 51-10-08 , 55-10-08 , 59-10-08 Office of Long-Term Living Home and Community-Based Program Policy Clarification Update- Provide Choice Protocol	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers

Attachment A

05-15-02,51-15-02,54-15-02,55-15-02,59-15-02 Critical Incident Management	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
51-14-07, 55-14-07, 59-14-07 - Service Coordination After-Hours Coverage	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
51-14-01,55-14-01,59-14-01 - OLTL Home and Community-Based Services Service Authorization Form 51-13-12, 55-13-12, 59-13-12 - Hearings and Appeals	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
05-13-10,51-13-10,55-13-10,59-13-10 - Addition to the Office of Long-Term Living Standardized Home and Community-Based Services Waiver Participant Informational Materials – Your Appeal and Fair Hearing Rights	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
51-13-06, 55-13-06, 59-13-06 - Additions to Office of Long-Term Living Standardized HCBS Waiver Participant Informational Materials - Abuse, Neglect and Exploitation and Self-Directed Models of Service	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
51-13-04, 55-13-04, 59-13-04 - Office of Long-Term Living Standardized Home and Community-Based Services Waiver Participant Informational Materials	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
05-13-05, 08-13-05, 11-13-05, 17-13-05, 19-13-05, 25-13-05, 26-13-05, 41-13-05, 51-13-05, 54-13-05, 55-13-05, 59-13-05 - Clarification of type, scope, amount, duration and frequency of services	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
03-13-03, 41-13-03, 55-13-03 - Providing For Absence Policies in the Enhanced Older Adult Daily Living Center Program	Adult Daily Living services in the Aging, CommCare, OBRA, and Independence waivers
05-13-02, 51-13-02, 54-13-02, 55-13-02, 59-13-02 - Billing Instructions - Home and Community Based Waiver Provider's billing of Procedure Codes Based on Authorized Service plans through PROMISE	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
05-13-01, 51-13-01, 52-13-01, 55-13-01, 59-13-01 - Maintaining Waiver Eligibility While in an Institution	All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers
05-11-07, 51-11-07, 52-11-07, 54-11-07, 55-11-07, 59-11-07 - Accessibility Adaptations and Assistive Technology	Accessibility Adaptations and Assistive Technology in the Aging, CommCare, OBRA, and Independence waivers

Attachment A

<p>05-11-05, 51-11-05, 52-11-05, 55-11-05, 59-11-05- Community Integration Changes provided in the Medical Assistance Home and Community based waiver Program</p>	<p>Community Integration Services in CommCare, OBRA, and Independence waivers</p>
<p>05-11-04, 51-11-04, 52-11-04, 54-11-04, 55-11-04, 59-11-04- Program Fraud & Financial Abuse in Office of Long Term Living MA Home and Community-Based Service (HCBS) Programs</p>	<p>All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers</p>
<p>05-10-08, 51-10-08, 55-10-08, 59-10-08- Office of Long-Term Living Home and Community-Based Program Policy Clarification Update</p>	<p>All services provided in the Aging, Attendant Care, CommCare, OBRA, and Independence waivers</p>
<p>05-10-05, 51-10-05, 52-10-05, 55-10-05, 59-10-05- - Nursing Home Transition Outreach Form</p>	<p>Nursing Home Transition Program</p>
<p>03-10-02, 41-10-02, 55-10-02- STANDARDS AND REIMBURSEMENT RATES FOR THE ENHANCED OLDER ADULT DAILY LIVING CENTER PROGRAM FOR MEDICAID AGING WAIVER PARTICIPANTS</p>	<p>Adult Daily living in the Aging waiver</p>