

State Responses to Public Comment on the Provider Self-Assessment and Member Survey Tools

The State received a total of six written comments via email. A public hearing was held on May 11, 2015, at which 17 people were in attendance, and 10 attended via Webinar. Six comments were received during the public hearing. The majority of the comments were from providers of HCBS waiver services.

Summary of Comments

The comments have been grouped into four categories and documented as follows:

- (a) Provider Self-Assessment and the Member Survey (combined);
- (b) Member survey only;
- (c) Provider Self- Assessment only; and
- (d) HCBS Transition Plan Timeline.

Requests were made to add an "N/A" option to multiple questions on the Provider Self-Assessment and Member Survey. The department appreciates this comment. Due to the validation method, "N/A" cannot be an option for this survey.

Comments related to both the Provider Self-Assessment and Member Survey

Comment #1: One commenter stated that both the survey and the assessment broadly address person-centered planning and believes it would be prudent to emphasize that Person Centered Planning does not mean everyone can choose 1:1 services.

Response: 42 CFR 441.301(c)(4), 441.710(a)(1), 441.530(a)(1) provide the regulatory requirements around person centered planning. The regulations address the issue of choice in services, emphasizing that in order to be in compliance, a setting must provide options for the member. The regulation does not specify what those options must be.

Comment #2: One commenter stated that members should be provided guidance in choosing housing they can afford, and providers must not be placed in a position to have to subsidize housing that is paid by Social Security/earned income.

Response: The regulatory requirements address the issue of members who are receiving Home and Community Based Service (HCBS) having as much choice in where they live as an individual who is not receiving services. The department does not wish to minimize the significance of staying within a budget; however, this issue is outside the scope of this project.

Comment #3: One commenter stated that the Member Survey asks: "Do you have a lease or written agreement for the living arrangement?" The Provider Self-Assessment asks: "Does the landlord tenant law apply in this setting? If not, is there a written agreement that offers responsibilities/protections from eviction for members?" The commenter agrees clients should

be afforded the same lease rules/ enforcement as a person not receiving services. However, the commenter would like language added to the tools that clarifies the client and/or their guardian does not have to be the signatory on the lease.

Response: CFR 441.301 (c)(4)(vi)(A), 441.530 (a)(1)(vi)(A), and 441.710 (a)(1)(vi)(A) state the requirements for settings in which landlord tenant law applies, as well as settings in which it does not. Determination of compliance for this requirement will be based on the presence of an agreement which affords the member receiving services the same protections, responsibilities, and rights as a member who is not receiving services. The regulation does not specify who must be the signatory on the lease.

Comment #4: One commenter expressed concern that providers may be faced with dismantling Section 8 and HUD housing apartments for people with a broad range of mental and health needs in neighborhoods where there are three or four houses that support people with disabilities and the commenter does not believe this is the intent of the final rule.

Response: It is not the intent of the department to dismantle neighborhoods where there are three or more houses that support people with disabilities. The department appreciates this comment and will be mindful of future decisions and how they may impact other programs.

****Comments received below are transcribed verbatim from the public hearing held on May 11, 2015, and relate to both the provider self-assessment and the member survey.***

Comment #5: While reading provider/member survey, etc., noticed that gist of information may not apply to facility's residents. There will be a lot of responses showing that people may not have the functional ability/capacity/desire/means to take advantage of these services.

Response: Choice must be offered/available to members. Whether they avail themselves of it, depending on ability, is another piece of that. Looking at it broadly, if there's integration within the building and out in the community, that's what the setting regulations are about.

Comment #6: What types of answers are being excluded from the program? What are the big issues they are trying to recover with this survey?

Response: If you go to the Q and A of the federal regulation, they talk a lot about the settings criteria. I'll just use this one example. If it's really attached with a doorway... So you pass from the licensed nursing facility into an assisted living setting and you walk through those doors. If you can't tell the difference between the nursing facility and the assisted living facility, one of two things is possible: 1) The nursing facility is integrated AND the assisted living facility is integrated as it meets all of those requirements. 2) It does not meet that requirement. If you live in your own home, we will say you are integrated; thus, you meet the requirement. But there is another subset of facilities that

meet almost all of the requirements. They will be able to remain and fix things within the transition timeline. We know that people are unable to change their business processes, etc. within a short time frame. These facilities must meet all of what Montana believes is the requirement to participate in our waiver program. It is all part of a process that we are trying to put in place.

Comment #7: Survey is designed to eliminate some members from the reimbursement program. Answering the questions in a certain way may limit access to this tool. What is your perspective in how we might facilitate our belonging versus answering questions in a way that may eliminate us?

Response: We cannot tell providers how to respond to the survey. However, it is not our intention to eliminate any providers from the waiver programs.

Comment #8: “Does the facility control the residents’ personal funds?” How would you answer that if the residents’ families have requested that the facility assist with weekly budgeting of monies?

Response: We would like to see how the member would respond to that, as there are no wrong or right answers. Questions are designed to be combined with a certain process in place, which will help determine settings and how people operate within those settings. Answers to these questions may necessitate an on-site review of a particular facility regarding their facility policies, etc.

Comment #9: If a parent of a child were to fill out the survey, they probably would not know how to properly complete some of the sections. Maybe age should be added to allow a truer representation of the number of individuals served, birth to death. “Do you have access to personal funds?” doesn’t apply to children. “Do you lock the bedroom door?” In most households, parents don’t allow young children to lock their doors. Recommend adding questions specific to children.

Response: Subsequent interviews and on site reviews would provide necessary information to determine whether or not setting serves youth and what is appropriate in such settings.

Comment #10: Questions pertaining to residents living in a wing or the same building. Please clarify what “in the same building” means: For instance, in our facility we have a skilled nursing facility AND an assisted living facility. They are joined by a corridor since the kitchen services both facilities. However, they are not under the same roof necessarily; there’s not a lot of contact between the two sides but they are joined by a corridor and another corridor that is separated by a fire door. How should those questions be answered properly?

Response: This survey question is taken from the federal regulatory language. At this time, we will not be making changes to the question.

Comments related to Member Survey only

Comment #11: Multiple commenters stated the draft member survey does not allow for variations pertaining to member circumstances, intensity of needs being addressed, or the type of disability and health needs that a person may have. Commenters requested additional opportunity to provide more detailed information.

Response: The purpose of the survey is to provide an overview for services. There will be further opportunity to provide more detailed and individualized information.

Comment #12: One commenter stated the draft member survey questions located in Section II: Physical Location of Your Living Arrangement may be better suited for the provider self-assessment.

Response: Sections B and E of the Provider Self-Assessment address these questions.

Comment #13: One commenter stated that the question regarding, "Can your case manager or others visit at any time?" should be re-written to make clear the meaning of "visit at any time". (I.e., during awake hours or as mutually arranged)

Response: 42 CFR 441.301(c)(4)(vi) (D) states: "Individuals are able to have visitors of their choosing at any time." The regulations do not restrict when a member may have visitors.

Comment #14: Multiple commenters stated that accessibility can mean different things to different people. A better question may be whether or not their living arrangement meets their accessibility needs.

Response: The department appreciates this comment and has removed the examples from the Member Survey in order to gain the members' perspective on whether they think the setting is accessible.

Comment #15: A commenter recommended possibly following up the accessibility question with an additional question about whether or not their landlord and/or provider are open to providing them reasonable accommodations and/or modifications where needed/requested.

Response: The purpose of the survey is to provide an overview for services. There will be further opportunity during onsite interviews and observations to provide more detailed and individualized information.

Comment #16: One commenter recommended that accessibility assessments be conducted on each facility to ensure they meet the accessibility requirements rather than relying on self-

assessments because accessibility means different things to different people and not all are aware of the accessibility requirements.

Response: The department appreciates this comment. However the department is seeking the members' perspective on whether they think the setting is accessible.

Comment #17: One commenter stated that if the person requires assistance in completing the survey that the person who is helping them not be an owner or an employee of the setting. The commenter encouraged the state to consider contracting with a third-party group/entity to conduct and oversee the process of conducting the member surveys.

Response: Page 1, question 3 provides a list of options of who may assist the member to complete the survey in order to alleviate possible conflicts of interest. The state is not contracting with a third party group/entity.

Comment #18: One commenter requested that "N/A" be added as a potential response to Section II, #2, for members who may be homeowners or live in a setting, such as their own apartment, that may not be operated by a provider.

Response: The department appreciates and considered this comment. However, we concluded adding an "N/A" option would create issues with the validity of the data.

Comment #19: One commenter requested that "N/A" be added as an option to Section III, #1, as not all members completing the survey will be living in a congregate care setting where services are available on-site.

Response: The department appreciates and considered this comment. However, adding an "N/A" option would create issues with the validity of the data.

Comment #20: One commenter questioned why the state needs to know exactly what types of community activities members may be participating in. The commenter stated it is their position that members have the right and freedom to make their own decisions on what it is they do. The commenter expressed concern that collecting such specific information borders on an attempt to micromanage people's lives.

Response: The purpose of this question is to determine whether or not the member participates in community activities of their choosing. Examples of such activities are given to facilitate feedback. However, there is also an "other" option for the member to select if their chosen community activity is not listed or they do not want to give specifics about which activities they engage in.

Comment #21: One commenter recommended that Section III, #3 be reworded to read, "Can your case manager, family members, friends, or others visit at any time?"

Response: The department appreciates this comment; however “others” encompasses all other people the member wish to have visit.

Comment #22: One commenter stated that Section IV, #1 assumes all members are renters and requested that “N/A” be added as a potential response to this question for members who may be homeowners. The commenter also recommended asking whether or not their lease or written agreement limits their opportunities to control their own living arrangement or their access to the broader community.

Response: The department appreciates and considered this comment. However, adding an “N/A” option would create issues with the validity of the data. The department anticipates a member interview portion of the on-site visits that may address the concern.

Comment #23: One commenter suggested that "N/A" be added as a potential response to question 3, Section IV for members who may be homeowners.

Response: The department appreciates this comment; however, this is a necessary and relevant question for any living arrangement.

Comment #24: One commenter recommended that "N/A" be added as a potential response Section IV, #5(a), as not all members live in congregate care settings. Many members live in their own homes or apartments not operated by a provider and are fully independent in managing their own finances.

Response: The department appreciates this comment. A member who is, in fact, fully independent in managing their own finances has the option of answering no to this question.

Comment #25: Several commenters requested adding "N/A" as an option for questions related to confidentiality and privacy in congregate care settings as these questions would not apply to members who live in their own homes or apartments in the community.

Response: The department appreciates this comment; however, members who do not live in congregate care settings could answer this question with no.

Comment #26: One commenter recommended that "N/A" as an option for Section V, #7(c), because members who live in their own home or apartments would not need to make the decision as to whether or not to eat alone.

Response: The department appreciates and considered this comment. However, we concluded adding an “N/A” option would create issues with the validity of the data. Members who live in non-congregate settings could answer this question yes.

Comment #27: One commenter recommends adding "N/A" as an option Section V, #16, as not all members live in congregate care settings. A member's home or apartment that is located in the community may not contain shared areas.

Response: The department appreciates and considered this comment. However, the department concluded adding an "N/A" option would create issues with the validity of the data. Members who live in non-congregate settings could answer this question yes.

Comment #28: One commenter stated that the questions in section VI assume all members will be working in a group setting/workshop or that they will all be receiving non-residential support services. The commenter recommends that "work activities," and "If you do not participate in any of the above, then you are finished with the survey!" We greatly appreciate you taking the time to complete it," be rephrased and clarified.

Response: The department appreciates this comment. The instructions were modified to include information that this section relates only to people who receive non-residential services. This survey includes all 1915(c) waivers and 1915(i) state plan. The language must be broad enough to encompass all settings.

Comment #29: One commenter recommended adding a question to Section VI regarding whether or not a member participates in community/competitive employment, whether that employment is full-time or part-time, and adding an additional question about whether or not members are paid sub-minimum wage. The commenter also recommended adding an "N/A" options to the questions that are aimed towards group/workshop employment.

Response: The department appreciates this comment. The questions the commenter suggested adding are outside of the scope of this survey and the federal regulations regarding settings. Adding an "N/A" option to the group/workshop employment would create issues with the validity of the data.

Comment #30: One commenter stated the provider survey asks providers if there are restrictions around when members can come and go and recommended that the same question be added to the member survey in order to gain members' perspectives. Additionally, the commenter requested "N/A" being added for members who do not live in congregate care.

Response: Question 14, page 6, Section V on the member survey asks, "Can you choose to come and go from home when you want?" The department has determined adding an "N/A" option would create issues with the validity of the data. Members who do not live in congregate settings and do not have restrictions on when they come and go could answer no.

Comment #31: One commenter requests that husband/wife occupancy be added to Member Survey in response to question related to roommate.

Response: We have added an additional response option to Section V, question 11 of the member survey which addresses husband/wife occupancy.

Comment #32: Several commenters stated that the member survey may not be applicable to youth and the services they receive.

Response: Subsequent interviews and on site reviews would provide necessary information to determine whether or not setting serves youth and what is appropriate in such settings.

****Comments received below are related to Member Survey only and transcribed verbatim from the public hearing held on May 11, 2015.***

Comment #33: Are alternate formats of these surveys available to increase independence in accessing / filling out the forms?

Response: The department intends to mail hard copy surveys to members chosen for the sample and all other members who request the survey. The font will be enlarged on the member survey. The cover letter will include information on requesting alternate format.

Comments related to Provider Self-assessment only

Comment #34: One commenter stated they didn't know if the provider self-assessment applied to them as it appears to apply more to I/DD day activities. The commenter wants to know whether it's necessary for staff to complete a provider self-assessment, apart from the periodic surveys are conducted by the division.

Response: Each provider owned or leased setting serving 2 or more people needs to complete a self-assessment.

Comment #35: One commenter asked what reimbursement providers will receive for the expense of completing the provider self-assessment and how will providers submit for reimbursement for this administrative expense?

Response: Medicaid will not reimburse for completion of the self-assessment survey.

Comment #36: One commenter stated the draft provider self-assessment basic yes/no format does not allow for variations and the survey may be more informative if there was a place to make comments in addition to a Yes/No response that would explain the basis for limitations, severity of needs, the degrees of physical accessibility to the environment, and the disability population being served.

Response: The purpose of the survey is to provide an overview for services, there will be further opportunity to provide more detailed and individualized information.

Comment #37: Several commenters asked for further clarification of terms such as "physically accessible to members". The commenters wanted to know if it applies to the physical abilities of the members served there or is the question related to the physical environment of the setting regardless of the members' physical abilities who live there.

Response: The question applies to the population that the provider is licensed to serve and must meet the applicable accessibility standards.

Comment #38: One commenter recommended that on-site reviews should be conducted on all residential providers regardless of whether or not they return their self-assessment. The commenter stated it should include an accessibility assessment utilizing the applicable accessibility standards as well as a member interview to gain the member's experience with accessibility and overall satisfaction with their living arrangement.

Response: The regulation requires the setting be accessible to members residing 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/>.

Comment #39: One commenter recommend revising question # 1 or adding an additional question to further scrutinize whether or not a setting may have the effect of isolating members from the broader community.

Response: The department will make those determinations on a case by case basis as to whether further scrutiny is warranted.

Comment #40: One commenter asked if members who receive services in any particular setting are exclusively people with disabilities or does this include older adults?

Response: The question applies to people of all ages with a disability.

Comment #41: One commenter recommended that the question concerning whether or not there are restrictions around when members can come and go, also be included in the member survey in order to cross analyze this issue from members' perspectives.

Response: The question is included on the Member Survey on page 6, #14.

Comment #42: One commenter requested that the licensure bureau address the applicable accessibility standards within the licensure process for residential facilities. The commenter stated that the requirements may be perceived differently by different people or that some may not be aware of the accessibility requirement they are obligated to meet.

Response: The regulation requires the setting be accessible to members residing 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/>.

Comment #43: One commenter expressed confusion over how Velcro strips qualify as a barrier and under what circumstances does the use of Velcro become a way to increase access in various situations.

Response: The department appreciates this comment. The CMS Exploratory Questions guidance includes the use of Velcro strips as a barrier; therefore, the department used this as an example of possible barriers.

****Transcribed Comments related to provider self-assessment only from Public Hearing 5/11/15***

Comment #44: Was the self-assessment draft reviewed by CMS or will it be given to them following comment review?

Response: The provider self-assessment draft will not be submitted to CMS for review.

Comments related to HCBS transition plan timeline

****Comments received below are transcribed verbatim from the public hearing held on May 11, 2015.***

Comment #45: One commenter stated a timeline of 2-3 pages was provided in October's judicial hearing. There are various phases through 2016 and 2017. Is that timeline still posted?

Response: The timeline is posted on each division's website.

Comment #46: Clarifying timeline for written replies was May 27, 2015, applicable to additional comments/suggestions as well?

Response: Yes, it is applicable to additional comments/suggestions.