

Michigan Department of Health and Human Services

Home and Community Based Settings

MI Choice

Questions and Answers

June 8, 2015

Process

Q: Who at the waiver agencies should conduct these surveys? Housing Specialists?

A: Who conducts these surveys is up to the waiver agencies. This activity could fall under the Housing Specialists job description, but it is not required by MDHHS that they do it.

Q: How should surveys be sent to the state?

A: Completed surveys can be sent to Cheryl Decker via email to deckerc@michigan.gov

Q: Once the survey has been submitted to the state, what is the timeframe that the AFC/HFA/AL/Waiver Agency will be notified that the AFC/HFA/AL is approved or not?

A: Depends on the volume. There are currently approximately 800 settings to be reviewed. We are reviewing as quickly as possible.

Q: If a state determines that a current HCB setting is not compliant with the new regulation, does it have to stop providing services in that setting immediately?

A: CMS answered this in their own Q&A - No. If a state determines that HCBS are currently being provided in settings that do not provide opportunities for participants to engage in community life, control personal resources, and access the community to the same degree of access as individuals not receiving Medicaid HCBS, or if individuals receiving HCBS are not residing in settings that meet the HCB settings requirements, the state has until March 2019 to bring its HCBS programs into compliance with the rule, consistent with its State Transition Plan. States can claim for federal matching funds for these services during the transition period.

Q: Can you send the approval/denial letter to both waiver agencies in the area? You have our Provider Lists, you can refer to them.

A: That is a lot of additional work for MDHHS. If the assessment states which agencies work with the provider, MDHHS can send the letter to both. Otherwise, the other agency will just need to go to WSA to view which providers have been done.

Q: When will we know which settings MI Health Link has surveyed - are we automatically notified of a site in our territory has been surveyed? Will you send out a statewide email with the name of the facility and county?

A: At this time, waiver agencies can contact Cheryl Decker (deckerc@michigan.gov) to find out which settings have already been surveyed. Considering the size of the MI Health Link waiver, they have not had many sites surveyed yet. MDHHS has been comparing the MI Health Link sites to the provider lists sent in by waiver agencies and will notify an agency if they are currently contracted with the site. In the near future (anticipating July), a statewide database of reviewed sites will be available to all waiver agencies.

Q: Will MDHHS be doing all follow up with any items needing corrective action?

A: Providers will be required to self-disclose remediation plans with timelines to come into compliance. These remediation plans will be sent to waiver agencies. Providers will be required to submit period status updates on remediation progress to MI Choice waiver agencies. MDHHS will request updates on corrective action plans and progress periodically.

Q: What are the timelines for these surveys?

According to the statewide HCBS Transition Plan:

1. Surveys will be completed by waiver agencies by 12/31/2015.
2. Assessment data will be reviewed and analyzed and made available to stakeholders by 3/31/2017.
3. A statewide remediation strategy will be developed by 3/31/2017.
4. MDHHS will notify providers who do not meet and cannot meet the rule by 3/31/2017.
5. Corrective action plans for settings/providers will need to be developed by 10/1/2016 and the work on the plans will continue through 9/30/2018.

Q: How will guardians be involved (particularly with clients with memory loss)?

A: Involving participants in the assessments is good practice, but isn't required. If you want input on how the setting is truly treating their residents, you are encouraged to ask participants, guardians, family or anyone else.

Q: Is there any reimbursement mechanism to the Waiver agencies to conduct these surveys, work with the correction action plan and subsequent site visits? This is a lot of work to push on local agencies without reimbursement.

A: This is a federal requirement of all home and community based waiver programs nationwide. There has been no additional funding made available. This is part of the regular administration of the waiver program to ensure providers meet requirements.

Settings that need to be assessed

Q: Does a survey need to be done in a nursing home?

A: No. Nursing homes automatically will not qualify as home and community based.

Q: What qualifies as an assisted living? Does this include unlicensed assisted living where individual has their own apartment, but lives in a community with others?

A: Any setting where an individual receives services that is "provider owned and/or operated". This includes those that do AND those that do NOT have a license.

Q: Does it matter if the services provided are paid for by our participant as part of their "rent" or do these services need to be purchased by the Waiver program?

A: If a participant is paying rent and receiving some services from their assisted living, but MI Choice is still providing other services in the same home setting, that setting needs to be assessed.

Q: Licensed settings only?

A: No, all provider owned and operated settings must be assessed, whether they are licensed or not.

Q: If there are condominiums on the grounds of a nursing facility but offer no services, do they need to be assessed?

A: Yes, because they have a trait of the “Presumed Not To Be” category.

Q: If there are no WA residents at the time of assessment, does another assessment need to be completed when a participant moves in? Do we mark “no” if the reasoning is no one lives there?

A: As long as all questions are asked and the setting meets requirements, and no significant changes have occurred with the setting, another assessment does not need to be completed when the participant moves in.

Q: Do we complete these tools based upon the individual in the setting with the most restrictions (e.g. severe competency deficiencies) or least restrictions (mainly independent).

A: Look at all individuals. If restrictions are documented as acceptable and approved in the plan of care, then the setting may still be in compliance. You should be concerned about restrictions that are in place that are NOT supported by a plan of care. Also carefully review comparative treatment of and restrictions imposed upon Medicaid recipients versus non-Medicaid recipients. If disparity in treatment exists the setting must be reviewed cautiously.

Q: Can existing sites be “grandfathered” in under the Home and Community-Based settings standard?

A: CMS answered this in their own Q&A - No, a state cannot choose to continue to provide Home and Community-Based Services in non-compliant settings under a “grandfathering” approach. The final regulations allow states up to five years to bring their HCBS programs into compliance with the HCB settings requirements, pursuant to a transition plan that will be reviewed publicly and approved by CMS. The transition plan could include, for example, requiring existing providers to modify programs as needed to comport with HCB settings standards or assisting individuals to relocate to compliant settings.

Both Surveys

Q: When it states, “Provide the respondent’s information” who is the “respondent”? Is that the owner or the staff we are speaking to at the setting or is that the waiver agency staff?

A: This should be the waiver agency staff that is filling out the assessment. It is likely that you will use a variety of sources to complete the assessment, including the owner, residents, and your own observations. So the respondent should be the one who actually fills out the survey.

Q: Waiver agents have no authority to review charts, care plans, etc. for non-MI Choice residents. Do the sites know they need to provide access for this survey process?

A: A review of the setting’s care documents is not necessary. Many of these questions can be verbally asked of the administrators, workers, residents, family or witnessed just by being in the setting. Any modifications to the requirements of this rule for specific individuals should be documented in the MI Choice waiver agency plan of care, therefore you would be able to access these and review the appropriateness of the modification.

Non-residential

Section 1, Item 3: Complete the table below to indicate the population characteristics of participants within the setting. Each person should be only listed once in the most appropriate category.

Q: Table states that only numbers of Medicaid recipients be counted...what does that mean?

A: Only MI Choice participants should be counted. Note: Adding up the categories may not equal total count in setting because “elderly” is not an option.

Section 1, Item 6: Do individuals participate in any of the following activities of his/her choosing in the community?

Q: What is the intent? Is this referring to time while at the ADC or in general?

A: The intent is to ensure access to community activities. Answer as it applies to individuals while they are in the setting.

Section 1, Item 9: Is the setting located among other residential buildings, private businesses, retail businesses, restaurants, doctor’s offices, etc. that facilitates integration with the greater community?

Q: To what extent? In same neighborhood, participants not fenced in and restricted to grounds, etc...

A: We just want to see that it is not segregated (walls, fences, gates, etc.) from the greater community. Is it located among the rest of the community?

Section 1, Item 10: Does the setting encourage visitors or other people for the greater community (aside from paid staff) to be present, and is there evidence that visitors have been present at regular frequencies?

Q: What if the answer to the first question is yes but second is no?

A: Look harder for evidence of visitors (logs, calendar of events, interviews with participants, etc.). This would include family. Participants can be used as resources. Posters advertising events that indicate everyone is welcome. If unsure, say “NO” and indicated unsure.

Section 1, Item 12: If public transportation is limited, does the setting provide information about resources for the individual to access the broader community, including accessible transportation for individuals who use wheelchairs?

Q: What to do if question is N/A because transportation is available and not limited?

A: Skip or say “Na”

Section 1, Item 14: Is the setting physically accessible including access to bathrooms and break rooms?

Q: To what extent is accessibility to be determined? For example, what if someone is morbidly obese?

A: Accessibility is to be assessed for the average participant (ADA compliant as necessary), but if anyone is having a difficult time getting around, this should be documented and investigated.

Section 1, Item 19: Does the setting only provide services to individuals with a specific type of diagnosis/disability?

Q: Does the setting provide services to individuals with a specific type of disability refer to an AFC home specializing in TBI, MI, or Alzheimer’s? Will CMS allow dementia-specific adult day care centers?

A: The HCBS regulations do not prohibit disability-specific settings; as with all settings in which HCBS are provided or in which individuals receiving HCBS reside, the setting must meet the requirements of the

regulation, such as ensuring the setting chosen by the individual is integrated in and supports full access of individuals receiving Medicaid HCBS to, the greater community, that individual's rights of privacy, dignity and respect and freedom from coercion and restraint are respected, etc.

Section 1, Item 31: Does the setting afford the individuals the opportunity to regularly and periodically update or change their preferences?

Q: Preferences for what? Seems to be missing the subject of the sentence.

A: Preferences in this case refers to how the individual lives - activities, tasks, services or living arrangements.

Section 2: Waiver Administration and Policy Enforcement for Non-Residential Settings

Q: Are these questions only for MI Choice participants in this setting?

A: Yes, answer these only for MI Choice participants.

Section 2, Item 1: Did individuals have the opportunity to choose a non-residential setting from a variety of options?

Q: The Supports Coordinator would be the individual to discuss the various options with the participant of the Adult Day Health Center, right?

A: Correct. This is a question of the waiver agency – we are making sure each participant is given all of their options for settings and providers.

Section 2, Item 3: Do all individuals in the setting have a plan of care?

Q: How do we know if everyone has a plan of care? Do you mean at the agency or adult day care?

A: The question is of the waiver agency, so we are referring to the plan of care you create.

Residential

Section 1, Item 1: Type of residence or setting

Q: What is a “specialized residential home”?

A: A “group home” licensed and overseen by the DHHS as well as the local Community Mental Health Authority. Specific guidelines are in place to meet the standards of the licensing body as well as funding sources.

Section 1, Item 3.c: Complete the table to indicate the population characteristics of participants within your setting. Each person should be listed only once in the most appropriate category.

Q: Does “most appropriate category” refer to main diagnosis?

A: Yes, this should be the primary diagnosis. However, if the setting has this data counted in a slightly different manner, that is ok. We're just trying to get an idea of the variability of people within the setting.

Section 2, Item 1: Is the residence located in the same building or on the same campus as an institutional treatment option (as defined in the glossary on the last page of this survey)?

Q: Define “campus”.

A: Campus means on the same property. If the answer is yes, you should explain the set-up and proximity of the campus in the comments.

Q: Are settings on the grounds of or adjacent to "private" institutions considered not to be home and community-based (HCB)? Can an HFA be on the same campus as a Skilled Nursing Facility (SNF)?

A: It depends. Settings that are on the grounds of or adjacent to a private institution are not automatically presumed to have the characteristics of an institution. However, if the setting isolates the individual from the broader community or otherwise has the characteristics of an institution or fails to meet the characteristics of a home and community-based setting, the setting would not be considered to be compliant with the regulation.

Section 2, Item 2: Does the provider operate or manage multiple home settings which are (1) on the same campus, (2) located close together, or (3) offer a continuum of care?

Q: In what proximity is "close"?

A: Next door or across the road would be considered "close". Clustered.

Section 3, Item 1: Are there options for using services and supports outside of the residence instead of onsite services?

Q: What "services and supports" are intended to be referenced (physician services, ADC, podiatrist)?

A: Any Waiver services that they are receiving in the setting should be available as an option outside of the setting. We're trying to determine if residents are forced to use their setting's provider or given a choice. If they had the means, would they have options?

Q: Do participants have to have a choice of providers for all services? Some of our adult foster cares are very small and if the participant chooses an outside vendor to provide personal care, the AFC may not receive enough payment to make housing the individual possible. Currently, these residents are required to use their services for a couple of service types. What would need to be done for them to come into compliance?

A: The participant needs to be aware of that restriction and have agreed to it in writing and have it be part of their plan of care.

Section 3, Item 3: Do individuals receiving Medicaid funded HCBS participate in any of the following activities of their choosing in the community (check all that apply)?

Q: What if individuals do not want to participate in any activities?

A: That is fine. They just need to have the opportunity and CHOICE to participate

Section 3, Item 5: Can the MI Choice support coordinator visit at any time without permission?

Q: What if there is no participant living there?

A: The idea behind this question is "does the setting try to limit the type of individuals who come in to visit"? (They shouldn't.) Note: You only need to assess those settings where you have or will have participants living.

Section 4, Item 1: Does each individual have a lease or residential agreement for the residential setting?

Q: Should we get a copy of the lease to verify it is compliant? Or do we just take what staff says?

MDHHS does not need to see a copy of the lease. If your agency would like to view one in order to confirm it exists, that is up to you.

Q: Is the state expecting that a lease be signed that meets state landlord tenant law?

A: No, we realize this may not be possible. This regulation defers to the state and local law, as applicable. From CMS – for settings in which landlord tenant laws do not apply to such units or dwellings, we must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant that outlines protections to address eviction or discharge processes and affords appeal rights of evictions or discharge in the same manner as all persons who are not receiving Medicaid HCBS.

Section 4, Item 2: Does the lease or residential agreement provide each individual who is receiving Medicaid funded HCBS with information on the eviction process and a means to appeal an eviction?

Q: Would the appeal be handled by the Ombudsman? Or through housing laws/courts in MI?

A: It is beyond the scope of this regulation to address issues such as who handles the appeals. This could possibly be done through the setting itself, BCAL, ombudsman, etc. Individuals need to be able to appeal an eviction decision in the same manner as persons who are not receiving Medicaid HCBS.

Section 4, Item 4: Is information about filing a complaint posted in an obvious location in an understandable format?

Q: What kind of information are we looking for?

A: This question is trying to get at whether the individuals are free from coercion. Individuals should be aware of how they can easily file a complaint about the setting. It doesn't necessarily have to be posted in an obvious area, but the individuals need to be aware of how they could do this and not be afraid of retribution.

Section 4, Item 6: Do individuals know the person to contact for completing an anonymous complaint?

Q: Is this intended to inquire as to whether a resident is provided information as to how they may FILE an anonymous complaint?

A: Is there a comment box or drop-off for complaints and do residents know where it is? It is more about the process for filing an anonymous complaint than the "person" it goes to.

Q: When asking if individuals know who to contact for completing an anonymous complaint, should the resident be asked or take staff's word? Who do unlicensed assisted living residents contact?

A: Whether they are licensed or unlicensed, there should be a way to file a complaint. And with all of these questions, the more input you get (from staff, residents, family), the better. If you are hesitant to take the provider's word for it, definitely follow-up with other individuals.

Section 4, Item 9: Does staff address individuals in the manner in which the individual would prefer to be addressed?

Q: Should the way resident's want to be addressed be documented, or ask the residents?

A: You may want to ask the staff and the residents how this works in the setting. If you hear conflicting information, you may want to ask if this gets documented. Documentation isn't a requirement of this assessment though.

Section 4, Item 10: Do individuals have access to their personal funds as appropriate?

Q: What does as appropriate mean? Does that mean 24/7 access?

A: Not necessarily – even banks have limited hours when you can access your money. Individuals should be made aware of any limitations to access (days/times) but still able to access their accounts on a regular basis.

Section 4, Item 11: Do individuals have control over their personal funds as appropriate?

Q: What does appropriate mean? What is the difference between control of their money and access to their money?

A: Having control means they can spend their money as they choose. As part of the care plan, guidelines on how much the individual controls on a regular basis may be discussed (for example, rent and living expenses may be agreed to be paid first, then any extra is free to be spent how the individual chooses). But overall, the choice of how to spend the money should be the individual's or their guardian's.

Section 4, Item 13: Do individuals have options within the setting to choose who provides their services and supports?

Q: Define the types of “services and supports”. Is this related to ancillary supports or paid supports, such as choosing not to receive services from specific staff of the provider.

A: This applies relating to specific staff members of the setting. Individuals should have a choice, within reason, of staff that provides their services/supports.

Q: Does “who” refer to individuals working there or agencies?

A: In this question, “who” refers to the workers.

Section 4, Item 16: Does staff receive training and continuing education on individual rights and protections?

Q: Does that mean all staff or trained? Or 1 or two people? Is this one time training, annually, a minimum frequency?

There is no specific requirement for this. We just want to make sure that each setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. One way to ensure this happens is by having staff training. If staff is not trained, that does not necessarily mean the setting isn't going to come into compliance.

Section 4, Item 17: Does the setting prohibit the use of physical restraints and/or restrictive intervention (unless documented and agreed upon in the person-centered plan)?

Q: What is included with “restrictive Intervention”?

A: According to CMS, “Restrictive interventions limit an individual's movement, a person's access to other individuals, locations or activities, or restrict participant rights. Restrictive interventions also include the use of other adverse techniques (not including restraint or seclusion) that are designed to modify a person's behavior.”

Section 5, Item 1: Individual Privacy and Doors

Q: Regarding door locks, will there be some sort of competence test of clients with memory loss? Vendors were concerned about liability and safety.

A: If a participant cannot have locks due to a medical condition, this must be documented in the plan of care. This would be on a case by case basis. In such cases, alternative means for assuring meaningful individual privacy should be required (for example, knocking and waiting for a reply before entering a person's private space, respecting private possessions, etc.).

Q: Are the Licensing Consultants aware of these changes, especially regarding the locks? AFC owners were worried they would be written up for locks on bedroom and bathroom doors. Can MDHHS communicate with BCAL to obtain an advisory letter indicating their approval of any locks we are requesting?

A: BCAL has been involved in our workgroup and has reviewed the guidelines against licensing laws and has found no conflict, as long as the locks that are installed meet the licensing laws (e.g. side-hinged, permanently mounted door equipped with positive-latching, non-locking-against-egress hardware). MDHHS is working with BCAL to develop guidance that outlines compliance with both the new rule licensing regulations.

Section 5, Item 2b: Can individuals choose what they eat, as appropriate?

Q: Explain this more – most AL/AFC (and HDM) have to plan meals in advance and serve the same meal to everyone.

A: Individuals should be able to choose what they eat as appropriate. It is acceptable if the setting has a set menu, but if only a limited number of types of foods are available, does the individual get a choice between the limited options? For example, a choice between two different meals for dinner. If they dislike a food, can they request an alternate meal?

Section 5, Item 2c: Can individuals choose to eat alone or with other housemates?

Q: If the home bars the person from eating in their room or by the TV or will not serve a meal outside the planned dining times, is that a no?

A: Individuals might still be able to eat alone while in the dining room, but if there are any rules that seem to be restricting the individual's ability to choose, please include those in comments so that they can be considered when reviewing the setting as a whole.

Section 5, Item 7: If there are cameras and visual/audio monitors present in the individual's bedroom or bathroom, was the equipment installed to meet an assessed or documented need for the individual?

Q: What to do about not-applicable?

A: Skip or write "NA". We'll update the tool and repost with that as an option.

Section 5, Item 10: Do individuals have the freedom to furnish or decorate their own bedrooms?

Q: Typically those details are found in a lease (can the renter paint the room, hang pictures, etc.) but most AFC agreements do not specify that level of detail.

A: This does not need to be included in the agreement. This question is just asking whether or not individuals are allowed to decorate their own space. You can find out the answer by asking administrators, residents, or visiting rooms.

Section 5, Item 11: Do individuals arrange and control their personal schedule of daily appointments and activities?

Q: Explain what would not be an institutional barrier – due to many of the residents needing help from staff or someone else, if that person is waiting on someone else, is the person in control of their schedule?

A: According to the rule, “individuals must have the freedom and support to control their own schedules and activities, and have access to food at any time.” Participants should not be forced to follow a schedule set by the setting and not have any choices or deviation.

Section 5, Item 14: Does the setting place restrictions on an individual’s ability to come and go from the home setting?

Q: In a setting, for example that has separate apartment units that meet the criteria, but then has one wing or floor for dementia residents who, because of cognition & safety issues, do reside in a locked-access wing, could that setting still be in compliance?

A: The regulation requires that the setting must be accessible to the individuals living there and that residents have the freedom of movement. Do all of the residents eat meals together or are meals segregated (e.g., residents with dementia dine separately from the rest of the residents in the setting)? Do all the residents, include residents with dementia participate in activities (e.g., walks outside the setting or outings) together offered by the setting? Are residents with dementia segregated from activities with non-dementia residents? Residents with dementia cannot be segregated in their living arrangements or activities from non-dementia residents unless it is written in their plan of care. The assessment for plan of care must be done on an individual basis and not applied to all residents with the same condition (i.e., dementia). MDHHS staff will review the setting and make the final determination on whether setting complies with the final rule.

Q: If the site requires the resident to sign in and sign out, visitors too, is that a restriction?

A: No, probably not. If you mark a question in the negative, include as much description as possible. This will all be reviewed by MDHHS staff who will make the final determination if a rule such as that is a restriction or not.

Section 5, Item 15: Does the setting place restrictions on an individual’s ability to freely move about the inside space of the home setting?

Q: If the resident can’t access the laundry room (staff only) or upstairs or basement, is that a restriction?

A: It could be. Those restrictions should be documented in the comments and reviewed by MDHHS staff.

Section 5, Item 17: Is the residence physically accessible to all individuals?

Q: To what extent is accessibility measured?

A: Accessibility is to be assessed for the average participant, checking for inaccessible areas. Document and investigate if anyone living there is having issues

Q: Will all HCB settings be expected to comply with Americans with Disability Act (ADA) guidelines for accessibility, even if they are already accessible to the individuals living there?

A: The regulation requires that the setting must be accessible to the individuals living there. This HCBS regulation does not affect obligations under the ADA. For specific requirements of the ADA, we recommend you contact the Department of Justice Civil Rights Division. Contact information is available at: <http://www.justice.gov/crt/contact/>

Section 5, Item 19: Are the household appliances within the setting physically accessible to all individuals?

Q: Does physically accessible mean they have access, or appliances are handicap accessible?

A: This is referring to whether they have physical access OR are handicap accessible. Are appliances within reach? If not, is there some sort of measure taken to work around that?

Section 5, Item 23: Is accessible transportation available for individuals to make trips within the community?

Q: How accessible is “accessible transportation”?

A: Access to any transportation. Buses, vans, taxis, volunteers, etc.

Section 5, Item 25: If public transit is available, do individuals receive training or assistance with using public transit?

Q: Do individuals have to ask for public transit training, or is it something everyone gets?

A: Not everyone has to get training, training or assistance just has to be available if they need it.

Section 5, Item 26: If public transit is limited or unavailable, do individuals have other resources to access the broader community?

Q: What to do about the one that is not-applicable (one or the other will be N/A)?

A: Skip or write “NA”

Section 6

Q: Is Section 6 only referring to Waiver residents, or all residents?

A: MI Choice waiver residents.

Q: These seem very specific to each individual resident – how do we answer that on a facility-wide scale for each AL/AFC?

A: These questions are to be answered by the waiver agency and should be choices that all individuals receive. If there are any times when individuals are not given a choice, we need to know why and address the issues.

Section 6, Item 2: Did individuals have an option of choosing a residential setting with a private bedroom?

Q: What if there are no affordable housing options with private bedrooms?

A: Participants do not need the option to have a private bedroom if it is not available in the area in which they are choosing to live. But they need to have the option of settings and roommates in the same way that people not on the MI Choice waiver have options.

Section 6, Item 4: Do all individuals in the setting have a documented service plan and/or person-centered plan (e.g. Plan of Care)?

Q: Is the plan of care referred to at the facility or with the Waiver agent?

A: The question is of the waiver agency, so we are referring to the plan of care you create.

Other questions related to the HCB Settings Rule

Q: What is the meaning of “non-disability-specific settings”? Does this requirement mean that the options must include settings in which other individuals with similar disabilities do not reside or receive services and support?

A: “Non-disability-specific”, in the context of this regulation means that among the options available, the individual must have the option to select a setting that is not limited to people with the same or similar types of disabilities. This could include services based out of a private home or a provider-controlled setting that includes people with and without disabilities. People may receive services with other people who have either the same or similar disabilities, but must have the option to be served in a setting that is not exclusive to people with the same or similar disabilities.

**Additional information related to other programs can be found
at <http://www.michigan.gov/mdch/> >> Health Care Coverage >> Home and Community-
Based Services Program Transition**