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Frequently Asked Questions Regarding the Home and Community-Based Services (HCBS) Setting Requirement and the Full Array of HCBS Services

1. Does the rule regarding home and community-based services settings continue to permit the full array of home and community-based services, as defined in the Medicaid HCBS statute and regulations and included in the individual’s person-centered plan?

Yes. As we indicated in the section-by-section analysis accompanying the final rule “the final rule will continue to convey this flexibility for states.” [79 FR 2954 (January 16, 2014)] Consistent with the Americans with Disabilities Act and the *Olmstead* decision, the state must administer the full array of home and community-based services in the most integrated setting appropriate to the needs of qualified individuals with disabilities. In addition, the state, in providing these services, directly or through contract or other arrangement, may not provide different or separate services unless such action is necessary to provide qualified individuals with disabilities with services that are as effective as those provided to others. [28 CFR 35.130(b)(1)(iv) and 35.130(d)]

2. Does the full array of home and community-based services defined in the Medicaid HCBS statute and regulations include prevocational services?

Yes. Prevocational services are defined in the regulations [42 CFR 440.180] to mean habilitation services that prepare an individual for paid or unpaid employment and that are not job-task oriented but are instead aimed at a generalized result, for example, teaching an individual such concepts as compliance, attendance, task completion, problem solving and safety.

As specified in the regulations, prevocational services are distinguishable from noncovered vocational services by the following criteria [42 CFR 440.180]:

- The services are provided to persons who are not expected to be able to join the general workforce;
- If the beneficiaries are compensated, they are compensated at less than 50 percent of the minimum wage;
- The services include activities which are not primarily directed at teaching specific job skills but at underlying habilitation goals (for example attention span, motor skills); and
- The services are reflected in a plan of care directed to habilitation rather than explicit employment objectives.

Prevocational services, as a form of habilitation services, are designed to assist individuals acquire, retain, and improve self-help, socialization and adaptive skills. [42 U.S.C. 1396n(c)(5)]
Prevocational services are time limited and the time limitations are determined based on the individual's needs, including the need to retain skills, as identified in his or her person-centered plan. [September 16, 2011 Information Bulletin at page 7]

3. May prevocational services be provided in a variety of locations in the community, including fixed site facilities?

Yes. Consistent with an individual's person-centered plan, prevocational services may be furnished in a variety of locations in the community, including fixed site facilities but prevocational services are not limited to fixed site facilities. [September 16, 2011 Information Bulletin at page 8]

4. Must prevocational services provided in fixed-site facilities satisfy the home and community-based setting requirement?

Yes. The final HCBS setting rule establishes affirmative outcome-based criteria rather than criteria based solely on a setting's location, geography, or physical characteristics. [79 FR 3011 (January 16, 2014)] Thus, prevocational services and other home and community-based services that are provided in fixed-site facilities must meet the HCBS setting requirements set forth in the rule [79 FR 3013 January 16, 2014)], including the requirement that 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 [42 CFR 440.301(c)(4)(i)-(vi)].

5. What practices illustrate the qualities of a home and community-based setting in a fixed-site facility providing prevocational services?

Example of appropriate practices regarding the provision of prevocational services in fixed site facilities that illustrate the qualities of a home and community-based setting include:

- The program is in a facility that resembles any other business of its size and scope;
- Individuals are working on production of goods and services for the greater business community, similar to other businesses;
- The program may serve populations other than HCBS participants with disabilities, including Veterans, individuals who are poor and under-privileged and need assistance;
- Participants are provided an overview of employment options, including discussions about and referrals to state vocational rehabilitation and other programs for competitive integrated employment;
- Community competitive integrated employment is discussed, encouraged, and promoted at every review, and the person is directly involved in making an informed choices, as well as during the delivery of prevocational services; and
- Prevocational services include opportunities to gain greater exposure to the greater community and to teach individuals how to access the greater community, including trial work experiences, and internships, and tours of local businesses.

- 6. If a program provided in a fixed-site facility satisfies the home and community-based services setting outcome-based criteria set out in 42 CFR 440.301(c)(4)(i)-(vi), does the program qualify for HCBS funding?**

Yes. The program conforms to the HCBS setting characteristics and thus may receive HCBS funding.