

## Appendix N-Public Comments from March 25, 2022 to April 23, 2022

Overview: This document serves as a summary of comments that the State has received - including participants, advocacy organizations, legal entities, and provider networks - regarding Maryland's HCBS State Transition Plan (STP). This document serves as a summary of comments that the State has received - including participants, advocacy organizations, legal entities, and provider networks - regarding Maryland's HCBS State Transition Plan (STP). 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.

### **Brain Injury Waiver**

<u>Public Input/Comments</u>	<u>Current Language Recommendation</u>	<u>Department Response</u>
<p>Why does supported employment require further assessment and remediation? This service is provided to individuals enrolled in the program to support them in competitive jobs in the community.</p>	<p>This is the definition in the most recent waiver renewal:  <i>Supported Employment is individual employment support, including transportation assistance from the participant's residence to place of employment, for participants who, because of their disabilities, need intensive on-going support to obtain and maintain competitive, customized or self-employment in an integrated work setting at or above the state's minimum wage in a job that meets personal and career goals.</i></p> <p><i>Supported employment means activities needed to support paid work in the community (in a regular work setting) by individuals receiving waiver services, including supervision and training. Supportive employment includes but is not limited to assisting the participant</i></p>	<p>It is not included as indicated in the STP.</p>

*to locate a job or develop a job on behalf of the participant. Supported employment is conducted in a variety of settings, particularly work sites where persons without disabilities work. When supported employment services are provided at a worksite where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by participants receiving waiver services as a result of their disabilities but does not include payment for supervisory activities rendered as a normal part of the business setting.*

*Level 1 requires that staff members provide daily contacts to the waiver participant. Level 2 requires that staff members provide a minimum of 1 hour of direct support per day. Level 3 requires that staff members provide continuous support for a minimum of 4 hours of service per day. Documentation is maintained in the file of each individual receiving this waiver service(s) may only be furnished to a waiver participant to the extent that they are not available as vocational rehabilitative services funded under the extent that they are not available as vocational rehabilitation services funded under the*

	<i>rehabilitation Act of 1973.</i>	
Background information, page 40 references individuals with "traumatic brain injury". The definition in regs is for "brain injury".	BI Waiver-removed the word traumatic several years ago so that individuals with any acquired brain injury could access the program.	The word "traumatic" has been removed in accordance with the regulation.
<b>Maryland Association of Community Services (MACS)</b>		
STP states that "changes to the residential setting must be supported by a specific assessed need which is detailed in the participant's person-centered service plan.	We believe a statement should be added that addresses the option and right of an individual to change their residential setting location at any time, based on his or her preferences. This would clarify that these types of changes need not be supported by a specific assessed need.	Individuals in residential settings have the right to change settings. The statement in the STP is reflective of the fact that the residential settings must make changes to those settings e.g environmental adaptations, in consideration of the assessed needs of the participants.

<p>The Introduction, in the third bullet, the draft STP states that “Services must ensure individuals’ rights of privacy, dignity, respect and freedom from coercion and restraint.” Freedom of choice of qualified providers and freedom of association are important to quality of life and should be included in the goals for each HCBS program.</p>	<p>We believe a statement should also be added to clarify that a person with IDD (A) who receives community living services may choose to live with someone with IDD (B) who receives community living services and who has an assessed need for rights restrictions in their community residential setting without (A) needing to show an assessed need for the setting restrictions. In this case, the persons’ plan must document how the HCB settings requirements will be met.</p>	<p>The service model CL- GH and CL-ES are designed specifically for people with or without restrictive measures. Maryland offers residential services that allow individuals with IDD to reside with others with and without IDD. The sites are licensed and the rates are different.</p>
--	---	---

**Maryland Developmental Disabilities Administration (DDA)**

<p>Shared Living, a support model that provides residential support in the home of an individual, couple, or family in the community that shares their home with the person receiving supports, is included for further review solely because it is residential in nature.</p>	<p align="center">N/A</p>	<p>Shared Living consists of an arrangement in which an individual, couple, or an individual,couple,or family in the community share(s) his/her/their home with a participant. The individual, couple, or family support(s) the participant in the same manner as he/she/they would a family member, including engaging in all aspects of community life.</p>
--	---------------------------	---

**Page 42**

The STP references that DDA must grant exception for anyone to live in a home with greater than 4 residents. However, in the next paragraph, the STP states that any home with more than 3 residents will require further review to ensure compliance with the Final Rule. It is unclear why MDH has chosen homes with 3, rather than 4, residents to warrant further review. Additionally, it is unclear why people receiving Supported Living would fall under this type of scrutiny, in light of the requirement that people in Supported Living must live in a home that they control, including the following requirements:

1. The residential setting cannot be provider owned and operated.
2. The residential setting is not licensed by the Maryland Department of Health.
3. The residential setting must be owned or leased by at least one of the individuals residing in the home or by someone designated by one of those individuals, such as a family member or legal guardian.

4. The individuals living in the home are legally responsible for the residence in accordance with applicable federal, State, and local laws and regulations and any applicable lease, mortgage, or other property agreements.

N/A

The STP has been amended to correct all references to that discrepancy. The STP reads as follows: A residential setting assists participants with acquisition, retention, or improvement of skills related to activities of daily living and the social adaptive skills necessary to enable the participant to live. The MDH must grant an exception for any individual living in a home with greater than 3 individuals. In reviewing these exceptions requests, the MDH considers the following:

- 1) the wishes of the individuals living in or proposing to live in the home,
- 2) the interests of the individuals living in or proposing to live in the home, and
- 3) the health and well-being of individuals living in or proposing to live in the home. No more than 3 participants requiring support may reside in an individual's, couple's, or family's home at one time. This service was included in the service types requiring further review to ensure compliance with the Final Rule as it is residential in nature.

<p>The STP references the tiered standards Stakeholder group that met a number of times primarily from 2016 to 2017. The STP says that “Once finalized, the standards were incorporated into the Community Pathways Waiver through an amendment.” Given that stakeholders are unaware that tiered standards were ever “finalized”, it is unclear how they were incorporated into the waiver. The minutes from one of the Tiered Standards Committee-Residential Supports Subcommittee (January 4, 2017); specifically Recommends that “DDA should not impose Tiered Standards as part of its transition plan. The State can set goals for the growth of new services that are not tied to CMS’ oversight.” It does not appear that this position and recommendation from the Subcommittee was reversed at any point during the brief time period this group was Meeting, yet Tiered Standards have been included in the STP. Further, the statement that the Final Rule requirements were “incorporated into the development of Tiered Standards” runs counter to the numerous statements by DDA leaders that the purpose of the tiered standard was to set standards above those set by the Final Rule.</p>	<p>N/A</p>	<p>Per the DDA comments information in the STP, the standards were not implemented.</p>
<p><b>Page 46</b> Remediation Strategies The STP states that Transition Advisory Teams were</p>	<p>N/A</p>	<p>Maryland will continue to engage stakeholders with respect to the proposed remediation strategies and provide additional training and technical assistance to providers, as necessary, to ensure all providers have the tools and support</p>

<p>intended to “ensure ongoing stakeholder involvement as it relates to the STP and achieving compliance with the Final Rule”. However, the timeline for completion was April of 2015, which precludes the ongoing stakeholder involvement that is needed in order to ensure a smooth transition to a state of compliance with the Final Rule.</p>		<p>necessary to achieve full compliance by March 17, 2023 and remain in compliance thereafter.</p>
<p><b>Page 52</b>  The DDA rate study, while showing a date of December 2017 as the timeline for completion, is still not fully completed. The initial study by JVGA was completed in 2017, but extensive subsequent work was deemed necessary by Optumas, a second consulting firm. While MDH has made considerable progress in the rate-setting process, there are still significant concerns with rates, particularly for meaningful day services; concerns which have been communicated to the Department and acknowledged. Without adequate rates for all services, compliance with the Final Rule will be challenging, if not impossible. Lastly, the chronic direct support workforce shortage which reached a historic down-turn during the pandemic, must be addressed through rate-setting, and other policy goals such as career ladders, in order for community providers to comply with the Final Rule.</p>	<p>Lastly, in light of these extraordinary circumstances, and the direct impact disenrollment  Could have on people with house supports, MDH should consider and develop a plan for using state-only funds to bridge the gap in time for a provider to achieve full compliance. This is important to ensure people with IDD are not negatively impacted by changes in their compliance. This is important to ensure people with IDD are not negatively impacted by changes in their services and supports and that they continue to have the opportunities to exercise choice and control in their lives. It is also also important that providers who are acting in good faith to transition to compliance have both the assistance and post-pandemic time they need to do so in a thoughtful, meaningful, and quality-enhanced manner. This would be consistent with the statement on page 51, that</p>	<p>There will be no changes at this time. Please See The Rate advisory process below:  <a href="#">Rate Review Advisory Group</a></p>

	<p>Maryland’s intent is not to close or terminate providers, and Consistent with DDA’s commitment to ensuring people with disabilities have access to supports and service in their communities and the opportunity to have full lives.</p>	
<p><b>Pages 54-56</b>  The timeline outlined in the STP for notice to be given to providers, and action taken by MDH regarding potential non-compliance, is troubling and could have a negative impact on people with developmental disabilities. The last two years have been extraordinarily challenging for providers and people who use supports, between the COVID-19 pandemic and the subsequent debilitating DSP workforce shortage. Implementation of the Final Rule has not been a focus of attention since the onset of the pandemic in March 2020 as health, safety, and continuity of care was the critical focus for people with IDD and providers. In consideration of the continuing pandemic and ongoing recovery efforts of the developmental disabilities community, the pandemic related and CMS approved service flexibilities will continue until June 30, 2022 unless extended. The draft STP indicates that a list of non-compliant providers will be generated in June 2022, barely more than one month away. The draft plan</p>		<p>The timeline outlined in the STP remediation plan regarding notice to providers has been established based on federal requirements mandating full compliance by March 17, 2023. It is Maryland’s intention to assist each participant with understanding the full benefit of the HCB settings requirements and to assist each provider in achieving and maintaining full compliance with the Final Rule.</p>



states that providers will be notified in July 2022, will have 3-4 months to remediate issues in order to achieve compliance, and notice will be sent to people using supports in October 2022 noting the need to select a new provider, submit a new plan, and if applicable, relocate to a new residence. The timeline for relocation to be completed in the draft STP is January 2023.

We disagree with this timeline. It does not provide people with IDD enough notice, nor does it allow enough time for providers. It does not reflect the impact of ongoing COVID-19 cases requiring isolation and quarantine, the work needed to rebuild the provider workforce, nor the return and transition to full supports and services. Providers will need additional time and assistance to comply with the Final Rule as they emerge from the pandemic and work through related recovery efforts. The STP indicates a possible disenrollment date of December 31, 2022 for provider non-compliance in Maryland, despite a federal deadline of March 17, 2023.

While we understand that people who use supports will need adequate time to transition to a new provider and/or residence in the unfortunate case that they must do so, MDH should use the full timeline allowed under federal guidelines before considering disenrollment of a provider for non-compliance.

