

DISTRICT OF COLUMBIA HOME AND COMMUNITY-BASED SETTINGS RULE

STATEWIDE TRANSITION PLAN

CMS Feedback (October 2016)

ADDITIONAL CMS FEEDBACK ON AREAS WHERE IMPROVEMENT IS NEEDED IN ORDER TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

PLEASE NOTE: It is anticipated that the State will need to go out for public comment again once these changes are made and prior to resubmitting to CMS for final approval.

HCBS Settings Analyzed under the STP

- **EPD Waiver:** On page 2, the District explains that there are seven services covered under the EPD waiver, and then describes two specific settings – assisted living and adult day health. CMS requests the District clarify within this section that all services provided under the EPD waiver are either provided in an individual's private home, or in one of these two settings.
- **IDD Waiver:**
 - The District verifies that there are twenty-seven (27) services offered under the IDD waiver. However, the approved IDD waiver in the Waiver Management System (WMS) shows that this waiver offers 26 waiver services. Please verify. Please confirm that all of these services are offered via the 617 sites identified under this waiver. If there are any services offered under the IDD waiver that are provided specifically within an individual's private home, please make this distinction within this section.
 - Within the forty (40) day/vocational sites identified by the District as providing services under this waiver, 24 are facility-based day habilitations settings and 16 are facility-based sheltered workshops. CMS checked and found that among the services offered under this waiver, the District allows for group supported employment services. However, it does not appear that those sites are included in the District's assessment, validation and remediation activities. If the state is providing any community-based group day programming or group supported employment under the IDD waiver, these settings must also be included in the state's assessment, validation and remediation process. CMS reminds the District that any setting in which people are clustered or grouped together for the purposes of receiving HCBS must be included in the state's HCBS implementation activities. Additionally, it appears that the District has recently received approval by CMS for small group day habilitation under its new waiver amendment. Please make sure that you include language in the STP discussing how these settings will continue to be monitored for ongoing compliance with the federal HCBS settings rule.

Remaining Systemic Issues:

- The District specifies that it made significant changes to the proposed EPD Waiver regulations to ensure compliance with CMS' settings requirements and included the list of requirements on

pages 94-95 of the STP. The list does not include the requirement that “Individuals sharing units have a choice of roommates in that setting.” Please clarify.

- There are a number of places in the STP where the District specifies “[Insert Link]”. Please include these links in the revised STP.

Site-Specific Assessment & Validation:

CMS acknowledges the additional details provided by the District with respect to the methodology it applied in making determinations around setting compliance. CMS also notes that the District has now included estimates of the number of settings across both HCBS waivers that the District presumes are either compliant, non-compliant but can become compliant with modifications, and or unable to come into compliance with the rule. Additionally, the most recent version of the STP also includes a description of the District’s process for validating provider self-assessments with the findings from Provider Certification Reviews (PCR). CMS requests that the state provide the following information regarding the site-specific assessment process.

- ***Status of Assessment Activities:*** To date, the District has assessed approximately two-thirds of its 616 IDD settings, and the 3 Assisted Living Facilities enrolled in the EPD waiver. It is CMS’ understanding that the District plans to update the STP to complete the assessments of all remaining settings prior to publishing the plan again for public comment. CMS requests that the results of the remaining 1/3 of the IDD settings that have not yet been assessed be included in the next resubmission. Please also update the total estimates around level of compliance of HCBS settings based on the completed assessment of all settings.
- ***Assessment & Validation: General Issues/Questions***
 - **Site-by-Site Assessment:** In several portions of the STP, it mentions a site-by-site assessment. Please confirm whether this means an onsite visit was conducted for each HCBS setting assessed, or if this means something different. Also, if only a subset of settings received an onsite visit, please explain how settings were selected for onsite reviews.
 - **Participant Experience Surveys:** Please confirm how the participant surveys are administered (ie. what modes are deployed (online, in-person at site, in-person at beneficiary’s choice of location, by phone, mail, or other); if anyone else beyond service coordinators are allowed to assist participants in completing the surveys; how many HCBS beneficiaries are expected to complete the participant experience survey across each site; what training do any individuals providing support to beneficiaries in completing the participant experience surveys receive; and what steps is the state taking to assure the surveys are being conducted in a manner so that the individual participants fully understand the questions being posed and are able to provide honest responses without coercion or the fear of being penalized).
 - **Discrepancies between Provider Self-Assessments and Participant Experience Surveys:** Please explain how the District will address any discrepancies in provider compliance

- with the federal HCBS settings requirements identified between provider self-assessment responses and participant survey responses.
- Validation of Site-Specific Assessments: CMS reminds the District that it is responsible for assuring that 100% of all HCBS settings comply with 100% of the final HCBS rule in its entirety. The District must assure at least one validation strategy is used to confirm provider self-assessment results, and should also supplement strategies where there may be a perceived conflict of interest with validation strategies.
 - ***IDD Waiver***
 - Interpreting Personal Experience Assessment Scores: The DDS used a Likert-type scale for the Personal Experience Assessments, interpreting scores of 4 or 5 as being compliant. However, the STP provides no explanation of what a score of “4” means as opposed to a score of “5” (which the STP describes as being whenever “he or she would like” in terms of participant preference). Please include a description of how each ranking was defined for survey respondents (for example, what a score of “4” is).
 - IDD Waiver Setting Reviewer Credentials & Training: Under the DC HCBS IDD Day Settings, please provide additional detail on the credentials and training received of staff that were responsible for analyzing the results of the Provider Certification Review (PCR) and conducting the onsite assessment of each setting location.
 - Personal Experience Assessments v. Day & Vocational Personal Assessment Tool: On page 124, under item 7, the District specifies that it designed both a residential personal assessment tool and a day and vocational personal assessment tool. The District moved forward with the residential tool only as it completed site-by-site assessments of all day and vocational programs using the PCR process, which includes interviews of a sample of people receiving supports from each setting. What sample size did the District use in administering personal experience assessment surveys for these settings?
 - Facility-Based Employment Readiness Settings: Under facility-based employment readiness settings, the District wrote on page 20 that, “There are no facility-based employment readiness settings with 50 or more people receiving supports.” This factor alone would not rule out the possibility that one of these settings possessed qualities that may isolate HCBS beneficiaries from the broader community. As such, please provide additional detail as to how the District determined that none of these settings should be targeted for heightened scrutiny.
 - Inclusion of ICF Residential Provider Data: The Table on page 102 shows Provider Self-Assessment results aggregated for all HCBS IDD Waiver Residential Providers. However, it includes results for some Intermediate Care Facility providers who operate wholly outside of the waiver program. How is the District ensuring that each residential service provider is meeting or will meet the HCBS settings requirements of the rule for any HCBS beneficiaries that are residing in these settings? This question also applies to all of the setting types for which the District has provided Aggregated Provider Self-Assessments. Please see pages 4-5 of this document for additional information regarding CMS’ concerns on this topic.

- **IDD Provider Transition Plans & Onsite Visits:** On page 115, the District specifies that, based upon a review of Provider Self-Assessments, DDs required all providers, including those that rated themselves as fully compliant, to submit a Provider Transition Plan aimed at continuous quality improvement. Is the District conducting onsite visits with a sample of providers who reported they comply with the rule as well as with any/all that don't comply and/or rise to the level of heightened scrutiny?

- ***EPD Waiver***
 - **Residential Site Assessment:** Please clarify that the person-by-person residential site assessment will cover a survey of all individuals receiving HCBS in these settings (or, if only a subset of the population, what the sample size will be and how the sample will be determined).
 - **Assisted Living:** On page 128, under item 5, the District specifies that it will administer individual experience assessments of a sample of ALF residents to validate findings of the on-site assessments by the District and the provider self-assessments. What is the sample size?
 - **Adult Day Health:** The other settings covered by the EPD waiver includes 7 Adult Day Health sites that were assessed and deemed compliant in the last waiver amendment (October 2015) and are thus not included in the STP. CMS requests that the state will clarify in the STP that these settings will be monitored for ongoing compliance as part of the monitoring process outlined for other settings.
 - **Capacity Building:** Please provide additional details to support the following statement on page 23: *"DHCF recognizes that will we have recently updated our regulations and policies, it will take some time to see all of these changes on the ground for people who receive services. Our current approach is to provide technical assistance and training to build capacity for sustainable compliance."*

- ***Individual, Privately-Owned Homes:*** The District may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and the state determines that presumption is overcome, the District should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving home and community-based services (for example, a setting purchased by a group of families solely for their family members with disabilities using home and community-based services).

- ***Residential Settings of Individuals receiving Day Supports:*** Under the section entitled, “Day Settings for People Who Receive Supports from the HCBS IDD Waiver,” beginning on page 19, the STP states, “In fact, several of our large providers, defined for this purpose as 50 or more people attending, inclusive of HCBS waiver beneficiaries and people who reside in an ICF/IDD and receive Active Treatment Services, have more promising results from the site-by-site assessments than some of the smaller providers.” CMS has several concerns about this statement.
 - First, the description suggests that the setting alone could be institutional in that it is serving individuals residing in ICF/IDD. Alternatively, it could mean that the state has interpreted the requirement that “individuals receiving access to the broader community to the same degree as individuals not receiving HCBS in the same setting” could in fact be met by assuming individuals living in ICF/IDD as “individuals not receiving HCBS”, which was certainly not the intent of the federal HCBS rule.
 - Second, CMS wishes to reinforce that individuals receiving HCB services must reside in settings that comply fully with the rule (regardless of whether those settings are being paid for using HCBS funds or not). Thus, living in ICF/IDDs or other settings that do not comply with the rule could jeopardize an individual’s ability to receive non-residential HCBS after the transition period.
 - Third, CMS is concerned that, based on the limited information provided by the District thus far, these settings could potentially be settings that either do not comply fully with the rule and/or have qualities that isolate HCBS beneficiaries from the broader community. The fact that the state is planning to implement a new policy in its next waiver submission to limit the number of participants being served in these facilities to 50 people/day suggests that the District is concerned about these facilities being isolating in nature.
 - As such, CMS requests the following additional information be provided:
 - It is noted that the District suggests that data from the site assessments demonstrate some of these larger congregate day habilitation sites actually show more positive results than smaller ones; however, much more detailed information is needed to verify the accuracy of this statement. For example: Is this statement based on provider self-assessments, participant survey responses, or both? What is the District referring to as “promising results” based on the data collected?
 - Please confirm how many larger day habilitation settings that serve 50 or more individuals and are supporting both individuals living in HCBS as well as individuals living in ICF/IDD.
 - Please provide an estimate of the number of people currently receiving Active Treatment Services that live in an ICF/IDD, and describe what the state’s actions are to either transition these individuals into residential settings that comply with the HCBS rule or transition these individuals to other day options.

Site-Specific Remedial Actions

CMS requests more detail on the District's proposed process and timeline for remediation of settings.

- ***Trends in Areas of Non-Compliance:*** While the outcomes of the site-specific assessments are provided in aggregate by setting type and HCBS regulation, CMS requests that the District add information about specific compliance issues identified and associated remedial actions, particularly any of the key federal criteria in which 50% or fewer settings are currently in compliance (and what technical assistance the District is planning to provide to help settings address gaps in compliance).
- ***Site-Specific Remediation Process:*** The District's site-specific assessment results provides information on the HCBS regulations that are currently in need of the most remedial actions given the reported noncompliance rates; however CMS and the public are not able to discern the specific steps and actions the District plans to take to remediate the issues identified in individual settings. Please add details to the STP which explain the individual remedial actions the District will implement for all issues identified at all relevant settings. It may be helpful to separate assessment and remediation into two separate sections to more clearly delineate the site-specific remediation process, interim steps and timeline demonstrating that the District will achieve full compliance by March 2019.
- ***Non-Disability Specific Settings:*** The STP does not sufficiently address the federal requirement that each individual has a choice of and access to a non-disability specific setting. Please provide more specific details demonstrating how the District assures beneficiary access to non-disability specific settings in the provision of residential and non-residential services. This additional information should include how the District is strategically building capacity to assure non-disability specific options.

Monitoring of Settings

The STP includes a general process for assuring continual monitoring of site compliance with the federal HCBS settings requirements, and describes various kinds of strategies to ensure ongoing compliance beginning on page 130. These strategies include incorporating assessment by the person into ongoing service coordination monitoring activities, using quality assurance and performance measures, incorporating requirements into provider certification and licensing. The District also indicates that continued monitoring will occur largely through the continuous improvement plan CIP process (pg 87). Additional information about the ongoing monitoring of settings is needed.

- In Section VI of the STP, the District should clarify timelines listed as in progress and ongoing. The STP mentions two different work plans which track progress of HCBS activities.
- CMS thanks the District for including a link to the DDS work plan for IDD settings. The work plan for EPD settings is described as in development and posted online by August 15 (but could not be located online as of September 8). The District should include this work plan as well in the STP.

- Please add a monitoring category in its timelines/milestones so that CMS and the public can track the District's progress related to monitoring of settings.

Relocation of Beneficiaries

CMS thanks the District for including a general description of the District's intended actions surrounding relocation of beneficiaries, and also a link to separate transition policies and procedures on the District's website (pg 11). To date, five individuals have been identified as requiring transition to a new setting. The District's description of its relocation process (in both the STP and the separate link provided on page 11) does not include timelines or intermediate milestones to assure all relocation activities are completed by March 17, 2019. The District should further describe its process of relocating beneficiaries and include intermediate milestones and timelines in its STP.

Heightened Scrutiny

CMS requests that the District provide additional information about its heightened scrutiny process to assure full compliance of all settings will be achieved by March 17, 2019. Please provide a timeline (with end dates) for identifying sites that require heightened scrutiny and submitting the evidence to CMS.

- **Settings that Isolate:** In various sections of the current draft STP, the District asserts that they have no settings that would be flagged as a setting that may isolate HCBS beneficiaries (and thus be flagged under prong 3 for heightened scrutiny) because there are no “farmstead or disability-specific farming communities, gated or secured communities for people with intellectual disabilities, residential schools or multiple settings co-located and operationally related which congregate a large number of people with disabilities such that people’s ability to interact with the broader community is limited.” Please note that in the 2015 sub-regulatory guidance provided by CMS entitled, [Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community](#) these types of settings were listed as examples but not as an exhaustive list. Further, the subregulatory guidance asserts the following:

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- *The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.*
- *The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.*

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- *The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.*

- *People in the setting have limited, if any, interaction with the broader community.*
 - *Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).*
- CMS requests that the state include more specific language in the STP demonstrating that the state used this guidance in attempting to identifying and determining that there were no HCBS settings in the District that should be flagged under the third HS prong as a “setting that isolates” and did not just look at this prong through the four examples offered. Additionally, with respect to non-residential settings, merely capping or affirming that settings are serving 50 people or fewer does not itself determine that a setting is not isolating. CMS encourages the District to use the *Exploratory Questions* for both residential and non-residential settings to further help identify and determine whether or not settings should be flagged for heightened scrutiny.
- ***Clustered Residential Apartment Complexes under IDD Waiver:*** On page 11, the District provides its rationale for why it is not moving forward in submitting two apartment complexes forward for heightened scrutiny, even though the District received input during a previous public comment process from stakeholders expressing concerns about these entities potentially clustering individuals with disabilities. In its rationale for not moving forward in submitting these to CMS for additional review under heightened scrutiny, the District stated, “DDS is aware of the density issue in these buildings and monitors any new people moving in to ensure that they are based upon the person’s choice, rather than provider convenience.” CMS wishes to remind the District that choice alone is not a sufficient reason to support an HCBS beneficiary in a residential setting that is not compliant with the federal HCBS settings requirements. It also is not basis enough to avoid submitting a setting that may have the qualities of isolating HCBS beneficiaries for CMS review under heightened scrutiny. Additionally, the District even coins these settings as “clustered” in nature. Further, the District’s general statement of data related to compliance with the rule based on the Personal Experience Assessments may be compelling, but is something CMS would typically expect more detailed information about. Keep in mind that the intent of heightened scrutiny is to allow a state government that believes a setting fully complies with the federal HCBS settings requirements and has overcome any institutional characteristics or settings that isolate. The description the District provided suggests to us that in reality, these settings really should be submitted under heightened scrutiny for further review by CMS. As such, CMS urges the District to reconsider its decision not to submit these or any other clustered residential settings that may have qualities that isolate to CMS with a detailed evidentiary package under heightened scrutiny.
- ***Submission of HS Evidentiary Packages:*** On page 21, the District specifies that in the event DDS submits a provider for heightened review, DDS will conduct an on-site review; engage stakeholders; solicit public input by posting at least two notices and offering 30-day public

comment period, prior to submission to CMS. We would note that it is the Medicaid Agency's responsibility to submit the information to CMS for the heightened scrutiny process if the District determines, through its assessments, that these settings do have the qualities that are home and community-based in nature and do not have the qualities of an institution. Below is the information that we believe will facilitate CMS' review of heightened scrutiny requests (please note that formal language is still working its way through CMS clearance but is expected to be released later this year in the form of additional subregulatory guidance around the rule).

- Summarize the state's licensure or other regulatory requirement that distinguishes the setting from an institutional provider and/or requires the setting to facilitate beneficiary access to the community.
- Summarize any housing or zoning requirement that addresses beneficiary integration into the community.
- Describe the location of the setting in relation to community establishments (retail shops and restaurants, houses of worship, services such as Laundromats, libraries, etc.) and public transportation avenues, and indicate how the setting facilitates beneficiary access to these establishments. If public transportation is not available, indicate how transportation is otherwise provided.
- Summarize any provider qualifications that speak to trainings on the requirements of a home and community-based setting and how to perform job requirements in ways that facilitate community integration.
- Identify any service definitions that articulate an individualized approach to furthering beneficiary goals of community integration.
- Describe the documentation the state used to determine that the setting complies with the requirements for provider-owned or controlled settings, including the articulation of individually-assessed modifications in person-centered service plans.
- Describe how the setting demonstrated to the state that facilitation of beneficiary integration into the community occurs according to the individual's preferences and interests as defined in person-centered service plans.
- Describe the documentation the state used to determine that the setting was selected by individuals from among all options, including non-disability specific settings.
- Submit pictures of the interior and exterior of the setting to showcase the physical construct of the setting and its surroundings.
- Include a summary of the results of any onsite visits to the setting in question.
- Summarize all public comments as well as the state's reaction to public feedback received in response to publishing the evidentiary package for the setting in question.
- Describe other supporting evidence available upon CMS request, such as consumer experience surveys that can be linked to the site for which evidence is being submitted, or participant interviews outside the presence of the provider conducted by an independent entity or state staff with demonstrated expertise and/or training working with the relevant population.

- On page 23, the District specifies that it conducted a thorough review of the Lisner Louise Dickerson Hurt Home using its own criteria for determining whether a setting requires further review by CMS under heightened scrutiny. CMS requests the following clarification:
 - Which prong of the settings presumed NOT to be HCB does the District believe this facility falls under?
 - Please clarify whether the District is submitting the information as a sample evidentiary package for review under HS by CMS, or whether it is providing this information to support rationale for why the District has decided not to move forward in submitting the setting for CMS review under heightened scrutiny. As a reminder, states must submit any setting for which they have identified meets at least one of the three prongs for heightened scrutiny to CMS for review. The submission should include an evidentiary package that supports the state's assertion that (a) the setting has overcome any institutional presumptions or qualities that isolate; and (b) fully complies with the HCBS rule.