

APPENDIX 1

SETTINGS TRANSITION DOCUMENTS

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State: Utah

Programs: Medicaid 1915(c) Home and Community Based Waivers

Bureau: Authorization and Community Based Services

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Utah HCBS Setting Transition Plan Crosswalk of Revisions

Version Five - Updated June 2019

Prepared by the Division of Medicaid and Health Financing



State Transition Plan (STP) Version 5

Section	(Action Item)	Revisions	Page(s)
Section 1. Public Notice and Comment Process	All	No major content changes. Timelines and Progress/Status updated	2-3
Section 2. Assessment Process	All	Timelines and Progress/Status updated Refer to Self-Assessment Report (new appendix)	4-7
Section 2 Continued	State will conduct a review of HCBS Waiver Sites of Services and will make preliminary categorization.	Updated content to reflect actions taken and completed status	4
Section 2 Continued	Employ multiple processes to evaluate sites that are potentially Not Yet Compliant or Not Compliant with HCBS characteristics	Updated content to reflect actions taken and completed/in progress status	5-7
Section 3. Remediation Strategies	All	Timelines and Progress/Status updated Refer to Self-Assessment Report (new appendix)	8-16
Section 3 Continued	Collaborate to Develop Provider Remediation Plan	Additions: For provider remediation plan approved timelines that are greater than one year (12 months), the State will require a status update every 6 months. Remediation Plans that required a Corrective Action Plan (CAP) to come into compliance, the State will verify the CAPs have been completed. Expansion on how the public may provide ongoing feedback.	8-9
Section 3 Continued	Settings Requiring an Additional In-depth Review	Entire section is new information	10
Section 3 Continued	Heightened Scrutiny Review	Updated and expanded content to explain process in greater detail	11-12
Section 3 Continued	Ongoing Monitoring	Updated and expanded content to explain process in greater detail	13-16
Section 3 Continued	State Remediation Activities	Entire section is new information	16

New Appendix	Page(s)	New Appendix	Page(s)
Provider Self-Assessment Notification Letter	A-41	Self-Assessment and Remediation Plan Example	A-47
Provider Remediation Plan Response Letter	A-43	Self-Assessment Report	A-48
Self-Assessment Instructions: Residential	A-45	Public Comment Summary Version Four	A-86
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Preliminary HCBS Transition Planning Compliance Report

An action item identified in the Utah HCBS Setting Transition Plan describes that the State will conduct an initial review of the HCBS Waiver Service Sites. The State has completed this review. This report provides the review results.

The Department of Health queried the Medicaid Management Information System (MMIS) to identify all enrolled HCBS waiver providers. Each waiver and its associated services are reported separately. The State conducted its preliminary categorization by describing services as either “presumed to be compliant” or “requires additional review”. In addition, a listing of provider types and the number of providers has been supplied to help assess the scope of the in-depth reviews that will occur in the upcoming months.

The Department of Health took a conservative approach when designating providers as “presumed to be compliant”. The State only identified services as “presumed to be compliant” when the services are not dependent on the setting and that are direct services provided to the waiver participant. For example, in the Medicaid Autism Waiver, Applied Behavioral Analysis is a service that is provided directly to the child. The service is provided in the child’s home or other naturally occurring setting in the community. Accordingly, this service is presumed to be fully compliant with the HCBS regulations. In addition, providers that offer multiple types of services, were categorized as “requires additional review” if the provider had any possibility of providing a service that may not be compliant. For example, if a provider is enrolled to offer Personal Budget Assistance, Respite Care, Behavioral Consultation and Residential Habilitation, the provider as a whole would be classified as a ‘Residential Service Provider’ and designated as “requires additional review” to ensure all sites will be fully assessed.

When services are listed as “presumed to be compliant” a brief narrative explanation of the category is provided.

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Acquired Brain Injury Waiver

Facility-Based

Facility Based Respite Services

Facility-based respite services are provided to give temporary relief to the primary caregiver. This service is time limited (less than 14 days) and is allowed to be provided in a facility-based setting.

	Total Providers	Percent of Total
Presumed Compliant	1	100.00%
Totals	1	100%

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant maximum flexibility in hiring staff of their choosing. Many Acquired Brain Injury Waiver services are provided through SAS.

	Total Providers	Percent of Total
Presumed Compliant	5	100.00%
Totals	5	100%

Support Coordination Agency

Support Coordination Services are services provided to coordinate the array of services the participant receives. Services are provided to the participant and are not dependent on a setting.

	Total Providers	Percent of Total
Presumed Compliant	74	100.00%
Totals	74	100%

Emergency Response Services

Emergency Response Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	5	100.00%
Totals	5	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Acquired Brain Injury Waiver

Non-Residential - Needs Review

Day Support Services

Day Supports are provided in licensed day supports locations throughout the state and represent non-residential settings requiring review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	18	100.00%
Totals	18	100%

Supported Employment

Supported Employment settings must be integrated in the community but vary in the number of participants served, and the nature of the employment arrangement. These settings will require review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	3	100.00%
Totals	3	100%

Residential - Needs Review

Residential Facility / Supported Living

Residential settings include several categories including but not limited to, Assisted Living, licensed or certified residential through DSPD, licensed or certified supported living, etc. These settings will require review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	94	100.00%
Totals	94	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Aging Waiver

Facility-Based

Facility Based Respite Services

Facility-based respite services are provided to give temporary relief to the primary caregiver. This service is time limited (less than 14 days) and is allowed to be provided in a facility-based setting.

	Total Providers	Percent of Total
Presumed Compliant	21	100.00%
Totals	21	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Aging Waiver

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant maximum flexibility in hiring staff or their choosing. In the Aging Waiver, Personal Care Services are available through SAS.

	Total Providers	Percent of Total
Presumed Compliant	13	100.00%
Totals	13	100%

Medical Equipment Supplier

Medical Equipment Supplies are provided in the home and community to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	10	100.00%
Totals	10	100%

Emergency Response Services

Emergency Response Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	50	100.00%
Totals	50	100%

Home and Vehicle Modifications

Home and Vehicle Modifications are provided in the home and community to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	4	100.00%
Totals	4	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Aging Waiver

Case Management Agency

Case Management Agency Services are services provided to coordinate the array of services the participant receives. Services are provided to the participant and are not dependent on a setting.

	Total Providers	Percent of Total
Presumed Compliant	24	100.00%
Totals	24	100%

In-Home

Home Health Agency

Home Health Agency Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	135	100.00%
Totals	135	100%

Home Delivered Meals

Home Delivered Meals are provided in the home to assure the participant's nutritional health in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	12	100.00%
Totals	12	100%

Personal Care Provider

Personal Care Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	202	100.00%
Totals	202	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Aging Waiver

Non-Residential - Needs Review

Adult Day Care

Adult Day Care must be provided in licensed adult day health locations throughout the state including Assisted Living locations. These settings will require review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	16	100.00%
Totals	16	100%

Transportation Services

Transportation Services

Non- Medical Transportation Services are provided to assist the participant in accessing the community.

	Total Providers	Percent of Total
Presumed Compliant	41	100.00%
Totals	41	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Autism Waiver

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant or their family maximum flexibility in hiring staff or their choosing. In the Autism Waiver, Respite Care Services are available through SAS.

	Total Providers	Percent of Total
Presumed Compliant	3	100.00%
Totals	3	100%

In-Home

In-Home Therapy

In-Home Therapy (Applied Behavioral Analysis) is provided directly to the child to improve the child's development. The service is provided in the child's home or other naturally occurring setting in the community.

	Total Providers	Percent of Total
Presumed Compliant	11	100.00%
Totals	11	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Community Supports Waiver

Facility-Based

Facility Based Respite Services

Facility-based respite services are provided to give temporary relief to the primary caregiver. This service is time limited (less than 14 days) and is allowed to be provided in a facility-based setting.

	Total Providers	Percent of Total
Presumed Compliant	1	100.00%
Totals	1	100%

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant maximum flexibility in hiring staff of their choosing. Many Community Supports Waiver services are provided through SAS.

	Total Providers	Percent of Total
Presumed Compliant	5	100.00%
Totals	5	100%

Support Coordination Agency

Support Coordination Services are services provided to coordinate the array of services the participant receives. Services are provided to the participant and are not dependent on a setting.

	Total Providers	Percent of Total
Presumed Compliant	75	100.00%
Totals	75	100%

Emergency Response Services

Emergency Response Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	5	100.00%
Totals	5	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Community Supports Waiver

Non-Residential - Needs Review

Day Support Services

Day Supports are provided in licensed day supports locations throughout the state and represent non-residential settings requiring review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	14	100.00%
Totals	14	100%

Supported Employment

Supported Employment settings must be integrated in the community but vary in the number of participants served, and the nature of the employment arrangement. These settings will require review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	10	100.00%
Totals	10	100%

Residential - Needs Review

Residential Facility / Supported Living

Residential settings include several categories including but not limited to, Assisted Living, licensed or certified residential through DSPD, licensed or certified supported living, etc. These settings will require review by the Medicaid agency in order to assess compliance. These reviews will include a provider self-assessment and desk review of the self-assessment. The State may also conduct on-site visits and interview participants as needed to assure compliance.

	Total Providers	Percent of Total
Requires Additional Review	100	100.00%
Totals	100	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

New Choices Waiver

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant maximum flexibility in hiring staff of their choosing. In the New Choices Waiver, Personal Care Services are available through SAS.

	Total Providers	Percent of Total
Presumed Compliant	3	100.00%
Totals	3	100%

Medical Equipment Supplier

Medical Equipment Supplies are provided in the home and community to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	14	100.00%
Totals	14	100%

Emergency Response Services

Emergency Response Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	8	100.00%
Totals	8	100%

Home and Vehicle Modifications

Home and Vehicle Modifications are provided in the home and community to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	1	100.00%
Totals	1	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

New Choices Waiver

Case Management Agency

Case Management Agency Services are services provided to coordinate the array of services the participant receives. Services are provided to the participant and are not dependent on a setting.

	Total Providers	Percent of Total
Presumed Compliant	19	100.00%
Totals	19	100%

In-Home

Home Health Agency

Home Health Agency Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	57	100.00%
Totals	57	100%

Home Delivered Meals

Home Delivered Meals are provided in the home to assure the participant's nutritional health in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	3	100.00%
Totals	3	100%

Personal Care Provider

Personal Care Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	4	100.00%
Totals	4	100%

Residential - Needs Review

Adult Residential / Day Health

	Total Providers	Percent of Total
Requires Additional Review	185	100.00%
Totals	185	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

New Choices Waiver

Transportation Services

Transportation Services

Non- Medical Transportation Services are provided to assist the participant in accessing the community.

	Total Providers	Percent of Total
Presumed Compliant	9	100.00%
Totals	9	100%

Physical Disabilities Waiver

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant maximum flexibility in hiring staff of their choosing. In the Physical Disabilities Waiver, Personal Care Services are available through SAS.

	Total Providers	Percent of Total
Presumed Compliant	5	100.00%
Totals	5	100%

Support Coordination Agency

	Total Providers	Percent of Total
Presumed Compliant	8	100.00%
Totals	8	100%

Emergency Response Services

Emergency Response Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	5	100.00%
Totals	5	100%

HCBS Transition Planning Compliance Report

This initial report is based on an internal review by the Department of Health. As the Department continues through the evaluation process this information will be updated.

Technology Dependent Waiver

Indirect Support Service - No Setting

Financial Management Services

Financial Management Services are provided in support of self-directed or self-administered services (SAS). Services delivered through the SAS method enable the participant maximum flexibility in hiring staff of their choosing. In the Technology Dependent Waiver, Respite Services are available through SAS.

	Total Providers	Percent of Total
Presumed Compliant	2	100.00%
Totals	2	100%

In-Home

Home Health Agency

Home Health Agency Services are provided in the home to assure the participant's health and safety in a manner that promotes independence.

	Total Providers	Percent of Total
Presumed Compliant	15	100.00%
Totals	15	100%

In-Home Therapy

In-Home Therapy is provided directly to the child to improve the child's development. The service is provided in the child's home.

	Total Providers	Percent of Total
Presumed Compliant	1	100.00%
Totals	1	100%



State of Utah

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Governor

SPENCER J. COX
Lieutenant Governor

Utah Department of Health

JOSEPH K. MINER, MD, MSPH, FACPM
Executive Director

Division of Medicaid and Health Financing

NATHAN CHECKETTS
Deputy Director, Utah Department of Health
Director, Division of Medicaid and Health Financing

KEVIN BAGLEY
Director, Bureau of Authorization and
Community Based Services

DATE: April 26, 2016
TO: Utah Medicaid HCBS Waiver Providers
FROM: Kevin Bagley, Director, Bureau of Authorization and Community Based Services
RE: Compliance with Federal Home and Community Based Services (HCBS) Settings Rule

On March 17, 2014 the Centers for Medicare and Medicaid Services (CMS) implemented new federal HCBS regulations that provided clarification concerning the required characteristics of service settings. To determine compliance with the new regulations, states must review and evaluate all HCBS residential and non-residential service settings. These rules apply to all Utah HCBS waiver programs.

The final rule establishes an outcome-oriented definition of HCBS settings that focuses on the nature and quality of individuals' experiences. The rule reflects CMS' intent to ensure that individuals receiving services and supports through Medicaid HCBS programs have full access to the benefits of community living and receive services in the most integrated setting possible. Information on the final rule can be found at <http://health.utah.gov/lc/hcbstransition/>.

In accordance with the regulations, Utah Medicaid created an HCBS Setting Transition Plan (the Plan). One of the initial action items in the Plan requires the State to perform a preliminary categorization of providers as those presumed to be *Compliant*, *Not Yet Compliant*, or *Not Compliant* with the setting requirements. A related action item in the Plan requires all settings initially categorized as Not Yet Compliant or Not Compliant to complete and submit to the State, the results of the Provider Self-Assessment Tool. Completion of the Provider Self-Assessment Tool is mandatory and must be completed and returned to the State for each service setting via email, facsimile or mail within 60 days of the date of this letter. The results of your self-assessment must be submitted by: July 1, 2016. Failure to submit completed Provider-Self Assessments may result in suspension of payment or provider disenrollment. Submission instructions are described within the Provider Self-Assessment Tool. Utah Medicaid will be available to provide technical assistance to providers throughout this process and may be reached via email at HCBSSettings@utah.gov, or by phone at 801-538-6553.

After the provider self-assessment process has been completed, the Plan identifies additional action items. One action item requires the State to confirm the validity of the provider self-assessment process by performing onsite reviews of a statistically valid sample of settings subject to the provider self-assessment process. Another action item requires the State to review results and identify potential areas of non-compliance. Based on provider self-assessment findings and onsite reviews, the State, providers, and stakeholders will collaborate to develop Provider Remediation Plans. Providers will be given the opportunity to remediate issues and come into compliance within timeframes established by the State. Providers who fail to complete a Provider Remediation Plan, or those determined through the heightened scrutiny process to have institutional like qualities that cannot be remediated, will no longer be able to provide Medicaid HCBS services.

Thank you for the services you provide to Medicaid members. If you have questions about the Provider Self-Assessment Tool or process please contact the Bureau of Authorization and Community Based Services via email at HCBSSettings@utah.gov or by phone at 801-538-6553.

Provider Self-Assessment Tool Instructions

Background:

On March 17, 2014 the Centers for Medicare and Medicaid Services (CMS) implemented new federal HCBS regulations that provided clarification concerning the required characteristics of service settings. To determine compliance with the new regulations, states must review and evaluate all HCBS residential and non-residential service settings. These rules were developed to ensure that individuals receiving long term services and supports through Medicaid HCBS programs have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate. The following Provider Self-Assessment Tool (the Tool) measures each provider's current level of compliance with the HCBS Setting rules and provides a framework to assist providers with implementing necessary steps to compliance.

General Instructions:

The Tool can be downloaded at the following location: <http://health.utah.gov/ltc/hcbstransition/Documents.html>.

Residential and Non-Residential versions are available, the correct version must be completed for each site depending on the type of services provided. If you are unable to download the Tool, please contact the Bureau of Authorization and Community Based Services for assistance via email at HCBSSettings@utah.gov or by phone at 801-538-6553.

The Tool includes a series of YES/NO/NA questions. Supporting information is required for each response to demonstrate why the setting is in compliance or not in compliance. For all N/A responses please explain why the question does not apply to your setting.

Provider Self-Assessment process:

- Providers must complete one self-assessment for each individual HCBS setting they own, co-own, and/or operate.
- The provider will use the Tool to evaluate compliance with a variety of environmental and other factors that help to define the characteristics of the setting.
- Providers will be asked to demonstrate compliance by providing evidence that current policies, procedures and operating practices are in place and that compliance is regularly assessed.
- Compliance information that will be deemed acceptable evidence includes, but is not limited to citation of the following (Please do NOT send copies of these documents):
 - a. Provider Policies/ Procedures
 - b. Participant Handbook
 - c. Staff training curriculum and materials
 - d. Training Schedules
 - e. Letters of support from persons served
- When completing the assessment, providers must evaluate compliance by thinking about both the setting itself and each individual served.

Submission:

RESPONSES TO THE SELF-ASSESSMENT TOOL MUST NOT CONTAIN ANY CONFIDENTIAL OR PROTECTED HEALTH INFORMATION PERTAINING TO CLIENTS. THIS INCLUDES IDENTIFIABLE DEMOGRAPHIC DATA, INFORMATION ABOUT THE PHYSICAL OR MENTAL HEALTH CONDITION(S) OF AN INDIVIDUAL, OR ANY INFORMATION REGARDING TREATMENT REGIMENS OR PAYMENT HISTORY FOR HEALTHCARE SERVICES PROVIDED TO AN INDIVIDUAL.

Completed Tools can be submitted to the State Medicaid Agency via email, facsimile, or mail at the following locations:

Email: HCBSSettings@utah.gov

Facsimile: (801) 323-1588

Mail: Bureau of Authorization and Community Based Services

Attn: HCBS Settings Transition

P.O. Box 143112

Salt Lake City, UT 84114-3112

HCBS Settings Transition Provider Self-Assessment Tool: Residential

Section A: Provider Information

Provider Name:		Date Completed:	
Site Name:		Phone:	
Address:		City:	Zip Code:
Names and Roles of those Completing this Assessment:		Email Address:	
Number of Medicaid HCBS Individuals Served at this Location:		HCBS Provider Type:	<i>Residential Facility, /Supported Living, Assisted Living Facility; if other please specify</i>
Services Provided at this Location:		Waivers Served:	<i>Acquired Brain Injury, Community Supports, New Choices</i>

RESPONSES TO THIS SELF-ASSESSMENT TOOL MUST NOT CONTAIN ANY CONFIDENTIAL OR PROTECTED HEALTH INFORMATION PERTAINING TO CLIENTS. THIS INCLUDES IDENTIFIABLE DEMOGRAPHIC DATA, INFORMATION ABOUT THE PHYSICAL OR MENTAL HEALTH CONDITION(S) OF AN INDIVIDUAL, OR ANY INFORMATION REGARDING TREATMENT REGIMENS OR PAYMENT HISTORY FOR HEALTHCARE SERVICES PROVIDED TO AN INDIVIDUAL.

PLEASE PROVIDE CITATIONS ONLY FOR POLICIES, HANDBOOKS, TRAINING CURRICULUM, & MATERIALS.

Section B: CMS HCBS Community Rule: Self-Assessment and Planning Tool for Residential Settings

Characteristic 1: 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 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
1. Is the setting in a public or privately-owned facility that provides inpatient treatment? <i>-If yes, please provide the name and type of facility.</i>		
2. Is the setting on the grounds of, or immediately adjacent to a public institution? <i>-If yes, please provide the name and type of public institution.</i>		
3. Is the setting located in a gated/secured community for people with disabilities? <i>-If yes, please provide the name and a description of the community.</i>		
4. Is the setting located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community? <i>-If no, please describe the setting's location.</i>		
5. Does the setting allow the individual(s) the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
<p>6. Does the setting provide individual HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>7. Can the individual(s) come and go at any time? <i>-If yes, please provide evidence</i> <i>-If no, what limitations exist and why?</i></p>		
<p>8. Does the setting afford opportunities for individual schedules that focus on the needs and desires of the individual(s) and opportunities for individual growth? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>9. Does the setting restrict individuals from having knowledge of or access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting, and who in the setting will facilitate and support access to these activities? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>10. In settings where the individual(s) are of working age, is there activity with the individual(s) to pursue work as an option? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>11. In settings where personal budget assistance is part of the service, does the setting facilitate the opportunity for the individual(s) to have a checking or savings account or other means to have access to and control personal funds? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>12. Are the individual(s) informed that they are not required to sign over their paychecks to the provider? <i>-If yes, please provide evidence.</i> <i>-If no, what requirements exist and why?</i></p>		
<p>13. Does the setting restrict the individual(s) from receiving information about, or training on, how to access and use means of public transportation, such as buses, taxis, etc., and are these public transportation schedules and telephone numbers available when requested? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
14. Where public transportation is limited, does the setting provide information about resources for the individual(s) to access the broader community, including accessible transportation for individuals who use wheelchairs? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 1		
This setting has demonstrated compliance with Settings Characteristic 1.	Yes, No, Partial	Comments or Additional Information
Characteristic 2: The setting is selected by the individual from among setting options, including nondisability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
15. Does the setting reflect individual needs and preferences and ensure the informed choice of the individual(s), based on their resources? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
16. Is the option of a private room provided to the resident(s) as appropriate? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
17. Does the setting restrict access to non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA? <i>-If no, please provide evidence.</i> <i>-If yes, what restrictions exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 2		
This setting has demonstrated compliance with Settings Characteristic 2.	Yes, No, Partial	Comments or Additional Information
Characteristic 3: The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
18. Is all information about the individual(s) kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for PT, OT, medications, restricted diet, etc., in a general open area? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
<p>19. Do setting requirements assure that staff do not talk to other staff about the individual(s) in the presence of others or in the presence of an individual as if he/she were not present? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>20. Does the setting assure that staff interact and communicate with the individual(s) respectfully and in a manner in which they would like to be addressed, while providing assistance during the regular course of daily activities? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>21. Can the individual(s) have a private cell phone, computer or other personal communication device, or does the setting provide access to a telephone or other technology device to use for personal communication in private at any time? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>22. In settings with more than one individual, does the setting ensure that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting and/or restrictive to the rights of every individual receiving support within the setting? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>23. Does the setting offer a secure place for the individual(s) to store personal belongings? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>24. Is information about filing a complaint made readily available and does the setting inform the individual(s) of how to make a complaint? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>25. Can the individual(s) file an anonymous complaint? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>26. Is informal (written and oral) communication conducted in a language that the individual(s) understand? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
27. Does the setting support individuals who need assistance with their personal appearance, dress, and grooming to appear as they desire, and is personal assistance provided in private, as appropriate? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
28. Does the setting afford dignity to the diners (i.e., the individual(s) are treated age appropriately and not required to wear bibs)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 3	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 3.		
Characteristic 4: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
29. Does the setting post or provide information on individual rights? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
30. Does the setting allow the individual(s) to engage in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner consistent with individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
31. Does the physical environment support a variety of individual goals and needs (for example, does the setting provide indoor and outdoor gathering spaces; does the setting provide for larger group activities as well as solitary activities; does the setting provide for stimulating as well as calming activities)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
32. Does the setting afford the opportunity for tasks and activities matched to individual skills, abilities and desires? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
33. Does the setting afford opportunities for the individual(s) to choose with whom to do activities, either in the setting or outside the setting, and is participation voluntary? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
34. Can the individual(s) sit in any seat in a dining area? <i>-If no, what limitations exist and why?</i>		
35. If an individual desires to eat privately, can he/she do so? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
36. Can the individual(s) request an alternative meal if desired? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 4	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 4.		
Characteristic 5: The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(v)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
37. Does the setting restrict the services, providers, or supports available to the individual(s)? <i>-If no, please provide evidence.</i> <i>-If yes, what restrictions exist and why?</i>		
38. Does the setting afford the individual(s) the opportunity to update or change their preferences at any time? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
39. Does the setting ensure the individual(s) receive support in developing plans to support their needs and preferences? Is setting staff knowledgeable about the capabilities, interests, preference and needs of the individual(s)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 5	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 5.		
Characteristic 6: The individual has a lease or other legally enforceable agreement providing similar protections. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(A)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
40. Does the setting provide the individual(s) with a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
41. Does the setting inform the individual(s) of their rights regarding housing and when they could be required to relocate? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
42. Does the setting inform the individual(s) of how to relocate and request new housing? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
43. Does the written agreement include language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 6	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 6.		
Characteristic 7: The setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(B)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
44. Can the individual(s) close and lock the bedroom door? <i>-If no, what limitations exist and why?</i>		
45. Can the individual(s) close and lock the bathroom door? <i>-If no, what limitations exist and why?</i>		
46. Does staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the individual(s)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
47. Do staff or other residents always knock and receive permission prior to entering a bedroom, bathroom, or private living space? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
48. Are cameras present in the setting? <i>-If yes, please provide evidence that surveillance equipment has been authorized.</i>		
49. Do the furniture, linens, and other household items reflect individual preferences, interests, and hobbies as desired? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
50. Does the setting provide the individual(s) with the choice of a roommate? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
51. Does the setting inform the individual(s) of how to request a roommate change? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 7	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 7.		
Characteristic 8: The setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(C)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
52. Can the individual(s) have a meal at the time of their choosing? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
53. Are snacks accessible and available anytime? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
54. Does the setting require the individual(s) to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.? <i>-If no, please provide evidence.</i> <i>-If yes, what requirements exist and why?</i>		
55. Does the setting allow the individual(s) to access such things as a television, radio, and leisure activities that interest them and can they schedule such activities at their convenience? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 8	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 8.		
Characteristic 9: The individual can have visitors of his/her choosing at any time. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(D)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
56. Can the individual(s) have visitors at any time? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
57. Are visitors welcomed and encouraged? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
58. Can the individual(s) have private visits with family and friends? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
59. Are there restricted visitor's meeting areas? <i>-If no, please provide evidence.</i> <i>-If yes, what restrictions exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 9	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 9.		
Characteristic 10: The setting is physically accessible to the individual. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)€		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
60. Does the setting ensure there are no gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
61. Is the setting physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting or if they are present are there environmental adaptations such as a stair lift or elevator to ameliorate the obstruction? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
62. Does the setting provide the individual(s) with full access to typical facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
63. For those individuals who need supports to move about the setting as they choose, are supports provided, such as grab bars, seats in the bathroom, ramps for wheel chairs, viable exits for emergencies, etc.? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 10	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 10.		

Characteristic 11: The setting ensures that any modification of the HCBS Settings qualities and conditions is supported by a specific assessed need and justified in the person-centered service plan. 42 CFR 441.301(c)(4)(v)/441.710(a)(1)(v)/441.530(a)(1)(vi)(F)

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
64. Does the plan include a description of the condition that is directly related to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause the individual harm? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
65. Does documentation note if positive interventions and supports were used prior to any plan modifications? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
66. Are less intrusive methods of meeting the need that were tried initially documented? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
67. Does the setting policy require that the individual(s) and/or their representative grant informed consent prior to the use of restraints and/or restrictive interventions and document these interventions in the person-centered plan? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 11	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 11.		

Characteristic 12: The setting enforces the Home and Community-Based Settings Regulation requirements. 42 CFR 441.301(c)(4)/441.710(a)(1)/441.530(a)(1)

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
68. Do paid and unpaid staff receive new hire training and continuing education related to the rights of the individual(s) receiving services and member experience as outlined in HCBS rules? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
69. Are provider policies outlining participant rights and experiences made available to the individual(s) receiving services? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
70. Are provider policies on HCBS rules regularly reassessed for compliance and effectiveness and amended, as necessary? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
71. Do you have any additional questions or concerns specific to the Home and Community-Based Settings Regulation requirements?		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 12	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 12.		
OVERALL ASSESSMENT OF COMPLIANCE FOR HCBS SETTINGS RULE	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Rule characteristics 1-12.		

The Department of Health, Bureau of Authorization and Community Based Services wishes to thank all providers for taking the time to complete this Self-Assessment.

HCBS Settings Transition Provider Self-Assessment Tool: Non-Residential

Section A: Provider Information

Provider Name:		Date Completed:	
Site Name:		Phone:	
Address:		City:	Zip Code:
Names and Roles of those Completing this Assessment:		Email Address:	
Number of Medicaid HCBS Individuals Served at this Location:		HCBS Provider Type:	<i>Residential Facility, /Supported Living, Assisted Living Facility; if other please specify</i>
Services Provided at this Location:		Waivers Served:	<i>Acquired Brain Injury, Aging Waiver, Community Supports, New Choices</i>

RESPONSES TO THIS SELF-ASSESSMENT TOOL MUST NOT CONTAIN ANY CONFIDENTIAL OR PROTECTED HEALTH INFORMATION PERTAINING TO CLIENTS. THIS INCLUDES IDENTIFIABLE DEMOGRAPHIC DATA, INFORMATION ABOUT THE PHYSICAL OR MENTAL HEALTH CONDITION(S) OF AN INDIVIDUAL, OR ANY INFORMATION REGARDING TREATMENT REGIMENS OR PAYMENT HISTORY FOR HEALTHCARE SERVICES PROVIDED TO AN INDIVIDUAL.

PLEASE PROVIDE CITATIONS ONLY FOR POLICIES, HANDBOOKS, TRAINING CURRICULUM, & MATERIALS.

Section B: CMS HCBS Community Rule: Self-Assessment and Planning Tool for Non-Residential Settings

Characteristic 1: 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 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
1. Is the setting in a public or privately-owned facility that provides inpatient treatment? <i>-If yes, please provide the name and type of facility.</i>		
2. Is the setting on the grounds of, or immediately adjacent to, a public institution? <i>-If yes, please provide the name and type of public institution.</i>		
3. Is the setting located in a gated/secured community for people with disabilities? <i>-If yes, please provide the name and a description of the community.</i>		
4. Is the setting in the community/building located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community? <i>-If no, please describe the setting's location.</i>		
5. Does the setting allow the individual(s) the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
<p>6. Does the setting provide individual HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>7. Can the individual(s) come and go at any time? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>8. Is the setting physically accessible, including access to bathrooms and break rooms, and are appliances, equipment, and tables/desks and chairs at a convenient height and location with no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting? If obstructions are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstructions? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>9. Can the individual(s) have visitors at any time? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>10. Are visitors welcomed and encouraged? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>11. Does the setting afford opportunities for individual schedules that focus on the needs and desires of the individual(s) and opportunities for individual growth? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>12. Does the setting restrict individuals from having knowledge of or access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting, and who in the setting will facilitate and support access to these activities? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>13. In settings where the individual(s) are of working age, is there activity with the individual(s) to pursue work as an option? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
14. Do employment settings provide the individual(s) with the opportunity to participate in negotiating their work schedule, break/lunch times and leave and medical benefits with the employer to the same extent as individuals not receiving Medicaid funded HCBS? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
15. In settings where personal budget assistance is part of the service, does the setting facilitate the opportunity for the individual(s) to have a checking or savings account or other means to have access to and control personal funds? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
16. Are the individual(s) informed that they are not required to sign over their paychecks to the provider? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
17. Does the setting provide the individual(s) with contact information, access to and training on the use of public transportation, such as buses, taxis, etc., and are these public transportation schedules and telephone numbers available in a convenient location? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
18. Where public transportation is limited, does the setting provide information about resources for the individual(s) to access the broader community, including accessible transportation for individuals who use wheelchairs? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 1	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 1.		
Characteristic 2: The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
19. Does the setting reflect individual needs and preferences? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
<p>20. Does the setting restrict access to non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA?</p> <p><i>-If no, please provide evidence.</i> <i>-If yes, what limitations exist and why?</i></p>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 2		Yes, No, Partial
This setting has demonstrated compliance with Settings Characteristic 2.		Comments or Additional Information
Characteristic 3: The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
<p>21. Is all information about individual(s) kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of the individual(s) for PT, OT, medications, restricted diet, etc., in a general open area?</p> <p><i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>22. Do setting requirements assure that staff do not talk to other staff about the individual(s) in the presence of other persons or in the presence of an individual as if he/she were not present?</p> <p><i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>23. Does the setting assure that staff interact and communicate with the individual(s) respectfully and in a manner in which they would like to be addressed, while providing assistance during the regular course of daily activities?</p> <p><i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>24. In settings with more than one individual, does the setting ensure that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting?</p> <p><i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		
<p>25. In settings with more than one individual, does the setting ensure that each individual's supports and plans to address behavioral needs are not restrictive to the rights of every individual receiving support within the setting?</p> <p><i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i></p>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
26. Does the setting policy require that the individual(s) and/or their representative grant informed consent prior to the use of restraints and/or restrictive interventions and document these interventions in the person-centered plan? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
27. Does the setting offer a secure place for the individual(s) to store personal belongings? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
28. Is information about filing a complaint made readily available and does the setting inform the individual(s) of how to make a complaint? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
29. Is informal (written and oral) communication conducted in a language that the individual(s) understand? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
30. Does the setting support individuals who need assistance with their personal appearance, dress, and grooming to appear as they desire, and is personal assistance provided in private, as appropriate? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 3	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 3.		
Characteristic 4: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
31. Does the setting ensure there are no gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
32. If the setting modifies the HCBS Settings qualities and conditions, is this modification supported by an assessed need justified in the person-centered service plan prior to implementation? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
33. Does documentation note the positive interventions and supports that were used prior to any plan modifications? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
34. Does documentation note the less intrusive methods of meeting the need that were used prior to any plan modifications? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
35. Does the setting post or provide information on individual rights? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
36. Does the setting allow the individual(s) to engage in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner consistent with individuals who are not receiving Medicaid funded services and supports? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
37. Does the physical environment support a variety of individual goals and needs (for example, does the setting provide indoor and outdoor gathering spaces; does the setting provide for larger group activities as well as solitary activities; does the setting provide for stimulating as well as calming activities)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
38. Does the setting afford the opportunity for tasks and activities matched to individual skills, abilities and desires? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
39. Does the setting afford opportunities for the individual(s) to choose with whom to do activities, either in the setting or outside the setting, and is participation voluntary? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
40. Can the individual(s) have a meal/snacks at the time and place of their choosing? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
41. Does the setting afford the individual(s) full access to a dining area with comfortable seating and opportunity to converse with others during break or meal times? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
42. In settings where meals are provided, does the setting provide for an alternative meal and/or private dining if requested by the individual(s)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
43. Do individuals have access to food at any time consistent with individuals who are not receiving Medicaid-funded services and supports? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
44. Does the setting afford dignity to the diners (i.e., the individual(s) are treated age appropriately and not required to wear bibs)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 4	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 4.		
Characteristic 5: The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v)/441.710(a)(1)(v)/441.530(a)(1)(v)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
45. Does the setting restrict the services, providers, or supports available to the individual(s)? <i>-If no, please provide evidence.</i> <i>-If yes, what limitations exist and why?</i>		
46. Does the setting afford the individual(s) the opportunity to update or change their preferences at any time? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
47. Does the setting post or provide information to the individual(s) about how to make a request for additional HCBS, or changes to their current HCBS? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
48. Does the setting ensure the individual(s) receive support in developing plans to support their needs and preferences? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
49. Is setting staff knowledgeable about the capabilities, interests, preferences and needs of the individual(s)? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		

Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
50. Does the setting ensure the individual(s) are supported to make decisions and exercise autonomy to the greatest extent possible? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 5	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 5.		
Characteristic 6: The setting enforces the Home and Community-Based Settings Regulation requirements.		
42 CFR 441.301(c)(4)/441.710(a)(1)/441.530(a)(1)		
Indicator	Yes, No, N/A	Evidence and Analysis to Demonstrate why the Setting is in Compliance or Not in Compliance
51. Do paid and unpaid staff receive new hire training and continuing education related to the rights of the individual(s) receiving services and member experience as outlined in HCBS Settings rules? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
52. Are provider policies outlining participant rights and experiences made available when requested to the individual(s) receiving services? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
53. Are provider policies on HCBS Settings rules regularly reassessed for compliance and effectiveness and amended, as necessary? <i>-If yes, please provide evidence.</i> <i>-If no, what limitations exist and why?</i>		
54. Do you have any additional questions or concerns specific to the Home and Community-Based Settings Regulation requirements?		
OVERALL ASSESSMENT OF COMPLIANCE FOR CHARACTERISTIC 6	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Characteristic 6.		
OVERALL ASSESSMENT OF COMPLIANCE FOR HCBS SETTINGS RULE	Yes, No, Partial	Comments or Additional Information
This setting has demonstrated compliance with Settings Rule Characteristics 1-6.		

The Department of Health, Bureau of Authorization and Community Based Services wishes to thank all providers for taking the time to complete this Self-Assessment.

HCBS Settings Rule: Attestation Tool for Residential Settings

Attest to the setting's compliance with the following characteristics by checking "Yes" or "No." All settings must be fully compliant with Characteristics 1-12 in order to provide Medicaid HCBS services.

Characteristic 1: 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 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

Yes No

Indicators

The setting is not in a public or privately-owned facility that provides inpatient treatment; is not on the grounds of, or immediately adjacent to, a public institution; is not located in a gated or secured community for people with disabilities; is located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community.

The setting allows the freedom to move about inside and outside of the setting; provides HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS; affords opportunities for individual schedules; does not restrict access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting; has activities to pursue work as an option (if applicable); provides contact information, access to and training on the use of public transportation, such as buses, taxis, etc., and has public transportation schedules and telephone numbers available in a convenient location; where public transportation is limited, provides information about resources to access the broader community, including wheelchair accessible transportation.

Should Personal Budget Assistance be provided, the setting facilitates the opportunity for the individual(s) to have a checking or savings account or other means to access and control personal funds.

Individual(s) can come and go at any time and are informed they are not required to sign over their paychecks to the provider.

Characteristic 2: The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

Yes No

Indicators

The Setting reflects individual needs and preferences and ensures informed choice based on individual resources; does not restrict access to non-disability-specific settings; provides the option of a private room to the resident(s), as appropriate.

Characteristic 3: The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)

Yes No

Indicators

The setting assures staff interact and communicate respectfully and in a manner in which the individual(s) would like to be addressed; keeps all information about the individual(s) private; ensures that individual supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting (if applicable); ensures that individual supports and plans to address behavioral needs are not restrictive to the rights of every individual receiving support within the setting (if applicable); offers a secure place to store personal belongings; ensures information about filing a complaint is made readily available and informs the individual(s) of how to make a complaint; provides assistance with personal appearance, dress, and grooming to appear as the individual desires, and provides personal assistance in private, as appropriate; assures that staff do not talk to other staff about the individual(s) in the presence of others or in the presence of an individual as if he/she were not present; affords dignity to the diners.

Informal communication (written and oral) is conducted in a language that the individual(s) understand.

The Individual(s) can have a private cell phone, computer or other personal communication device, or the setting provides access to a telephone or other technology to use for personal communication in private at any time; can file an anonymous complaint.

<p>Characteristic 4: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
Indicators
<p>The setting posts or provides information on individual rights; allows the individual(s) to engage in legal activities (ex. vote when 18 or older, consume alcohol when 21 or older) in a manner consistent with individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports; affords the opportunity for tasks and activities matched to individual skills, abilities, and desires; affords opportunities for individual(s) to choose with whom to do activities, either in the setting or outside the setting, and participation is voluntary.</p> <p>The Individual(s) can sit in any seat in a dining area; can eat privately if desired; can request an alternative meal if desired.</p> <p>The physical environment supports a variety of individual goals and needs (for example, indoor and outdoor gathering spaces, larger group activities as well as solitary activities, stimulating as well as calming activities).</p>
<p>Characteristic 5: The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(v)</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
Indicators
<p>The setting does not restrict the services, providers, or supports made available; affords the opportunity to update/change individual preferences at any time; ensures individual(s) receive support to develop plans supporting their needs and preferences; staff is knowledgeable about interests, preferences, and needs of the individual(s).</p>
<p>Characteristic 6: The individual has a lease or other legally enforceable agreement providing similar protections. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(A)</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
Indicators
<p>The setting provides a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement; informs the individual(s) of their rights regarding housing and when they could be required to relocate; informs the individual(s) of how to relocate and request new housing; in the written agreement, includes language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws.</p>
<p>Characteristic 7: The setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(B)</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
Indicators
<p>The setting does not have cameras present; provides the individual(s) with the choice of a roommate; informs the individual(s) of how to request a roommate change.</p> <p>The Individual(s) can close and lock the bedroom and bathroom doors; can have furniture, linens, and other household items which reflect preferences, interests, and hobbies as desired.</p> <p>The Staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the individual(s); or along with other residents, always knock and receive permission prior to entering a bedroom, bathroom, or private living space.</p>
<p>Characteristic 8: The setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(C)</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
Indicators
<p>The Setting assures snacks are accessible and available anytime; does not require a set schedule for waking, bathing, eating, exercising, activities, etc.; provides access to such things as a television, radio, and leisure activities that interest the individual(s), and permits the scheduling of these activities at the individuals' convenience. The Individual(s) can have a meal at the time of their choosing.</p>

Characteristic 9: The individual can have visitors of his/her choosing at any time. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(D)	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
Indicators	
The individual(s) can have visitors at any time; can have private visits with family and friends; are not restricted in visitors' meeting areas. Visitors are welcomed and encouraged.	
Characteristic 10: The setting is physically accessible to the individual. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)€	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
Indicators	
The Setting ensures there are no gates, Velcro strips, locked doors, or other barriers preventing entrance to or exit from certain areas of the setting; is physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting mobility in the setting or if they are present are there environmental adaptations to ameliorate the obstruction; provides full access to typical facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas; provides supports for those who need it to move about the setting as they choose, such as grab bars, seats in the bathroom, ramps, viable exits for emergencies, etc.	
Characteristic 11: The setting ensures that any modification of the HCBS Settings qualities and conditions is supported by a specific assessed need and justified in the person-centered service plan. 42 CFR 441.301(c)(4)(v)441.710(a)(1)(v)/441.530(a)(1)(vi)(F)	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
Indicators	
The plan includes a description of the condition that is directly related to the assessed need; data to support ongoing effectiveness of the intervention; time limits for periodic reviews to determine the ongoing necessity of the modification; informed individual consent; assurance that the intervention will not cause the individual harm.	
The individual(s) and/or their representative grant informed consent prior to the use of restraints and/or restrictive interventions, and these interventions are documented in the person-centered plan.	
Documentation notes if positive interventions and supports were used prior to any plan modifications; that less intrusive methods of meeting the need were tried.	
Characteristic 12: The setting enforces the Home and Community-Based Settings Regulation requirements. 42 CFR 441.301(c)(4)/441.710(a)(1)/441.530(a)(1)	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
Indicators	
Staff receive new hire training and continuing education related to the rights of the individual(s) and member experience as outlined in HCBS Settings rules. Policies on participant rights and experiences are made available when requested. Policies on HCBS Settings rules are regularly reassessed for compliance and effectiveness.	

By signing this form, I attest that all settings that I currently provide Home and Community-Based Services from, and any new settings I use in the future, will comply with the characteristics described and all Federal regulations they pertain to. I understand that Medicaid home and community-based services provided in a setting which does not abide by these requirements are not eligible for Medicaid payment. Claims that I submit while my site is not in compliance with these regulations may be subject to recoupment.

Name of Authorized Representative (Printed or Typed)	Title	
Signature	Date	Telephone Number

HCBS Settings Rule: Attestation Tool for Non-Residential Settings

Attest to the setting's compliance with the following characteristics by checking "Yes" or "No." All settings must be fully compliant with Characteristics 1-12 in order to provide Medicaid HCBS services.

Characteristic 1: 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 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

Yes No

Indicators

The setting is not in a public or privately-owned facility that provides inpatient treatment; is not on the grounds of, or immediately adjacent to, a public institution; is not located in a gated or secured community for people with disabilities; is in a location that facilitates integration with the greater community; is physically accessible.

The setting allows the freedom to move about inside and outside of the setting; provides HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS; affords opportunities for individual schedules; does not restrict individuals from having knowledge of or access to information regarding age-appropriate activities outside of the setting, including transportation, and providers in the setting facilitate and support access to these activities; has activities to pursue work as an option (if applicable); welcomes and encourages visitors.

The individual(s) can come and go at any time; can have visitors at any time; are informed that they are not required to sign over their paychecks to the provider.

Employment Settings: The setting provides the opportunity for individuals to participate in negotiating work schedules, break or lunch times, and benefits with the employer to the same extent as individuals not receiving Medicaid funded HCBS.

Where Personal Budget Assistance is Provided: The Setting facilitates the opportunity for the individual(s) to have a checking or savings account or other means to access and control personal funds (where PBA is part of services).

Characteristic 2: The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

Yes No

Indicators

The setting reflects individual needs and preferences and does not restrict access to non-disability-specific settings.

Characteristic 3: The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)

Yes No

Indicators

The setting assures staff interact and communicate with the individual(s) respectfully and in a manner in which they would like to be addressed; keeps all information about the individual(s) private, and provides this assistance in private, as appropriate; ensures that individual supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting (if applicable); ensures that individual supports and plans to address behavioral needs are not restrictive to the rights of every individual receiving support within the setting (if applicable); requires that individual(s) and/or their representative grant informed consent prior to use of restraints and/or restrictive interventions and documents these interventions in the PCSP; offers a secure place for the individual(s) to store personal belongings; ensures information about filing a complaint is made readily available and informs the individual(s) of how to make a complaint; communicates (written and oral) in a language that the individual(s) understand.

Characteristic 4: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)

Yes No

Indicators

The setting has no barriers preventing entrance to or exit from certain areas of the setting; if modifying the HCBS Settings qualities and conditions, supports this modification with an assessed need justified in the PCSP prior to implementation; documents positive interventions and supports used prior to plan modifications; documents less intrusive methods to meet needs used prior to plan modifications; posts or provides information on individual rights; allows the individual(s) to engage in legal activities in a manner consistent with individuals who are not receiving Medicaid funded services and supports.

The setting affords opportunities for activities matched to individual skills, abilities, and desires; affords opportunities for the individual(s) to choose with whom to do activities, either in the setting or outside the setting, and assures participation is voluntary; affords full access to a dining area, comfortable seating, opportunity to converse with others during break/meal times, and dignity to diners; provides for alternative meals and/or private dining if requested (if applicable); provides access to food at any time consistent with individuals not receiving Medicaid HCBS; supports a variety of individual goals and needs (indoor/outdoor gathering spaces; large group activities and solitary activities; stimulating and calming activities).

Characteristic 5: The setting facilitates individual choice regarding services and supports, and who provides them.

42 CFR 441.301(c)(4)(v)/441.710(a)(1)(v)/441.530(a)(1)(v)

Yes No

Indicators

The setting does not restrict the services, providers, or supports available to the individual(s); affords the opportunity to update/change individual preferences at any time; provides information to the individual(s) about changes or increases to HCBS; ensures individual(s) receive support to develop plans supporting their needs and preferences; staff is knowledgeable about interests, preferences, and needs of the individual(s); ensures the individual(s) are supported to make decisions and exercise autonomy to the greatest extent possible.

Characteristic 6: The setting enforces the Home and Community-Based Settings Regulation requirements.

42 CFR 441.301(c)(4)/441.710(a)(1)/441.530(a)(1)

Yes No

Indicators

Staff receive new hire training and continuing education related to the rights of the individual(s) and member experience as outlined in HCBS Settings rules. Policies on participant rights and experiences are made available when requested. Policies on HCBS Settings rules are regularly reassessed for compliance and effectiveness.

By signing this form, I attest that all settings that I currently provide Home and Community-Based Services from, and any new settings I use in the future, will comply with the characteristics described and all Federal regulations they pertain to. I understand that Medicaid home and community-based services provided in a setting which does not abide by these requirements are not eligible for Medicaid payment. Claims that I submit while my site is not in compliance with these regulations may be subject to recoupment.

Name of Authorized Representative (Printed or Typed)	Title	
Signature	Date	Telephone Number



State of Utah
GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

Utah Department of Health

JOSEPH K. MINER, MD, MSPH, FACPM
Executive Director

Division of Medicaid and Health Financing

NATHAN CHECKETTS
Deputy Director, Utah Department of Health
Director, Division of Medicaid and Health Financing

KEVIN BAGLEY
Director, Bureau of Authorization and
Community Based Services

DATE: December 29, 2017
TO: Utah Medicaid HCBS Waiver Providers
FROM: Kevin Bagley, Director, Bureau of Authorization and Community Based Services
RE: Self-Assessment Report and Remediation Plan for the Federal Home and Community Based Services (HCBS) Settings Rule

On March 17, 2014 the Centers for Medicare and Medicaid Services (CMS) implemented new federal HCBS regulations that provided clarification concerning the required characteristics of service settings. The final rule establishes an outcome-oriented definition of HCBS settings that focuses on the nature and quality of individuals' experiences. The rule reflects CMS' intent to ensure individuals receiving services and supports through Medicaid HCBS programs have full access to the benefits of community living and receive services in the most integrated setting possible. Information on the final rule can be found at <http://health.utah.gov/ltc/hcbstransition/>.

In accordance with the regulations, Utah Medicaid created an HCBS Setting Transition Plan (the Plan). One of the initial action items in the Plan required the State to perform a preliminary categorization of providers as those presumed to be *Compliant*, *Not Yet Compliant*, or *Not Compliant* with the setting requirements. A related action item in the Plan required all settings initially categorized as Not Yet Compliant or Not Compliant to complete and submit to the State, the results of the Provider Self-Assessment Tool.

Now that the provider self-assessment process has been completed, the Plan identifies additional action items. One action item requires the State to review results and identify potential areas of non-compliance. The State has completed its initial review of the self-assessments. As a next step, to respond to improvement areas identified during the self-assessment process, providers are now required to develop a Remediation Plan. Another action item requires the State to confirm the validity of the provider self-assessment process through onsite visits of a statistically valid sample of settings. Onsite visits will be conducted in January 2018. Providers chosen for an onsite visit will have an additional letter attached within this mailing. Based on onsite reviews, the State may amend actions items and the State and providers will collaborate to develop an updated Remediation Plan.

State Self-Assessment Reports and Remediation plans will be distributed in a follow-up email. For all sites whose Self-Assessments resulted in 100% compliance, no remediation plan is required at this time. **For all sites whose Self-Assessments did not result in 100% compliance, completion of the Remediation Plan is mandatory and must be completed and returned to the State via email, facsimile or mail within 60 days of the date of the email. The results of your self-assessment must be submitted at the following locations:**

Email: HCBSSettings@utah.gov

Facsimile: (801) 323-1588

Mail: Bureau of Authorization and Community Based Services
Attn: HCBS Settings Transition
P.O. Box 143112
Salt Lake City, UT 84114-3112

Failure to submit completed Remediation Plans may result in suspension of payment or provider disenrollment. Submission instructions are described within the Remediation Plan. The State will provide guidance for Provider Remediation Plans that do not fully demonstrate how compliance will be achieved. These responses will be issued within 60 calendar days of the receipt of the Provider Remediation Plan. Providers will be given the opportunity to remediate issues and come into compliance within timeframes agreed upon by the provider and the State.

Thank you for the services you provide to Medicaid members. If you have questions about the Findings Report and Remediation Plan or process please contact the Bureau of Authorization and Community Based Services via email at HCBSSettings@utah.gov or by phone at 801-538-6613.



State of Utah

GARY R. HERBERT
Governor

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Lieutenant Governor

Utah Department of Health

JOSEPH K. MINER, MD, MSPH, FACPM
Executive Director

Division of Medicaid and Health Financing

NATHAN CHECKETTS
Deputy Director, Utah Department of Health
Director, Division of Medicaid and Health Financing

KEVIN BAGLEY
Director, Bureau of Authorization and
Community Based Services

DATE:

TO:

FROM: Kevin Bagley, Director, Bureau of Authorization and Community Based Services

RE: Self-Assessment Report and Remediation Plan for the Federal Home and Community Based Services (HCBS) Settings Rule

On March 17, 2014 the Centers for Medicare and Medicaid Services (CMS) implemented new federal HCBS regulations that provided clarification concerning the required characteristics of service settings. The final rule establishes an outcome-oriented definition of HCBS settings that focuses on the nature and quality of individuals' experiences. The rule reflects CMS' intent to ensure individuals receiving services and supports through Medicaid HCBS programs have full access to the benefits of community living and receive services in the most integrated setting possible. Information on the final rule can be found at <http://health.utah.gov/ltc/hcbstransition/>.

In accordance with the regulations, Utah Medicaid created an HCBS Setting Transition Plan (the Plan). Now that the provider self-assessment process has been completed and State has completed its initial review of provider remediation plans, the Plan identifies additional action items.

1. The State will provide guidance within 60 calendar days of the receipt of Provider Remediation Plans that do not fully demonstrate how compliance will be achieved. For providers that had a site validation visit conducted, you may have an amended or updated Remediation Plan attached as a result of the visit and/or policy review. See attached revised Remediation Plan(s).
2. Providers are given the opportunity to remediate issues and come into compliance within timeframes agreed upon by the provider and the State.

Remediation Plan indicators are categorized as 1) Further Action Required or 2) Workgroup Indicator: Further Action Required. Action items that were met were removed from the Remediation Plan. **Completion of the revised Remediation Plan is mandatory and must be completed and returned to the State via email or mail within 30 days of the date of this letter.**

Remediation Plans may be submitted to the following locations:

Email: HCBSSettings@utah.gov

Mail: Bureau of Authorization and Community Based Services
Attn: HCBS Settings Transition
P.O. Box 143112
Salt Lake City, UT 84114-3112

Failure to submit updated Remediation Plans may result in suspension of payment or provider disenrollment. Submission instructions are described within the Remediation Plan.

Thank you for the services you provide to Medicaid members. If you have questions about the Remediation Plan or process please contact the Bureau of Authorization and Community Based Services via email at HCBSSettings@utah.gov or by phone at 801-538-6613.

State Self-Assessment Report and Remediation Plan

Residential: Multi-Site

The purpose of the State Self-Assessment Report (document 2) is to summarize the State's review of the self-assessments submitted by your agency. The report summarizes 12 federally mandated characteristics which all residential HCBS settings must possess and reflects the State's assessment of the extent to which your agency currently complies with each characteristic.

If Overall Compliance is "Yes" there is no remediation plan or further action required at this time.

If Overall Compliance is "Partial" the submission of a Remediation Plan is required (document 3).

Remediation Plan Instructions:

- Each indicator (e.g. R1-R70) not in compliance is documented. Indicators that are provider specific will be documented on the Provider Specific Report and require a Remediation Plan response at the provider level. Indicators that are site specific will be documented on the Site Specific Report and will require a Remediation Plan response at the site level.
- Providers must complete the following for each indicator: Corrective Action; Start Date; Due Date
- Date Complete and Evidence for Compliance need only be included if finalized prior to submission
- Corrective Action will document how the site will come into compliance and what evidence will be provided to demonstrate compliance
- Corrective Action information that will be deemed acceptable evidence includes, but is not limited to citation of the following: Provider policies/procedures; Participant Handbook; Staff Training curriculum, materials, schedules; Letters of support from persons served

The State will provide a response to submitted Remediation Plans within 60 calendar days of receipt of the plans. Full compliance is not expected at this time; providers will be given the opportunity to remediate issues and come into compliance within timeframes agreed upon by the provider and the State.

State Self-Assessment and Remediation Plan

Non-Residential

The purpose of the State Self-Assessment Report (document 2) is to summarize the State's review of the self-assessments submitted by your agency. The report summarizes 6 federally mandated characteristics which all non-residential HCBS settings must possess and reflects the State's assessment of the extent to which your agency currently complies with each characteristic.

If Overall Compliance is "Yes" there is no remediation plan or further action required at this time.

If Overall Compliance is "Partial" the submission of a Remediation Plan is required (document 3).

Remediation Plan Instructions:

- Each indicator (e.g. NR1-54) currently not in compliance is documented
- Providers must complete the following for each indicator: Corrective Action; Start Date; Due Date
- Date Complete and Evidence for Compliance need only be included if finalized prior to submission
- Corrective Action will document how the site will come into compliance and what evidence will be provided to demonstrate compliance
- Corrective Action information that will be deemed acceptable evidence includes, but is not limited to citation of the following: Provider policies/procedures; Participant Handbook; Staff Training curriculum, materials, schedules; Letters of support from persons served

The State will provide a response to submitted Remediation Plans within 60 calendar days of receipt of the plans. Full compliance is not expected at this time; providers will be given the opportunity to remediate issues and come into compliance within timeframes agreed upon by the provider and the State.

State Self-Assessment Report and Remediation Plan Single Site

EXAMPLE

NR9	Can the individual(s) have visitors at any time?			
Action Item	Evidence or analysis provided was insufficient or missing; demonstrate individual(s) can have visitors at any time. Provide evidence to demonstrate that restrictions have been removed or any restrictions to an individual is implemented on a case-by-case basis for an assessed and documented need, approved through the appropriate processes and documented on the Person Centered Plan. Additionally, describe how those who do not have an assessed need can circumvent this restriction.			
Corrective Action	Start Date	Due Date	Date Complete	Evidence for Compliance
R52	Can the individual(s) have a meal at the time of their choosing?			
Action Item	Evidence or analysis provided was insufficient or missing; demonstrate that the setting will accommodate individuals who choose to eat outside of the regularly scheduled meal times. Provide evidence to demonstrate that restrictions have been removed or any restrictions to an individual is implemented on a case-by-case basis for an assessed and documented need, approved through the appropriate processes and documented on the Person Centered Plan. Additionally, describe how those who do not have an assessed need can circumvent this restriction.			
Corrective Action	Start Date	Due Date	Date Complete	Evidence for Compliance
R56	Can the individual(s) have visitors at any time?			
Action Item	Evidence or analysis provided was insufficient or missing; demonstrate individual(s) can have visitors at any time. Provide evidence to demonstrate that restrictions have been removed or any restrictions to an individual is implemented on a case-by-case basis for an assessed and documented need, approved through the appropriate processes and documented on the Person Centered Plan. Additionally, describe how those who do not have an assessed need can circumvent this restriction.			
Corrective Action	Start Date	Due Date	Date Complete	Evidence for Compliance

Utah HCBS Settings Self-Assessment Report for Medicaid 1915(c) Home and Community Based Waiver Programs

Federal Home and Community Based Services (HCBS) Settings Rule

Prepared by the Division of Medicaid and Health Financing

May 2019



INTRODUCTION

Background

On March 17, 2014 the Centers for Medicare and Medicaid Services (CMS) implemented new federal HCBS regulations that provided clarification concerning the required characteristics of service settings. To determine compliance with the new regulations, states must review and evaluate all HCBS residential and non-residential service settings. These rules apply to all Utah Medicaid HCBS waiver programs.

The final rule establishes an outcome-oriented definition of HCBS settings that focuses on the nature and quality of individuals' experiences. The rule reflects CMS' intent to ensure that individuals receiving services and supports through Medicaid HCBS programs have full access to the benefits of community living and receive services in the most integrated setting possible. Information on the final rule can be found at <http://health.utah.gov/lrc/hcbstransition/>. The final rule defines the following:

Settings That are Not Home and Community-Based:

For 1915(c) home and community-based waivers, settings that are not home and community-based are defined as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility (ICF) for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

Settings that are Presumed to have the Qualities of an Institution:

For 1915(c) home and community-based waivers, section 441.301(c)(5)(v) specifies that the following settings are presumed to have the qualities of an institution:

- Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

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).

In accordance with the regulations, Utah Medicaid created an HCBS Setting Transition Plan (the Plan). One of the initial action items in the Plan requires the State to perform a preliminary categorization of providers as those presumed to be Compliant, Not Yet Compliant, or Not Compliant with the setting requirements. A related action item in the Plan requires all settings initially categorized as Not Yet Compliant or Not Compliant to complete and submit to the State, the Provider Self-Assessment Tool.

After the provider self-assessment process has been completed, the Plan identifies additional action items. One action item requires the State to confirm the validity of the provider self-assessment process by performing onsite reviews of a statistically valid sample (this sample was of sufficient size to ensure statistical validity of the information provided in the self assessment, a stratified random sample of settings for validation reviews where sample size required a 5% margin of error, 95% confidence level, and 50% response distribution using the following settings categories: Adult Day Care, Day Support Services, Residential Services, Supported Living, and Supported Employment) of settings subject to the provider self-assessment process. Another action item requires the State to review results and identify potential areas of non-compliance. Based on provider self-assessment findings, desk reviews, onsite reviews, technical assistance, and stakeholder feedback; the State, providers, and stakeholders will collaborate to develop Provider Remediation Plans. Providers are given the opportunity to remediate issues and come into compliance within timeframes established by the State. Providers who fail to complete a Provider Remediation Plan, or those determined through the heightened scrutiny process to have institutional like qualities that cannot be remediated, will no longer be able receive reimbursement for Medicaid HCBS services.

Survey Methodology

The State identified the universe of current residential and non-residential providers, and their corresponding sites of service for each of its eight 1915 (c) HCBS waivers. Utah does not provide long-term services and supports through HCBS programs under 1915 (i) or 1915 (k) Medicaid authorities, and therefore did not consider any additional provider sites of service for purposes of this review.

Per CMS guidance, the State presumed the enrollee’s private home or the relative’s home in which an enrollee resides, meet the requirements of HCB settings. In accordance with this guidance, the following services which are provided in the participant’s own home, were not assessed for Settings compliance using the self-assessment tools developed by the State: Home Health, Home Delivered Meals, In-Home Therapy, and Personal Care. Per CMS guidance, respite settings did not require assessment for compliance with Settings requirements. The State will monitor compliance with the Rule in private home settings as a part of ongoing monitoring and compliance. See this section of the State Transition Plan for additional detail on the State’s approach.

Additionally, the State identified services as “presumed to be fully compliant” when the services were not related to settings and were direct services to the waiver participant. The following services were not reviewed against Settings requirements as they do not provide a setting for the participant as a part of service delivery: Financial Management Services, Medical Equipment Supply, Home and Vehicle Modifications, Support Coordination/Case Management, Transportation, and Emergency Response Services.

All other HCBS settings identified in the Utah Medicaid 1915 (c) HCBS Waiver programs were determined to be either “not yet compliant” or “not compliant,” and were assessed for full compliance with the Settings requirements using the self-assessment tools developed by the State. All settings that group two or more people together for the purpose of receiving Medicaid funded HCBS fell into this category and required a self-assessment. See the Preliminary Compliance Report for additional detail on the initial evaluation of Utah HCBS settings.

Self-Assessment Tool Development

The State created residential and non-residential provider self-assessment tools which include questions to identify any sites that may be presumed to have institutional like qualities. All indicators were adapted from the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings*, as provided by CMS.

The self-assessment tools included the following characteristics with associated indicators to evaluate compliance:

- Characteristic 1: 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.
- Characteristic 2: The setting is selected by the individual from among setting options, including nondisability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.
- Characteristic 3: The setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint.
- Characteristic 4: The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Characteristic 5: The setting facilitates individual choice regarding services and supports, and who provides them.
- Characteristic 6: The setting enforces the Home and Community-Based Settings Regulation requirements.

The residential self-assessment tool included the following additional characteristics with associated indicators to evaluate compliance:

- Characteristic 7: The individual has a lease or other legally enforceable agreement providing similar protections.
- Characteristic 8: The setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.
- Characteristic 9: The setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time.
- Characteristic 10: The individual can have visitors of his/her choosing at any time.
- Characteristic 11: The setting is physically accessible to the individual.
- Characteristic 12: The setting ensures that any modification of the HCBS Settings qualities and conditions is supported by a specific assessed need and justified in the person-centered service plan.

Evidence and analysis was required to demonstrate compliance or non-compliance with each indicator as specified in the tool. Evaluation of compliance required consideration of both the setting itself and each individual served.

The self-assessment tools were released on November 23, 2015 for a 30 day public comment period. Public comment was addressed and incorporated following this release. Additionally, feedback from the Settings Transition Workgroup was incorporated into the draft version of the tools.

The State further collaborated with the workgroup to determine review criteria for the evaluation of self-assessments. Acceptable evidence for compliance included citation of the provider's policies and procedures, participant handbook, staff training curriculum and materials, training schedules, and/or letters of support from persons served.

Self-Assessment Process

The State sent an informational letter to residential and non-residential providers that described HCBS Setting requirements and transition plan assessment steps including State review and provider self-assessment. The letter described providers' ability to remediate issues to come into compliance within deadlines, and provided contact information to obtain technical assistance throughout the process.

The Department disseminated the tools to all residential and non-residential providers preliminarily categorized by the State as "not yet compliant" or "not compliant." Providers were given 60 days to complete the tool and submit the results to the State for review.

State employees were trained on the Settings requirements and CMS' guidance for *Settings that Isolate* (<https://www.medicaid.gov/medicaidchip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>). Any setting determined through the application of this guidance in the self-assessment review process, to have the effect of isolating individuals, is subject to the State's in-depth review and/or heightened scrutiny review process.

State employees reviewed and documented results from 1,857 provider self-assessments. The State made contact to providers via phone and email to clarify residential and non-residential provider responses as needed.

Those providers who were required to participate in the self-assessment process and failed to complete the tool within the required time frame were contacted via phone and email to encourage completion of the tool. Where necessary, the State placed a hold on all Medicaid payments for those providers who still did not complete a self-assessment despite State efforts to contact them. All payment holds were removed once the required self-assessments were received and documented by the State. Throughout the process, all (100%) of required provider settings submitted a self-assessment to the State for review.

The provider self-assessment allowed providers to reflect on their current level of compliance as well as take note of areas of potential non-compliance, and raised awareness among providers serving Medicaid HCBS participants about the Settings Rule. Self-assessment and remediation plan processes have initiated dialogue between the State and the provider community, and have facilitated the State's provision of targeted technical assistance as providers continue to move toward full compliance with the Rule. The State's efforts to validate self-assessment results are described in a later portion of this report.

Provider self-assessment results as presented in this report have been made available for a 30 day public comment period.

The following five types of residential settings and eight types of non-residential settings were reviewed through the self-assessment process:

Residential (1,455 settings):

1. Adult Residential Services provided under the New Choices Waiver (NCW)

Adult Residential Services provided under the NCW include supportive services provided in an approved community-based adult residential setting.

Supportive services are expected to meet scheduled and unpredictable participant needs and to

provide supervision, safety and security in conjunction with residing in a homelike, non-institutional setting.

Adult Residential Services may be provided in licensed assisted living or community residential facilities and independent living facilities. Services can include homemaking, chore services, 24-hour onsite response capability, daily status checks (or more frequently as deemed appropriate in the comprehensive needs assessment), attendant care, memory care services, behavioral health services, meal preparation, medication assistance/oversight, social/recreational programming, and nursing/skilled therapy services that are incidental rather than integral to the provision of Adult Residential Services

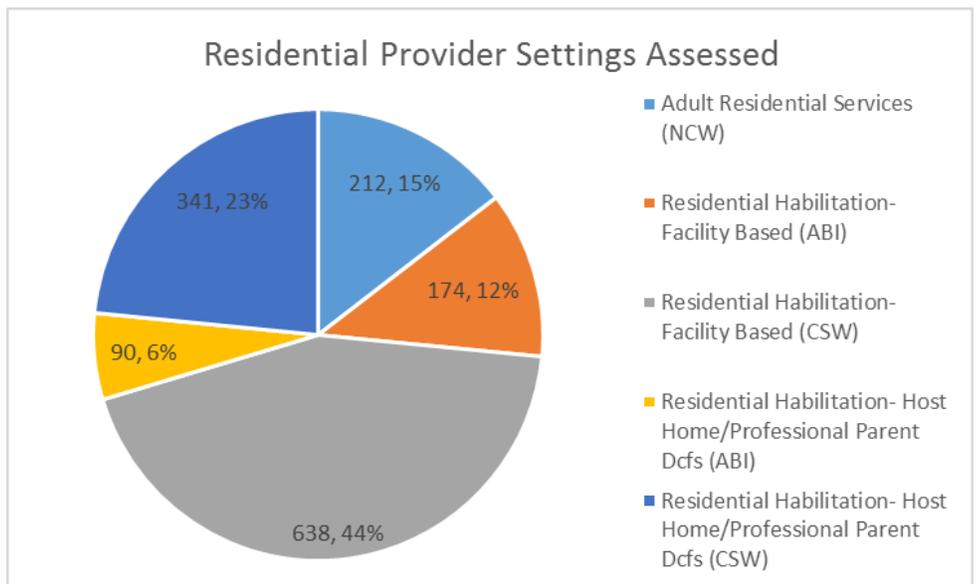
All Adult Residential Services no matter the setting include 24 hour on-site response capability or other alternative emergency response arrangements determined appropriate to meet scheduled or unpredictable participant needs and to provide supervision, safety and security in conjunction with residing in a homelike, non-institutional setting.

2. Residential Habilitation- Facility Based provided under the Acquired Brain Injury (ABI) Waiver

Facility Based Residential Habilitation services provided under the ABI waiver include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living in the community. Facility Based Residential Habilitation services may be provided in licensed group homes with four or more residents, unlicensed group homes with three or fewer residents, or individual supervised apartments or home settings with three or fewer residents. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated setting appropriate to his/her needs. Residential Habilitation also includes personal care and protective oversight and supervision.

3. Residential Habilitation- Facility Based provided under the Community Supports Waiver (CSW)

Facility Based Residential Habilitation services provided under the CSW include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living as independently and productively as possible in the community. Facility Based Residential Habilitation services may be provided in licensed group homes with four or more residents, unlicensed group homes with three or fewer residents, or individual supervised apartments or home settings with three or fewer residents. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated



setting appropriate to his/her needs. Residential habilitation also includes personal care and protective oversight and supervision.

4. Residential Habilitation- Host Home/Professional Parent provided under the Community Supports Waiver (CSW)

Host Home/Professional Parent Residential Habilitation services provided under the CSW include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living as independently and productively as possible in the community. Host Home/Professional Parent Residential Habilitation services may be provided in professional parent homes where two or fewer individuals under the age of 22 reside in a private residence with supervision, or host homes where two or fewer individuals 18 or older reside in a private residence with supervision. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated setting appropriate to his/her needs. Residential habilitation also includes personal care and protective oversight and supervision. This service is available to individuals in the custody of the State of Utah: Department of Human Services, Division of Child and Family Services. For individuals in the custody of the Division of Child and Family Services, the costs of basic and routine support and supervision are not covered as waiver services. Compensation for this routine support and supervision are covered by other funding sources associated with the Division of Child and Family Services.

5. Residential Habilitation- Host Home/Professional Parent provided under the Acquired Brain Injury (ABI) Waiver

Host Home/Professional Parent Residential Habilitation services provided under the ABI waiver include individually tailored supports to assist with acquisition, retention, or improvement in skills related to living as independently and productively as possible in the community. Host Home/Professional Parent Residential Habilitation services may be provided in professional parent homes where two or fewer individuals under the age of 22 reside in a private residence with supervision, or host homes where two or fewer individuals 18 or older reside in a private residence with supervision. Supports can include adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development, to assist the participant to reside in the most integrated setting appropriate to his/her needs. Residential habilitation also includes personal care and protective oversight and supervision. This service is available to individuals in the custody of the State of Utah: Department of Human Services, Division of Child and Family Services. For individuals in the custody of the Division of Child and Family Services, the costs of basic and routine support and supervision are not covered as waiver services. Compensation for this routine support and supervision are covered by other funding sources associated with the Division of Child and Family Services.

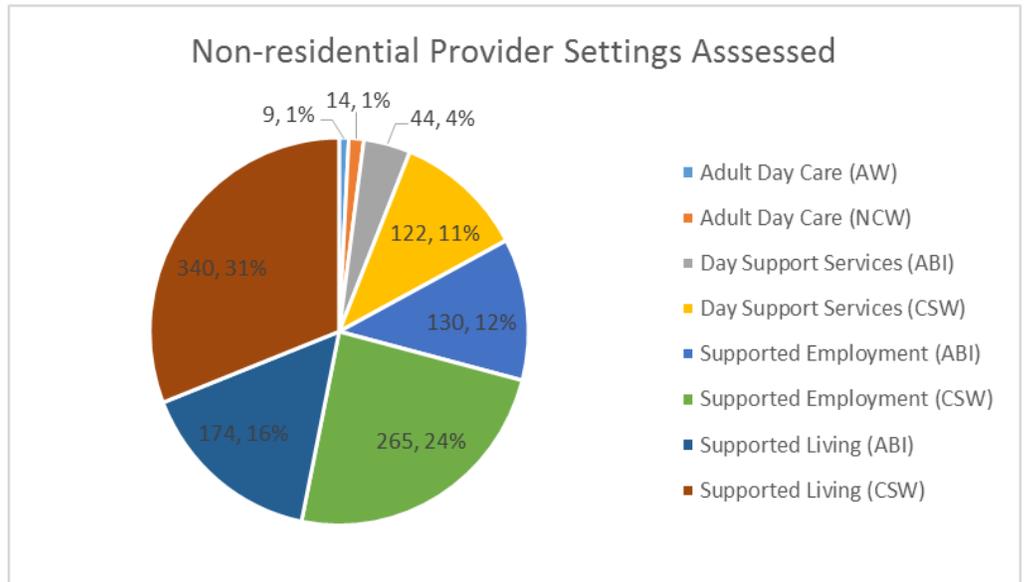
Non-Residential (1098 settings):

1. Adult Day Care provided under the Aging Waiver (AW)

Adult Day Care services provided under the AW serve the purpose of providing a supervised setting during which health and social services are provided on an intermittent basis. Adult Day Care services are provided in licensed day care settings where three or more individuals 18 years of age and over receive continuous care and supervision generally for at least four but less than 24 hours a day. Services include a variety of health, social, recreational, and related support services in a protective setting to meet the needs of functionally impaired adults.

2. Adult Day Care provided under the New Choices Waiver (NCW)

Adult Day Care services provided under the AW serve the purpose of providing a supervised setting during which health and social services are provided on an intermittent basis. Adult Day Care services are provided in licensed day care settings where



three or more individuals 18 years of age and over receive continuous care and supervision for at least four but less than 24 hours a day. Services include a variety of health, social, recreational, and related support services in a protective setting to meet the needs of functionally impaired adults.

3. Day Support Services provided under the Acquired Brain Injury (ABI) Waiver

Day Support Services provided under the ABI waiver assist with acquisition, retention, and improvement in self-help, socialization and adaptive skills. Services typically take place in a non-residential setting, separate from the home or facility in which the individual resides. Day Support Services can be provided in licensed site-based day support settings where four or more individuals attend, or in non-site based day support settings in the community. Additionally, services can be provided in senior support settings designed for individuals who have needs that closely resemble those of older persons, and desire a lifestyle consistent with that of the community’s population of similar age or circumstances. Day Support Services facilitate independence, promote community inclusion, and prevent isolation for individuals in services.

4. Day Support Services provided under the Community Supports Waiver (CSW)

Day Support Services provided under the CSW assist with acquisition, retention, and improvement in self-help, socialization and adaptive skills. Services typically take place in a non-residential setting, separate from the home or facility in which the individual resides. Day Support Services can be provided in licensed site-based day support settings where four or more individuals attend, or in non-site based day support settings in the community. Additionally, services can be provided in senior support settings designed for individuals who have needs that closely resemble those of older persons, and desire a lifestyle consistent with that of the community’s population of similar age or circumstances. Day Support Services facilitate independence, promote community inclusion, and prevent isolation for individuals in services.

5. Supported Employment provided under the Acquired Brain Injury (ABI) Waiver

Supported Employment services provided under the ABI waiver support individuals, based on individual need, to obtain, maintain, or advance in competitive employment in integrated work settings. Supported Employment services can be provided to an individual who is employed either full or part-time and occurs in a work setting where the individual works with individuals without disabilities (not including staff or contracted co-workers

paid to support the individual). Supported Employment services can be provided by a coworker to provide additional support under the direction of a job coach as a natural extension of the workday, in an enclave/mobile work crew setting where a small group is trained and supervised by a job coach amongst employees without disabilities, or in a customized employment setting where individuals desiring to create and implement their own business enterprises receive targeted training, instruction and coaching to achieve their goals. Supported Employment services assist individuals to achieve competitive employment, compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Services can include work-related behavior management and crisis intervention, job coaching, assistance with skills related to paid employment including communication, problem solving and safety; participant-directed attendant care, time management, transportation between work or between activities related to employment, on-site vocational assessment after employment, and employer consultation. Individuals receiving Supported Employment services are supported and employed consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice as indicated in the individual's support plan.

6. Supported Employment provided under the Community Supports Waiver (CSW)

Supported Employment services provided under the CSW support individuals, based on individual need, to obtain, maintain, or advance in competitive employment in integrated work settings. Supported Employment services can be provided to an individual who is employed either full or part-time and occurs in a work setting where the individual works with individuals without disabilities (not including staff or contracted co-workers paid to support the individual). Supported Employment services can be provided by a coworker to provide additional support under the direction of a job coach as a natural extension of the workday, in an enclave/mobile work crew setting where a small group is trained and supervised by a job coach amongst employees without disabilities, or in a customized employment setting where individuals desiring to create and implement their own business enterprises receive targeted training, instruction and coaching to achieve their goals. Supported Employment services assist individuals to achieve competitive employment, compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Services can include work-related behavior management and crisis intervention, job coaching, assistance with skills related to paid employment including communication, problem solving and safety; participant-directed attendant care, time management, transportation between work or between activities related to employment, on-site vocational assessment after employment, and employer consultation. Individuals receiving Supported Employment services are supported and employed consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice as indicated in the individual's support plan.

7. Supported Living provided under the Acquired Brain Injury (ABI) Waiver

Supported Living services provided under the ABI waiver offer individually tailored hourly support, supervision, training, and assistance for people to live as independently as possible in their own homes, family homes and apartments. Supported living services can be provided to individuals who live alone, with family, or with roommates. Services can include maintenance of individual health and safety, personal care services, homemaker, chore, attendant care, medication observation and recording, advocacy, communication, assistance with activities of daily living, instrumental activities of daily living, transportation to access community activities, shopping and attending doctor appointments, keeping track of money and bills and using the telephone; and indirect services such as socialization, self-help, and adaptive/compensatory skill development

necessary to reside successfully in the community. This service may also include behavioral plan implementation by direct care staff.

8. Supported Living provided under the Community Supports Waiver (CSW)

Supported Living services provided under the CSW offer individually tailored hourly support, supervision, training, and assistance for people to live as independently as possible in their own homes, family homes and apartments. Supported living services can be provided to individuals who live alone, with family, or with roommates. Services can include maintenance of individual health and safety, personal care services, homemaker, chore, attendant care, medication observation and recording, advocacy, communication, assistance with activities of daily living, instrumental activities of daily living, transportation to access community activities, shopping and attending doctor appointments, keeping track of money and bills and using the telephone; and indirect services such as socialization, self-help, and adaptive/compensatory skill development necessary to reside successfully in the community. This service may also include behavioral plan implementation by direct care staff.

Validation of Self-Assessment Results

The State validated 100% of the settings that were identified as requiring compliance with the Setting Rule.

- Desk Review: This validation process included the comparison of the provider self-assessment tool and evidence of compliance submitted by the provider.
- Technical Assistance: If State employees conducting technical assistance identified non-compliance with the settings rule, education was provided and follow up and resolution measures were completed on a site by site evaluation by the State.
- Consumer, guardian, and external stakeholder feedback: Feedback received via surveys, telephone, or the HCBSSettings@utah.gov email that is specific to a setting are entered into a database and all follow up and resolution measures are completed on a site by site evaluation by the State.
- Ongoing monitoring: Any HCBS setting pulled for monitoring will be monitored for HCBS Setting Rule compliance. Follow up and resolution measures for any noncompliance areas will be completed on a site by site evaluation by the State. Case management, licensing & certification, and quality management review processes will include HCBS Setting Rule compliance monitoring.
- Ongoing incident report monitoring: State staff review each submitted incident report for Settings Rule compliance. Follow up information including corrective action necessary on the part of the provider, is monitored by State staff. This information is collected and addressed on an ongoing basis but trends are monitored as well.
- On-site validation reviews: Residential and non-residential self-assessment results have been validated through on-site reviews. On-site reviews included observation along with interviews/surveys of participants and staff, and document and policy reviews. See additional information below.

On-site validation reviews: The State selected a statistically valid stratified random sample of settings for validation reviews where sample size required a 5% margin of error, 95% confidence level, and 50% response distribution using the following settings categories: Adult Day Care, Day Support Services, Residential Services, Supported Living, and Supported Employment. This sample was of sufficient size to ensure statistical validity of the information provided in the self-assessments.

The State leveraged the Division of Services for People with Disabilities (DSPD) Community Based Services Reviewers for validation of DSPD settings. DOH State employees performed validation visits and interviews for all other waiver programs. All validation reviewers are part of their respective Quality Assurance Teams and have experience in survey/data collection, auditing, and fieldwork. A training was provided to all validation reviewers including methods for direct observation, note-taking, and record review prior to conducting the site visits. Training also included a thorough review of both the residential and non-residential self-assessment tools and the validation survey tools.

The site visits followed a standard process including brief introduction with setting administrators/staff, setting observation, request for supporting documentation if it had not already been submitted, interviewed participants and direct support staff using questions included in the tool to further validate responses provided by the setting, and an exit summary with administrators/staff.

State employees conducting validation reviews required evidence to confirm all responses provided by the setting in the self-assessment tool. State employees conducting interviews made an effort to conduct a minimum of 5 participant and 5 direct support staff interviews at each setting. Interviews were voluntary and conducted away from other setting staff and participants to ensure a conflict free process. If individuals who were not chosen by State employees wanted to provide feedback, they were interviewed as well. Individuals also will have the option to fill out a survey located on our Settings website that ask the same questions as were asked in the validation interviews. Validation findings, including participant and staff interviews, requiring remediation were added to State findings and are incorporated into the Remediation Plan.

State Findings

A state finding was recorded for each indicator in a self-assessment which either indicated non-compliance with the HCBS Settings Rule, or required additional information to sufficiently demonstrate compliance. Findings were recorded when evidence and analysis was not present, evidence and analysis did not fully address the indicator, additional clarifying information was required to determine compliance or noncompliance, and for all indicators for which a Yes/No/NA response was not provided.

The State has presented each provider with assessment of their HCBS setting as determined through State review, provider self-assessment, desk review, and/or on-site validation visits.

The State findings informed providers of which Settings Rule characteristics and indicators will require remediation, and the reason the State has come to this decision. For settings which have identified modifications of the Settings Rule, evidence will be required to ensure that restrictions are specific to the individual and are supported by an assessed and documented need.

Following the receipt of findings from the State, the provider has 60 days to develop and submit a Remediation Plan in order to demonstrate how they will come into compliance. The State will provide guidance within 60 days of the receipt of the Remediation Plans that do not fully demonstrate how compliance will be achieved. Providers are given the opportunity to remediate issues and come into compliance within timeframes agreed upon by the provider and the State. The State is tracking all provider remediation plan approved compliance timelines, and will track when timelines have been met and setting status is changed to compliant. For provider remediation plan approved timelines that are greater than one year (12 months), the State will require a status update every 6 months.

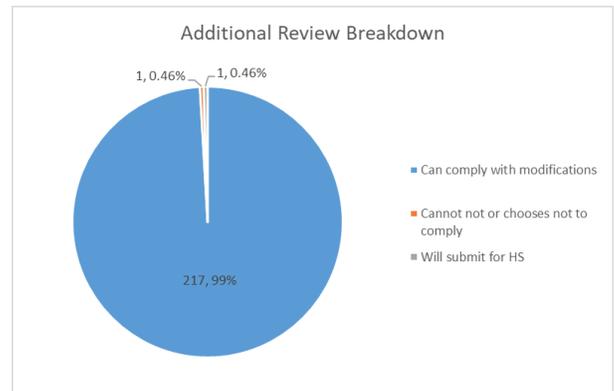
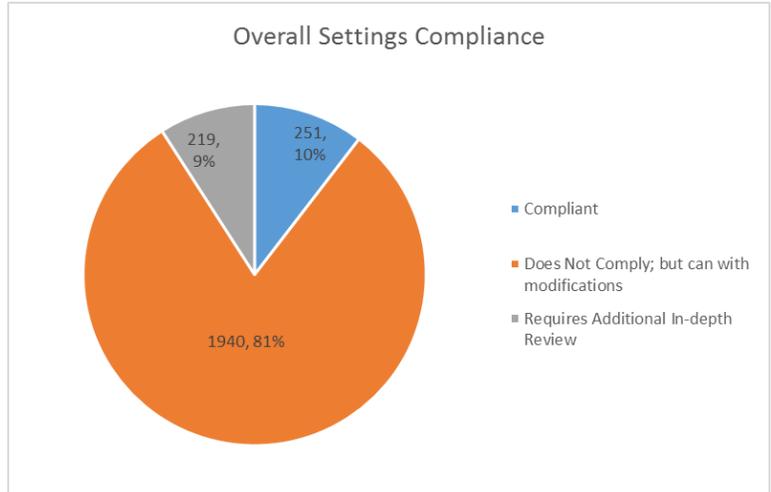
PROVIDER SELF-ASSESSMENT OUTCOMES

Compliance data includes results determined through State review of provider self-assessments, desk review, technical assistance, and on-site validation visits. There were settings that had submitted a self-assessment but were subsequently removed during the State review process. Removal of some settings occurred due to closure of the setting, closure of waiver contract, or settings were presumed to be compliant. Removed settings were not categorized and thus were not included in the compliance data.

Settings Compliance

Settings were documented in the following categories:

- **Compliant:** the setting was able to demonstrate compliance with all settings characteristics.
- **Does not comply; but can with modifications:** the setting had a minimum of one setting characteristic that was not evaluated as compliant. Each of these settings were deemed able to become compliant with modifications.
- **Requires additional in-depth review:** the setting was identified as needing an additional in-depth review to determine if the setting falls into one of the following categories as indicated in the Additional Review Breakdown chart: (1) Can comply with modifications, (2) Cannot or chooses not to comply, (3) Presumed to have the qualities of an institution for which the state will submit evidence for the application of heightened scrutiny.



There is one AW non-residential setting (Day Support) setting that potentially cannot or chooses not to comply with the settings rule. This setting currently is not providing services to any Medicaid Waiver HCBS individuals.

There is one NCW residential setting that is categorized as being located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (nursing home) that will be going through the heightened scrutiny process. This setting provides services to approximately 25 Medicaid Waiver HCBS individuals.

All (100%) of Day Support and Adult Day Care Services will be required to go through an additional in-depth review.

Characteristics Requiring Action to Come into Compliance:

Of the 1,857 provider settings reviewed, Tables 1 and 2 outline the number and percentage of settings requiring action in each of the following characteristics in order to come into compliance:

TABLE 1. Number and percentage of residential settings requiring action to come into compliance, by characteristic.

Residential: Settings Rule Characteristic and Description	Settings Requiring Action	
	No.	(%)
<i>Characteristic 1:</i> 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.	871	59.9
<i>Characteristic 2:</i> Setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and based on individual needs, preferences, and, for residential settings, resources available for room and board.	179	12.3
<i>Characteristic 3:</i> Setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint.	905	62.2
<i>Characteristic 4:</i> Setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	590	40.5
<i>Characteristic 5:</i> Setting facilitates individual choice regarding services and supports, and who provides them.	151	10.4
<i>Characteristic 6:</i> The individual has a lease or other legally enforceable agreement providing similar protections.	462	31.8
<i>Characteristic 7:</i> Setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.	699	48.0
<i>Characteristic 8:</i> Setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time.	376	25.8
<i>Characteristic 9:</i> The individual can have visitors of his/her choosing at any time.	743	51.1
<i>Characteristic 10:</i> The setting is physically accessible to the individual.	440	30.2
<i>Characteristic 11:</i> Setting ensures any modification of the HCBS Settings qualities and conditions is supported by a specific assessed need and justified in the person-centered service plan.	371	25.5
<i>Characteristic 12:</i> Setting enforces the Home and Community Based Settings Regulation requirements.	131	9.0

*The characteristics of the Home and Community Based Settings Rule were defined using the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings*, as provided by CMS.

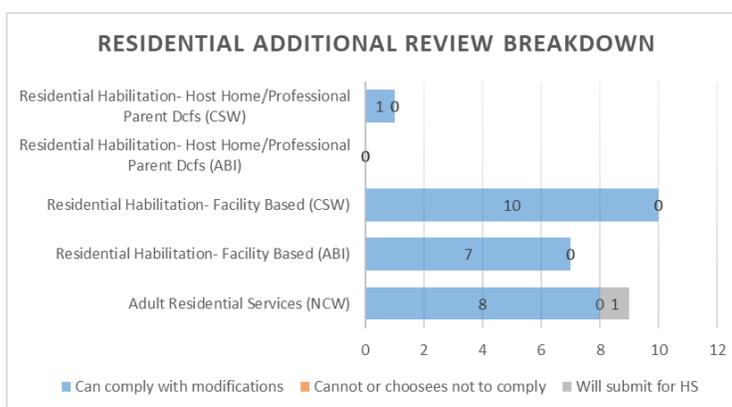
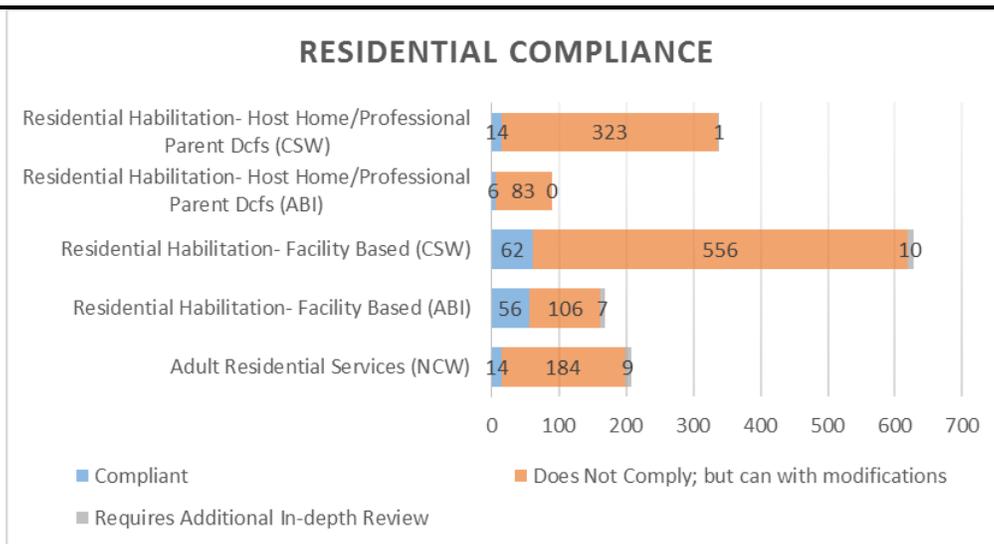
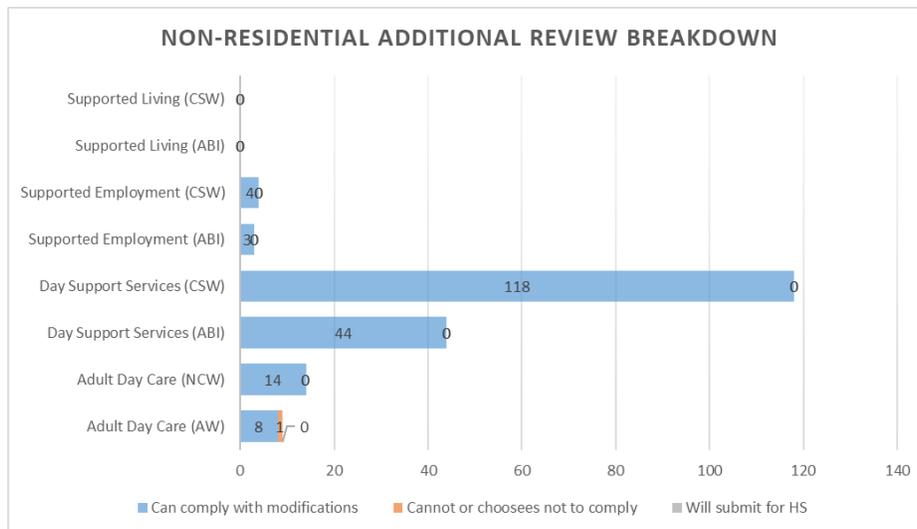
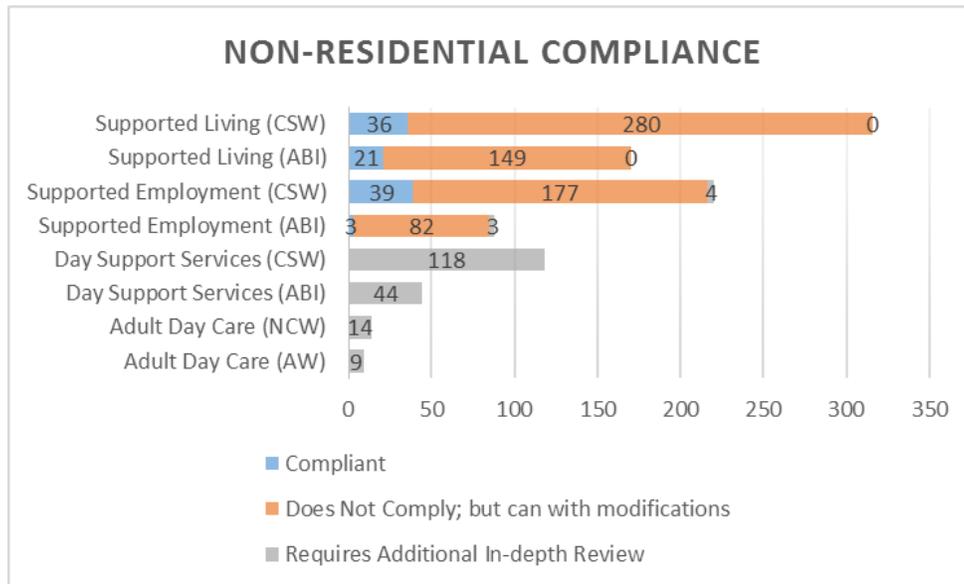


TABLE 2. Number and percentage of non-residential settings requiring action to come into compliance, by characteristic.

Non-Residential: Settings Rule Characteristic and Description	Settings Requiring Action	
	No.	(%)
<i>Characteristic 1:</i> 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.	614	55.9
<i>Characteristic 2:</i> Setting is selected by the individual from among setting options, including non-disability specific settings. The settings options are identified and documented in the person-centered plan and are based on the individual’s needs and preferences.	183	16.7
<i>Characteristic 3:</i> Setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint.	775	70.6
<i>Characteristic 4:</i> Setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	614	55.9
<i>Characteristic 5:</i> Setting facilitates individual choice regarding services and supports, and who provides them.	195	17.8

*The characteristics of the Home and Community Based Settings Rule were defined using the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings*, as provided by CMS.



Settings Identified as Requiring an Additional In-depth Review

Of the 1,857 provider settings reviewed, 166 (8.9%) were identified as having possibly one or more institutional qualities or characteristics that isolate. Settings categorized as needing an additional in-depth review were unable to be categorized based only on the self-assessment and validation review process.

Findings were recorded for non-compliance with indicators 1-4 on both the residential and non-residential self-assessment tools. Additionally, other settings which were determined to have the effect of isolating individuals receiving HCBS from the broader community were identified during self-assessment review, technical assistance provided, and validation visits by State workers trained in CMS guidance titled *Settings that Isolate*. The State welcomed

advocacy organizations input and incorporated their feedback when identifying settings that had a possible effect of isolating individuals from the broader community.

TABLE 3. Number and percentage of residential and non-residential settings identified as requiring additional in-depth review

Settings Rule Indicator and Description	Settings Requiring Additional Review	
	No.	(%)
<i>Indicator 1:</i> Is the setting in a public or privately-owned facility that provides inpatient treatment?	1	0.0
<i>Indicator 2:</i> Is the setting on the grounds of, or immediately adjacent to a public institution?	0	0
<i>Indicator 3:</i> Is the setting located in a gated/secured community for people with disabilities?	0	0
<i>Indicator 4:</i> Is the setting located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community?	3	0.2
<i>Other Settings that Isolate:</i> Settings that have the effect of isolating individuals receiving HCBS from the broader community.	161	8.7

*The indicators used to identify settings presumed to have institutional qualities or characteristics that isolate were defined using the *Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Settings* and *Settings that Isolate*, as provided by CMS.

The State will follow up to verify findings for indicators 1-4 as well as settings identified under other settings that isolate as a part of the *Required Additional In-depth Review* process.

- Those settings found to be in compliance with these indicators will be presumed *not* to be institutional.
- Following this additional review, those settings still presumed to be institutional in nature but found to meet the qualities for being home and community-based will complete the Heightened Scrutiny review process. CMS will evaluate information presented by the State and input from the public to determine whether or not the setting may be included in HCBS programs.
- Those settings still presumed to be institutional in nature and are not found to meet the qualities for being home and community-based will no longer be reimbursed for HCBS services.

All (100%) of the following service types have been identified under the other settings that isolate category:

- Adult Day Care (AW & NCW)
Adult Day Care services are provided in licensed day care settings where the setting is designed specifically for people with disabilities, and the individuals in the setting are primarily or exclusively people with disabilities. These designations may meet the criteria for having the effect of isolating individuals; the additional in-depth review process will determine how each setting will be categorized.
- Day Support Services (ABI & CSW)
Day Support Services can be provided in licensed site-based day support settings where four or more individuals attend, or in non-site based day support settings in the community. Additionally, services can be provided in senior support settings designed for individuals who have needs that closely resemble those of older persons, and desire a lifestyle consistent with that of the community's population of similar age or circumstances. These settings are typically designed specifically for people with disabilities and the individuals in the the setting are primarily or exclusively people with disabilities. These designations may meet the criteria for having the effect

of isolating individuals; the additional in-depth review process will determine how each setting will be categorized.

During the coming months, we expect these lists of settings requiring additional review, compliance, partial compliance, and non-compliance to remain fluid. Settings will move from one list to the other, with the ultimate goal of moving all settings into a state of HCBS compliance. We recognize that not all of these settings may be able to make the necessary changes to become HCBS compliant, but we expect to engage in some level of remediation with all settings over the course of the next 12-18 months (January 2019-June 2020).

Additional In-depth Review Process:

In order to identify settings for which an additional in-depth review should be applied, the State incorporated questions regarding the presumption of institutional characteristics into the provider self-assessment tool. These indicators focus directly on the presumed characteristics of an institution as outlined in the Rule:

1. The setting is NOT located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (a NF, IMD, ICF/IID, hospital).
2. The setting is NOT located in a building on the grounds of, or immediately adjacent to, a public institution.
3. The setting is NOT located in a gated/secured 'community' for people with disabilities.
4. The setting is located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community.

A Self-Assessment and/or Validation response to any of the above indicators that denotes non-compliance will require that the State pull the setting for an additional in-depth review.

Additionally, any setting determined to have the effect of isolating individuals receiving HCBS from the broader community were identified by State employees trained on CMS' guidance for *Settings that Isolate* (<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>) during self-assessment review, technical assistance provided, and validation site visits will require the State pull the setting for an additional in-depth review. Stakeholder, including advocacy entities, feedback was utilized to add settings for an additional in-depth review.

The State considers properties in which there are multiple provider-owned or operated homes in a cluster as having the effect of isolating individuals and will include them in an additional in-depth review.

To assist providers in establishing documentation that they have the qualities of a home and community based setting, State staff will notify providers that they will be participating in an additional review process that may result in undergoing heightened scrutiny and will develop tools for on-site visits and the additional review process. The State anticipates to conduct the in-depth reviews May-October 2019.

For ABI or CSW Providers voluntarily participating in the Provider Transformation process, their in-depth review will be postponed (up to 6 months) to have the chance to complete their Provider Transformation Plan. The Provider Transformation Plan will be accepted by the State as their plan towards compliance with the settings rule.

The in-depth review process utilized by the State will require a comprehensive review of the setting which may include:

- A. A review of person-centered plans that include modifications or restrictions for individuals receiving services in the setting
- B. Interviews with service recipients and/or family members/participant representatives that generally:
 - a. include as many individuals as possible selected by the interviewers without influence by the provider or staff.

- b. include staff, specifically including direct support staff because they implement the program policies and procedures on a day-to-day basis, outside the presence of the supervisor or administrator.
- C. A secondary review of policies, training, incident reports, and other applicable service related documents
- D. Additional focused review of the setting's proposed Remediation Plan, including how each of the above is expected to be impacted as the plan is implemented.
- E. Settings may be asked for additional information to document the HCBS nature of the setting and how the setting is integrated into the greater community. This may include:
 - a. Descriptions of community interactions and how close a setting is to community activities and public transportation (or how transportation is provided for individuals)
 - b. Campus maps/diagrams
 - c. Descriptions of how a setting is connected with any related institutional facility including information about financing, shared administration or other staff, and shared resources such as transportation and eating facilities
- F. An on-site visit and assessment of the physical location and practices of the setting. The site visit will:
 - a. include a significant amount of time that is observational in nature. The purpose of this is to observe:
 - i. the individual's life experience and the presence or absence of the qualities of HCBS.
 - ii. the individual's access to the broader community including the availability of transportation and geographic proximity to other community resources, including shopping, entertainment, worship, etc.
 - iii. for evidence that settings have institutional characteristics, such as cameras; individuals schedules or other personal information posted, lack of uniqueness in room decor, indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities; and barriers that inhibit community member involvement, such as fences or gates.

Based on the accumulation of these findings (presented with identifying information removed from the documentation), the Settings Transition Workgroup will make an initial determination on which settings fall into the following categories:

1. Those settings found to be in compliance with these indicators will be presumed *not* to be institutional.
2. Following this additional review, those settings still presumed to be institutional in nature but found to meet the qualities for being home and community-based will complete the Heightened Scrutiny review process.
3. Those settings still presumed to be institutional in nature and are not found to meet the qualities for being home and community-based will complete the Heightened Scrutiny review process.

Heightened Scrutiny Review Process

All settings still presumed to be institutional in nature (categories 2 & 3 above) will continue on to the Heightened Scrutiny process.

An Evidence Summary Packet including the following will summarize and include (as appropriate):

- A. Description of how a setting overcomes its presumed institutional qualities will focus on the qualities of the setting and how it is integrated in and supports full access of all individuals receiving HCBS into the greater community. This may include the following:
 - a. Description of the proximity and to and scope of interactions with community settings used by individuals not receiving Medicaid funded HCBS.
 - b. Provider qualifications for staff employed in the setting that indicate training or certification in HCBS, and that demonstrate the staff is trained specifically for HCBS support in a manner consistent with HCBS settings regulations.
 - c. Policy and/or procedures in place by the setting that indicate support for activities in the greater community according to the individual's preferences and interests, staff training materials that speak of the need to support individuals chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observations, cultural celebrations, employment, etc.)

- d. Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided where public transportation is limited.
- e. The setting is integrated in the community to the extent that a person without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.
- f. The individual(s) participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting.
- g. Services to the individual, and activities in which the individual participates, are engaged with the broader community.
- h. Specifically for settings that are located on the grounds of or immediately adjacent to a public institution, documentation showing that the HCBS setting is not operationally interrelated with the institutional setting, such as:
 - i. Interconnectedness between the institution and the setting, including administrative or financial interconnectedness, in question does not exist or is minimal
 - ii. To the extent any institutional staff are assigned occasionally or on a limited basis to support or back up the HCBS staff, the institutional staff are cross trained to meet the same qualifications as the HCBS staff
 - iii. Participants in the setting in question do not have to rely primarily on transportation or services provided by the institutional setting, to the exclusion of other options.
- B. Summary of surveys and interviews of participants, staff, stakeholders, and public input that can be linked to the setting for which evidence of being submitted
- C. Diagrams, maps, pictures of the site and other demonstrable evidence (taking into consideration the individual's right to privacy)
- D. Remediation and/or Transition Plan (for providers continuing working towards compliance)
- E. Any additional information submitted by providers

By the end of 2019, the State will compile a list of providers that document compliance with the regulations for HCBS settings and a list of providers that document non-compliance. Public input will be incorporated into the State's review process. Public notice will list affected settings by name and location (as appropriate), identify the number of individuals served in each setting, include all justifications as to why the setting is home and community based (this will include any reviewer reports, interview summaries, etc.), and provide the public an opportunity to comment. A participant experience survey will be an additional way to provide input on settings.

Once public input is compiled and added to the Evidence Summary Packet, the Settings Transition Workgroup will determine if they think the evidence package overcomes or will overcome with the modifications outlined, the presumption of not being home and community based and if a setting does not overcome the presumption, why it does not. The determining factors for deciding if a setting is ready for CMS review include:

1. Consensus among Settings Transition Workgroup
2. Evidence of integration for all individuals in the setting
3. Evidence of individual choice and autonomy

The Settings Transition Workgroup may identify areas in the Evidence Summary Packet that should be strengthened or verified before submission to CMS. The setting and workgroup recommendation are reviewed by State staff and a recommendation will be made to leadership as to whether a setting is ready to be submitted to CMS or if additional outreach is required.

The State has decided to begin the staggered submission process with a small group of settings that represent a variety of types of providers, locations of settings, and participants served. A smaller first submission would be helpful in having an understanding of the submission and review process. The State expects to begin submitting heightened-scrutiny

evidentiary packets for settings to CMS by April 2020. CMS will evaluate information presented by the State and input from the public to determine whether or not they agree with the State's assessment.

For settings still presumed to be institutional in nature and are not found to meet the qualities for being home and community-based, (due to the extension of the HCBS deadline) the State will provide additional time for settings to submit a revised plan to come into compliance. Reassessment of these settings will be completed no later than December 2020.

Those determined not to be home and community based after heightened scrutiny is conducted by CMS, the State will proceed with dis-enrolling settings (providers) and transitioning beneficiaries affected. The State anticipates transitioning beneficiaries from non-compliant settings between June to December 2021.

The State will send a formal notification letter to the Operating Agency that outlines the specific reasons for settings that must be transitioned and the due process procedure and timeline available to the person and if applicable his/her guardian/representative no less than 45 days prior to the transition.

The Operating Agency will then send the current provider of service and the participant and/or representative/guardian a formal notification letter indicating the intent to transition the person supported no less than 30 days prior to the transition. The Operating Agency will be responsible to inform and transition individuals to compliant settings or to ensure participants understand that the receipt of continued services in these settings will not be funded by HCBS.

State assures that it will provide reasonable notice and due process to any participant that needs to transition to another setting. Through the person-centered planning process the Support Coordinator or Case Manager will ensure that the participant is provided information about alternative settings that comply with HCBS settings requirements and allow them to make an informed choice of an alternative setting. The Support Coordinator or Case Manager will ensure that all critical services are in place in advance of a participant's transition and will monitor the transition to ensure successful placement and continuity of services.

While Support Coordinators and Case Managers will provide information on options and encourage participants to transition to a setting that complies with the HCBS settings requirements, some participants may choose to remain in their current setting and either disenroll from the waiver program or continue to receive services without HCBS funding.

COMPLIANCE ACTION AND RECOMMENDATIONS

The State will continue to work with settings and providers to come into compliance. Throughout this process, the State will continue to emphasize that reverse integration activities are not sufficient to meet the true intent and spirit of the HCBS Settings Rule.

Stakeholder Work Groups:

The purpose of the stakeholder work group meetings was to engage stakeholders in a workgroup format to provide feedback as the State works to respond to Provider Remediation Plans. Stakeholders were composed of providers, advocacy groups, consumers, community members, case coordinators, and State staff. During the workgroup meetings the Settings Rule and CMS guidance was reviewed, self-assessment indicators that require clarification were discussed, and feedback from stakeholders was solicited.

The following stakeholder work groups were held:

- April 3, 2018- Non-residential integration

- April 10, 2018- Modifications and restrictions
- April 17, 2018- Residential integration
- May 1, 2018- Heightened Scrutiny

Direction was provided by the workgroup and is being utilized to respond to Provider Remediation Plans, provide technical assistance to providers, and to use in brainstorming sessions with stakeholder focus groups as follows:

Community Integration:

Individuals not receiving Medicaid HCBS, as referenced in the Settings Rule, refers to both other individuals in the service setting and the greater community. “Community” as referenced in the rule refers to the greater community and not solely a community of one’s peers, and that integration also means more than integration with peers who also receive services. Note that visits by community members have value, but cannot replace community access for individuals receiving HCBS services; this is called reverse integration.

All settings, including those in rural communities and those in low density suburban areas, should provide adequate transportation opportunities to meet beneficiaries’ desires for meaningful community engagement and participation in typical community activities.

We support individual choice and agree that individuals may vary in their choices as they seek full access and participation in the greater community. However, in order to receive approval of a State plan under which it will receive Medicaid funding for HCBS, a state must ensure that the choices available to individuals meet the requirements for community integration under the final rule.

Modification and Restrictions:

The following are two areas that were discussed by the workgroup and has been interpreted to be a restriction under the Settings Rule:

- An alarm on the door
- Not having locks on bathroom and living unit doors in a residential setting

The assumption is that a participant always starts with a lock (bathroom and bedroom or living unit), rather than being given the choice to have one installed. Locks are really about equal treatment and privacy, all staff should not have unlimited access to individuals’ rooms or living unit. If a restriction is in place, all requirements in the Rule must be met.

Settings with controlled-egress (such as a memory care unit) must demonstrate how they can make individual determinations of unsafe exit-seeking risk and make individual accommodations for those who are not at risk to allow them to circumvent this restriction.

Controls on personal freedoms and access to the community cannot be imposed on a class or group of individuals receiving Medicaid Home and Community Based Services. Restrictions or modifications that would not be permitted under the HCBS settings regulations cannot be implemented as “house rules” in any setting, regardless of the population served and must not be used for the convenience of staff.

Informed Consent in regards to a modification or restriction is a signature on the PCSP, but it is important to help the individual understand the decision they are making. For example, accommodations can be made to assist individuals to fully understand their PCSP, such as allowing them to take it home for review before making a decision.

Example of modifications or restrictions surrounding an individual who has Prader Willi Syndrome (a genetic disorder that includes symptoms of constant hunger) and requires restricted access to the refrigerator/food:

- There must be a documented and assessed need, and a way for other individuals in the home to circumvent this restriction.
- Is staff providing access to the fridge an appropriate way to circumvent this restriction? If only the staff have a key, this could have the effect of giving the staff additional power over program participants. There is a difference between limiting access because it is almost dinner time (acting as a parental figure), and opening the fridge whenever an individual wants (ensuring participant rights). Training and the individual's experience will be very important to distinguish compliance.
- The presumption is participants always have access. Restrictions are individualized and based on a documented and assessed need. The expectation is the same for knives, the stove, and other situations that could potentially be dangerous.

Stakeholder Focus Groups:

The purpose of the stakeholder focus group meetings was to engage stakeholders in a focus group format in an effort to provide a forum for stakeholders to talk openly to identify ways to bring HCBS services into compliance with the Settings Rule. Stakeholders were composed of providers, advocacy groups, consumers, community members, case coordinators, and State staff. The information discussed during the focus group meetings were the definition of community integration, workgroup determinations, objectives of how to enhance the quality of current HCBS services was identified, and focused brainstorming occurred.

The following focus groups were held:

- June 5, 2018- Residential (NCW)
- June 19, 2018- Non-Residential (Adult Day Care)
- July 3, 2018- Non-Residential (Employment)
- July 10, 2018- Residential (DSPD)
- August 28, 2018- Person-Centered Care Plan (PCSP)
- September 11, 2018- Modifications and Restrictions

Brainstorming performed by the focus groups resulted as follows:

Training and Resources:

The focus groups identified the following training and resources that would assist the State and Providers coming into compliance:

- Education on community integration and what this should look like in each type of setting
- Direct Care Staff education: how to make staff feel empowered to take action to support individual goals and choices
- Early consumer and family orientation on assessments, person-centered planning, services, etc.
- Education and outreach to the community and businesses
- Consumer rights education for individuals/families receiving services and what to do when they are not being met
- Resources for individuals on what services and providers are available to them
- Informed choice and informed consent for consumers, families, providers, case coordinators (including for people who have no representative and appear to not be able to understand)
- Person-centered Support Planning (PCSP) training for consumers, families, providers, case coordinators
- Consumer and family education on modifications and restrictions
- Ongoing quarterly settings meetings (education, input, updates, etc.)

Waiver Service Modifications:

The focus groups identified the following as areas to look at the current waiver service model to better support community integration:

- Transportation: Challenges currently include limited providers, limited public transportation schedules, transportation no-shows, accessibility, limited emergent transportation options, inflexibility with rates, and rates do not cover costs.
- Service reimbursement rates: Challenges currently include that acuity is not tied to rates, expenses are not covered by current rates, rates are not based on the level of need and supervision, and one rate does not fit all individualized circumstances.
- Service codes: There is no flexibility to service an individual under multiple codes (more individualized) and the current codes do not reflect the kind of services needed to support individuals in the community. Need better support for people in crisis; allowing fluidity of services when individuals demonstrate need.
- Staff ratios and group size: Evaluation of group size of individuals in each service and staff qualifications and ratios.

Community Integration Support:

The focus groups identified the following as areas to improve in to better support individuals to integrate in their communities:

- Have more options and choices of activities; larger variety of jobs to choose from; be more creative
- Base activities that are focused on individual preference versus staff preference
- Improve person-centered focus when care-planning; support individuals to be the driver of the PCSP process
- Navigate parent/participant/provider relationship better to ensure participant is not being required to participate in activities they are not interested in
- Improve on focusing on desires of versus parents/families
- Better coordination between agencies that are serving an individual
- Ensure people have informed consent of where and who they live with
- Base choices on individual needs versus group options
- Better connection with community resources, leveraging what is already available
- Stop making assumptions that a person does not care about a restriction (especially a restriction that is in place for another but affects them)
- Better communication with natural supports/families

Other Challenges:

The focus groups identified the following as other challenges that need to be taking into consideration:

- Individuals lack of interest in community integration, overstimulation, agitation, and stress in the community
- Health and personal care needs in the community
- Balancing risk, liability for providers, and safety of others
- Access to more affordable housing and to wheelchair accessible homes (to increase residing in the community)
- Include more self-advocates and families in the process
- Human Rights committee, with the Settings Rule, is overloaded and the time commitment is heavy for volunteers (due process versus committee requirements need to be assessed)
- Circumventing restrictions for those who do not need them

Additional Guidance:

Privacy and the Use of Cameras in the New Choices Waiver Residential HCBS Setting

Although the allowance/prohibition of cameras is not specifically discussed in the HCBS Settings Final Rule, a minimum requirement of States is to ensure individual rights to privacy, dignity, and respect in all HCBS service settings.

The residential self-assessment asks the following question: “Are cameras present in the setting? If yes, please provide evidence that surveillance equipment has been authorized.” This question is to assess the use of cameras used for the purpose of surveillance that violate a person’s right to privacy.

Removal of cameras is not a requirement of the Settings Rule. The use of cameras must be assessed against the HCBS Settings Rule to ensure that the presence and intended use of cameras is in compliance with the Rule. Surveillance cameras in a setting may change the perception of the site as institutional in nature versus Home and Community Based. Use the following information to determine if surveillance equipment is inline with the settings rule:

Surveillance equipment in the following circumstances generally do not raise privacy concerns and can be used as similar non-HCBS settings would use them:

- In areas dedicated to provider staff (desks/offices)
- Monitoring entrances and exits
- Monitoring exterior areas of the building (parking lots)
- In commercial/integrated areas of the setting (such as stores, cafes, etc.)

Surveillance equipment may also be used if it achieves one of the following:

- Increased independence for individual(s) receiving HCBS services
- Addresses a complex medical condition or other extreme circumstance
- Reduces or minimizes critical incidents
- Improves the quality of supports

Surveillance equipment must meet the following requirements:

- Address health and safety concerns, potential risks and safety planning
- Visual (concealed cameras are not allowed)
- Be the least restrictive option
- Be accessed (both equipment and any recordings) only by appropriate staff
- Method of secure disposal or destruction of any recordings after a reasonable period

If an individualized assessment indicates that a person needs to be watched at all times so that staff can intervene when they engage in behavior that is dangerous to themselves or others, this modification should be reflected in their person centered plan.

If surveillance equipment is used in an HCBS setting, individuals receiving services and their guardian must provide informed consent. We recognize there will be times when the person’s guardian may need to be heavily involved in this process. However, the participant, regardless of age, should be involved in the informed consent and planning process as much as possible.

Note: Only a resident or the resident’s legal representative may operate or install a monitoring device in the resident’s room per Utah Administrative Code 26-21-303.

Avenues for Additional Feedback:

Individuals receiving Waiver HCBS services or their guardian or authorized representative will have the opportunity to complete the Medicaid HCBS Settings Consumer Survey providing feedback on the settings they receive services in. The link to the survey will be posted on the Utah HCBS Waiver Programs Settings page.

The State has an email dedicated to the Settings Rule transition. Feedback, general questions, a request for technical assistance, or any other settings related inquiries can be submitted to HCBSSettings@utah.gov.

The Utah Department of Health and the Utah Department of Human Services are participating in the National Core Indicators (NCI) and the National Core Indicators- Aging and Disabilities (NCI-AD) project. NCI and NCI-AD is a voluntary effort by State Medicaid, aging, and disability agencies to measure and track their state's performance. The core indicators are standard measures used across states to assess the outcomes of services provided to individuals and families. Indicators address key areas of concern including service planning, rights, community inclusion, choice, health and care coordination, safety and relationships. The State will use the information collected to improve the services provided to Utahns who are aging or have disabilities.

Technical Assistance:

The State has a dedicated staff member to provide technical assistance to providers upon request. The technical assistance is frequently initiated by provider phone calls or emails in response to completing their Provider Remediation Plans.

Provider Transformation:

Beginning in 2013, the State invested in capacity building and began contracting with Griffin Hammis to assist DSPD providers to be able to provide customized employment and learn the essential elements of successful customized employment. In 2015, the state applied for resources through the Office of Disability Employment Policy- Employment First State Leadership Mentoring Program (ODEP- EFSLMP) and chose to focus those resources on provider transformation among provider companies that offer either day support or supported employment services. The state also allocated resources to school to work efforts and concentrated on rates and reimbursement restructuring.

In year one, the state worked with two providers, who received extensive technical assistance from nationally recognized subject matter experts. In year two, the state added two more providers to the program and continued to provide support to the year one sites through EFSLMP resources. The state added two more providers in year three and continued to provide support to year one and two providers as needed. In year four, the state added three providers while continuing to offer quarterly check-ins, webinars, and trainings to past transformation participants.

In addition to the targeted technical assistance, we have offered at least two webinars to all DSPD providers and partners about community engagement, person-centered services, shifting from caregiving to community-connecting. We have also shared the ODEP monthly webinars and provider transformation series and manual with ALL providers.

In addition to the ODEP resources, we have continued to contract with Griffin Hammis training a combination of 50 employment specialists each year that includes educators, VR counselors, Workforce counselors and support coordinators to receive a national certificate level training in customized employment and provide technical assistance after training.

DSPD plans to offer additional transformation technical assistance to all contracted ABI and CSW HCBS Waiver service providers (not just those that offer day or employment), to help them better understand and achieve compliance with the settings rule. This will include technical assistance, similar to previous transformation technical assistance offered, but will include mentorship specific to the settings rule.

In addition, DSPD has been awarded a technical assistance grant for person-centered planning through NCAPPS.

Community Integration in Adult Day Care and Day Support Services:

Training and technical support to traditional adult day care and day support services programs will be provided to improve the quality of those programs and to help those providers plan for future business models that support community integrated services and compliance with the HCBS Settings Rule.

Center Based Employment (CBE) Hub and Spoke Model:

For Day Support Service centers that currently engage in center based employment, the following model has been proposed.

To assist providers to transition to the CBE model, the State will identify and engage technical assistance contract that specializes in this service delivery area, modify employment and day support service descriptions, and identify rate changes needed to employment and day support billing codes.

- Limit use of CBE to up 24 months (with some exceptions that allow CBE beyond 24 months)
 - Ability to extend beyond 24 months - Based on the goals outlined in the individual's person centered support plan (PCSP) on a case by case basis
 - Option to return to center-based employment for additional (up to) 24-month periods if the individual quits or loses competitive, integrated employment
- Complete meaningful person-centered planning to determine what tasks the individual will work on to build job skill while in CBE
 - Must work toward (and document) specific and measurable employment goals for competitive integrated employment
 - Opportunity for yearly career counseling
- Create opportunities for integration during both the pre-vocational phase and during periods of the day when the individual is not at work at their competitive, integrated, employment site. (This could entail the use of a new service definition "Community Participation" or a combination of service codes (for example – some services could be coded as "supported employment" and some "day supports")
 - Evaluate implementing a requirement where individuals will spend a minimum of 20% of their time in the community participating in experiences that are meaningful to the individual
 - CMS has stated that providers must avoid reverse integration
- Limit enrollment of new CBE providers to those that:
 - Meet the pre-vocational hub and spoke model standards

Training:

The State has engaged in several face-to-face training opportunities. Trainings up to this point have focused on education and awareness of the Settings Rule, Provider Remediation Plan requirements, and the State's progress towards compliance.

The State recognizes that the requirement for settings to be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community is a key component of the HCBS Setting Rule. Providers were assessed on how they currently comply with the integration component within the provider self-assessments and remediation plans, but did not expect providers to be fully compliant with this requirement until June 2021. The State will continue providing ongoing education and technical assistance to ensure that providers understand that reverse integration alone is not enough to be fully compliant with this requirement.

The State is planning multiple training opportunities for providers, consumers, and other stakeholders to discuss reoccurring themes in provider-initiated technical assistance, self-assessment characteristics identified with a high percentage of settings requiring action, and workgroup and focus group outcomes.

The State will also continue to train support coordinators, case managers, and contract review staff to ensure they are ensuring settings are making progress towards compliance through the current services delivery system. Training will include steps to take to increase access to non-disability specific settings among individual service options for both residential and non-residential services.

Greater Family Engagement:

For waiver participants who have involved family members, educating and informing family members regarding community integration and employment as a critical step towards compliance. The State has begun meeting with consumers and family members to educate and answer questions.

Utah HCBS Draft Transition Plan - Public Comment Summary
Summary of Public Comments from *October 22, 2014 Version One*

A brief summary of public comments and the State's response to the comments follow:

Comment:

Two commenters described that the State should maximize opportunities for transparency in the transition process. The commenters described concerns that the plan lacked sufficient detail and that the remediation measures included plans and compliance tools that will not be developed until after the plan has been developed with no opportunity for public input.

Response:

The State views the transition planning process as an iterative process in which additional detail regarding remediation activities and compliance tools will be shared with the public as the transition planning process moves forward. The plan was updated to include action items that require the State to share assessment and remediation tools with stakeholders as they are developed. The plan was also updated to require that the State provide quarterly updates to stakeholders as well as to CMS.

Comment:

One commenter encouraged the State to hold additional notice and comment periods as more substantive detail is incorporated into the transition plan.

Response:

The State believes that providing additional comment periods when changes are made to the plan is a requirement of the federal rule. It is the State's intent to engage in additional notice and comment periods with each iteration of the plan. The State agrees that additional clarity could be added to the plan. The State updated the plan to include an action item that describes the State will hold notice and comment periods for each new iteration of the plan.

Comment:

One commenter expressed concern that a preliminary screening would be conducted without onsite reviews, provider self-assessments, or gathering other sources of information. The concern expressed is that the State could potentially determine that large portions of the HCBS service system are compliant without first gathering evidence to support this presumption.

Response:

The State understands the concern expressed, but disagrees that the outcome of the preliminary screening will be the determination that large portions of the HCBS system will be determined compliant without evidence. In its preliminary screening, the State took a conservative approach when designating providers as "presumed to be fully compliant". The State only identified services as "presumed to be fully compliant" when the services are not dependent on the setting and when the services are direct services provided to the waiver participant. For example, in the Medicaid Autism Waiver, Applied Behavioral Analysis is a service that is provided directly to the child. The service is provided in the child's home or other naturally occurring setting in the community. Accordingly, this service is presumed to be fully compliant with the HCBS regulations. In addition, providers that offer multiple types of services, were categorized as "requires further review" if the provider had any possibility of providing a service that may not be compliant. For example, if a provider is enrolled to offer Personal Budget Assistance, Respite Care, Behavioral Consultation and

Residential Habilitation, the provider as a whole would be classified as a ‘Residential Service Provider’ and designated as “requires further review” to ensure all sites will be fully assessed. Within the preliminary report, when services were listed as “presumed to be fully compliant”, the State provided a brief narrative to explain the determination. The preliminary report was submitted to the public for a 30-day comment period on February 2, 2015.

Comment:

One commenter expressed concerns that the plan did not include a review of the State’s standards, rules and regulations.

Response:

The State agrees that the plan should include a review of its standards, rules, regulations and provider contracts. An action item will be added to the plan prior to submission of the plan to CMS.

Comment:

One commenter expressed concern that the plan did not include an analysis to identify settings that are presumed to have the qualities of an institution.

Response:

The plan included an action item describing that the “state would employ multiple processes to evaluate sites that are potentially not yet compliant or not compliant with HCBS characteristics”. In response to the comment, the State amended the plan to include language that the processes will include those to determine whether sites are presumed to have institutional-like qualities and that these sites will be identified as requiring heightened scrutiny.

Comment:

One commenter described that the State should actively engage HCBS consumers in the Transition Process. The commenter recommended including specific interventions such as completing consumer experience surveys to determine consumers level of understanding of the transition planning process.

Response:

While the State understands that the completion of surveys and other educational opportunities represent enhancements to the process, it does not believe these interventions are required elements to be included in a transition plan. The State believes that the plan as currently drafted meets plan requirements. The State will continue to discuss these items with the Transition Planning Workgroup to find opportunities for additional education and consumer involvement. For example, in the first Transition Plan Workgroup meeting, we discussed inclusion of family members and additional consumers from various programs. Current attendees have agreed to submit names of additional consumers to participate in the Workgroup.

Comment:

Two commenters suggested that the State should develop assessment and remediation strategies that are specific to residential and non-residential settings.

Response:

The State intends to develop assessment and remediation strategies that are specific to residential and non-residential settings. Utah’s plan refers to “waiver sites of service”. This is inclusive of both residential and non-residential services. The plan was updated to include action items that require the State to share assessment and remediation tools with stakeholders as they are developed.

Utah HCBS Draft Transition Plan - Public Comment Summary
Summary of Public Comments from February 2, 2015 Version Two

A brief summary of public comments and the State's response to the comments follow:

Comment:

One commenter described that the plan should include the level of detail provided in the State's Initial HCBS Compliance Report that included details about the process by which the Department of Health queried providers, the standards used to assess providers, and an explanation of the Department's analysis.

Response:

The State views the transition planning process as an iterative process in which additional detail regarding remediation activities and compliance tools will be shared with the public as the transition planning process moves forward. The State's Initial HCBS Compliance Report is a good example of the process the State will incorporate as additional details are developed. The plan was updated to include action items that require the State to share assessment and remediation tools with stakeholders as they are developed. The plan was also updated to require that the State provide quarterly updates to stakeholders as well as to CMS.

Comment:

One commenter expressed concerns that the plan did not include a review of the State's standards, rules and regulations.

Response:

The State agrees that the plan should include a review of its standards, rules, regulations and provider contracts. An action item describing this requirement was added to the transition plan.

Comment:

One commenter described that the State should more actively engage HCBS consumers in the Transition Process. The commenter recommended including specific interventions such as completing consumer experience surveys to determine consumers level of understanding of the transition planning process.

Response:

While the State understands that the completion of surveys and other educational opportunities represent enhancements to the process, it does not believe these interventions are required elements to be included in a transition plan. The State believes that the plan as currently drafted meets plan requirements. The State will continue to discuss these items with the Transition Planning Workgroup to find opportunities for additional education and consumer involvement. For example, in the first Transition Plan Workgroup meeting, we discussed inclusion of family members and additional consumers from various programs. Current attendees have agreed to submit names of additional consumers to participate in the Workgroup.

Comment:

Two commenters suggested that the State should develop assessment and remediation strategies that are specific to residential and non-residential settings.

Response:

The State intends to develop assessment and remediation strategies that are specific to residential and non-residential settings. Utah's plan refers to "waiver sites of service". This is inclusive of both residential and non-residential services. The plan was updated to include action items that require the State to share assessment and remediation tools with stakeholders as they are developed.

Comment:

One commenter suggested that because support coordination and case management agencies play a significant role in the service delivery system and in the person-centered planning process, the State should not presume these providers are compliant with the new settings rule.

Response:

While the State agrees that support coordination and case management agencies play a significant role in the service delivery system, and that provider education about rule requirements will be needed throughout the planning process, the State disagrees that these providers are non-compliant entities with regard to the setting requirements. The State will continue to engage the Workgroup to discuss education and training opportunities for support coordinators and case managers.

Utah HCBS Draft Transition Plan - Public Comment Summary
Summary of Public Comments from January 15, 2016, Version Three

The State received public comment from a variety of sources including family, friends and guardians of individuals receiving services, advocacy groups, health care providers, employers, and health care associations. The comments were mixed, with commenters providing both support and disagreement within sections of the Statewide Transition Plan (the Plan). A brief summary of the public comments and the State's responses are set forth below.

Comment:

One commenter suggested the current version of the Plan lacks necessary detail with regard to treatment of providers based on their response to provider self-assessments and the Plan does not provide enough detail about the tool that will be used during the validation process at the conclusion of the provider self-assessment period.

Response:

As agreed to in the previous versions of the Plan, the State has shared and sought public feedback on draft evaluation tools as they have been created. Prior to disseminating the current version of the Plan (Version 3) for public comment, the Plan was updated to include additional detail about conducting statistically significant sampling of providers after the self-assessment period has concluded (regardless of self-reported compliance level). The State views the transition planning process as an iterative one in which detail regarding additional remediation activities and compliance tools will be shared with the public as the planning process moves forward and new tools are created. The Plan already includes action items that require the State to share assessment and remediation tools with stakeholders as they are developed and requires the State to provide quarterly updates to stakeholders as well as to the Centers for Medicare and Medicaid Services (CMS).

Comment:

One commenter stated some of the timelines specified in the Plan are unclear, are contradictory in some places, and leave concern that the State will not come into compliance within the necessary time frame.

Response:

The State acknowledges there was a discrepancy in the timelines and has updated the timeline to inform and transition clients to match the timeline for disenrolling non-compliant providers. The State will work with providers determined to be non-compliant to ensure sufficient time is provided to inform and transition waiver participants to new settings. Provider self-assessments will be reviewed on a case by case basis and the State will work with individual providers to come into compliance throughout the remediation process.

Comment:

One commenter suggested the State should maximize opportunities for transparency in the transition process and actively seek to engage consumers in the process. The commenter suggested the State accept comments through email, written correspondence, fax, and testimony with the use of public meeting environments. Additionally, the commenter encouraged the State to ensure the workgroup has a balanced representation of consumers, providers, and advocates. The commenter requested the State make the quarterly updates to CMS publicly available throughout the transition process.

Response:

The State's process currently allows for public comment to be submitted in writing in a variety of ways. The State's HCBS Transition Planning Website describes that submissions may be submitted online, via standard mail, or fax. The State has accepted email and hand delivered comments as well. The State requires public comment to be submitted through written channels because it allows for a more thorough response to multi-faceted issues and prevents misinterpretation or inaccurate paraphrasing of verbal statements. The Plan already includes action items that require the State to share assessment and remediation tools with stakeholders as they are developed and requires the State to provide quarterly updates to stakeholders as well as to CMS.

Comment:

One commenter suggested the State should include more detail concerning a variety of aspects of the Heightened Scrutiny Process. The commenter expressed concern that without a clearly identified Heightened Scrutiny Process the State risks improperly allocating HCBS funding for settings that do not meet the new HCBS requirements.

Response:

Prior to disseminating Version 3 of the Plan for public comment, the Plan was updated to include additional detail about the Heightened Scrutiny Process including that all settings presumed to have the qualities of an institution as outlined by the regulation, will be subject to the Heightened Scrutiny Process. The Provider Self-Assessment Tools include questions to identify any sites that may be presumed to have institutional like qualities. Version 3 of the Plan describes that the Heightened Scrutiny submission will be determined by the State and the Transition Plan Workgroup during analysis of assessment results, remediation plan review, and/or the findings rebuttal process. For settings presumed to have institutional qualities, the State will review the information to determine whether the qualities of a home and community based settings outlined in 42 CFR 441.301(c)(4)/ 441.530(a) are met, whether the State can demonstrate that persons receiving services are not isolated from the greater community, and whether there is strong evidence the setting does not meet the criteria for a setting that has the qualities of an institution. The State will submit information for settings presumed to have institutional qualities to the CMS Heightened Scrutiny Process if the State determines, through its assessments, that these settings do have qualities that are HCBS in nature and do not have the qualities of an institution.

Comment:

One commenter stated the Plan should be more responsive to the feedback provided by CMS regarding the systemic assessment. The commenter expressed belief that elements from the October 8, 2015 letter to the Department of Health must be more fully developed before a draft is submitted to CMS for approval.

Response:

The State believes updates made in Version 3 of the Plan are responsive to feedback provided by CMS. The public will have the ability to comment 30 days before the submission of findings from the systemic assessment. The Plan already includes action items that require the State to share assessment and remediation tools with stakeholders as they are developed and requires the State to provide quarterly updates to stakeholders as well as CMS.

Comment:

One commenter suggested the State should ensure notice provisions are followed for all public comment periods. The commenter encouraged the State to release all drafts of assessment and remediation tools in the manner outlined in the State's transition plan in order to solicit meaningful feedback from providers, consumers, their families, and other stakeholders.

Response:

Although the State published public notice in Salt Lake Tribune and Deseret News, the State acknowledges it did not send out an announcement via the listserv at the commencement of the public comment period in December 2015. To ensure the public had sufficient opportunity to comment, the State extended the comment period to ensure a full 30-day period was achieved for all stakeholders, including those who were relying on the listserve notification. The State continues to fully comply with the public comment period requirements.

Comment:

One commenter suggested the State should proactively engage HCBS consumers as a part of the assessment process. The commenter stated in order for the State to determine if a setting is compliant, it must create an open dialogue with participants and understand their experience in that setting.

Response:

The State agrees it is important to take participant experience into account throughout the HCBS settings transition. Version Three of the Plan includes the development of a Participant Experience Survey to assess individual experience in a Utah HCBS setting as a part of ongoing monitoring activities.

Comment:

One commenter stated the Residential Provider Self- Assessment Tool (the Tool) does not ask if individuals regularly access the community or if individuals are able to describe how they access the community. The commenter recognized the Tool asks if individuals are restricted from participating regularly in meaningful non-work activities in integrated community settings, however stated the Tool does not affirmatively ask if individuals are in fact participating in these activities.

Response:

The State recognizes the importance of individuals taking part in integrated, community activities, and believes the wording in the Tool provides objective criteria to assess compliance.

Comment:

One commenter stated the Tool does not ask if individuals were given opportunities to visit other settings when selecting a setting, and that the Tool does not ask if the individuals work in an integrated setting. The commenter adds the Tool only asks if information about competitive employment is restricted instead of explaining how the setting supports individuals seeking competitive employment.

Response:

During person-centered planning processes, individuals are afforded the right to select providers from all enrolled, available providers. Criteria to assess Supported Employment services settings will also be reviewed to verify the setting does not have an isolating factor. The State believes the wording in the Tool provides objective criteria to assess compliance.

Comment:

One commenter stated the Tool did not address person-centered planning and whether or not individuals or their chosen representatives have an active role in the development and update of the person-centered plan.

Response:

The State places high importance on appropriate completion of the person-centered planning process but it does not believe review of person-centered planning requirements is a required component of the Plan.

Comment:

One commenter expressed concern regarding the potentially negative impact the Settings Rule may have on assisted living environments which serve individuals with dementia. The commenter stated some individuals in this setting often leave unintentionally out of confusion, and that if a staff member is required to sit by all the doors to redirect the residents, this will result in an increased cost for an already costly service.

Response:

The State intends to work with all waiver providers to remediate areas of potential non-compliance with the HCBS Settings regulation. Should items remain out of compliance, but the individual setting maintains the qualities of a home and community-based setting, the State will work with CMS to have the setting reviewed through the Heightened Scrutiny Process.

Comment:

One commenter expressed concern regarding congregate settings under the HCBS Settings Final Rule. The commenter questioned how the term “fully integrated” will be applied to day treatment programs and/or sheltered workshops. The commenter asked if only individuals with disabilities are participating in these settings, if the setting would then fail this requirement. Further, the commenter asked who will be making this determination.

Response:

The Department of Justice describes integrated settings as “those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.” Integrated settings are “located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.” Compliance will be determined on a case by case basis and the State will work with providers to develop remediation plans should they be required.

Comment:

One commenter expressed hope that the new regulations include children under the age of 18 as they have not found an appropriate after school program for their child with Autism to participate in enjoyable activities such as sports, swimming, spending time with friends, horses, or other activities with appropriate supports that children without disabilities enjoy. The commenter added that they are glad the new regulations allows for a variety of providers for services and described an experience where a loved one lived in a group home setting and felt the types of activities where limited.

Response:

The State appreciates the comment and believes the HCBS Settings rule will have a positive impact on the lives of HCBS participants, regardless of age.

Comment:

One commenter indicated question number seven on the Tool should differentiate between the individual's ability to leave a program with his or her ability to leave when safety is a concern.

Response:

The State recognizes that due to health and safety concerns some individuals may require an individualized modification that will be reflected in detail in the person-centered planning process. Individualized modifications are addressed in section 441.301(c)(4)(v)441.710(a)-(f) of the Final Rule.

Comment:

One commenter suggested question number 14 on the Non-Residential Tool should take into account the impractical aspects of negotiating work hours and pay for individual working at piece rate.

Response:

The regulation states individuals must be provided “opportunity to 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.” The State recognizes that unique circumstances may exist, and will work with providers on an individual basis to achieve compliance with the regulation throughout the transition period.

Comment:

One commenter stated question number 16 on the Non-Residential Tool indicates that we ensure that a client has an understanding. The commenter added that verbalization does not always indicate understanding of a rule or request.

Response:

The State agrees with the comment and has modified the question accordingly.

Comment:

One commenter stated question number 20 on the Non-Residential Tool needs to define "restrict access" to outside settings. The commenter added they do not restrict access, but they do not facilitate these opportunities. The commenter stated the way the question is written, it appears that if outside opportunities are not promoted, they are automatically denied access.

Response:

The regulation states individuals must be provided “opportunity to 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.” The State will work with individual providers to determine compliance throughout the transition process.

Comment:

One commenter stated question numbers 24 and 25 in the Non-Residential Tool should reflect the behavioral needs of clients that require interventions.

Response:

The person-centered support plan addresses behavioral needs that require interventions for an individual. The HCBS settings rule assures that individual supports and plans to address any behavioral need are applied on an individual basis and not to all individuals in the setting.

Comment:

One commenter suggested question number 31 in the Non-Residential Tool should consider the exception of access to staff only areas or offices.

Response:

For non-residential settings, individuals receiving Medicaid HCBS services must have the same degree of access as individuals not receiving Medicaid HCBS. The State will work with individual providers to determine compliance throughout the transition process.

Comment:

One commenter stated Section 441.710(a)(vi)(B)(1) requiring lockable doors is unclear, costly, and unnecessary to ensure the privacy and dignity of residents.

Response:

The intent of the Final Rule is to “provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.” The placement of locking doors and the types of locks will be specific to the setting. Any agreed upon restriction would need to be documented during the person-centered planning process on an individualized basis and may include the type of mechanism used, staff/family members who may be provided access and health and safety considerations leading to the decision.

Comment:

One commenter stated the section concerning choice of roommates is vague and creates a catch-22 for assisted living facility owners. The commenter recognized the value of choice of roommate policies but stated that the policy assisted living facilities are being asked to implement is a disaster waiting to happen as the regulation is unclear when referring to individuals in shared units having a choice of roommates “in that setting.” The commenter expressed concern that individuals who know they have the right to choose their roommate may decide that every potential roommate is inadequate.

Response:

The State understands the concern voiced and will work with providers to develop strategies that can both meet the HCBS Settings regulations and be reasonably managed by HCBS providers.

Comment:

One commenter stated the section requiring individual control of schedules and activities, including the participant’s access to food at any time, is untenable and unreasonable. The commenter stated they are required by the Department of Health to offer food at certain times with varying requirements, including proper food temperature, nutrition, and aesthetics.

Response:

The intent of the Final Rule is to “provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.” Individual control of schedules and activities is an integral component of community living. The HCBS Settings Rule may require that modifications be made to current state laws and licensing requirements. The State is performing a review of State laws/regulations at this time. Depending on the setting and the health and safety needs of the individuals residing in the setting, preparation of meals may vary. The State will work with individual providers to determine compliance throughout the transition process.

Comment:

One commenter stated the section concerning visitation hours misunderstands the purpose of assisted living. The commenter expressed the feeling that the regulations assumes assisted living in Utah is nothing more than an apartment complex or rental home, but in Utah assisted living is an interesting and dynamic hybrid of apartment living and healthcare.

Response:

The State understands the comment and recognizes compliance with aspects of the HCBS Settings Rule will be a paradigm shift for many providers and there are legitimate requirements to protect the health, safety, dignity and privacy of all individuals who may reside in a congregate setting. The intent of the Final Rules is to “provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.” Depending on the nature of the setting and the assessed needs of the waiver participants served that are discovered during person-centered planning, any restrictions to access visitors would be applied on an individual basis and not to all individuals in the setting. The State will work with individual providers to determine compliance throughout the transition process.

Comment:

One commenter expressed concern regarding the number of memory care residents to be cared for under this program, and added that while Section 441.710(a)(vi)(F) does allow for individualized modifications in certain circumstances, their reading of the regulations seems to require that each memory care resident elope once before we change a person-centered service plan. The commenter described that the process for changing a service plan is arduous and difficult and may make it difficult for providers to operate efficiently.

Response:

The State understands the comment and the concerns presented. The State will work with providers on a case by case basis to achieve compliance in all sections of the Final Rule. Any restrictions will need to be applied on an individual basis and not to all individuals in the setting. The State will work with individual providers to determine compliance throughout the transition process. Should items remain out of compliance, but the individual setting maintain the qualities of a home and community-based setting, the State will work with CMS to have the setting reviewed through the Heightened Scrutiny Process.

Comment:

One commenter requested that the State put an end-date for the comment period on the website.

Response:

The State appreciates this feedback and will make this change to the website in future comment periods.

Comment:

One commenter expressed excitement and concern regarding the HCBS Settings Final Rule. The commenter stated integration as a choice is a great thing, but should not be forced. The commenter added choice should remain the driving focus and that when integration is the choice, it should be funded appropriately with clear objectives and systems in place to deliver that choice in a successful way.

Response:

The State understands this comment and agrees that choice must be assured for all HCBS participants and that choice is an important component of the HCBS Settings Rules. The State will work with providers to assure that choice remains a focal point for all HCBS participants.

Comment:

One commenter expressed belief that the State must recognize and preserve the unique and positive relationship between assisted living homes, low-income residents, and the State that has been created by the cooperative nature of

the New Choices Waiver program. The commenter states that individuals participating in assisted living environments range in abilities from nearly independent to substantially dependent in some areas of their daily living.

Response:

The State understands this comment and will work with providers throughout the transition process to help them come into compliance with the HCBS Settings Rules.

Comment:

One commenter stated that the costs and challenges to owners and operators of assisted living facilities should be examined as the effect of these regulations diminishes access to needed services for many lower-income elderly in Utah.

Response:

The State will continue to evaluate the impact of implementing the requirements of the settings rule and the appropriateness of the existing reimbursement structure.

Comment:

Some commenters stated the Settings rule will cause HCBS participants to move from assisted living settings into more restrictive and costly nursing facilities. The commenters suggested provision in the Rule overly restrict the participant's freedom of choice regarding the residential settings in which they utilize their Medicaid funds.

Response:

The State understands the comment and agrees with the goal of providing services in the most appropriate and least restrictive setting. The State further recognizes compliance with aspects of the HCBS Settings Rule will be a paradigm shift for many providers and that there are legitimate requirements to protect the health, safety, dignity and privacy of all individuals who may reside in a congregate setting. The intent of the Final Rule is to "provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities." Depending on the nature of the setting and the assessed needs of the waiver participants served that are discovered during person-centered planning, any restrictions will need to be applied on an individual basis and not to all individuals in the setting. The State will work with individual providers to determine compliance throughout the transition process.

Utah HCBS Draft Transition Plan - Public Comment Summary
Summary of Public Comments from August 29, 2016, Version Four

A brief summary of public comments and the State's response to the comments follow:

Comment:

One commenter recommends the State continue to accept public comment through a variety of means including email, written correspondence, fax, and testimony.

Response:

The State agrees it is important to accept public comment through a variety of means, and will continue to accept public comment via email, written correspondence, fax, and testimony.

Comment:

One commenter suggested the State adopt consumer engagement and education as a formal action item.

Response:

The State will continue to work to engage and educate HCBS program participants throughout the Settings Transition process. The State encourages stakeholders and providers to continue to refer consumers to both the Workgroup and the Settings Transition list serve in order to ensure their inclusion in upcoming Settings public meeting, discussion, focus group, and training environments.

Comment:

One commenter urged the State to begin reviewing reimbursement rates and payment structures as many providers have indicated they will require additional funds in order to fully implement the rule.

Response:

The State appreciates the need to look forward at the impact the Settings rule will have on service delivery. Throughout the transition phase the State will continue to engage consumers, providers and advocates to develop strategies and establish and share best practices to ensure waiver participants are able to achieve their goals related to community integration and to receive services in settings which do not isolate them due to their disability/age.

Comment:

One commenter requested clarification on how settings previously determined to be Not Compliant or Not Yet Compliant may in fact be determined to be fully compliant.

Response:

Recent guidance from CMS has provided additional information on how Settings may be categorized. The guidance has identified the following settings as 'presumed to be home and community-based' and meet the rule without any changes required: individually-owned homes, individualized supported employment, and individualized community day activities. Although these settings are presumed to be compliant, they will be included in ongoing monitoring activities outlined in the Plan.

Comment:

One commenter stated that the Heightened Scrutiny portion of the Plan should include programmatic measures (i.e. service delivery) that will be used to determine if a setting has institutional characteristics, in addition to physical indications of settings that isolate.

Response:

The Heightened Scrutiny portion of the Plan includes programmatic measures that will be used to review settings with institutional qualities. State employees reviewing Self-Assessments or conducting Validation Site Visits will be trained on CMS' guidance for *Settings that Isolate* (<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>). Any setting determined through the application of this guidance in the Self-Assessment and/or Validation processes to have the effect of isolating individuals will undergo heightened scrutiny review. The State will utilize further guidance from CMS as it is released.

Comment:

One commenter expressed appreciation of the State's plan to facilitate groups of providers to talk through specific issues and problem solve, and encouraged the State to hold these groups as soon as possible. Another commenter suggested the State begin consulting with and training Support Coordinators and Case Managers on the application of the Settings Rule.

Response:

The State agrees that focused groups of providers and other stakeholders will support the development of creative solutions and facilitate a greater understanding of the Settings Rule in Utah. The State will work with Support Coordinators, Case Managers, and other stakeholders to begin this dialogue.

Comment:

One commenter requested additional detail on the State's plan to conduct onsite compliance reviews to confirm implementation of remediation plans, including which agencies will be performing the reviews, how compliance tools will be developed, how this process will differ from validation visits, and how consumers will be involved in the reviews.

Response:

The State Medicaid Agency in conjunction with waiver Operating Agencies will be the primary entities that conduct follow-up reviews to ensure remediation plans have been implemented. Reviews may be completed as desk reviews or on-site reviews as needed. The State plans to incorporate feedback from the stakeholder workgroup to establish best practices and standards for compliance; these will be the criteria used to measure and assess these settings. The State is also working on a process by which consumers and other stakeholders can report potential issues with settings compliance.

Comment:

One commenter requested the State further develop the section of the Plan detailing how individuals will be transitioned to compliant settings, including reassessment of need, budget adjustments, and non-disability specific service options.

Response:

The Plan assures the State will provide reasonable notice and due process to any participant that needs to transition to another setting. Through the person-centered planning process the Support Coordinator or Case Manager will ensure that the participant is provided information about alternative settings that comply with HCBS settings requirements and allow them to make an informed choice of an alternative setting. The Support Coordinator or Case Manager will ensure that all services are in place in advance of a participant's transition and will monitor the transition to ensure successful placement and continuity of services. As part of the transition process, the State will be working to strengthen and improve its person-centered focus which it will also employ in any needed transitions from non-compliant settings.

Comment:

One commenter requested clarification on whether consumer experience surveys will be conducted only during the implementation process, or will be used as an ongoing compliance tool beyond 2019.

Response:

Participant experience surveys have been included in the Plan as a part of ongoing monitoring activities and will not end with the assessment/remediation processes.

Comment:

One commenter stated the State should include a measure to address how providers will be assessed and monitored for compliance whose program became effective prior to the creation of the Attestation form and education tools, as CMS guidance indicates that settings created after March 17, 2014 must be fully compliant with the rule by the effective date of their program.

Response:

The state requires newly enrolling providers to attest to compliance with the specific home and community based characteristics outlined in the settings rule through signing an attestation form as part of their enrollment. These providers will be subject to on-going compliance monitoring activities. As part of its self-assessment process all existing providers were required to complete either the residential or non-residential assessment (or both). During its implementation of the Statewide Transition Plan the state believes it has balanced appropriate oversight with preventing access to care issues for individuals enrolled in the waiver programs.

Comment:

One commenter asked if the Plan will be posted in a format that is accessible to screen readers, on a website that is fully accessible to individuals with various disabilities. Additionally, the commenter asked whether drafts of the Plan will be provided in any languages other than English.

Response:

At this time there are no plans to translate prepared materials into other languages, however attempts will be made to accommodate individuals who may have difficulty accessing existing information. During public comment periods the State provides documents electronically and in paper copies for those who request them. We encourage individuals to contact our office if we may be able to assist with specific needs.

Comment:

One commenter asked if the State will provide information and status updates on the development of stakeholder training regarding the assessment and remediation tools. Specifically, the commenter suggested the development of self-study training modules, webinars, and/or other training materials designed to assist stakeholders to properly and efficiently use these tools.

Response:

The State will continue its work with stakeholders to improve its communication methods and materials used to educate and inform members of the public about the Settings rule and the Plan.

Comment:

One commenter asked if there been any consideration of providing direct mailings of Transition Plan iterations to Area Agencies on Aging and local Medicaid Offices to make the materials more accessible to stakeholders who do not typically access information in web-based/electronic formats. Additionally, the commenter suggested providing additional graphic displays of the information in the Plan, such as flow charts, to assist stakeholders to understand the Transition plan and the assessment and remediation tools.

Response:

Hard copies of the Plan are available upon request through the State Medicaid Agency, case management agencies, local DHS offices, and Area Agencies on Aging throughout the State. The State will work to create additional graphic displays of the information provided when recommended by members of the public in order to make information more accessible.

Comment:

One commenter asked what specific steps the State will take to ensure that the Transition Plan Workgroup will include stakeholders from geographically diverse areas of the state (non-Wasatch front and rural areas) as well as diverse stakeholder groups including aging and advocates representing various disability groups/categories. The commenter encouraged the State to work with Centers for Independent Living, People First of Utah, the Utah Developmental Disabilities Council and the Center for Persons with Disabilities at Utah State University to recruit participants for the Work group and for assistance with disseminating information to broader groups of stakeholders.

Response:

The State has performed direct communication and outreach to many of the groups indicated in order to solicit feedback and participation in the Transition Plan. During public meetings continued efforts to request stakeholder assistance to identify or recommend other individuals has become an ongoing endeavor to ensure as broad a group of individuals is reached as possible.

Comment:

One commenter requested the link to the CMS HCBS Settings Review Toolkit to conduct the preliminary screening of settings be highlighted and made readily available on the State HCBS Transition Planning webpage.

Response:

The CMS HCBS Settings Review Toolkit utilized by the State can be found at the following location: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports>. The State will add this link to the State HCBS Settings Transition website.

Comment:

One commenter requested the State provide the criteria that will be used to determine whether or not a provider will be subjected to a sanction when they fail to complete the Self-Assessment Tool within the required time frame.

Response:

The State will follow up with providers who have not yet submitted the required HCBS Setting Self-Assessments in order to provide guidance on the Rule and confirm a new submission date. The State will put a hold on payment for those providers who either choose not to submit self-assessments for required settings, or who do not meet the agreed upon deadline.

Comment:

One commenter suggested the workgroup be involved in the process of reviewing and documenting results from the provider self-assessment. The commenter added the workgroup could also be an asset when developing and modifying evaluation tools for contract certification and licensing reviews.

Response:

The State agrees the Workgroup provides valuable insight for the review of self-assessments submitted. The State consulted with the Workgroup to identify acceptable evidence and analysis submitted by providers for each indicator, which will be used to assess compliance or non-compliance with the Settings Rule. The State will continue to utilize the Workgroup environment for the development and modification of evaluation tools for the Settings Transition Project.

Comment:

One commenter requested more information about how and who at the State will be selecting a stratified random sample of settings to be reviewed for validation visits.

Response:

The statistical criteria which the State used in order to draw its sample of providers for validation visits can be found within the plan. In order to ensure all waivers/provider types were represented in the settings to be reviewed, a stratified random sample was used.

Comment:

One commenter encouraged the State, when leveraging existing licensing and contracting review schedules and resources as a component of the Validation Review process, to include resources in addition to DSPD such as the Medicaid offices and/or members of the workgroup.

Response:

The State respects both the desire of members of the public/Workgroup to assist in the validation of provider self-assessments along with the responsibility to ensure that the privacy of individuals in services is maintained, particularly related to their employment and private residences. The State will balance these interests during the validation process.

Comment:

One commenter asked if the State developed a template for remediation plans that can be used to assist providers in adequately responding to notification that remediation is required for their setting to be in full compliance with the Rule.

Response:

The State has developed a template for Remediation Plans. The template can be found on the Settings Transition website at the following location: <http://health.utah.gov/lrc/hcbstransition/>, and is titled *Provider Remediation Plan*.

Comment:

One commenter suggested the workgroup develop an attachment with a timeline and flow chart to guide providers through the various remediation steps they will be required to take in order to be in full compliance with the rule.

Response:

The State will work to create additional graphic displays of the information provided in the Plan.

Comment:

One commenter asked how the State will document sites' progress toward compliance when remediation is necessary. Specifically, the commenter asked if the State will be asking for monthly or quarterly reports, and what information these reports will require.

Response:

As part of a provider's Remediation Plan, an anticipated time frame to achieve compliance for each noted concern will be required. Periodic updates on progress may be used for significant/extensive issues when circumstances merit this approach.

Comment:

One commenter asked if the State will look to other states for examples of what is working well as far as tools to assess level of compliance and ensure person-centered planning requirements are being met.

Response:

The State will continue to utilize guidance released by CMS as well as best practices identified in other states throughout the Transition process as new tools and state requirements are developed.

Comment:

One commenter suggested the opportunity for individuals completing a participant experience survey to remain anonymous to encourage open and accurate feedback without causing stakeholders concern about impacting the services they receive. Additionally, the commenter suggested externally conducted participant focus groups with de-identified responses to gather additional, in-depth feedback from a sample of participants.

Response:

The State acknowledges the importance of the ability for consumers to submit an anonymous Participant Experience Survey due to the concerns mentioned. In order to effectively address providers who may have compliance issues, anonymity may not always be possible. Future strategies will seek to balance the need to remediate issues along with participant considerations.

Comment:

One commenter stated attention to the language abilities and comprehension level of participants should be a primary concern in designing any type of survey or other data collection tool designed to capture the lived experience of those receiving services covered by the HCBS waiver.

Response:

The State agrees with the comment and will continue to seek stakeholder input as HCBS Settings tools are created.

Comment:

One commenter requested information on how the State is evaluating the Addendum to the care planning process for the New Choices Waiver pilot which began in July, 2015.

Response:

The State understands the objective to create a more participant focused effort with person-centered planning and to ensure individual rights are protected. The need to balance this objective along with efficient use of time during care planning meetings is also understood. The State's evaluation process is attempting to ensure that meaningful, positive change is resulting in its changes to the care-planning process while minimizing administrative burden to the greatest extent possible.

Comment:

One commenter suggested numbering the Transition Plan document with subsections to make commenting on specific points more efficient and accurate, and to facilitate discussion.

Response:

The State agrees with the comment and will number future iterations of the Transition Plan document with subsections to facilitate future comment and discussion environments.

Comment:

One commenter expressed concerns about excluding individuals from receiving services in settings with others who have similar diagnoses as it may appear to be isolating. The commenter stated that people with similar diagnoses are often more comfortable with each other and would choose to manage their own levels of inclusion rather than having those levels dictated by the neuro-typical majority.

Response:

The State recognizes the importance of consumer choice in the context of home and community based settings compliance. In response to similar comments on the final rule, CMS noted that "it is not the intent of this rule to prohibit congregate settings from being considered home and community-based settings." The State believes that the purpose of the rule is to ensure that consumers are offered adequate choice between settings with various options for integration into the community. The State acknowledges that for some settings, implementing these requirements will require a change to operational protocol, and perhaps changes to licensure requirements, but we believe that the requirements are achievable. The State is committed to working with consumers and providers to achieve compliance with the settings rule.

Utah HCBS Setting State Transition Plan (STP) – Public Comment Summary
Summary of Public Comments from February 19, 2019, Version Five

Comment:

One commenter stated it was unclear if the Transition Plan Workgroup is comprised of a consistent group of members and if regular meetings occur. The commenter encouraged the State to provide more information on the Transition Plan Workgroup and to also include consumer and advocate involvement in the workgroup.

Response:

The Transition Plan Workgroup is comprised of a consistent group of members and the State intends to keep the workgroup membership consistent. The Workgroup meets on an ad hoc basis as indicated in the STP. The State agrees with the comment that the Workgroup should include consumer and advocate involvement and has updated the STP to include home and community based services (HCBS) clients and advocates in the list of stakeholders involved. The State has previously sought, and will continue to seek consumer and advocate participation in Workgroup activities. The State has secured Workgroup participation from advocates and waiver clients' family members, but has had challenges in finding consumers who are willing to participate in the Workgroup. We encourage advocates, providers and other stakeholders to continue to encourage and refer consumers to participate in the Workgroup and to enroll in the HCBS Settings list serve in order to ensure their inclusion in upcoming settings public meetings, discussions, and training environments.

Comment:

One commenter recommends the State include where the State is in the Provider Remediation Plan process and to supply as much information as possible on remediation plan action items in the STP. The commenter asked the State to include updates on these areas to reflect what recent progress has been made.

Response:

The State recognizes the importance of informing stakeholders on progress that has been made. The State believes that the purpose of the transition plan is to lay out the path the State is pursuing towards compliance. The plan itself is not the best avenue to provide this level of detailed information. Rather, the State will continue to communicate updates through the HCBS Settings listserv, HCBS Settings web page, and hold periodic stakeholder meetings.

Comment:

One commenter asked the State to clarify if providers have been given additional information after categorizing providers and completing validation reviews and if remediation plans reflect the most current data collected by the State.

Response:

The State has incorporated validation findings, including participant and staff interviews that require remediation into the Provider Remediation Plans. All providers/settings have received their setting specific remediation plan and have been given the opportunity to respond. Providers must have an approved remediation plan no later than March 2019. Providers with accepted timelines greater than one year (12 months) will be required to provide a status update to the State every six months.

Comment:

One commenter expressed concerns with the State delaying the Heightened Scrutiny process, stating that by continuing to wait on guidance from CMS, the State risks transferring a potentially large number of individuals to compliant settings under a compressed timeline.

Response:

The State has outlined a timeline in the STP for Heightened Scrutiny that the State is confident it will be able to achieve. The current Heightened Scrutiny process outlined in the STP was developed in accordance with the information provided from CMS (power points, trainings, State specific feedback) and from other states STP's that have received final approval.

Comment:

One commenter recommends that if the State needs to affirm a response or if there is additional information that must be gathered, this should be done as part of the assessment and validation process and not the in-depth review process.

Response:

The State agrees with the comment and considers the in-depth review process as an additional step to the validation process. The State believes there are providers that did not fully understand what was being asked of them during the self-assessment process and that these settings require additional attention by State Staff to validate their compliance. The State is committed to accurately categorizing settings prior to entering the Heightened Scrutiny process.

Comment:

The commenter highlights that the Heightened Scrutiny process is pivotal because it allows for recipients, families, and other individuals working within the service system to publicly voice their concerns about the settings identified.

Response:

The State agrees with this comment. Public input will be incorporated into the State's review process. Public notice will list affected settings by name and location (as appropriate), identify the number of individuals served in each setting, include all justifications as to why the setting is home and community based (this will include any reviewer reports, interview summaries, etc.) and provide the public an opportunity to comment.

Comment:

One commenter expressed concerns with the State's defined "in-depth review process" and stated that the State must identify any setting presumed to have the qualities of an institution in the STP and it is then for CMS, and not the Workgroup, to determine if the setting can overcome this presumption. The commenter stated that if CMS agrees with the State, that the setting does have the qualities of HCBS, and not the qualities of an institution, the setting cannot undergo significant changes in population or services without again going through the Heightened Scrutiny process. The commenter expressed the belief that providers should not have additional time for remediation.

Response:

The intent of the in-depth review process is to identify any settings presumed to have the qualities of an institution and to accurately categorize these settings prior to entering the Heightened Scrutiny process. During this step, the State may identify settings that are unable or unwilling to overcome the presumption that they possess qualities of an institution. Subsequently, these settings will not be submitted to CMS through the Heightened Scrutiny process. Settings that are identified through the Heightened Scrutiny process to overcome

qualities of an institution but are determined to be HCBS in nature will be submitted to CMS through the Heightened Scrutiny process. The State believes that if providers/settings are able to remediate those qualities that identified them as institutional in nature, the setting then becomes compliant and submission to CMS through the Heightened Scrutiny process is not required. For example, if the only institutional quality identified at a setting is that the setting is fenced in, and that setting removes the fence, the State would categorize that setting as compliant with the Settings Rule.

Comment:

One commenter states they are aware of new settings where providers are unfamiliar with the Settings Rule and that they have visited new settings that had the characteristics of an institution and should not be receiving reimbursement. The commenter urges the State to conduct onsite visits of new providers to ensure all HCBS consumers are receiving integrated services as required by the rule.

Response:

The State requires newly enrolling providers to attest to compliance with the Settings Rule through the signing of an attestation form as part of their enrollment. These providers are subject to on-going compliance monitoring activities and ongoing educational and training resources. The State recognizes there may be settings that require some additional technical assistance as they may have begun operation without a clear understanding of what a compliant setting looks like. The State continues to encourage anyone to provide setting specific feedback to HCBSsettings@utah.gov; the State is committed to working with providers to achieve compliance with the Settings Rule. In addition, the State intends to contact the commenter to seek additional information regarding the allegation that new settings have been enrolled that are not compliant with the Settings Rule.

Additional comment received outside of the public comment period:

In August 2017, the State received communication from the Disability Law Center (DLC) identifying sites which may not be fully in compliance with the Settings Rule. The information contained provider operated locations which likely due to observed physical characteristics or other noted factors may lead to having an isolating effect on individuals being supported there.

Response:

All of the settings/locations included in the DLC's letter have been categorized as ones which need to go through the additional in-depth review process and each will have an on-site review completed.