

## Appendix L—Public Comments from December 21, 2014 to February 15, 2015

**Overview:** This document serves as a summary of approximately 20 sets of questions and comments that the State has received from its stakeholders - including participants, advocacy organizations, legal entities, and provider networks - regarding the Maryland's HCBS draft transition plan. The draft transition plan was posted on December 21, 2014, with a comment period lasting through February 15, 2015. Careful attention was given to those comments that pertain specifically to the transition plan itself. Any other questions or comments that go into more detail about the process will serve to guide the State as we implement each remediation strategy. The State would like to thank all who have taken the time to be a part of our public meetings over the last six months, especially those who were able to take the time to submit their thoughts in writing in regards to the HCBS Community Settings Transition Plan.

### Assessment Process

#### Questions and Comments

#### State Response

Baseline surveys should not be included in the transition plan.

These data were included because they gave the State preliminary background information with which to work, and an opportunity to improve the processes moving forward.

There should be self-assessment surveys for providers.

Self-assessment surveys will be developed for providers.

There should be a quality of life assessment, such as the Ask Me! Survey, for participants.

The plan includes a strategy to explore common assessments and surveys that relate to quality of life and community integration.

The transition plan needs to more clearly define the tools intended to be used to conduct setting assessments and ongoing compliance monitoring.

The plan describes a process by which new tools will be created. Because there is not a validated/reliable tool, the State will work with transition teams in this step.

The National Core Indicators (NCI) data should be removed from the plan and a different validated tool should be used. The NCI data is extremely limiting.

Preliminary data, including NCI data, are utilized as background information, and will not limit how the State moves forward with the assessment process.

The new surveys should be developed by an entity experienced in survey design and analysis.

The Hilltop Institute will be involved in survey design and analysis.

The Comprehensive Settings Results document should be made available to providers so that agencies can individually have a sense of where they stand, but individual provider information should not be made available publicly. Aggregate data, however, should be made available publicly.

The State will investigate the most appropriate way to develop the report to be both sensitive to individual provider data, transparent to the public, and useful to all stakeholders.

Providers should conduct an individual-based self-assessment at each person's Individual Plan (IP) meeting in the beginning of September 2015, which each IP being reviewed in September 2016.

Participant surveys will need to be delivered outside the influence of providers. Therefore the State does not feel as though this is the most appropriate setting to accomplish the task. The State envisions using the help of case managers and self-advocate groups in this effort.

**Assessment Process****Questions and Comments****State Response**

The Department should hire experts in specialized data collection procedures.

The State will be working with the Hilltop Institute, who has expertise in this area.

Alternative and innovative data collection methods must be considered, including focus groups, participatory appraisal methods, well-designed accessible surveys, remote and video communications technology, and the use of social media.

The State will be exploring, with the help of our transition teams and the Hilltop Institute, alternative data collection methods moving forward in the process.

There should be participant and parent/caregiver annual surveys of provider performance. The results of these annual surveys should be used to determine licensing/re-licensing of a provider.

Provider performance will be a part of ongoing compliance and monitoring. The State will be reviewing current procedures and policies for compliance with the new rules and ways to enhance quality including participant surveys.

**Educational Efforts/Technical Assistance****Questions and Comments****State Response**

The transition plan should include information regarding future educational efforts geared towards informing individuals of their rights under the new regulations.

The State will work toward educating case managers as the primary voice to reach participants. The State will work with transition teams for input on educational efforts for participants and family members in regards to participant/applicant rights.

Educate individuals, caregivers, family members, providers, and advocates about the rule change, person-centered planning, etc.

The State will work with transition teams for input on educational efforts for the various stakeholders.

An orientation should be held for students and parents regarding terminology, programs, and services available.

Case manager entities are responsible for sharing information regarding programs, services, and requirements during person-centered planning processes and monitoring activities. The plan includes a strategy to review program policies and procedures to enhance current practices.

The transition plan should include technical assistance and training to ensure compliance with person-centered planning requirements.

CMS requires states to be in compliance with person-centered planning requirements. To improve on current practices, the State has several person-centered planning (PCP) initiatives including a federal grant to develop standardize training for option counselors, exploration of PCP processes for the State's Long-Term Services and Supports (LTSS) system, and federal technical assistance to enhance DDA's current practices and policies. These efforts will be shared with stakeholders for input and coordinated for implementation. Technical assistance and training on this topic will continue to be an area of focus moving forward in the process, but will not be included in the transition plan.

**Funding/Resources****Questions and Comments****State Response**

The resources/funding required to undertake system changes are inadequate. There needs to be capacity-building.

The State will implement the steps identified in the transition plan including conducting a rate study and developing transition teams to achieve systems change.

The Department must make resources available to facilitate engagement with businesses.

The State is open to suggestions for appropriate and effective method for encouraging businesses to participate.

Limited supply of housing and limited funding give rise to situations where individuals may not have many choices—this needs to be addressed.

The State has several housing initiatives associated with other federal grants including the establishment of a housing registry for HCBS participants, set aside public housing vouchers, and State funded efforts to bridge voucher gaps due to long waiting list. The State will also include housing specialists in the advisory groups to further explore new opportunities.

**Lease/Residential Agreement****Questions and Comments****State Response**

The department needs to create a model lease or legal residential agreement that provides protection to waiver participants.

The State will be working with the Maryland Disability Law Center and Legal Aid to construct a model lease to be reviewed by the public.

The lease requirement must come after regulations and rates are settled.

The State will be working with legal counsel to construct a model lease to be reviewed by the public and potentially utilized across programs. Examining regulations and rates will be a part of this process.

DHMH should not mandate that all housing agreements be leases or act like leases. Tenancy is not the only legally enforceable property right.

As part of the rule, CMS requires leases or other written agreements need to be in place. The State will investigate what is being used across programs, and develop standardized language that can be used.

**Person-centered Planning****Questions and Comments****State Response**

The Department should strengthen the person-centered planning process by including a review of the role of resource coordination in the transition teams' tasks and by providing training for surrogate decision makers.

The State is always looking at ways to strengthen person-centered planning. The Maryland Department of Aging has a federal grant to develop standardize person-centered planning training for option counselors. DDA is reviewing roles, responsibilities, and training for coordinators of community services (case managers) and also receiving federal technical assistance to enhance person-centered planning practices and policies. These efforts will be shared with stakeholders for input and coordinated for implementation.

**Person-centered Planning**

Questions and Comments	State Response
DDA should implement the MDLC Individual Plan Work Group’s recommendations for improving the person-centered planning process.	These recommendations will be taken into consideration for improvements to person-centered planning.
The IP (Individual Plan) should include provisions for emergency contingencies either within the home or community at large.	Emergency planning will be reviewed in the PCP efforts noted above.
The IP should not be prepared by service providers.	Maryland has case managers (e.g. support planners, coordinators of community services, etc.) that are responsible for the development of the person-centered service plan. Service providers, as part of the person-centered planning team, develop specific strategies to support employment, community integration, and other life goals that are approved by the participant and incorporated in the plan by the case manager.

**Regulations**

Questions and Comments	State Response
Regulations should be revised to explicitly include the new rule requirements and the person-centered planning process.	One of the transition strategies include revisions to regulation to comply with the final rule. This process includes opportunity for stakeholder input.
The transition plan should outline how § 441.735 of the new rule (regarding substituted judgment and surrogate decision makers) will be implemented.	This can be studied in the survey process, regulation review, etc. to determine if problems are identified and change is necessary.

**Service Settings**

Questions and Comments	State Response
DDA should aggressively move to end sheltered workshops and segregated day habilitation services by transitioning people to community-based supported employment and meaningful community activities.	The State has received differing opinions on the topic of sheltered workshops and day habilitation—some have expressed a desire to close such center-based employment settings, while others have urged to keep them as an option for participants who are guaranteed freedom of choice as part of the person-centered planning process. All settings must meet the federal HCBS settings requirements and State standards. The State will need to further investigate what is happening at each site by developing an evaluation tool to gauge level of compliance. Through the heightened scrutiny process and site visit evaluations, the State will make determinations regarding compliance in such settings.
Individuals should still have the choice of participating in day programs and sheltered workshops.	
Day programs, sheltered workshops, and group homes should not be closed	
High priority should be placed on making policy and funding changes to bring day programs and sheltered workshop settings into compliance.	
The department should end the use of campus-type settings and related settings that isolate people.	

### Service Settings

Questions and Comments	State Response
The department should explore all opportunities for assisting individuals in attaining housing independent of providers, and making choice of setting options a reality for individuals.	The State, with input from stakeholders, will explore opportunities and best practices.
The service delivery systems need to be examined to determine how to provide individuals with the staff and transportation support they need to leave their homes and fully engage in their communities.	The person-centered service plan process should identify all supports and services including Medicaid funded services, community options, and natural supports to fully meet the needs of the participant in engaging in their communities.
There should be no set limit regarding numbers of residents in the same building.	Current research and best practices for community integration in all settings, as well as compliance for all of the guidelines set forth by the federal rule, will be considered.

### Timeline

Questions and Comments	State Response
Implementation time frame is too short. Will take 10 years to implement.	The State adjusted some timelines based on stakeholder input. As per federal requirement, all changes must be completed by March 17, 2019.
The transition plan should set a realistic timeline for compliance. Some requirements should be addressed before others.	
The timeline for the residential lease agreement should be pushed back to at least 2018 to give providers adequate time to make necessary adjustments that will enable compliance with the Final Rule.	The plan was updated to demonstrate the timeframe for investigating the leases currently in use, exploring standard language, and communicating standards. The lease itself, as a requirement, will need to be in place by 2018.
The Comprehensive Settings Results document needs to be completed before April 2018.	This has been adjusted to December 2017.
The on-site survey needs to be completed earlier than 2018.	This has been adjusted to July 2017.

**Transition Plan (General)**

<b>Questions and Comments</b>	<b>State Response</b>
<p>The plan should include a vision statement.</p>	<p>AS noted in the plan, Maryland’s HCBS services should support participants to receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services. Participants will be assisted in developing a person-centered plan that is based on the individual’s needs and preferences; choice regarding services and supports and who provides them; and for residential settings, the individual’s resources. Services should optimize individual initiative, autonomy, and independence in making life choices. Services should support opportunities for individuals to seek employment and work in competitive integrated settings, engage in community life, and control personal resources. Services should ensure individuals’ rights’ of privacy, dignity, respect, and freedom from coercion and restraint.</p>
<p>The transition plan should be more user-friendly and less complex.</p>	<p>The State will continue to explore various methods to share the plan and information in a more user friendly and less complex manner to support all stakeholders.</p>
<p>The Department needs to review portions of the plan and appendices where stakeholders disagree on current compliance (i.e. page 16 involving DDA IPs being reviewed by several entities).</p>	<p>The State will continue to review program elements to detect any current compliance issues and enhance quality.</p>

**Transition Teams**

<b>Questions and Comments</b>	<b>State Response</b>
<p>The role and purpose of the transition teams needs to be clarified.</p>	<p>A noted in the transition strategy, the purpose and roles of the transition teams are to provide ongoing stakeholder guidance, input, and monitoring of transition plan strategies.</p>
<p>Families, participants, and subject matter experts should be included on the transition teams.</p>	<p>Transition teams will include HCBS participants, family members, and subject matter experts such as the Maryland Disability Law Center, Legal Aid, and the Hilltop Institute.</p>
<p>The Office of the Attorney General should be included in the transition teams.</p>	<p>The State can investigate this possibility.</p>
<p>Incorporate subcommittees for more focused discussions on the transition teams.</p>	<p>The State will work with transition teams for the need of subcommittees.</p>
<p>Transition team meetings should be accessible to the public.</p>	<p>Meetings will either be open to the public, or materials will be made available to the public.</p>
<p>The Prince George’s County Adults with Developmental Disabilities Citizen Advisory Committee should be included on transition teams.</p>	<p>The State will begin a process to identify all interested people and organize transition teams.</p>

**Transition Teams**

Questions and Comments	State Response
The Maryland Down Syndrome Advocacy Coalition has direct and substantial interest in the planning process.	The State will begin a process to identify all interested people and organize transition teams.
The Department should create a Business Advisory Group to provide solid business advice to the transition teams.	The State will begin a process to identify all interested people and organize transition teams.
The Medical Day Care Waiver Advisory Council has expressed interest in having members represented on a transition team.	The State will begin a process to identify all interested people and organize transition teams.
The Department must provide sufficient resources to make the work of the transition teams meaningful.	Research, best practices, and other available materials and resources will be provided.

**Miscellaneous**

Questions and Comments	State Response
The Department should develop stronger action plans that include targeted numerical goals for person-centered planning, community integration, participant choice, employment, and the development of a model lease.	The details of the transition plan will continue to be developed as new information and results are provided by the remediation strategies.
There should be a mechanism by which to express grievances.	As noted in the plan, providers will have opportunities toward technical assistance throughout the transition plan process to help them meet the requirements. Individuals will need to receive services in settings that comply with the requirements, and there will be a specialized focus on ensuring participants understand the process and do not lose services. There will not be a formal appeal process for individuals who wish to receive services from noncompliant providers.
The stipulation of a six hour day for CLS, which is an increase from the current four hour per day minimum under SE has many concerned. The six hour day minimum means those who had been serving four hours per day will require more staff time without an increase to account for this cost.	The State is investigating where this misconception arose, but this is inaccurate information. CLS activities must be provided a minimum of four hours.
There should be public reporting by the State, no less than annually during the transition period, on the progress of rate-setting, regulatory compliance, and technical assistance.	The State agrees that stakeholders should be updated with the progress being made over the course of the transition.
Any new DDA policies that result from the Final Rule should be communicated to providers at least 60 days prior to their official implementation, should only be applied prospectively, and should include a public input process.	The State will communicate any new policies that are developed as a result of this transition plan. We will strive to obtain input and give adequate notice to all providers.

**Miscellaneous**

**Questions and Comments**

**State Response**

DDA should identify a skilled, knowledgeable entity to actively track and coordinate all systems change activities.

DDA will continue to work with Medicaid in this process to track and coordinate system change activities.

DDA should set guidelines that allow an individual receiving supports and their team to assess and determine fair levels of risk. The individual's team and person-centered plan should drive the level of risk deemed appropriate in order to meet the standards embodied in the Final Rule.

The State's responsibility will be to ensure that the settings and programs meet the requirements. The person-centered planning process should include a risk assessment for the person on an individual basis; however this does not mean that they could opt out into a setting that does not meet the requirements.

There needs to be clarification in the plan regarding the 85% standard for the NCI data.

On March 12, 2014, CMS issued new guidelines related to quality measures in a document titled "Modifications to Quality Measures and Reporting in §1915(c) Home and Community-Based Waivers". The new guidelines establishes a minimum 86% compliance threshold for program performance measures. CMS requires a quality improvement strategy when a measure is at or below 85% threshold.

Individuals have the right to information regarding publicly funded programs, supports, and services. This information must be presented in the best format for them and parent/caregiver understanding.

The State will work with transition teams and advocacy groups including self-advocates to develop information and tools to enhance the sharing of information about public funded programs, supports, and services.

Time should be taken to develop consistent terminology and their definitions and usage.

The State, with the assistance of transition teams, will investigate the possibility of streamlining program language as the process continues.

Why does DDA need to re-review and approve changes (in IPs) when no additional funding is being requested and the new provider is DDA approved?

The State must meet federal assurances (rules) related to service plans and health and welfare. At times, changes to services can impact participant's health and welfare even when they do require additional funding. As noted in the transition strategies, the State will review current practices and policies to comply with the federal rule.

The Department is encouraged to create self-advocate workgroups to develop and expand the ways in which the advocacy community can support compliance with regulations.

The State values self-advocates and encourages participation in transition teams and workgroups.