

## **DDSN Provider Questions and Answers: HCBS Compliance**

From the May 4 Meeting:

**Q: Lease concerns:**

- How can a person who is intellectually disabled and adjudicated not to be able to make decisions on their own (court appointed guardian or Power of Attorney granted to another) in a group home enter into a “legally enforceable contract”?
- Residents in a QPL CTH II are placed there by the state. The QPL contracts with the state for their care as a Qualified Provider. Why is the state not a part of this lease agreement?
- SEE RH2.6. It states “A legally enforceable agreement (Lease, residency agreement, or other form of written agreement) is in place for each person...” What could realistically be included in an “other form of written agreement”?
- Who would sign the lease? Resident, Parent, Other responsible family member, guardian? What if the guardian or other responsible individual will not sign the “lease” because they have concerns about the health and safety of their charge living in this open environment?
- What is the legal recourse of a resident or the provider if either party objects to a decision to evict or leave?
- Could a provider “kick out” (actual words in the lease) a resident without some type of process involving SCDDSN, the person legally responsible for the resident and possibly others. The lease says the landlord can evict a resident with 30 days’ notice for any reason. So a provider could empty all their homes where people have signed a lease with a 30 day notice?

**A:** Some of these questions can be answered through the DDSN Provider Workshop on May 9 at 10:00 AM that will specifically address lease concerns. DDSN has also created a document entitled “HCBS Rule: Answers to Provider Questions” and it addresses some of the lease questions presented here (page 18). A sample lease is provided in 250-09-DD.

**Q:** Issuance of Keys: This is a concern as residents can have their keys copied unwittingly by third parties. Keys can be lost. Residents could leave without staff knowing they left. Keys can be given to any person the resident knows and they could sneak them in.

**A:** Please see pages 15-16 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Allowing visitors at any time day or night is a security and health concern. So are overnight guests.

**A:** Please see pages 28 in “HCBS Rule: Answers to Provider Questions.”

**Q:** We use Residential Support Plans and Individual Support Plans. How is a “Person Centered Plan” different from what we are currently doing?

**A:** Please see pages 22 and 24 in “HCBS Rule: Answers to Provider Questions.”

**Q:** How much input do residents have in selecting staff? Can they veto? Can they argue for termination of a staff member? How do residents choose which staff they want to work with (what does this mean)?

**A:** Please see page 27 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Is it the goal of the residential provider to prepare people for greater independence so they can “transition from the HCBS programs”? How do you know when the resident is ready? What is appropriate? Who decides? Who teaches them how to write a resume, attend classes at local institutions of learning?

**A:** Please see pages 3-4 in “HCBS Rule: Answers to Provider Questions.”

**Q:** How does a resident request a change in their living situation? What if they “don’t like it here” and want to move out? Want to move to another town? Live with their boy or girlfriend in another place? Leave the HCBS supports?

**A:** Please see page 25 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Access to food: This is a concern. Obesity, diabetes, poor oral health and many other factors are associated with diet. This provider is morally, legally required to provide a proper diet for the residents. Some residents have specific dietary needs that must be followed. What about alcoholic beverages?

**A:** Please see pages 10-12 in “HCBS Rule: Answers to Provider Questions.”

**Q:** How much input do residents have in selecting their roommates, or people to live in the home they are in? What if it is a split decision among the residents? Who makes the decision? What if a resident really objects?

**A:** Please see page 25 in “HCBS Rule: Answers to Provider Questions.”

**Q: Day programs:**

- Choices of lunch times, etc. (concerns with staffing, choking issues, etc.)
- Access to food at any time at day program?

**A:** Please see pages 10-11 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Concern with site-specific assessment (apparent contradictions) and waiver participant responses (seemed contradictory)

**A:** Please see page 26 in “HCBS Rule: Answers to Provider Questions.”

**Q:** DOL posters – how reconcile this requirement with HCBS requirements?

**A:** Please see pages 8-9 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Concerns with proximity on all of their residences (NOTE: A5 and A6 indicators removed from assessment and CAP consideration; noted in memo from Mr. Maley on 3/30/18).

**A:** Please see page 5 in “HCBS Rule: Answers to Provider Questions.”

**Q:** SLP II’s – concerns with co-locations since units all in same space

**A:** Please see page 5 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Concerns with programmatic mitigation for SLP II’s above (means more staff and money)

**A:** Please see page 23 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Day services (A7 question) – career prep: is it considered an employment type service or another type of service? Concerns with co-location in day program settings

**A:** As a reminder, the A7 assessment question for non-residential settings states:

**“The setting is located separately from a sheltered workshop or other employment setting. (Co-location refers to being on the same grounds, within the same building of, or sharing common spaces).”**

The answer to this question will need to be fully discussed in a DDSN workshop. There are a few questions generated by this question that need to be answered before this question can be answered:

- What did the PCG Site Surveyors observe on the day of the site visit to mark this question a “no”?
- Global Analysis results indicate that 45.45% of providers were compliant with this particular question. What were these providers doing or what was observed that indicated to PCG Site Surveyors that they were compliant?

Discussions around these questions can help in two ways:

- Help providers who were marked “non-compliant” determine how to best address this in their CAP.
- Help providers who were marked “non-compliant” look closely at how they are structuring all of their day services to see if they are being properly implemented.

Further discussions are needed before this can be fully answered.

**Q:** Personal control of assets/money – related to the Representative Payee issue (collective accounts vs. individual accounts), concerns with participants’ access level to their resources

**A:** Please see page 20 in “HCBS Rule: Answers to Provider Questions.”

**Q:** Meal times and access to food in residential settings: level of flexibility, how provided, staffing resources (esp. w/ choking concerns)

**A:** Please see pages 10-12 in “HCBS Rule: Answers to Provider Questions.”

**Q:** House rules? Would like guidance on developing them; how to facilitate that process

**A:** Please see pages 13-14 in “HCBS Rule: Answers to Provider Questions” and attend the HCBS Workshop 5/7/2018 at 10:00 AM.

**Q:** Assessment and facilitation of service plans: are we moving back to a single plan? Unclear if question in PCG assessment on facilitation offered (for plans) meant only for large Case Management plan, or also meant Day Program plan (and/or Residential Plan)

**A:** Please see page 24 in “HCBS Rule: Answers to Provider Questions.”

#### Email submissions:

**Q:** I think guidance is going to be needed when trying to write a POC for A7 in the day programs where proximity is being cited due to the 6 service descriptors written into the waiver – Day Activity, Support Center, Community Activity, Career Prep, Employment Individual, Employment Group.

**A:** See the response above to the “Day Services (A7) question” at the April meeting.

**Q:** I think it would be helpful to have some further discussion about the heightened scrutiny issue and how that process will work as well as what kind of evidence needs to be provided to show that individuals are treated differently at various locations. I know this may sound redundant, but I am still not sure if everyone really understands this.

**A:** The State Level HCB Settings Quality Review process must occur first before SCDHHS sends any setting to CMS for Heightened Scrutiny Review. The SCDHHS website lists an overview of this [process here](#).

- The State must determine first if any settings have institutional qualities.
- If any settings do, the state must then determine if these institutional qualities can be overcome either through physical changes and/or programmatic changes/mitigation.
- If the setting **cannot** overcome the institutional qualities, then it will no longer be able to provide HCBS (waiver) services at that setting.
- If the setting **can** overcome the institutional qualities and in every other way meets HCBS requirements, then those settings will be submitted to CMS for Heightened Scrutiny review.

Only settings that have the qualities of a home and community based setting and are fully compliant with HCBS, but might otherwise be presumed institutional, will be submitted to CMS for Heightened Scrutiny review. The list of settings submitted to CMS must also go through a public notice process.

The website lists suggested documentation and information to provide as evidence for a HCB Settings Quality Review. As the process is finalized, this information will be updated.