

# Statewide Transition Plan for Compliance with Home and Community-Based Setting Rules

STATE OF MARYLAND



MARYLAND  
Department of Health

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## **EXECUTIVE SUMMARY**

Maryland receives funding from the Centers for Medicare and Medicaid Services (CMS) to help pay for services provided in waiver programs such as the Autism, Brain Injury, Community Pathways, Community Options, Model, and Medical Day Waivers. In 2014, the federal government put out new rules that states must follow to continue to receive funding to pay for services. This plan gives information about the new rules; the State's review of programs and the plan to implement the rule; and input received from various stakeholders like participants, family members, advocates, and others.

## **INTRODUCTION**

On March 17, 2014, the Centers for Medicare & Medicaid Services (CMS) issued regulations that define the settings in which states can pay for Medicaid Home and Community-Based Services (HCBS or HCB). The purpose of these regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated and that support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as individuals who do not receive HCBS. These changes will maximize the opportunities for participants in HCBS programs to have access to the benefits of community living and to receive services in the most integrated setting.

States must ensure all HCB settings comply with the new requirements by completing an assessment of existing state rules, regulations, standards, policies, licensing requirements and other provider requirements to ensure settings comport with the Home and Community-Based settings requirements. States must be in full compliance with the federal requirements by the time frame approved in the Statewide Transition Plan but no later than March of 2022.

Prior to the Final Rule, HCB setting requirements were based on location, geography, or physical characteristics. The Final Rule now defines HCB settings as more process and outcome-oriented, guided by the consumer's person-centered service plan, and clarifies settings in which home and community-based services cannot be provided. These settings include nursing facilities, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospitals.

## **Overview of Setting Provision**

The Final Rule requires that all home and community-based settings meet certain criteria. These include:

- The setting is integrated in and supports full access to the greater community;
- The setting is selected by the individual from among setting options;
- Each individual has a right to privacy, is treated with dignity and respect, and is free from coercion and restraint;
- Provides individuals independence in making life choices; and
- The individual is given choice regarding services and who provides them.

- Specific to provider-owned or controlled settings, additional requirements must be met:
- The individual has a lease or other legally enforceable agreement providing similar protections;
- Individuals must have privacy in their living unit including lockable doors;
- Individuals sharing a living unit must have choice of roommates;
- Individuals must be allowed to furnish or decorate their own sleeping and living areas;
- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

Any modification to requirements for provider-owned home and community-based residential settings must be supported by a specific assessed need, justified in the person-centered service plan, and can only be made exclusively on an individual basis. Documentation of all of the following is required:

- Identification of a specific and individualized assessed need;
- The positive interventions and supports used prior to any modification(s) to the person-centered plan;
- Less intrusive methods of meeting the need that has been tried but did not work;
- A clear description of the condition(s) that is directly proportionate to the specific assessed need;
- Review of regulations and data to measure the ongoing effectiveness of the modification(s);
- Established time limits for periodic reviews to determine if the modification(s) is still necessary or can be terminated;
- Informed consent of the individual; and
- An assurance that interventions and supports will cause no harm to the individual.

Proposed regulation COMAR 10.09.36.-1 is in the process of being adopted and is overarching. It supersedes the language in the other cited COMAR regulations. All providers of Home and Community-Based services are obligated to follow the guidelines and criteria set forth under COMAR 10.09.36. This regulation will ensure all of the processes and procedures that are currently non-compliant will be in compliance. As a result, no provider will be non-compliant.

The intent of the federal regulation and Maryland's transition plan is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community.

The Statewide Transition Plan covers three major areas: Assessment, Proposed Remediation Strategies, and Public Input. It identifies the framework and strategy for achieving and maintaining compliance with the federal requirements for HCB settings in Maryland.

Stakeholders have provided new strategies and offers of assistance related to the outreach, design, and administration of additional surveys which are reflected in the remediation strategies. Prior to the implementation of program specific surveys, the State administered the survey using a pilot group, which allowed Maryland and stakeholders to be confident in the survey questions and results.

## MARYLAND'S HOME AND COMMUNITY-BASED SERVICES

Maryland's home and community-based 1915(c) Waiver and 1915(i) State Plan programs differ significantly in the populations they serve, their size and complexities, and their statutory and regulatory structures. Within each of these programs, waiver services are developed to support individuals to receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services. The goals of each waiver include the following:

- Services must optimize individual initiative, autonomy, and independence in making life choices.
- Services must support opportunities for individuals to seek employment and work in competitive integrated settings, engage in community life, and control personal resources.
- Services must ensure individuals' rights' of privacy, dignity, respect, and freedom from coercion and restraint.

Individuals in each waiver are 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. Information regarding the types of services and setting options, including non-disability specific settings and an option for a private unit in a residential setting must also be documented in the plan.

The Maryland Department of Health (MDH), as the single state Medicaid agency, is responsible for all 1915 (c) and 1915 (i) programs. MDH's Office of Health Services (OHS), Developmental Disabilities Administration (DDA), and Behavioral Health Administration (BHA) are responsible for daily administration of specific programs on the following page. In addition, MDH has an agreement with the Maryland State Department of Education (MSDE) for the administration of the Autism Waiver.

Currently, for each of the 1915(c) waivers that offer HCBS, there is a comprehensive quality plan in place to monitor service delivery and ensure continuous compliance with HCB setting criteria. Program specific quality plans are detailed in each waiver application. These plans include the details of the quality assurances developed and implemented by the State, including policies and processes in place to ensure quality of person-centered plans of service and participant's health and welfare.

Individuals who are enrolled in and receiving services from one of the HCBS programs may also be referred to, in this Statewide Transition Plan, as participants, children, consumers, individuals, or clients.

Service plans may also be referred to, in this Statewide Transition Plan, as Individual Plans, Plans of Care, Plans of Service, Person-Centered Plans of Service, Individualized Treatment Plans and Individualized Education Plan (IEP).

Case managers may also be referred to, in this Statewide Transition Plan, as Supports Planners, Service Coordinators, and Coordinators of Community Services.

The following programs are included in the STP:

Federal Reference	Program	Administering Agency	Number of Recipients	Medicaid Providers
MD.0339.R03.00	Autism Waiver	MSDE	1054	49
MD.0023.R06.00	Community Pathways Waiver	DDA	14,570	240
MD.0265.R04.03	Home and Community-Based Options Waiver	OHS	3,615	596
MD.0645.R01.00	Medical Day Care Waiver	OHS	5,632	119
MD.40118.R06.00	Model Waiver	OHS	218	73
MD.40198.R02.00	Traumatic Brain Injury	BHA	91	7
	1915(i) State Plan Home and Community-Based Services (Intensive Behavioral Health Services for Children, Youth, and Families)	OHS & BHA	41	8

**Note:** Based on FY2016 Maryland Medicaid Management Information System (MMIS) claims data run through December 31, 2016. The 1915(i) was approved as of October 1, 2014.

Each program supports a specific population, offers a variety of services in different settings, and has specific provider networks and stakeholder groups. This Statewide Transition Plan identifies at a high level the commitments and requirements that each of the six HCBS waivers and 1915(i) State Plan program will meet. Specific approach and details surrounding each program will reflect the input and guidance of the particular program's stakeholders, and the unique structure and organization of the program itself. The complexity of each task has the potential to vary significantly across programs.

The following pages include summaries of the initial compliance findings for each program based on: an assessment of the program's provider and site data; and waiver application and regulations service definitions, rules, and policies currently governing all setting, both residential and non-residential. The program summaries and initial findings were used to identify areas of concern, which are reflected in Maryland's proposed remediation strategies section including quality assurance processes to ensure ongoing compliance. Maryland is committed to engaging with stakeholders and has sought public input from various stakeholders including participants, family members, self-advocates associations, advocacy groups, and others throughout the process of the transition plan development.

## ASSESSMENT OF MEDICAID WAIVER AND STATE PLAN REGULATIONS:

COMAR Regulation	Title	Preliminary Findings	Reference
10.07.05	Residential Service Agencies	Missing criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix A</a>
10.07.14	Assisted Living Facilities	Missing some of the criteria dictated by the Final Rule, and two of the regulations are noncompliant with the rule related to the freedom to access food at any time and have visitors at any time.	<a href="#">Appendix B</a>
10.09.07	Medical Day Care Services	Missing a significant amount of criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix C</a>
10.09.61	Medical Day Care Waiver	Missing significant criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix C</a>
10.09.26	Community Pathway Waiver	Missing some of the criteria dictated by the Final Rule, and non-compliance findings related to integration to the community, individual selections, and independence.	<a href="#">Appendix D</a>
10.09.27	Model Waiver	Missing a large majority of criteria dictated by the Final Rule. The regulations only have two components that are present; all other components are absent. There are no issues of noncompliance.	<a href="#">Appendix E</a>
10.09.46	Brain Injury Waiver	Missing a large amount of criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix F</a>
10.09.54	Home and Community Based Options Waiver	Missing a small amount of criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix G</a>
32.03.01	Senior Citizen Activities Centers Capital Improvement Grants	Missing a small amount of criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix G</a>

<b>COMAR Regulation</b>	<b>Title</b>	<b>Preliminary Findings</b>	<b>Reference</b>
32.03.04	Congregate Housing Services Program	Missing a small amount of criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix G</a>
10.09.56	Autism Waiver	Missing nearly all criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix H</a>
10.09.89	Intensive Behavioral Health Service for Children, Youth and Families (1915(i))	Missing criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix I</a>
10.12.04	Medical Day Care Facilities	Missing criteria dictated by the Final Rule. There are no issues of noncompliance.	<a href="#">Appendix J</a>
10.22.01 - 10.22.12 and 10.22.14 - 10.22.20	Developmental Disabilities Administration – Various Titles	Missing criteria dictated by the Final Rule and noncompliant findings related to freedom from restraint; legally enforceable agreement by the individual receiving services; conflict of interest related to development of person centered service plans; and setting options.	<a href="#">Appendix K</a>



## SECTION 1: ASSESSMENT OF MARYLANDS HCBS PROGRAMS

# AUSTIM WAIVER (Medicaid Waiver for Children with Autism Spectrum Disorder)

### BACKGROUND

The Autism Waiver is a collaborative effort between the Maryland State Department of Education (Operating State Agency) and MDH (State Medicaid Agency), 24 local school systems, and private sector partners within Maryland with a goal to enable children with Autism Spectrum Disorder (ASD) to remain in their home and community. Through the waiver, Maryland's children and families receive services such as respite, therapeutic integration, and intensive individual support services provided by highly qualified professionals and trained direct care workers. A registry is provided by MDH as part of an ongoing effort to address federal Centers for Medicare and Medicaid Services (CMS) requirements for "state wideness" in the management and provision of the Autism Waiver program and services. Children who apply for the Autism Waiver are referred from the registry in chronological order according to the date the child was placed on the registry. Applicants are considered for the Autism Waiver by the local school system according to a thorough process and set of medical and technical guidelines. Financial eligibility is determined by MDH, Eligibility Determination Division. Service coordination and the technical eligibility determination are also provided by the local school system. Children must have an Individualized Education Program (IEP) and must be receiving at least 15 hours of special education services per week. Children who are diagnosed with Autism Spectrum Disorder are eligible. Children must be between ages one and 21 as measured by the school year in which they turn 21 years old. Candidates must meet the level of care required to qualify for services in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

The Autism Waiver offers the following services:

1. Adult life planning (ALP)
2. Environmental accessibility adaptations
3. Family consultation
4. Intensive individual support services (IISS)
5. Respite care
6. Service coordination
7. Residential habilitation
8. Therapeutic integration services/Intensive therapeutic integration services

The Autism Waiver's renewal date is July 1, 2019.

## **ASSESSMENT OF SERVICE DELIVERY SYSTEM SETTINGS**

From July through October 2014, OHS, and MSDE, completed a review of provider data, self-assessment surveys, analysis of the Autism Waiver application, and State regulations, which are further described below.

Through routine monitoring efforts, including quality reviews, data analysis, and communication with participants and providers, Maryland is aware of many strengths and weaknesses of the service delivery system as they relate to the HCB setting rule.

Additionally, OHS and MSDE currently monitor providers and service delivery through a variety of other activities as well: quality reviews, quality surveys, data analysis, plan of service reviews, reportable events, and communication with participants and providers. These efforts will continue throughout the transition process and will be updated to include the new federal standards and other strategies recommended by stakeholders.

The Office of Health Care Quality (OHCQ) licenses three of the residential providers, while the Department of Human Resources (DHR) licenses the remaining two residential providers. Participants Treatment Plans are reviewed annually by MSDE to ensure ongoing compliance with the licensing requirements. Parents of Autism Waiver participants and where possible, the participant, meet with their service coordinators annually for face-to-face meetings, and have monthly contact, to monitor service delivery, including progress on goals, assessment of services as per the plan, status and confirmation of health services, eligibility, and incidents. These plans are resubmitted to the OHS for review. These reviews can be expanded to include the new setting standards of the Final Rule.

The Autism waiver has a Quality Management Strategy designed to review operations on an on-going basis, discover issues with operations, remediate those issues, and develop quality improvement initiatives to prevent the repeat of operational problems. Regular reporting and communication among the Office of Health Services, MSDE, providers, and other stakeholders, including the Waiver Advisory Councils, facilitates ongoing discovery and remediation. The Office of Health Services is the lead entity responsible for trending, prioritizing and determining system improvements based on the data analysis and the formulation of recommendations for system improvements. Partners include, but are not limited to, MSDE, OHCQ, DHR providers, participants, and families. A plan to work on significant problem areas may result in the establishment of a specific task group or groups, which may include stakeholders.

In accordance with the Department's Reportable Events Policy, all entities associated with the waiver are required to report alleged or actual Reportable Events. All Reportable Events shall be reported in full on the Department's newly designed Reportable Events form in the tracking system, analyzed via reports and identify trends for areas in need of improvement.

Any person who believes that an individual has been subjected to abuse, neglect, or exploitation is required to report the alleged abuse, neglect, or exploitation immediately to the police, Adult Protective Services (APS) or Child Protective Services (CPS) office. The complete incident report must be submitted within one working day of discovery to the OHA and MSDE.

# INITIAL ASSESSMENT STRATEGIES AND FINDINGS

## Provider Data

Eight different Autism Waiver services are provided by 58 community-based providers serving children with ASD in their home and community in Maryland. As of November of 2014, when the following data was run, there are two provider types for the Autism waiver participants that will need to be more closely monitored for compliance with the HCBS Final Rule. The following information is based on billing data, and providers of the following services will be the focus of further review:

### Intensive Residential Habilitation

- 5 providers
- 34 participants

### Therapeutic Integration Services/ Intensive Therapeutic Integration Services

- 21 providers
- 451 participants

Reference: [Appendix 1](#)

## Self-Assessment Surveys for Residential Services

During July through October of 2014, MDH worked with the Hilltop Institute, a non-partisan health research organization with an expertise in Medicaid, to develop and deliver preliminary self-assessment surveys that were specific to participants receiving residential habilitation services and their representatives, providers, and case managers. This process was an initial setting analysis and general in nature across three program populations including the Autism, Community Pathways, and Community-Options Waivers. To support participation in the survey, participant specific information such as name and program was not collected. This assessment process does not suggest that any specific program, provider or location is non-compliant solely by classification. Compliance will be determined through further analysis that might include additional self-assessments for providers and participants, on-site reviews, stakeholder input, and further analysis of programmatic data. Below is a brief summary of the methodology and analysis of the three self-assessments. A full analysis and recommendations were made by the Hilltop Institute that can be found in [Appendix 10](#).

### Provider Self-Assessment

- 141 providers completed the provider survey
- Of these, 65 were assisted living providers and 71 were residential habilitation providers.
- Five providers failed to answer these questions.
- Several questions were asked about the physical location of their settings, as well as the type of people served at the settings.

### Participant Self-Assessment

- 646 participants responded to the survey.

- Of the 646 participants, 71 indicated they lived in an assisted living unit, 186 indicated they lived in a group home/alternative living unit, 205 indicated it was neither an assisted living unit or a group home/alternative living unit, 6 indicated they did not know, and 178 did not answer the question.

#### Case Manager Self-Assessment

- 187 case manager responses

Based on the information gathered from the preliminary survey areas that have been identified for further review include those settings that may be in institutions, settings that may be isolating to participants (multiple provider settings close to each other and settings that serve only those with disabilities), and settings with criteria that had lower affirmative response rates (such as access to food, locking the front door, and lease issues).

Further review should include assessment of criteria for settings presumed not to be home and community-based: settings near other settings run by the provider for people with disabilities, an individual’s control over their personal resources, community access and involvement, and the ability to file complaints. Additional areas of concern in residential settings are whether the participant signs a lease, has a choice of private room or a roommate, the degree of privacy available, has flexible access to food, and encounters barriers to any of these elements set forth in the Final Rule.

#### Waiver Application and Regulations Assessments

Between September and November 2014, the Office of Health Services, along with the Maryland State Department of Education and the Developmental Disabilities Administration, have completed a review of state regulations including COMAR 10.09.56, licensing rules, waiver and state plan applications to determine the current level of compliance with the new federal requirement. In order to crosswalk all of the following documents, Maryland has utilized the “HCBS Worksheet for Assessing Services and Settings” developed by the Association of University Centers on Disabilities (AUCD), National Association of Councils on Developmental Disabilities (NACDD), and the National Disability Rights Network. This has allowed for consistency across programs and documents.

The preliminary review resulted in identification of missing criteria dictated by the Final Rule and language that conflicts or is out of compliance with the rule that will require remediation. See [Appendices H and K](#) for specific details.

### **PRELIMINARY FINDINGS ON SERVICE DELIVERY**

Through the process described above, the State has determined that the following waiver services comply with the regulatory requirements because they are individualized services provided in the participant’s private home or community:

1. Adult life planning (ALP)
2. Environmental accessibility adaptations
3. Family training
4. Intensive individual support services (IISS)
5. Service coordination
6. Therapeutic Integration (TI) services - Available as a structured program of therapeutic activities based on the child’s need for intervention and support. TI services are based on the child’s individualized treatment plan that identifies the goal of specific therapeutic activities provided. TI focuses heavily on expressive therapies and therapeutic recreational activities. Development of the child’s communication and social skills, enhancement of self-esteem, improved peer interaction, and management of behavior are important components. A daily session is a minimum of two hours and a maximum of four hours

for those children who are identified as benefitting from a therapeutic program in their waiver plan of care. The services are provided at a location outside of the child's home.

Intensive Therapeutic Integration services - This service is for participants whose needs require one-to-one support to allow participation in community settings with their peers. Intensive Therapeutic Integration services are available as a structured program of therapeutic activities. This service offers a more focused and individualized approach to intervention and support. This service is for participants who are unable to participate in a regular Therapeutic Integration setting and has a staffing ratio of 1-1 or 2-1.

There are no licensed facilities for therapeutic integration or intensive therapeutic integration. As participants in the Autism Waiver are minors, TI and ITI sites are after school programs for 2-4 hours. Therefore, participants are in a community setting such as a public school during the day.

Therapeutic integration and intensive therapeutic integration are provided at a "non-residential setting separate from the home or facility where the participant lives (COMAR 10.09.56.14)." They are based in approved (but not licensed) sites and often include community outings with transportation. Approved therapeutic integration sites may be found in locations like churches, schools, or separate recreation centers run specifically by the provider for therapeutic integration. These are not licensed facilities and are not day programs. Participants are integrated with other children without disabilities. Our current regulation COMAR 10.09.56.06-1 (I.- J.) requires that the TI providers:

- I. Provide documented evidence of services in the least restrictive environment in the community that is appropriate to a participant's needs;
- J. Provide documented evidence of integration of the covered services with other community-based services received by participants;

The State also recognizes that Respite Care has been an approved service on many waiver applications in a variety of community locations. Respite Care is defined as offering appropriate care and supervision to protect children's safety in the absence of family members. Respite care services include assistance with daily living activities provided to children unable to care for themselves. In addition, respite offers relief to family members from the constantly demanding responsibility of providing care and attending to basic self-help needs and other activities. Respite care can be provided in the child's place of residence, a community setting, a Youth Camp certified by MDH, or a site licensed by the Developmental Disabilities Administration to accommodate individuals for respite care. The service will remain in the waiver and will be provided in the home, community, and other settings as written into the waiver application. Based on guidance received from CMS, the State believes that because respite services are allowable in facilities that do not meet the HCB setting criteria that these settings will not need further review.

The State has determined that the following waiver services need further review and remediation to fully comply with the regulatory requirements. The State will work with providers of these services to develop remediation strategies and timelines to implement the changes needed to achieve full compliance.

1. Residential Habilitation - Community-based residential placements for children who cannot live at home because they require highly supervised and supportive environments. Placements provide a therapeutic living program of treatment, intervention, training, supportive care, and oversight. Services are designed to assist children in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services are offered at a regular or intensive level and reimbursed at one of two rates. The intensive level of service for the child involves awake overnight and one-on-one staffing.

The waiver application is noncompliant in the language in relation to ensure freedom from restraint. The application routinely mentions "The use of restraints is permitted during the course of the delivery of waiver services." This will be remedied by COMAR 10.09.36-1, which is in the process of being adopted.

Further review is needed to ensure that individuals that receive this Medicaid HCBS are truly integrated and have full access to the greater community. A stakeholder group is currently drafting regulations that will need to be reviewed for compliance with the Final Rule.

## **ASSESSMENT STRATEGIES AND FINDINGS**

Maryland is committed to coming into full compliance with the HCBS rule in advance of the deadline. The following are strategies utilized to come into full compliance with the Home and Community-Based Settings rule:

- Transition Advisory Teams were created in 2015 and the stakeholder process is ongoing, with meetings on or about a monthly basis.
- Maryland law and all regulations related to the Autism Waiver program were reviewed. OHS has determined that nothing in current law or regulations conflicts with the HCBS rule. However, some areas of the HCBS rule are not addressed by current regulations. MDH will update the regulations accordingly within the next two years.

### Provider Survey

- A pilot survey was completed in Fall 2015.
- To assess providers, OHS implemented the HCBS Provider Self-Assessment in January 2016. Compliance with the provider survey was ensured by suspending the provider number of non-responding providers. All providers have completed the survey or are no longer in operation. Hence, no providers were suspended.
- MDH and Hilltop Institute are currently analyzing the data from the provider survey to determine compliance with all components of the rule. Preliminary results show that compliance is possible for all providers by 2022.

### Corrective Action Plans

The Department sought input from the Medicaid Transition Advisory Team on a standardized Corrective Action Plan template, instructions, guidance, and development of a reconsideration request process. The Corrective Action Plan template was prepopulated with concerns/issues for specific sites based on the provider's responses to the survey questions and Medicaid's compliant/non-compliant coding scheme. Any provider who felt that they misunderstood the question(s) or that Department misunderstood their response(s) had the opportunity to submit a request for reconsideration within 10 days. The Corrective Action Plan guidance and supporting documents can be viewed by clicking [here](#). Providers had up to 30 calendar days to submit their Corrective Action Plan which included transitional codes to assist with organizing and reviewing and details of the provider specific transitional strategies.

### Site Visits

Site visits are incorporated into the re-validation process. It will be made to all Autism providers to validate the provider survey results and determine compliance with the HCBS rule.

# COMMUNITY PATHWAYS WAIVER

## BACKGROUND

This 1915(c) waiver is administered by the Developmental Disabilities Administration (DDA) and provides services and supports to individuals with developmental disabilities of any age, living in the community through licensed provider agencies or self-directed services. The Community Pathways Waiver covers 19 different types of services delivered by licensed service providers and independent providers throughout the state. This waiver also gives the option of self-direction. Under self-direction, individuals are required to obtain the services of a Support Broker and Fiscal Management Service provider, who will assist in the planning, budgeting, management and payment of the person's services and supports. Individuals must need the level of care required to qualify for services in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

The DDA's Vision is for individuals to have full lives in the community of their choice where they are included, participate, and are active citizens. This includes options to live however and wherever they choose in a setting that meets the community setting final rule.

The Department is committed to enhancing community employment options for persons with developmental disabilities. Employment First is a concept to facilitate the full inclusion of people with the most significant disabilities in the workplace and community. Under the Employment First approach, community-based, integrated employment is the first option for employment services for youth and adults with significant disabilities. The guiding principle of Employment First is that all individuals who want to work can work and contribute to their community when given opportunity, training, and supports that build upon their unique talents, skills and abilities. Everyone of working age, and those supporting them, should consider employment as the first option prior to any other service options. As fully participating members of their community, individuals with developmental disabilities will be afforded the opportunity to earn a living wage and engage in work that makes sense to them. Career exploration and planning will be supported when assisting individuals in making informed choices in designing their unique pathway to increased independence, integration, inclusion, productivity, and self-determination.

### Principles of Employment First

- All individuals have the right to explore the full range of employment options to empower informed choice and foster self-determination.
- Career Planning can ensure that supports, services, and outcomes on individual support plans are consistent with what the person is seeking.
- All individuals have the right to earn a living wage in a job of their choosing, based on their unique talents, gifts, skills, and interests.
- As with all employees, persons with disabilities should have access to services and supports necessary to succeed in the workplace.
- Businesses universally value employees with disabilities as an integral part of their workforce and include all people within recruitment and hiring efforts as standard practice.

## Values

- All Marylander's with developmental disabilities of working age (16-64):
  - Work;
  - Realize economic self-sufficiency ;
  - Earn wages and benefits that are commensurate to the job and responsibilities;
  - Have opportunity to save income and build assets;
  - Have access to healthcare and other necessary services, in order to achieve the highest quality of life possible;
  - Actively explore and develop their own unique career path;
  - Engage in the negotiation and terms of their employment;
  - Engage in all aspects of the work environment;
  - Build and maintain connections and relationships throughout their career path; and
  - Have access to current information, resources and quality services to support their career paths

The Department is committed to supporting families. In 2016, Maryland joined the National Community of Practice (CoP) to build its capacity to support families caring for family members with intellectual and developmental disabilities across the lifespan. Through a community of practice, MD CoP partners and the LifeCourse Framework are working to create policies, programs, services and practices to enhance the lives of MD families. Our goal is to support families with all of their complexity, strengths and unique abilities so they can best support, nurture, love and facilitate opportunities for their family member's achievement of self-determination, interdependence, productivity, integration and inclusion in all facets of community life.

The Community Pathways Waiver offers the following services:

1. Assistive Technology and Adaptive Equipment
2. Behavioral Supports
3. Community Learning Services
4. Community Residential Habilitation Services
5. Day Habilitation – Traditional
6. Employment Discovery and Customization
7. Environmental Accessibility Adaptations
8. Environmental Assessment
9. Family and Individual Support Services
10. Fiscal Management Services
11. Live-In Caregiver Rent
12. Medical Day Care
13. Personal Supports
14. Respite
15. Shared Living
16. Support Brokerage
17. Supported Employment
18. Transition Services
19. Transportation



## 20. Vehicle Modifications

The Community Pathways Waiver's renewal date is July 1, 2018.

### **ASSESSMENT OF THE DDA'S SERVICE DELIVERY SYSTEM SETTINGS**

From July through October 2014, OHS and DDA completed reviews and analysis of: Maryland's National Core Indicator survey results; licensed providers data; self-assessment surveys; and the DDA Statute, Community Pathways application, and State regulations, which are further described below.

Through routine monitoring efforts, including quality reviews, site visits, data analysis, and communication with participants and providers, Maryland is aware of the many strengths and weaknesses for the DDA service delivery system as they relate to the HCB setting rule.

OHS and DDA, or their designated agents, currently monitor providers and service delivery through a variety of activities, including licensure surveys, site visits, person-centered plan reviews, complaints and incidents reviews, and National Core Indicator (NCI) surveys. These efforts will continue throughout the transition process and will be updated to include the new federal standards and other strategies recommended by stakeholders.

The Office of Health Care Quality (OHCQ) is a designated State licensing agent of the DDA. OHCQ is authorized to issue new licenses and renew licenses for existing licensed providers. It may conduct inspections as part of investigations or regular surveys and cite providers for noncompliance with the regulatory standards from the Code of Maryland Regulations (COMAR) Title 10 Subtitle 22 related to licensure and quality of care. Based on the severity of the finding, the OHCQ may require a plan of corrections from the provider or issue sanctions and pursue disciplinary action of license suspension or revocation for deficiencies cited from this subtitle.

Participant's person-centered plans are reviewed by several entities to ensure they comply with programmatic regulations, including coordinator of community services (case manager) and their supervisors, DDA regional office staff during site visits and quality audits, and the OHCQ during surveys and investigations.

Coordinators of community services (case managers) conduct quarterly face-to-face visits to monitor service delivery including progress on goals, assessment of services as per the plan, status and confirmation of health services, eligibility, and incidents.

In accordance with the Department's Policy on Reportable Incidents and Investigations (PORII), all entities associated with the Community Pathways Waiver are required to report alleged or actual significant incidents in the DDA incident module, including unauthorized restraints. Follow-up and investigative actions are taken as per policy and data are analyzed for trends and to identify areas in need of improvement.

Any person who believes that an individual has been subjected to abuse, neglect, or exploitation is required to report the alleged abuse, neglect, or exploitation immediately to the police, Adult Protective Services (APS) or Child Protective Services (CPS) office, and the DDA Regional Office. The complete incident report must be submitted within one working day of discovery.

DDA also utilizes the National Core Indicators surveys to measure and track performance related to core indicators. 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 employment, rights, service planning, community inclusion, choice, and health and safety.

The DDA also receives guidance from CMS, The Hilltop Institute, and stakeholders when establishing criteria for engaging in site-specific assessments.

## **INITIAL ASSESSMENT STRATEGIES AND FINDINGS**

Below are brief summaries of each activity OHS and DDA undertook to complete an initial analysis of the DDA service delivery system for compliance with the new HCB setting rule. This initial analysis was general in nature and does not imply that any specific provider or location is non-compliant solely by classification or service type.

### National Core Indicators (NCI)

The DDA became a member of the NCI in 2011. Surveys include an adult consumer survey, family survey, and guardian survey, which have been conducted for the past three years. The NCI Adult Consumer Survey is an interview conducted with a sample of individuals who are receiving DDA funding for services. This survey is used to gather data on approximately 60 consumer outcomes. Interviewers meet with individuals to ask questions about where they live and work, the kinds of choices they make, the activities they participate in within their communities, their relationships with friends and family, and their health and well-being. NCI indicators linked to the Community Settings Final Rule are reflected in [Appendix 14](#).

For some areas, Maryland scored above the national average and in other areas below. Examples, based on results from the 2013- 2014 surveys, include the following:

- 74% of respondents from Maryland and 82% across NCI states reported that they decide or have input in choosing their daily schedule
- 85% of respondents from Maryland and 87% across NCI states reported that they choose or have input in choosing how to spend their money
- 82% of respondents from Maryland and 91% across NCI states reported that they decide or have input in choosing how to spend free time
- 75% of respondents from Maryland and 71% across NCI states reported that they went out for entertainment in the past month
- 49% of respondents from Maryland and 48% across NCI states reported that they went out to a religious service or spiritual practice in the past month
- 64% of respondents from Maryland and 45% across NCI states reported that they went out on vacation in the past year
- 72% of respondents from Maryland and 76% across NCI states reported that they have friends other than family or paid staff
- 26% of respondents from Maryland and 26% across NCI states reported that they want to live somewhere else
- 43% from Maryland and 34% across NCI states reported that they want to go somewhere else or do something else during the day among respondents with a day program or regular activity

If applying a standard of 100%, as required in CMS for reporting of quality measures in 1915(c) Home and Community-Based waivers, Maryland did not meet this standard in any of the HCB setting requirements noted above.

## Licensed Provider Data

Community Pathways' waiver providers may specialize in providing services to a particular group, such as individuals with medical complexities, behavioral challenges, or those who are court/forensically involved. Providers may also be licensed to provide more than one waiver service.

The DDA updated data on licensed providers including the number of people supported, number of sites, and number of people per site. These data will be used to target providers and sites for further reviews. Highlights are indicated below:

### Personal Supports

- DDA funds 112 licensed providers to provide services
- 2,681 individuals receive these services in 2,502 sites.
  - 2,358 sites have one individual
  - 117 sites include two individuals
  - 24 sites include three individuals
  - 3 sites include four individuals

Reference: [Appendix 8](#)

### Residential Habilitation – Alternative Living Unit (ALU)

- DDA funds 118 licensed providers to provide ALU services
- 3,100 individuals receive these services in 1,330 sites.
  - 270 sites have one individual
  - 382 sites include two individuals
  - 648 sites include three individuals
  - 20 sites include four individuals

Reference: [Appendix 8](#)

### Residential Habilitation – Group Home (GH)

- DDA funds 87 licensed provider to provide GH services
- 2,945 individuals receive these services in 773 sites.
  - 34 sites have one individual
  - 40 sites include two individuals
  - 203 sites include three individuals
  - 369 sites include four individuals
  - 81 sites include five individuals
  - 23 sites include six individuals
  - 13 sites include seven individuals
  - 16 sites include eight individuals

Reference: [Appendix 8](#)

### Shared Living

- DDA funds 14 licensed providers to provide Shared Living services
- 212 individuals receives these services in 170 homes
  - 149 homes have one waiver individual
  - 27 homes include two waiver individuals
  - 3 homes include three waiver individuals

Reference: [Appendix 8](#)

### Medical Day Care Services

- As of August 8, 2016 there were 645 individuals receiving services from 55 providers of Medical Day Care

### Day Habilitation

- DDA funds 106 licensed providers to provide day services
- 8,838 individuals receive these services in 209 sites.
- Day provider site consumer count range is 1 – 372

Reference: [Appendix 9](#)

### Supported Employment (SE)

- DDA funds 97 licensed provider to provide SE services
- 3,941 individuals receive these services.
- SE providers support from 1 – 527 individuals.

Reference: [Appendix 9](#)

Based on this information, further review and heightened scrutiny is needed to assess whether services or settings receiving Medicaid-funded HCBS may have institutional qualities or may be isolating individuals from the broader community due to structure of the setting, multiple provider settings being close to each other or on the same grounds, and settings that serve only those with disabilities with no or limited community interactions.

In addition, service providers shared concerns related to limited community options in rural areas of the State due to inadequate community transportation options and limited community business and resources such as libraries, malls, and restaurants, which have hindered opportunities to seek employment and work in competitive and integrated settings, engage in community life, and receive services in the community to the same degree as individuals who do not receive HCBS.

### Initial Self-Assessment Surveys for Residential Services

During July through October of 2014, the MDH worked with the Hilltop Institute, a non-partisan health research organization with an expertise in Medicaid, to develop and deliver preliminary self-assessment surveys that were specific to participants receiving residential habilitation services and their representatives, providers, and case managers. This process was an initial setting analysis and general in nature across three program populations including the Autism, Community Pathways, and the Home and Community-Based Options Waivers. To support participation in the survey, participant specific information such as name and program was not collected. This assessment process does not suggest that any specific program, provider or location is non-compliant solely by classification. Compliance will be determined through further analysis that might include: additional self-assessments for providers and participants, on-site

reviews, stakeholder input, and further analysis of programmatic data. A full analysis and recommendations were made by the Hilltop Institute that can be found in [Appendix 10](#).

Based on the information gathered from the preliminary survey, areas that were identified for further review include those settings that may be in institutions, settings that may be isolating to participants (multiple provider settings close to each other and settings that serve only those with disabilities), and settings with criteria that had lower affirmative response rates (such as access to food, locking the front door, and lease issues).

Further review should include assessment of criteria for settings presumed not to be home and community-based: settings near other settings run by the provider for people with disabilities, an individual's control over their personal resources, community access and involvement, and the ability to file complaints. Additional areas of concern in residential settings are whether individuals may execute a lease, may choose a private room or a roommate, are guaranteed privacy and flexible access to food, and experience significant barriers related to provisions of the Community Settings Final Rule.

#### Assessments of DDA Statute, Waiver Application, and Regulations

Between September and November of 2014, the DDA completed a review of the State regulations including the Code of Maryland Regulations (COMAR) 10.09.26, 10.09.48, and 10.22 to determine the current level of compliance with the new federal requirements. COMAR 10.09 are specific to the Community Pathways Waiver and DDA's targeted case management services under the Medical Care Programs. COMAR 10.22 are specific to Developmental Disabilities and include 20 individual chapters on specific topics or services such as definitions; values, outcomes, and fundamental rights; individual plan; vocational programs; and community residential services. Regulations and statutes specific to institutional settings only were not included as they are not considered community or comply with the rule. In order to crosswalk regulation and waiver applications, Maryland utilized the "HCBS Worksheet for Assessing Services and Settings", developed by the Association of University Centers on Disabilities (AUCD), National Association of Councils on Developmental Disabilities (NACDD), and the National Disability Rights Network. This has allowed for consistency across programs and documents.

The preliminary review resulted in identification of missing criteria dictated by the Community Settings Final Rule and language that conflicts or is out of compliance with the rule that will require remediation. At times, language is noted that is similar to the federal requirements but may not apply to all services or elements of the requirement. See [Appendices K](#) for specific details.

## **PRELIMINARY FINDINGS RELATED TO THE DDA SERVICE DELIVERY SYSTEM**

Through the process described above, MDH has determined that the following waiver services comply with the regulatory requirements because they are individualized services provided in the participant's private home or community:

1. Assistive Technology and Adaptive Equipment – technology and equipment to help participants live more independently
2. Behavioral Support Services – assist individuals who exhibit challenging behaviors in acquiring skills, gaining social acceptance, and becoming full participants in the community. Services are provided in residential habilitation sites, participant's homes, and other non-institutional settings to help increase independence including: behavior consultation; behavior plan development and monitoring; behavioral support; training for families and other service providers; behavioral respite; and intensive behavioral management services. Current regulations, COMAR 10.22.10.08 and 10.22.10.09, permit physical restraint and use of mechanical restraints and supports when the individual's behavior presents a danger to self or serious bodily harm to others or medical reasons. Regulations require a formal behavioral plan that includes historical information, analysis, strategies, and informed consent from the individual or guardian, as applicable.

3. Employment Discovery and Customization – time-limited, community-based services for up to six months, designed to provide discovery, customization, and training activities to assist a person in gaining competitive employment at an integrated job site where the individual is receiving comparable wages. Regulations are being drafted by a stakeholder group, which will be reviewed for compliance with the Community Settings Final Rule.
4. Environmental Accessibility Adaptations – adaptations to make the environment more accessible
5. Environmental Assessment – assessment for adaptations and modification to help participants live more independently
6. Family and Individual Support Services – assistance in making use resources available in the community while, at the same time, building on existing support network to enable participation in the community
7. Fiscal Management Services – assistance with the financial tasks of managing employees for participants who self-direct their services
8. Live-In Caregiver Rent – funding for caregiver rent
9. Personal Supports – hands-on assistance or reminders to perform a task in own home, family home, in the community, and/or at a work site
10. Respite – short-term relief service provided when regular caregiver is absent or needs a break. The service is provided in the home and/or community settings to meet planned or emergency situations, giving caregivers a time free from their role as care provider.
11. Support Brokerage – assistance with the self-directed services
12. Transition Services – one-time set-up expenses when moving from an institution or a provider setting to a living arrangement in a private residence
13. Transportation – services include mobility and travel training including learning how to access and utilize informal, generic, and public transportation for independence and community integration.
14. Vehicle Modifications – modifications to vehicles to meet participant’s disability-related needs.
15. Community Learning Services - Community-based services, activities, support, and education to help individuals whose age, disability, or circumstances currently limits their ability to be employed, and/or participate in activities in their communities. They assist in developing the skills and social supports necessary to gain, retain, or advance in employment. Service can be provided in groups of no more than four (4) individuals with developmental disabilities, all of whom have similar interests and goals as outlined in their person-centered plan except in the case of self-advocacy groups. They can also provide assistance for volunteering and retirement planning/activities. Community Learning Services must be provided in the community and are not allowed to be provided in residential or day facilities owned or controlled by Medicaid providers.

MDH also recognizes that respite care has been an approved service on many waiver applications in a variety of community and institutional locations. Respite care is defined as short-term relief service provided when regular caregiver is absent or needs a break. The service will remain in the Community Pathways waiver and will be provided in the home and/or community settings to meet planned or emergency situations, giving caregivers a time free from their role as care provider. Based on guidance received from CMS, the MDH believes that because Respite Services are allowable in facilities that do not meet the HCB setting criteria that these settings will not need further review.

The State has determined that the following waiver services, associated regulations, and processes need further review and remediation to fully comply with the regulatory requirements. MDH will work with stakeholders and providers of these services to implement the changes needed to achieve full compliance.

1. Community Residential Habilitation - Services are provided in either group homes (GHs) or alternative living units (ALUs) and help individuals learn the skills necessary to be as independent as possible in their own care and in community life.

ALUs can be licensed to support one to three individuals and GHs can be licensed for up to eight individuals. Special permission is required for any individual living in a home of greater than three individuals. In reviewing these exceptions, the following are considered: 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, 3) health and safety, and 4) other exceptional

circumstances. Provider data noted above indicated there are several residential provider sites with more than three individuals. These sites will need further review to ensure compliance with the rule.

In addition, some sites have farmstead or disability-specific farm community characteristics or have multiple service settings co-located which will require further review.

Residential providers have various sites that are established to meet the individual needs of the resident. Providers shared concerns with the initial self-assessment survey as it was based on a single site or facility and answers to questions would vary depending if based on specific sites. Further review of each site is needed to identify areas of concerns per site.

Residential service providers also use various leases or residency agreement, which need further review to determine if these are legally enforceable. Stakeholder input included the suggestion for a standardize lease or agreement

2. Day habilitation – Facility-based services designed to provide vocational assessment, training in work, social, behavioral, and basic safety skills. They are intended to increase independence and develop and maintain motor skills, communication skills, and personal care skills related to specific habilitation goals that lead to opportunities for integrated employment.

Data demonstrate that the current service delivery system supports close to 9,000 individuals in these service with one provider supporting 372 individuals. A few providers have transitioned their historic programs to focus on community-based activities and individualized integrated employment for people they serve. The DDA is working with these agencies to obtain transitioning strategies, challenges, and opportunities that can be shared with other providers to assist with transitioning and compliance with the Community Settings Final Rule.

3. Medical Day Care Services – Services provided in medically supervised, health-related services program provided in an ambulatory setting to support health maintenance and restorative services for continued living in the community.

Current regulations COMAR 10.09.07 and 10.09.54 do not address many of the criteria from the HCB setting rule. Further review is needed to ensure that individuals who receive this Medicaid service are truly integrated and have full access to the greater community. Medical Day Care providers are approved and monitored by the Office of Health Services as part of the Medical Day Care Waiver. Therefore, these services are being reviewed for compliance with the Community Settings Final Rule under the Medicaid Day Care Waiver.

4. Personal Supports – Services include hands-on assistance, prompting to perform a task, or supports for independent living. These supports are provided in participant's own home, family home, or in the community. Currently there are three homes supporting four individuals receiving services. One of the homes is a family where all members are receiving supports. The individuals at the other two homes are exploring other independent living arrangements.
5. Shared Living – An arrangement in which an individual, couple or a family in the community share life's experiences and their home with a participant. The structure and expectations of this service are such that it is similar to a family home, with expectations that the individual, couple, or family supports the waiver participant in the same manner as family members including engaging in all aspects of community life. Maryland's requirements for shared living settings are small with no more than three individuals requiring support living in the home. The experience of the individuals being supported through shared living will be similar to individuals living in their own or family home.

6. Supported employment - Services are community-based services that assist an individual with finding and maintaining employment or establishing their own business. Supports may include job skills training, job development, and ongoing job coaching support. They are designed to assist with accessing and maintaining paid employment in the community.

Maryland is a member of the State Employment Leadership Network (SELN), which includes state development disability agencies that share, educate, and provide guidance on communities of practice and policies around employment. Part of this effort includes the use of data to guide daily systems management. Maryland employment outcomes data includes various setting types, such as integrated jobs (i.e. individual competitive job, individual contracted job, group integrated job, and self-employment), facility-based employment, and community-based non-work.

The data system is administered by the Institute of Community Inclusion (ICI) at the University of Massachusetts. This data is collected twice a year and covers a two-week period. The data is captured in the month of May and October. Each provider is required to report on each person being supported in Day Habilitation, Employment Discovery and Customization, Supported Employment and Community Learning Services. Providers choose whichever two-week period in that month they want. Providers report on all activities for each person during that specific two-week period. This data has been collected since 2013 twice a year. This data has been used to shape future policies, build provider capacity and create an infrastructure for training and provider support.

The most recent data below reflects the outcomes from data collected in October 2016:

Employment Related

	Individual Competitive Employment	Individual Contracted Work	Self-Employment	Group Integrated Job	Facility- Based Job
Number of Individuals	2361	431	54	1116	2448
Percentage	20.1%	3.7%	.5%	9.5%	20.8%

Non Work Related Day Activities

	Community- Based Non Work	Facility- Based Non Work
Number of Individuals	4995	6406
Percentage	42.5%	54.5%

Facility-based jobs and facility-based non-work activities will need further review.

Community Pathways Waiver Independent Reviews

To further assess and enhance the services delivery system and support quality of life for people utilizing communities of practice, the DDA procured consultants to review the Community Pathways Waiver including services definitions, quality enhancement, and performance measures; self-direction processes and policies; and targeted case management including person-centered planning. These reviews included various stakeholder input opportunities, such as public listening sessions facilitated by the consultants, and focused reviews for compliance with the Community Settings Final Rule. Information related to the review can be viewed at: <https://dda.health.maryland.gov/Pages/waiver%20feedback.aspx>



## DDA Rate Study

As per Maryland legislation passed last year, Chapter 648 of the Acts of 2014, the DDA procured a contractor to conduct an independent cost-driven rate setting study, develop a strategy for assessing the needs of individuals receiving services, develop a sound fiscal billing and payment system, and obtain input from stakeholders including individuals receiving services and providers. This rate setting process will look at all current and proposed new services. The anticipated duration of services to be provided under this contract is an eighteen-month base period and two one-year option periods. During the initial eighteen-month performance period, the contractor will define the rates and provide a fiscal impact analysis. The option periods will be exercised if implementation support is required.

## DDA Transition Advisory Team

The DDA Transition Advisory Team (TAT) was established to provide information and guidance to the MDH related to strategies associated with the State Transition Plan due to the unique needs of individuals with developmental disabilities, the DDA provider service delivery network, and historical practices. The group includes program participants, family members, self-advocates and representation from various stakeholder organizations such as: People on the Go (self-advocacy organization), the Maryland Developmental Disabilities Council, the Maryland Center for Developmental Disabilities, the DDA Quality Advisory Council, the Disability Rights Maryland (formerly the Maryland Disability Law Center), The Arc of Maryland, the Coordination of Community Services Coalition, and the Maryland Association of Community Services (MACS) (provider association). This group provides recommendations and guidance on stakeholder input, remediation strategies, and action items from the transition plan. Meeting minutes will reflect the recommendations at each meeting.

## **TIERED STANDARDS**

The DDA established a stakeholder group to assist with the development of Tiered Standards. Tiered Standards provides an opportunity for Maryland to develop best practices and new innovative service delivery models, as the current service models were developed in 1986. Four subgroups were formed related to Employment and Day Services, Residential Services, Training, and Finance. Recommendations from these subgroups can be viewed at [here](#). New standards may establish or promote new or existing models of service that more fully meet the DDA's vision and priority focus areas including self-direction, self-determination, employment, supporting families, and independent supported housing. Once finalized, the standards will be incorporated into a waiver amendment. Current day and residential settings currently in use in the Community Pathways waiver may continue within the waiver, as long as they will be able to meet the minimum standard set in the rule on or before the end of the transition period. The DDA may suspend admission to the setting or suspend new provider approval or authorizations for those settings based on the establishment of Tiered Standards.

## **HEIGHTENED SCRUTINY**

Maryland will require heightened scrutiny for the following settings, but not limited to:

- Sheltered workshops
- Farmsteads
- Licensed residential sites in close proximity (e.g. next door or multiple homes on a cul-de-sac)

Maryland will identify settings that may appear to have qualities of an institution or appear to be isolating individuals from the community but have been determined to meet the community settings requirements. MDH's heighten scrutiny reviews will consist of:

- A review of person-centered support plans and Community Setting Questionnaire for individuals receiving services in the setting
- Interviews with service recipients
- A review of data pertaining to services utilized by persons receiving services in the specified setting
- An on-site visit and assessment of physical location and practices
- A review of policies and other applicable service related documents
- Additional focused review of the agency’s proposed transition plan as applicable including how each of the above is expected to be impacted as the plan is implemented
- State determination regarding:
  - Whether the setting in fact is “presumed to have the qualities of an institution” as defined in rule/guidance
  - Whether the presumption is overcome based on evidence
- Collection of evidence to submit to CMS to demonstrate compliance

## **PROVIDER SELF-ASSESSMENTS**

In partnership with the DDA Transition Advisory Team and the assistance of The Hilltop Institute, the MDH developed new provider specific (i.e. Residential and Non-Residential) comprehensive self-assessment surveys specific to the DDA service delivery system and HCB setting requirements to provide additional data to determine compliance. As noted in The Hilltop Institute’s initial survey report in there were several limitations to the initial surveys as they did not account for different waiver populations and provider systems. Prior to the implementation of a provider self-assessments survey, the MDH piloted the surveys with a volunteer group of providers for both the Residential and Non-Residential Surveys to test the survey questions and results. Surveys were revised based on recommendations from the DDA Transition Team and dissemination to related provider groups.

### Non-Residential Provider Self-Assessment

MDH, with information supplied by DDA, sent waiver providers an email on April 22, 2016 announcing the necessity of completing the upcoming provider self-assessment. The email also contained a PDF version of the assessment instrument for providers to preview and information regarding webinars to assist providers in completing the self-assessments. MDH also sent providers a personalized email on April 27 announcing the opening of the self-assessment after the webinar on April 28. Webinars held on April 28 and April 29 walked providers through the assessment and helped answer questions. Providers were further instructed to complete self-assessments for each service at each site a provider operated.

Providers were instructed to complete the self-assessments by May 16, 2016; however, the online assessment remained open until July 25, 2016.

In order to determine provider compliance, relevant questions/indicators were linked to specific regulations within the HCBS community settings final rule criteria. MDH had developed a compliant/non-compliant analysis scheme in which providers who were non-compliant on any one indicator for a specific regulation were deemed non-compliant for that entire regulation. DDA agreed to use this same analysis scheme. Additional key questions were denoted as “red flag questions.” Providers who were deemed non-compliant on these questions may require more immediate attention from DDA.

One hundred seventeen (117) providers completed assessments, totaling 377 completed assessments. The plurality of the service settings are day habilitation settings, which account for 48 percent of the completed assessments. The Hilltop Institute “HCBS Final Rule: DDA Non-Residential Provider Self-Assessment Summary” September 22, 2016 full report can be viewed by clicking [here](#).

### Residential Provider Self-Assessment

DDA sent providers an email on June 8, 2016 announcing the necessity of completing the upcoming provider assessment. The email also contained a PDF version of the assessment instrument for providers to review and information regarding webinars to assist providers in completing the self-assessments. MDH also sent providers a personalized email on June 13, 2016 after an informational webinar announcing the opening of the self-assessment. Included in this email were the provider’s medical assistance number, DDA license number and site numbers, and instructions to enter the numbers into the provider’s self-assessment(s).

Webinars held on June 12 and 13, 2016 walked providers through the assessment and helped answer questions. Providers were further instructed to complete self-assessments for each site operated.

Providers with 40 or fewer sites were instructed to complete all of their site assessments by July 31, 2016 and providers with over 40 sites were instructed to complete all of their site assessments by August 31, 2016. However, the assessment remained open until the morning of November 7, 2016.

One hundred thirty-four providers completed assessments for each site operated, totaling 1,964 completed assessments. The maximum number of assessments completed by a provider was 75, while the minimum was 1. The average number of assessments completed by a provider was 15. The plurality of the service settings are alternative living units, which account for 64 percent of the completed assessments. The Hilltop Institute “HCBS Final Rule: DDA Residential Provider Self-Assessment Summary” November 22, 2016 full report can be viewed by clicking [here](#).

### Provider Transition Plans

The Department sought input from the DDA Transition Advisory Team on a standardized Provider Transition Plan template, instructions, guidance, and development of a reconsideration request process. The Provider Transition Plan template was prepopulated with concerns/issues for specific sites based on the provider’s responses to the survey questions and Medicaid’s compliant/non-compliant coding scheme. Any provider who felt that they misunderstood the question(s) or that Department misunderstood their response(s) had the opportunity to submit a request for reconsideration within 10 days. The Provider Transition Plan guidance and supporting documents can be viewed by clicking [here](#). Providers had up to 90 calendar days to submit their Provider Transition Plan which included transitional codes to assist with organizing and reviewing and details of the provide specific transitional strategies.

## **PARTICIPANT ASSESSMENTS**

MDH will be using the Community Setting Questionnaire (CSQ) approved by CMS under the Community First Choice program for all waiver programs, including the Community Pathways program. See [Appendix 12](#) for the day program CSQ and [Appendix 13](#) for the residential program CSQ.

DDA’s Coordinators of Community Services (case managers) will administer the CSQ during quarterly monitoring visits and enter into a database so a comparison can be made between the participant questionnaire and the provider self-assessment. We project to have the information collected by June 15, 2017.

The CSQ will then be conducted annually or with any chance in service settings. The CSQ is also being incorporated into Maryland LTSS tracking system to support ongoing monitoring. System implementation is scheduled for 2018.

The CSQs will also be used as one strategy to validation provider self-assessments and gather information about the setting. It is not a participant experience or satisfaction survey. The Department will work with the DDA Transition Advisory Team to explore strategies to use the new person-centered plan and relevant discovery focus areas for assessing ongoing compliance.

## **VALIDATION OF FINDINGS AND SETTINGS INVENTORY – ON SITE ASSESSMENTS**

### Provider Self-Assessments Validation

The DDA requested that The Hilltop Institute explore multiple strategies to for validation of the provider self- assessments including:

- Geomapping
- CSQs
- OHCQ citation tags
- Employment data

Relevant data/indicators were linked to specific regulations within the HCBS community settings final rule criteria. When multiple validation strategies exist for a single question, the most appropriate one will be chosen based on the data. Information was shared with the DDA Transition Advisory Team for input and recommendations.

### Medicaid Re-Validation

As part of the MDH's re-validation process, site visits are made to all Medicaid providers to meet the Affordable Care Act (ACA) standards. During the site visit, the surveyor report any observed unsafe conditions and/or inappropriately locked (or unlocked) spaces. They will take photos of the facility to document whether it is open and operational. They will scan for accessibility and settings structure such as multiple sites in one location, farmsteads, and other potential isolating characteristics. Pictures and narrative information is then shared with MDH and administrating agencies such as the DDA for further assessment.

### DDA Site Specific Assessment

Based on the results of the preliminary data analysis and statewide provider survey, Maryland will identify specific licensed sites that will need further review prior to the completion of a comprehensive setting results document in order to validate the information obtained through the comprehensive survey.

Validation of the compliance of the specific sites will be determined by CMS guidance as to what is and is not a community setting. CMS has issued clear guidance that any setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS is presumed to have the qualities of an institution. Maryland, with the assistance of The Hilltop Institute and stakeholders, will utilize this guidance in developing and establishing criteria for engaging in site-specific assessments. Results of the site-specific assessments will be used to identify specific settings that do not meet the HCB setting requirements. Site visits will be coordinated by the DDA during the months of July through December 2017.

# HOME AND COMMUNITY-BASED OPTIONS WAIVER (HCBOW)

## BACKGROUND

The Home and Community-Based Options Waiver (HCBOW) provides services for older adults and individuals with physical disabilities in order for them to live at home or an assisted living facility (ALF) instead of a nursing facility. Participants are 18 and older who meet the level of care required to qualify for nursing facility services.

Services that may be provided include:

1. Assisted Living Services
2. Behavior Consultation Services
3. Case Management
4. Family Training
5. Dietician and Nutritionist Services
6. Medical Day Care
7. Senior Center Plus
8. Respite Care\*

\*Respite care is defined as temporary relief for caregivers of those unable to care for themselves due to physical and/or cognitive impairments.

The Home and Community-Based Options Waiver's renewal date is **December 31, 2020**

## ASSESSMENT OF THE SERVICE DELIVERY SYSTEM SETTINGS

Many processes are currently in place to assist OHS in assessing the strengths and weaknesses of the program as it relates to the HCB Settings Rule. OHS monitors providers and service delivery through a number of mechanisms. These efforts will continue throughout the transition process, and will be updated to reflect the new federal standards and other strategies recommended by stakeholders.

The following mechanisms are used to monitor providers and service delivery:

- OHS is responsible for trending, prioritizing, determining and developing recommendations for system improvements based on data analysis.
- Regular reporting and communication facilitate ongoing discovery and remediation. Partners include, but are not limited to: OHS, Office of Health Care Quality (OHCQ), providers, participants, family, Community Options Advisory Council, and other stakeholders. A plan to work on significant problem areas may result in the establishment of a specific task group or groups.
  - The Community Options Advisory Council includes Community First Choice Implementation Council and Waiver Advisory Councils.
- HCBOW has a Quality Management Strategy designed to review operations on an on-going basis, discover issues with operations, remediate those issues, and develop quality improvement initiatives to prevent the repeat of operational problems.
- The use of the Community Settings Questionnaire (CSQ), which was implemented with the start of the Community First Choice program (CFC). CFC, which is available to all waiver participants living in the community, has been compliant with the Home and Community-Based Settings rule from its inception in January 2014. CSQ has been approved by CMS for use as the participant survey. All CO clients now have completed a CSQ.
- OHS conducts site visits to ensure ongoing compliance with licensing requirements. Licenses are issued by OHCQ.
- Plan of Services are reviewed by participants and their case managers quarterly to monitor service delivery - including progress on goals, assessment of services as per the plan, status and confirmation of health services, eligibility, and incidents. These plans are resubmitted annually to OHS for review. Support Planners must submit a CSQ prior to submitting the Plan of Service. CSQ was updated to reflect the HCB Settings rule.
- OHS provides orientation for individuals applying to become a Medicaid-funded provider of Assisted Living Facilities (ALF). All Assisted Living Facilities (ALF) providers must attend an orientation prior to being enrolled as an ALF provider. This process is in addition to the 80-hour manager's course that Assisted Living managers must take before the facility and program will be considered for licensure. ALF providers receive CSQ and community settings regulation information during orientation.
- All entities associated with HCBOW are required to report alleged or actual Reportable Events in full on the Department's Reportable Events form in the tracking system.
  - Any person who believes that an individual has been subjected to abuse, neglect, or exploitation is required to report the alleged abuse, neglect, or exploitation immediately to the police, Adult Protective Services (APS) or Child Protective Services (CPS) office. The complete incident report must be submitted within one working day of discovery.
  - Medicaid staff conducts on-site reviews of unexplained participant deaths that occur in Assisted Living facilities. Unexplained deaths would be those that are suspected to have resulted from other than natural causes, potentially due to abuse or neglect. All such cases are also reported to adult or child protective services authorities as well as the appropriate legal authority.

## INITIAL ASSESSMENT STRATEGIES AND FINDINGS

### Waiver Application and State Regulations Review

In 2014, OHS reviewed the Home and Community-Based Waiver application and State regulations - including COMAR 10.07.14, 10.09.54, 32.03.01 and 32.03.04 to determine the current level of compliance with the new federal requirements. In order to crosswalk all of the documents, Maryland utilized the “HCBS Worksheet for Assessing Services and Settings” developed by the Association of University Centers on Disabilities (AUCD), National Association of Councils on Developmental Disabilities (NACDD) and National Disability Rights Network. This has allowed for consistency across programs and documents.

The preliminary review resulted in identification of missing criteria dictated by the Home and Community-Based Settings rule and language that conflicts or is out of compliance with the rule. See [Appendices B and G](#) for specific details.

### *Services in Compliance*

Through the process described above, the State has determined that the following waiver services comply with the regulatory requirements since they are individualized services provided in the participant’s private home or community:

- Behavior consultation services
- Case management
- Family training
- Dietician and nutritionist services

In addition, respite care will not need further review. This decision was made based on guidance from CMS, and because respite services are allowable in facilities that do not meet HCB setting criteria. Respite care is provided to participants on a short-term basis because of the absence or the need for relief of an individual normally providing assistance.

The State recognizes that respite care has been an approved service on many waiver applications in a variety of community and institutional locations. Respite care will remain in the waiver and provided in the home, community settings, assisted living and nursing facilities.

### *Service Settings that Need Further Review*

The State has determined that the following waiver services, associated regulations, and processes need further review and remediation to fully comply with the regulatory requirements. The State will work with stakeholders and providers of these services to implement the changes needed to achieve full compliance.

- **Medical Day Care**
  - A program of medically supervised, health-related services provided in an ambulatory setting to medically disabled adults who need health maintenance and restorative services to support their continued living in the community.
  - Current regulations COMAR 10.09.07 and 10.09.54 do not address many of the criteria from the HCB setting rule. Further review is needed to ensure that individuals receiving this service are truly integrated and have full access to the greater community.
  
- **Senior Center Plus**
  - A program of structured group activities and enhanced socialization provided for four or more hours a day on a regularly scheduled basis. The program is designed to facilitate optimal functioning, orientation and cognitive ability. Senior Center Plus is provided in an outpatient setting, most often within a senior center. Services available in a Senior Center Plus program include: social and recreational activities designed for elderly/disabled individuals, supervised care, assistance with activities of daily living, instrumental activities of daily living and enhanced socialization and one meal. Health services are not included; hence, Senior Center Plus is an intermediate option between senior centers and medical day care.
  - Current regulations COMAR 10.09.54 and 32.03.01 do not address many of the criteria from the HCB setting rule. Further review is needed to ensure that individuals receiving this service are truly integrated and have full access to the greater community.
  
- **Assisted Living**
  - A licensed facility/home that provides housing and supportive services for individuals who need assistance in performing activities of daily living - such as eating, toileting, dressing and, if needed, medication management.
  - Current regulations COMAR 10.09.54 and 10.07.14 do have two areas in which providers' policies will need to better accommodate resident preferences and rights are enabling ongoing access to food during the day and allowing visitation at any time.
  - In addition, residential service providers also use various leases or residency agreement that will need further review to determine if these are legally enforceable.
  - Further review of each site will be necessary to determine compliance.

### Provider Data

To further evaluate service settings, OHS examined provider data. The following information is based on FY2014 billing data:

- **Medical Day Care**
  - OHS funds 117 providers
  - 4, 781 individuals receive services



- Senior Center Plus – Usually provided in Medical Day Care Facilities
  - OHS funds 7 providers
  - 30 individuals receive services
- Assisted Living
  - OHS funds 452 providers
  - 1509 participants receive services (including Level II and Level III)

Reference: [Appendix 2](#).

### Residential Services Self-Assessment Surveys

In 2014, OHS worked with Hilltop Institute, a non-partisan health research organization with an expertise in Medicaid, to develop and deliver preliminary self-assessment surveys. This process was an initial setting analysis and general in nature across three program populations - Autism, Community Pathways, and HCBO. To encourage participation in the survey, the participant identifying information such as name and program was not collected.

This assessment process does not suggest that any specific program, provider or location is non-compliant solely by classification. Compliance will be determined through further analysis that includes: additional self-assessments for providers and participants, on-site reviews, stakeholder input, and further analysis of programmatic data.

The following self-assessment surveys were completed:

- Provider Self-Assessment
  - 141 providers completed the survey
    - 65 were Assisted Living providers
    - 71 were Residential Habilitation providers
  - Five providers failed to answer these questions
- Participant Self-Assessment
  - 646 participants completed the survey
    - 71 indicated they lived in an assisted living unit
    - 186 indicated they lived in a group home/alternative living unit
    - 205 indicated it was neither an assisted living unit or a group home/alternative living unit
    - 6 indicated they did not know
    - 178 did not answer the question
- Case Manager Self-Assessment
  - 187 case managers completed the survey

A full analysis and recommendations were made by the Hilltop Institute and can be found in [Appendix 10](#).

## ASSESSMENT STRATEGIES AND FINDINGS

Maryland is committed to coming into full compliance with the HCBS rule in advance of the deadline. The following are strategies utilized to come into full compliance with the Home and Community-Based Settings rule:

- Transition Advisory Teams were created in 2015 and the stakeholder process is ongoing, with meetings on a monthly basis.
- MDH already has a process to assure that participants, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice for relocation if they desire or if it becomes necessary. Maryland provides a Freedom of Choice (FOC) form to participants. The form includes an attestation that the participant received a list of all providers. Participants currently sign the FOC prior to enrollment.
- Maryland law and all regulations related to the Assisted Living program were reviewed. OHS has determined that nothing in current law or regulations conflicts with the HCBS rule. However, there are some areas of the HCBS rule that are not addressed by current regulations. MDH will update the regulations accordingly within the next two years.
- OHS is in the process of doing a systemic assessment of all providers of facility based or residential services.

### Provider Survey

A pilot survey was completed in Fall 2015.

To further assess providers, OHS implemented the HCBS Provider Self-Assessment in January 2016. Compliance with the provider survey was ensured by suspending the provider number of non-responding providers. All providers have completed the survey or are no longer in operation. Hence, no providers were suspended.

MDH and Hilltop Institute are currently analyzing the data from the provider survey to determine compliance with all components of the rule. Preliminary results show that compliance is possible for all providers by 2022.

The following are findings specific to ALF:

- 29 providers self-identified as being located in a nursing facility, institution for mental disease, intermediate care facility for individuals with intellectual disabilities, or a hospital. These providers may need to be subject to heightened scrutiny. However, more research is needed to determine if they really are located in a nursing facility, institution for mental disease, intermediate care facility for individuals with intellectual disabilities, or a hospital, or if the self-report is inaccurate.
- 39 providers self-identified as being located on the grounds or adjacent to a facility that provides inpatient institutional treatment. We believe that many of these 39 overlap with the 29 who say they are being located in a nursing facility, institution for mental disease, intermediate care facility for individuals with intellectual disabilities, or a hospital, as the questions are similar.
- 21 providers self-report complete compliance, which means none of the 75 questions were of concern.

The most commonly concerned questions for ALF are:

<b><u>ALF Top Concerns :</u></b>	<b><u>Total Number of Negative Responses:</u></b>
Do participants have keys to their entrance door (i.e., the front door)	381
Do participants control their own funds? (i.e., participants have their own checking or savings account that they manage.)	368
Do participants have keys to their bedroom doors?	350

Corrective Action Plans

The Department sought input from the Medicaid Transition Advisory Team on a standardized Corrective Action Plan template, instructions, guidance, and development of a reconsideration request process. The Corrective Action Plan template was prepopulated with concerns/issues for specific sites based on the provider’s responses to the survey questions and Medicaid’s compliant/non-compliant coding scheme. Any provider who felt that they misunderstood the question(s) or that Department misunderstood their response(s) had the opportunity to submit a request for reconsideration within 10 days. The Corrective Action Plan guidance and supporting documents can be viewed by clicking [here](#). Providers had up to 30 calendar days to submit their Corrective Action Plan which included transitional codes to assist with organizing and reviewing and details of the provider specific transitional strategies.

Further research is needed to determine the accuracy of these self-reports. MDH utilizes the participant survey and site visits process as additional strategies to validate the results from the HCBS Provider Self-Assessment.

Participant Survey

The Community Settings Questionnaire (CSQ) is currently given to waiver participants annually or with any change in residence by the Supports Planner. All Supports Planners - case managers who are not associated with the provider - are required to complete a CSQ with their client after visiting the setting.

All CO participants have had a current CSQ since May 2016. As it is being housed in the Maryland LTSS tracking system, the data will be cross-referenced with the provider survey by the Hilltop Institute.

Site Visits

In July 2017 Office of Health Services Medicaid will start to conduct site visits for providers who are on the heightened scrutiny list and other Home and Community Based Settings facilities.

## Provider Educational Manual

The Office of Health Services has created a draft for a Provider Educational Manual. The Provider Educational Manual is a guide that describes the Home and Community-Based Settings Rule and provides information on areas providers will need to review to be in compliance with the new rule. The manual gives a brief overview of what the Home and Community-Based Settings rule is, who are affected by the rule, and an in depth explanation of topics such as privacy dignity and respect, heightened scrutiny and site visits. In addition the guide includes a list of frequently asked questions and a glossary of commonly used terms.

All ALF providers will be re-validated to meet the Affordable Care Act (ACA) standards. As of April 2016, there are 668 ALF providers. OHS has sent mailings to approximately 1/2 of the providers, and will continue with wave mailings until completed. The project should be completed by December 31, 2017. Each provider is required to submit an updated application, current ALF license, resumes for manager and alternate manager, copy of current license for delegating nurse, resident agreement, resident rights, and resident house rules to verify adherence to program regulations.

As part of the re-validation process, starting in May 2016, site visits are made to all ALF providers to validate the provider survey and determine compliance with aspects of the HCBS rule. The site team visitors are MDH contractors, reviewing ACA required information and three questions about community settings. The following questions are added to the re-validation checklist:

- Is the ALF located in, adjacent to, or on the grounds of a nursing facility, an institution for mental diseases, an intermediate care facility for individuals with intellectual disabilities or a hospital?
- Is the site near other private residences or retail businesses and not physically isolated from the greater community? (i.e., not a gated setting, secured community, farm community, or campus setting)
- Is all personal information about participants kept in a secure and private location? (e.g., in a locked file cabinet.)

Site visitors also report any observed unsafe conditions and/or inappropriately locked (or unlocked) spaces. They also send pictures and narrative information to MDH of any observed isolating residences.

All Supports Planners currently visit their clients in the clients' residence at least quarterly. For site visits, Supports Planners will assess community settings compliance and report their findings to MDH.

Site visits will be made to all ALFs for provider and participant education and to validate the results of the provider survey. Site visits began in June 2017. Additional site visits will be made by the MDH Reportable Events Unit to ALFs which may need heightened scrutiny or who are compliance problems.

# MEDICAL DAY CARE SERVICES WAIVER

## BACKGROUND

The Medical Day Care Services Waiver offers qualified participants services in a community-based day care facility. Day care centers operate five to seven days a week providing services 4 to 12 hours a day. Participants are 16 years and older who meet the level of care required to qualify for nursing facility services.

The following services may be provided:

1. Prevention, Diagnosis, Treatment, Rehabilitation and Continuity of Care Assessments
2. Skilled Nursing and Nursing Assessments, including Medication Monitoring
3. Physical Therapy Services
4. Occupational Therapy Services
5. Personal Care Services
6. Nutrition Services, including Meals
7. Social Work Services, including Daily Living Skills Training and Enhancement
8. Activity Programs
9. Transportation Services

The Medical Day Care Services Waiver's renewal date is August 8, 2021.

## ASSESSMENT OF THE SERVICE DELIVERY SYSTEM SETTINGS

Many processes are currently in place to assist OHS in assessing the strengths and weaknesses of the program as it relates to the HCB Settings Rule. OHS monitors providers and service delivery through a number of mechanisms. These efforts will continue throughout the transition process, and will be updated to reflect the new federal standards and other strategies recommended by stakeholders.

The following mechanisms are used to monitor providers and service delivery:

- OHS is responsible for trending, prioritizing, determining and developing recommendations for system improvements based on data analysis.
- Regular reporting and communication facilitate ongoing discovery and remediation. Partners include, but are not limited to: OHS, Office of Health Care Quality (OHCQ), providers, participants, family, Waiver Advisory Councils, industry associations, and other stakeholders. A plan to work on significant problem areas may result in the establishment of a specific task group or groups.

- Medical Day Care Services Waiver performs quality management activities to review operations on an on-going basis, discover issues with operations, remediate those issues, and develop quality improvement initiatives to prevent the repeat of operational problems.
- OHS conducts site visits to review and ensure:
  - Ongoing compliance with licensing requirements. Licenses are issued by OHCQ.
  - Ongoing compliance with Participants Plan of Services
- Providers care plans to OHS on a quarterly and annual basis. OHS reviews the care plans for:
  - Status and confirmation of health services
  - Eligibility
  - Incidents
- All entities associated with the Medical Day Care Services Waiver are required to report alleged or actual Reportable Events in full on the Department’s Reportable Events form in the tracking system.
- Any person who believes that an individual has been subjected to abuse, neglect, or exploitation is required to report the alleged abuse, neglect, or exploitation immediately to the police, Adult Protective Services (APS) or Child Protective Services (CPS) office. The complete incident report must be submitted within one working day of discovery.

## **INITIAL ASSESSMENTS STRATEGIES AND FINDINGS**

### Waiver Application and State Regulations Review

In 2014, OHS reviewed the Medical Day Care Services Waiver application and State regulations - including COMAR 10.09.07, 10.09.61, and 10.12.04 – to determine the current level of compliance with the new federal requirements. In order to crosswalk all of the documents, Maryland utilized the “HCBS Worksheet for Assessing Services and Settings” developed by the Association of University Centers on Disabilities (AUCD), National Association of Councils on Developmental Disabilities (NACDD) and National Disability Rights Network. This has allowed for consistency across programs and documents.

The preliminary review resulted in identification of missing criteria dictated by the Home and Community-Based Settings rule and language that conflicts or is out of compliance with the rule.

See [Appendices C and J](#) for specific details.

## Provider Data

To further evaluate, OHS examined provider data. The following information is based on FY2014 billing data:

- OHS funds 117 Medical Day Care providers
- 4892 individuals receive services

Reference: [Appendix 4](#)

## **ASSESSMENT STRATEGIES AND FINDINGS**

Maryland is committed to coming into full compliance with the HCBS rule in advance of the deadline. The following are strategies utilized to come into full compliance with the Home and Community-Based Settings rule:

- Transition Advisory Teams were created in 2015 and the stakeholder process is ongoing, with meetings on or about a monthly basis.
- MDH already has a process to assure that participants, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice for relocation if they desire or if it becomes necessary. Maryland provides a Freedom of Choice (FOC) form to participants that include an attestation that the participant received a list of all providers. Participants currently sign the FOC prior to enrollment.
- Maryland law and all regulations related to the Medical Day Care Waiver program were reviewed. OHS has determined that nothing in current law or regulations conflicts with the HCBS rule. However, there are some areas of the HCBS rule that are not addressed by current regulations. MDH will update the regulations accordingly within the next two years.

## Provider Survey

A pilot survey was completed in Fall 2015.

To further assess providers, OHS implemented the HCBS Provider Self-Assessment in January 2016. Compliance with the provider survey was ensured by suspending the provider number of non-responding providers. All providers have completed the survey or are no longer in operation. Hence, no providers were suspended.

MDH and Hilltop Institute are currently analyzing the data from the provider survey to determine compliance with all components of the rule. Preliminary results show that compliance is possible for all providers by 2022.

The following are findings specific to MDC:

- 7 providers self-identified as being located in a nursing facility, institution for mental disease, intermediate care facility for individuals with intellectual disabilities, or a hospital. These providers may need to be subject to heightened scrutiny, however more research is needed to determine if they really are

located in a nursing facility, institution for mental disease, intermediate care facility for individuals with intellectual disabilities, or a hospital, or if the self-report is inaccurate.

- 12 providers self-identified as being located on the grounds or adjacent to a facility that provides inpatient institutional treatment. We believe that many of these twelve overlap with the seven who say they are being located in a nursing facility, institution for mental disease, intermediate care facility for individuals with intellectual disabilities, or a hospital, as the questions are similar.
- 11 providers self-report complete compliance, which means none of the 75 questions were failed.

Further research is needed to determine the accuracy of these self-reports. MDH utilizes the participant survey and site visits process as additional strategies to validate the results from the HCBS Provider Self-Assessment.

### Corrective Action Plans

The Department sought input from the Medicaid Transition Advisory Team on a standardized Corrective Action Plan template, instructions, guidance, and development of a reconsideration request process. The Corrective Action Plan template was prepopulated with concerns/issues for specific sites based on the provider's responses to the survey questions and Medicaid's compliant/non-compliant coding scheme. Any provider who felt that they misunderstood the question(s) or that Department misunderstood their response(s) had the opportunity to submit a request for reconsideration within 10 days. The Corrective Action Plan guidance and supporting documents can be viewed by clicking [here](#). Providers had up to 30 calendar days to submit their Corrective Action Plan which included transitional codes to assist with organizing and reviewing and details of the provider specific transitional strategies. Conflict-Free Case Management

The Medical Day Care Services Waiver does not offer waiver case-management services by an independent entity. The person-centered plans are developed and executed by the provider through nursing and social work services. Registered nurses and licensed social workers, employed by medical day care providers, must comply with Maryland's Nurse and Social Work Practice Acts, which holds them accountable for individual judgments and actions and ensures each discipline acts in the best interest of the participant.

Participants also have a right to include legal counsel, outside community resources, as well as other healthcare disciplines to ensure their best interest is met. In addition, plan are reviewed and approved by the Office of Health Services and Long-Term Services and Supports.

### Site Visits

Site visits are incorporated into the re-validation process. All Medical Day Care providers will receive a site visit to validate the provider survey results and determine compliance with the HCBS rule. Site visits will start in July 2017 by the Office of Health Services team.



# MODEL WAIVER FOR MEDICALLY FRAGILE CHILDREN

## BACKGROUND

This waiver allows children with complex medical needs to receive medical care in their homes instead of a hospital, nursing facility, or other long-term care facility. The Maryland Department of Health administers this waiver. Participants must be enrolled in the program prior to age 22. They may remain in the program as long as eligibility requirements are met. The ages of those served in this program are birth through age 21. The child must have complex medical needs, be at risk of long-term hospitalization, and need the level of care required to qualify for nursing facility or chronic hospital services.

Services that may be provided include:

1. Case management
2. Medical Day Care
3. Home health aide assistance
4. Physician participation in the plan of care development
5. Private duty nursing

## INITIAL ASSESSMENT STRATEGIES AND FINDINGS

Through the preliminary assessment process, the State has determined that the following waiver services comply with the regulatory requirements because they are individualized services provided in the participant's private home or community:

1. Case management
2. Home health aide assistance
3. Physician participation in the plan of care development
4. Private duty nursing

The Model Waiver for Medically Fragile Children's renewal date is July 1, 2018.

## Waiver Application and Regulations Assessment

Between September and November 2014, the OHS completed a review of the Annotated Code of the Model Waiver application, and State regulations, including COMAR 10.09.27, to determine the current level of compliance with the new federal requirement. In order to crosswalk all of the following documents, Maryland has utilized the “HCBS Worksheet for Assessing Services and Settings,” developed by the Association of University Centers on Disabilities (AUCD), National Association of Councils on Developmental Disabilities (NACDD), and the National Disability Rights Network. This has allowed for consistency across programs and documents.

The preliminary review resulted in identification of missing criteria dictated by the Final Rule, but no language that conflicts or is out of compliance with the rule that will require remediation. See [Appendices E](#) for specific details.

## **PRELIMINARY FINDINGS RELATED TO THE SERVICE DELIVERY SYSTEM**

The State has determined that the following waiver services, associated regulations, and processes need further review and remediation to fully comply with the regulatory requirements. The State will work with stakeholders and providers of these services to implement the changes needed to achieve full compliance.

### Medical Day Care

Currently, no one in this population is receiving such services, so reviewing the population, and the services they are receiving, on a continual basis will be necessary to ensure any new providers of this service meet the new HCB setting criteria. On-going quality monitoring will also be necessary.

# WAIVER FOR INDIVIDUALS WITH BRAIN INJURY

## BACKGROUND

This waiver provides services to individuals who are currently residing in state psychiatric hospitals, State-owned and operated facilities, chronic hospitals that are accredited for brain injury rehabilitation, or for whom Maryland is paying for services in an out-of-state facility. This waiver serves individuals age 22 to 64, for whom the brain injury must have occurred after the age of 17. Individuals must be diagnosed with a brain injury and need the level of care required to qualify for nursing facility or chronic hospital services.

Services that may be provided include:

1. Case management
2. Day habilitation
3. Individual support services
4. Residential habilitation
5. Supported employment
6. Medical Day Care

The Waiver for Individuals with Brain Injury's renewal date is July 1, 2021.

## INITIAL ASSESSMENTS: STRATEGIES AND FINDINGS

### Provider Data

As of November of 2014, when the following data was run, there are 4 provider types for the participants of the Waiver for Individuals with Brain Injury that will need to be more closely looked at. The following information is based on billing data, and providers of the following services will be targeted for further review:

#### Residential Habilitation

- Level 2
  - 58 participants
- Level 3
  - 17 participants

## Day Habilitation

- Level 1
  - 1 participant
- Level 2
  - 55 participants
- Level 3
  - 6 participants

## Supported Employment

- Level 3
  - 6 participants

## Medical Day Care

Currently, no one in this population is receiving such services, so reviewing the population, and the services they are receiving, on a continual basis will be necessary to ensure any new providers of this service meet the new HCB setting criteria. On-going quality monitoring will also be necessary.

Reference: [Appendix 6](#)

Based on this information, further review and heightened scrutiny is needed to assess whether services or settings may have institutional qualities or isolating individuals receiving Medicaid-funded HCBS from the broader community due to multiple provider settings close to each other and settings that serve only those with disabilities or those only with certain diagnoses like Brain Injury.

## Self-Assessment Surveys for Residential Services

During July through October of 2014, the MDH worked with the Hilltop Institute, a non-partisan health research organization with an expertise in Medicaid, to develop and deliver preliminary self-assessment surveys that were specific to participants receiving residential habilitation services and their representatives, providers, and case managers. This process was an initial setting analysis and general in nature across three program populations including the Autism, Community Pathways, and Home and Community-Based Options Waivers. To support participation in the survey, participant specific information such as name and program was not collected. This assessment process does not suggest that any specific program, provider or location is non-compliant solely by classification. Compliance will be determined through further analysis that might include: additional self-assessments for providers and participants, on-site reviews, stakeholder input, and further analysis of programmatic data. Below is a brief summary of the methodology and analysis of the three self-assessments. A full analysis and recommendations were made by the Hilltop Institute that can be found in [Appendix 10](#).

## Provider Self-Assessment

- 141 providers completed the provider survey
- Of these, 65 were assisted living providers and 71 were residential habilitation providers.
- Five providers failed to answer these questions.
- Several questions were asked about the physical location of their settings, as well as the type of people served at the settings.

### Participant Self-Assessment

- 646 participants responded to the survey.
- Of the 646 participants, 71 indicated they lived in an assisted living unit, 186 indicated they lived in a group home/alternative living unit, 205 indicated it was neither an assisted living unit or a group home/alternative living unit, 6 indicated they did not know, and 178 did not answer the question.

### Case Manager Self-Assessment

- 187 case manager responses

Based on the information gathered from the preliminary survey, areas that have been identified for further review include those settings that may be in institutions, settings that may be isolating to participants (multiple provider settings close to each other and settings that serve only those with disabilities), and settings with criteria that had lower affirmative response rates (such as access to food, locking the front door, and lease issues).

Further review should include assessment of criteria for settings presumed not to be home and community-based: settings near other settings run by the provider for people with disabilities, an individual's control over their personal resources, community access and involvement, and the ability to file complaints. Additional areas of concern in residential settings are whether the participant signs a lease, has a choice of a private room or a roommate, the degree of privacy available, has flexible access to food, and encounters barriers to any of these elements set forth in the Final Rule.

### Waiver Application and Regulations Assessments

Between September and November 2014, OHS reviewed State regulations, including COMAR 10.09.46, to determine the current level of compliance with the new federal requirement. In order to crosswalk all of the following documents, Maryland has utilized the "HCBS Worksheet for Assessing Services and Settings," developed by the Association of University Centers on Disabilities (AUCD), National Association of Councils on Developmental Disabilities (NACDD), and the National Disability Rights Network. This has allowed for consistency across programs and documents.

The preliminary review resulted in identification of missing criteria dictated by the Final Rule and language that conflicts or is out of compliance with the rule that will require remediation. See [Appendices F and K](#) for specific details.

## **PRELIMINARY FINDINGS RELATED TO THE SERVICE DELIVERY SYSTEM**

Through the process described above, the State has determined that the following waiver services comply with the regulatory requirements because they are individualized services provided in the participant's private home or community:

1. Case management - The services provided by a case manager who assists an individual in gaining access to needed medical, social, educational, and other services. This service includes assessment, referral, coordination, and monitoring of the plan of care.
2. Individual Support Services - Assistance provided to an individual to enable participation in the community,

The State has determined that the following waiver services, associated regulations, and processes need further review and remediation to fully comply with the regulatory requirements. The State will work with stakeholders and providers of these services to implement the changes needed to achieve full compliance.

1. Day Habilitation - Assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills, which takes place in a nonresidential setting, separate from the home or facility in which the individual resides, normally furnished four or more hours per day.

The preliminary review resulted in identification of missing criteria dictated by the Final Rule. Of particular importance will be looking further into topics that address community integration.

Current regulations COMAR 10.09.46 does have an area of noncompliance. The settings do not currently ensure freedom from restraint. Further review to identify the qualities of the residential service setting will be needed to ensure the rights of participants' are being upheld.

2. Residential Habilitation – Assistance with acquisition, retention, or improvement in skills related to activities of daily living and the social and adaptive skills necessary to enable the individual to live in a non-institutional setting.

ALUs can be licensed to support one to three individuals and GHs can be licensed for up to eight individuals. Special permission is required for any individual living in a home of greater than four individuals. In reviewing these exceptions, the following are considered: 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, 3) health and safety, and 4) other exceptional circumstances. Provider data noted above indicated there are several residential provider sites with more than three individuals. These sites will need further review to ensure compliance with the rule.

Residential providers have various sites that are established to meet the individual needs of the resident. Providers shared concerns with the self-assessment survey as it was based on a single site or facility and answers to questions would vary depending if based on specific sites. Further review of each site is needed to identify areas of concerns per site.

Current regulations COMAR 10.09.46 does have an area of noncompliance. The settings do not currently ensure freedom from restraint. Further review to identify the qualities of the residential service setting will be needed to ensure the rights of participants' are being upheld.

Residential service providers also use various leases or residency agreement, which need further review to determine if these are legally enforceable. Stakeholder input included the suggestion for a standardize lease or agreement

3. Supported Employment – Activities needed to support paid work by individuals receiving waiver services, including supervision and training.

Maryland is a member of the State Employment Leadership Network (SELN), which includes state development disability agencies that share, educate, and provide guidance on communities of practice and policies around employment. Part of this effort includes the use of data to guide daily systems management. Maryland is currently assessing employment outcomes data for 2014, which includes various setting types, such as integrated jobs (i.e. individual competitive job, individual contracted job, group integrated job, and self-employment), facility-based employment, and community-based non-work.

4. Medical Day Care - Medically supervised, health-related services provided in an ambulatory setting to medically handicapped individuals who, due to their degree of impairment, need health maintenance and restorative services supportive to their community living.

Currently, no one in this population is receiving such services, so reviewing the population, and the services they are receiving, on a continual basis will be necessary to ensure any new providers of this service meet the new HCB setting criteria. On-going quality monitoring will also be necessary.

## ASSESSMENT STRATEGIES AND FINDINGS

As of 08/5/16, there are 86 enrolled participants and 5 providers in the BI waiver.

Maryland is committed to coming into full compliance with the HCBS rule in advance of the deadline. The following are strategies utilized to come into full compliance with the Home and Community-Based Settings rule:

- Transition Advisory Teams was created in 2015 and the stakeholder process is ongoing, with meetings on a monthly basis.
- Maryland law and all regulations related to the Brain Injury Waiver program were reviewed. MDH has determined that nothing in current law or regulations conflicts with the HCBS rule. However, there are some areas of the HCBS rule that are not addressed by current regulations. MDH will update the regulations accordingly.
- MDH is in the process of doing a systemic assessment of all providers of facility based or residential services.

### Provider Survey

#### *Non-Residential Provider Self-Assessment*

MDH implemented the DDA Non-Residential Provider Self-Assessment in April 2016. Compliance with the provider survey was ensured by suspending the provider number of non-responding providers.

#### *Residential Provider Self-Assessment*

MDH implemented the DDA Residential Provider Self-Assessment in June 2016. Compliance with the provider survey will be ensured by suspending the provider number of non-responding providers.

MDH and Hilltop Institute will be analyzing the data from the provider survey to determine compliance with all components of the rule. MDH conducted a mass mail merge to providers who indicated non-compliance on certain questions from the provider survey. The letter is individualized to each provider, and contains question(s) deemed non-compliance as well as corresponding explanations. Any provider who felt that they misunderstood the question(s) or that MDH misunderstood their response(s) may submit a request for reconsideration within 10 days. Providers who did not submit a request for reconsideration are expected to submit a Corrective Action Plan (CAP). See [Appendix 11](#) for sample letter and instructions for CAP.

### Provider Transition Plans

The Department sought input from the DDA Transition Advisory Team on a standardized Provider Transition Plan template, instructions, guidance, and development of a reconsideration request process. The Provider Transition Plan template was prepopulated with concerns/issues for specific sites based on the provider's responses to the survey questions and Medicaid's compliant/non-compliant coding scheme. Any provider who felt that they misunderstood the question(s) or that Department misunderstood their response(s) had the opportunity to submit a request for reconsideration within 10 days. The Provider Transition

Plan guidance and supporting documents can be viewed by clicking [here](#). Providers had up to 90 calendar days to submit their Provider Transition Plan which included transitional codes to assist with organizing and reviewing and details of the provide specific transitional strategies.

Technical assistance from Medicaid staff is available to providers if they have difficulty addressing any of the HCBS requirements.



# **INTENSIVE BEHAVIORAL HEALTH SERVICES FOR CHILDREN, YOUTH, & FAMILIES**

## **1915(i)**

### **BACKGROUND**

The 1915(i) provides community-based treatment to children and youth with serious emotional disturbance (SED) and their families through a wraparound service delivery model. Each participant's Child and Family Team develops an individualized plan of care, which is implemented in partnership with a Care Coordination Organization through the Targeted Case Management (TCM) program. Eligible participants must enroll before age 18. Participants may receive services through 21 years of age.

Services that may be provided are:

1. Customized Goods & Services
2. Expressive and Experiential Therapy
3. Family Peer Support Services
4. Mobile Crisis Response Services
5. Intensive In-Home Services
6. Respite Services

### **INITIAL ASSESSMEN STRATEGIES AND FINDINGS**

Over the past several years, Maryland has operated a special CMS demonstration project known locally as the Residential Treatment Center (RTC) Waiver. This time-limited demonstration project used a special authority granted by the federal government under Section 1915(c) of the Social Security Act to provide home and community-based services for children and youth with emotional disturbances and their families. The demonstration project reached its statutory end.

In order to sustain and refine the approach undertaken in the initial CMS Demonstration Project, Maryland has created a 1915(i) State Plan Amendment (SPA) to serve a similar, but not identical, population of youth and families as prescribed by the federal government.

## **PRELIMINARY FINDINGS RELATED TO THE SERVICE DELIVERY SYSTEM**

Through the preliminary assessment process, the State has determined that the following 1915 (i) services comply with the regulatory requirements because they are individualized services provided in the participant's private home or community:

1. Customized Goods & Services: Participant-directed expenditures that support a participant's plan of care, selected in partnership with the care coordination organization.
2. Expressive and Experiential Therapy: Includes the use of art, dance, music, equine, horticulture, or drama to accomplish individualized goals as part of the plan of care
3. Family Peer Support Services: Helping and empowering the family with the participant's services.
4. Mobile Crisis Response Services: Offered in response to urgent mental health needs, and are available 24 hours per day and 7 days a week. They are short-term individualized services that assist in de-escalating crises and stabilizing children and youth in their homes and community setting.
5. Intensive In-Home Services: Strength-based interventions with the child or youth and his or her identified family that includes a series of components

The State also recognizes that respite care has been an approved service in many federal applications in a variety of community and institutional locations. Respite care is defined as including both community-based respite services, provided in the home or community-based setting and out-of-home respite services, which provide a temporary overnight living arrangement outside of the participant's home. The service will remain in the 1915(i) and will be provided in the home or community-based alternative living settings. Based on guidance received from CMS, the State believes that because respite services are allowable in facilities that do not meet the HCB setting criteria that these settings will not need further review.

## SECTION 2: PROPOSED REMEDIATION STRATEGIES

As part of CMS regulations, Maryland must develop a plan to remediate or correct, through various means, any areas of non-compliance with HCB setting rules. Maryland has developed the following remediation strategies including descriptions, timelines, milestones, and group responsible for monitoring. Some strategies may require legislative changes, budgetary actions, and/or federal amendments.

Legislative and budgetary actions are considered by the Maryland General Assembly annually from January through April. The following information is noted on the Maryland General Assembly website at <http://msa.maryland.gov/msa/mdmanual/07leg/html/proc.html>

### Bills

The State Constitution mandates that legislative bills be limited to one subject clearly described by the title of the bill and be drafted in the style and form of the *Annotated Code* ([Const., Art. III, sec. 29](#)). The one-subject limitation and the title requirement are safeguards against fraudulent legislation and allow legislators and constituents to monitor a bill's progress more easily. Ideas for bills (proposed laws) come from many sources: constituents, the Governor, government agencies, legislative committees, study commissions, special interest groups, lobbyists and professional associations, for example. Each bill, however, must be sponsored by a legislator. At the request of legislators, bills are drafted to meet constitutional standards by the [Department of Legislative Services](#) until July (the Department starts to receive drafting requests in mid-April, shortly after the legislative session ends). In the interim between sessions, legislators meet in committees, task forces, and other groups to study and formulate bill proposals.

### Budget Bill

In Maryland, the Constitution provides for an annual budget bill. Each year, the Governor presents a bill to the General Assembly containing the budget for State government for the next fiscal year. In Maryland, the fiscal year begins July 1 and ends June 30. The General Assembly may reduce the Governor's budget proposals, but it may not increase them. The budget, however, whether it is supplemented or amended, must be balanced; total estimated revenues always must be equal to or exceed total appropriations ([Const., Art. III, sec. 52 \(5a\)](#)).

If the General Assembly has not acted upon the budget bill seven days before the expiration of a regular legislative session, the Governor by proclamation may extend the session for action to be taken on the bill. After both houses pass the budget bill, it becomes law without further action ([Const., Art. III, sec. 52](#)). The Governor may not veto the budget bill.

### Maryland Regulation Process

Maryland has specific requirements for the adoption of regulation including utilizing an emergency or standard process. The length of time to complete these processes varies depending on time for development and stakeholder input, submission date, and public comments. At a minimum, it is a process that will take 94 days, after initial developments and submission from the State agency. The full text of each proposed regulation must be published in the Maryland Register. The process includes the following: Attorney General's Review; Administrative, Executive, and Legislative Review (AELR) Committee preliminary review; Maryland Registry review and publication; 30-day comment and review period; and regulations promulgation.

### Federal Amendments

Amendments or changes to Medicaid Waivers or State Plan programs require stakeholder input and public notices prior to submission to CMS. Once submitted, CMS has up to 90 days to review the request and may request additional information or ask questions, which can affect the timeframe.

Proposed regulation COMAR 10.09.36-1 is in the process of being adopted and is overarching. All providers of Home and Community-Based services are obligated to follow the guidelines and criteria set forth under COMAR 10.09.36. This regulation will ensure all of the processes and procedures that are currently non-compliant will be in compliance. As a result, no provider will be non-compliant. COMAR 10.09.36 will address all of the criteria of the Federal HCBS rule.

## MARYLAND’S TRANSITION REMEDIATION STRATEGIES

It is important to note that the intent of the transition plan and remediation strategies is not to close or terminate providers but instead, to work with participants, providers and other stakeholders to come into compliance with the CMS Final Rule and the vision of ensuring individuals are fully integrated into the community, afforded choice, and have their health and safety needs met. The table below outlines the strategies that Maryland has developed to both further assess compliance and to then address areas of non-compliance.

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
Regulations	Maryland will review and revise all applicable program regulations to meet the new HCB setting rule.	<ol style="list-style-type: none"> <li>1. Maryland to complete crosswalk of program regulations.</li> <li>2. Legal Review of preliminary findings.</li> <li>3. Develop regulation revisions to comply and allow for enforcement of HCB rule.</li> <li>4. Stakeholder process and public notice to amend regulations. (CP, HCBOW, Med Day)</li> <li>5. Develop regulation revisions to comply and allow for enforcement of HCB rule. (Remaining regulations)</li> <li>6. Stakeholder process and public notice to amend regulations. (Remaining regulations)</li> </ol>	<ol style="list-style-type: none"> <li>1. 12/2014</li> <li>2. 06/2015</li> <li>3. 12/2016</li> <li>4. 06/2017</li> <li>5. 08/2017</li> <li>6. 01/2018</li> </ol>	Adopted Regulations	Office of Health Services and established stakeholder transition teams

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
Transition Advisory Teams	<p>Creation of transition teams specific to the unique program service delivery system and/or service provider for ongoing stakeholder guidance, input, and monitoring of transition plan remediation.</p> <p>Teams will include program participants, family members, self-advocates and representation from other stakeholders.</p> <p>Monthly meetings</p>	<p>Establishment of the transition teams including, but not limited to, the following:</p> <ol style="list-style-type: none"> <li>1. DDA Transition Team (includes Community Pathways and Brain Injury Waivers)</li> <li>2. Medicaid Transition Team (includes Community Options, Autism, Medical Day, and Model Waivers)</li> </ol>	04/2015	Transition Teams	Office of Health Services and established stakeholder transition teams
Community Pathways Waiver Review	To further assess and enhance the DDA services delivery system, the DDA has procured independent consultants to review the Community Pathways Waiver for compliance with the Final Rule.	Independent consultants review of the Community Pathways Waiver	04/2015	<a href="#">Consultant Report</a>	DDA Quality Advisory Council
Maryland's Community Supports Standards	Communicate Maryland's HCB setting vision, expectations, and standards in compliance with the CMS rule to all stakeholders.	MDH to issue formal statement regarding HCB setting vision, expectations, and standards in compliance with the CMS rule.	04/2015	<p>Department Transmittal</p> <p><a href="#">Group Home Moratorium</a></p> <p><a href="#">Group Home Moratorium Clarification</a></p>	Office of Health Services and established stakeholder transition teams

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
<p>Lease or Other Legally Enforceable Agreement</p> <p>*Assisted Living</p> <p>*Residential Habilitation</p>	<p>Service providers use different leases or residency agreements for the service they provide.</p> <p>Maryland will request a representative sample of leases or residency agreement to assess for compliance with the Final Rule.</p>	<ol style="list-style-type: none"> <li>1. Collect and assess provider lease or residency agreement to determine if they are legally enforceable and comply with Final Rule.</li> <li>2. Explore standard lease or agreement for specific service delivery system.</li> <li>3. Work with the stakeholders and the Maryland Disability Law Center and Legal Aid to explore local county requirements and propose recommendations to be reviewed by the public and implemented across the similar programs.</li> <li>4. Regulation requirement in COMAR</li> <li>5. Communicate standards with participants and providers.</li> <li>6. Providers come into compliance with lease agreement requirements.</li> <li>7. Maryland assesses ongoing compliance by reviewing all leases and residency agreements of all new providers and a randomly selected, statistically significant sample of existing providers annually.</li> </ol>	<ol style="list-style-type: none"> <li>1. 05/2015</li> <li>2. 06/2015</li> <li>3. 06/2016</li> <li>4. Fall 2017</li> <li>5. 12/2017</li> <li>6. 12/2018</li> <li>7. Ongoing</li> </ol>	<p>Lease and Residency Agreements Summary</p>	<p>Office of Health Services and established stakeholder transition teams</p> <p>MDH Staff supports planning agencies</p>
<p>Initial Participant and Provider Surveys</p>	<p>Based on the results of the preliminary surveys, which grouped programs together, Maryland will work with program transition teams to develop waiver (program) specific comprehensive surveys that will provide data to further assess compliance with the Final Rule. Due to the unique individual needs and provider sites, a survey is to be completed for each licensed site.</p>	<p>Develop waiver program specific participant, provider, and site assessments survey techniques and alternative methodologies to determine provider compliance with the HCB setting rule including identifying supports for participants in completing the surveys.</p>	<p>06/2015</p>	<p><a href="#">Survey Report</a></p>	<p>Quality Councils</p> <p>Office of Health Services and established stakeholder transition teams</p> <p>MDH Staff</p>

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
Provider Transition Symposium	Maryland, in partnership with stakeholders, will conduct a symposium to share communities of practice and transition strategies from Maryland service providers and national entities.	Provide technical assistance for providers to transition current service delivery system to comply with new HCB setting rule.	06/2015 12/2018	<a href="#">Provider Transition Symposium</a>	Office of Health Services and established stakeholder transition teams  DDA Staff
Waiver Amendments	Based on assessment of waiver programs, independent consultant findings, and stakeholder input, amend waiver programs to comply with the Final Rule.  To provide time for development of new service models, business processes, rates and stakeholder input, program changes may occur in stages with additional amendments submitted later.	Submit Waiver Amendment to CMS  1. Community Pathways Waiver 2. Home and Community-Based Options Waiver 3. Medical Day Care Waiver 4. Brain Injury Waiver 5. Autism Waiver	1. <a href="#">07/2016</a> 2. No amendments 3. No amendments 4. 12/2020 5. No amendments	Waiver Amendments  <a href="#">Amendment #1</a>  <a href="#">Amendment #2</a>	MDH Staff  Office of Health Services and established stakeholder transition teams
Pilot Waiver specific survey (i.e. Autism, Community Pathways, Brain Injury, etc.)	Prior to implementation of a waiver program specific survey, Maryland will administer the program specific surveys using a pilot group in order to assess the validity and reliability of the survey.	Pilot program surveys for participants and providers.	1/2015	<a href="#">Pilot Survey Summary</a>	Office of Health Services and established stakeholder transition teams

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
<p>Provider Enrollment and Provider Training</p>	<p>Review and revise, as needed, the program provider enrollment and recertification processes. Provide training to new and existing providers to educate them on the new HCB setting requirements, provider transition plans, and State actions for non-compliance.</p>	<p>Review and revise provider enrollment and provide training as applicable.</p>	<p>01/2016 Ongoing</p>	<p><a href="#">Revised Provider Enrollment Process</a>  Provider Trainings</p>	<p>Office of Health Services and established stakeholder transition teams  MDH Staff</p>
<p>Participant and Provider Surveys</p> <p>Service Settings including:</p> <ul style="list-style-type: none"> <li>*Assisted Living</li> <li>*Community Learning Services</li> <li>*Community Supported Living Arrangement</li> <li>*Day Habilitation</li> <li>*Medical Day Care</li> <li>*Residential Habilitation</li> <li>*Supported Employment</li> </ul>	<p>Once the pilot surveys have been validated, Maryland, with the advice from program transition teams, will implement system wide surveys for participants and providers.</p> <p>The Hilltop Institute will analyze the data and provide a report on the survey results for each waiver program.</p> <p>The results will be shared with stakeholders throughout the systems.</p>	<p>Conduct waiver program specific participant and provider surveys to determine compliance with the Final Rule.</p> <p>Maryland intends to suspend provider numbers of the providers who fail to complete the survey after two requests. Providers will be informed of this in the introduction letter and through transmittals to providers. Telling the provider that the State will assume that they are not in compliance if they do not respond, and make a plan for relocation.</p>	<p>01/2017  Ongoing</p>	<p><a href="#">Survey Results Summary</a></p>	<p>MDH Staff</p> <p>Office of Health Services and established stakeholder transition teams</p>



Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
<p>Provider Transition Plans</p> <p>Corrective Action Plans</p>	<p>Maryland’s program administering agencies will provide technical assistance for providers whom have been identified as non-compliant with the rule.</p> <p>Stakeholder transition teams will provide guidance on remediation processes and format of provider transition plans.</p> <p>Providers interested in continuing to providing services shall develop transition plans to comply with the Final Rule.</p> <p>Plans will be reviewed and monitored for implementation by the applicable program’s administering agency</p>	<p>Maryland to develop and provide training for providers on requirements of transition plans.</p> <p>Providers to develop transition plans to come into compliance with Final Rule.</p> <p>Program administering agencies to provide technical assistance, approve or deny plan, and monitor implementation (as applicable).</p>	<p>07/2017</p> <p>12/2017</p> <p>3/2018</p>	<p>Provider Training</p> <p>Provider Transition Plans</p>	<p>Program Administering State Agencies</p>

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
DDA Rate Study	<p>As per legislation recently passed, Chapter 648 of the Acts of 2014, the DDA shall procure a contractor to conduct an independent cost-driven rate setting study, develop a strategy for assessing the needs of individuals receiving services, develop a sound fiscal billing and payment system, and obtain input from stakeholders including individuals receiving services and providers.</p> <p>The analysis must adhere to all “Relevant Regulations Regarding DDA Rates” as well as with the CMS Final Rule, and should seek to maximize federal match during and post implementation.</p>	<p>Conduct rate study of DDA services and payment system to define the rates and provide a fiscal impact analysis.</p> <p>Note: During the initial 18-month performance period, the contractor will define the rates and provide a fiscal impact analysis. There are two one-year options if implementation support is required.</p>	12/2017	Rate Study Report	DDA
DDA Tiered Standards	Develop new models of services and standards that more fully meet HCBS standards and Maryland’s vision.	Create leadership group including individuals, family members, services providers, and advocacy organizations to discuss tiered standards for the Community Pathways waiver. Recommendation to be submitted to DDA.	12/2016	<a href="#">Workgroup Reports</a>	DDA
Program Policies, Procedures Service Plans, and Forms	Review and revise all applicable internal and external program policies, procedures, plans, and forms including settings questionnaires to meet the HCB rule.	Revise program policies, procedures, plans, and forms.	01/2017	Revised forms and service plans	Office of Health Services and established stakeholder transition teams MDH Staff

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
On-Site Specific Assessments	Based on the results of the preliminary settings inventory, statewide program specific surveys, and stakeholder recommendations, Maryland will identify specific provider sites that will need further review prior to completion of the comprehensive setting results document.	<p>Validation of compliance of the specific sites based on CMS guidance as to what is and is not a community setting and criteria related to settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</p> <p>Maryland will do site visits to providers of all types. Maryland will also do a participant/case manager survey using the community settings questionnaire and complete site visits to all sites where there is a discrepancy between the provider self-report and participant survey.</p>	<p>12/2021</p> <p>Ongoing</p>	Site Specific Assessments Summary	<p>Office of Health Services and established stakeholder transition teams</p> <p>MDH Staff</p>
Heighten Scrutiny	Maryland will identify settings that may appear to have qualities of an institution or appear to be isolating individuals from the community but have been determined to meet the community settings requirements.	<p>A review supporting documentation to justify meeting community settings requirements.</p> <p>Interviews with service recipients.</p> <p>Conduct on-site visit and assessment of physical location and practices.</p> <p>State determination.</p> <p>Collection of evidence to submit to CMS to demonstrate compliance</p> <p>Submit to CMS</p>	3/2018	CMS Approval Decision	Office of Health Services
Comprehensive Settings Results Report	Maryland will develop a comprehensive setting results document, which identifies program-specific level of compliance with HCB setting standards. This document will be disseminated to stakeholders throughout the system.	Comprehensive settings results report will be shared with stakeholders to begin the process of systemic and provider transitions for compliance.	12/202117	Comprehensive Settings Result Report	Office of Health Services and established stakeholder transition teams

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
Participant Transitions	<p>When providers are dis-enrolled, participants will be assisted by their person-centered team in exploring new provider options. When a participant must relocate, the State, or its designated agent, will provide:</p> <ol style="list-style-type: none"> <li>1. Reasonable notice to the individual and due process;</li> <li>2. A description of the timeline for the relocation process; and</li> <li>3. Alternate setting that aligns, or will align, with the regulation, and that critical services/supports are in place in advance of the individual's transition.</li> </ol> <p>The State will report the number of participants impacted.</p>	<p>Develop description of the Maryland's process to assure that participants, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice for relocation.</p>	01/2022	Relocation Process	<p>Office of Health Services and established stakeholder transition teams</p> <p>Supports Planners/Resource Coordinators</p>
Provider Disenrollment	<p>In the event a provider either choose not to transition or has gone through remediation activities and continues to demonstrate noncompliance with HCB setting requirements, the State will develop a specific process for provider dis-enrollments.</p>	<p>Maryland will dis-enroll providers that fail to meet remediation standards and HCB setting requirements.</p>	03/2022	Dis-enrollment Summary	<p>Program Administerin g State Agencies</p>

Topic	Description	Remediation Strategy	Timeline for Completion	Milestone	Monitoring
Ongoing Compliance and Monitoring	<p>Quality reviews and verification of ongoing provider compliance with the Final Rule will be assessed by the program administering agency and its agents such as the Office of Health Care Quality.</p> <p>Maryland to explore common assessment indicators such as settings questionnaire, NCI, and existing experience survey.</p>	<ol style="list-style-type: none"> <li>1. Review quality indicators/tools being used in waiver programs currently.</li> <li>2. Look to standardize quality measures across programs.</li> <li>3. Assess ongoing compliance with Final Rule by providing technical assistance as needed, and take appropriate action to remediate, sanction, or disenroll.</li> <li>4. Ensuring 100% compliance providers will be assessed annually with the completion of the community settings questionnaire.</li> <li>5. In addition to the community settings questionnaire the State will also complete site visits to a randomly selected, statistically significant sample of providers of all types. In all settings that there is a discrepancy between the provider self-report and the participant survey, a site visit will also be completed.</li> </ol>	<ol style="list-style-type: none"> <li>1. 12/2017</li> <li>2. 06/2018</li> <li>3. Ongoing</li> <li>4. Ongoing</li> <li>5. Ongoing</li> </ol>	Quality Reports	Office of Health Services and Program Administering State Agency

## SECTION 3: Public Input and Comment

Maryland is committed to sharing information and seeking public input into the State's assessment for compliance with the Community Settings Final Rule and the development and implementation of this transition plan. In October 2014, the OHS and DDA established dedicated webpages related to the rule. The webpages have links to both internal and external sites including the CMS website and the Association of University Centers on Disabilities (AUCD) HCBS Advocacy site. The website includes the initial self-assessment surveys, printable versions and links to the online survey, lists of questions and responses from all regional and webinar presentations, and contact information, both a phone number and devoted email address for questions.

The site is located at: <https://mmcp.dhmh.maryland.gov/waiverprograms/pages/Community-Settings-Final-Rule.aspx>

During the month of October 2014, Maryland conducted regional public information and education meetings and a webinar to share general information about the Final Rule and assessment strategies. Approximately 400 individuals attended, including program participants, family members, case managers, service providers, and various advocacy organizations. The presentation was shared at both a 3:00 p.m. and 7:00 p.m. session to accommodate individual and family schedules. The meetings occurred as follows: October 6<sup>th</sup> for Southern Region; October 7<sup>th</sup> for Western Region; October 14<sup>th</sup> for Eastern Region; and October 15<sup>th</sup> for Central Region. In addition, the same presentation was used for a webinar that was conducted on October 21<sup>st</sup>.

Maryland conducted another set of regional public information meetings and a webinar in January 2015. The purpose of these meetings was to gain input from stakeholders regarding the draft transition plan and proposed remediation strategies. Approximately 400 individuals attended, including program participants, family members, case managers, service providers, and various advocacy organizations. The presentation times and formats were similar to the October 2014 meetings and occurred as follows: January 7<sup>th</sup> for Eastern Region; January 12<sup>th</sup> for Central Region; January 13<sup>th</sup> for Southern Region; and January 15<sup>th</sup> for Western Region. In addition, the same presentation was used for a webinar that was conducted on January 9<sup>th</sup>.

The October and January presentations, public comments, and responses have been posted on the OHS website listed above. The public comments summary is attached to this document as [Appendices L and M](#).

The State posted the draft transition plan to the website on December 21, 2014, with a comment period lasting through February 15<sup>th</sup>, 2015. Maryland received approximately 20 sets of comments and questions from stakeholders including: participants, family members, self-advocates, advocacy organizations, legal entities, and provider networks. A summary of all comments, with responses, has been posted to the OHS website, along with an updated version of the transition plan reflecting modification made based on stakeholder feedback. 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 initial plan was submitted to CMS in March of 2015.

On September 7, 2016, the State posted the updated transition plan to the website, with a comment period lasting through February 28, 2017. Maryland received approximately 70 sets of comments and questions from stakeholders. A summary of all comments, with responses, has been posted to the OHS website at: <https://mmcp.health.maryland.gov/waiverprograms/Pages/Community-Settings-Final-Rule.aspx>, along with an updated version of the transition plan reflecting modification made based on stakeholder feedback. 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 Department has also conducted various program specific stakeholder meetings including the following:

<b>Date</b>	<b>Meeting</b>
October 7, 2014	Balancing Incentive Plan/Money Follows the Person (BIP/MFP)
October 20, 2014	Autism Service Coordinators
October 21, 2014	Medical Day Care Waiver Advisory Meeting
October 23, 2014	Maryland Medicaid Advisory Committee (MMAC)
October 24, 2014	Local Health Department Presentation
October 29, 2014	Autism Provider Focus Group
November 5, 2014	People on the Go (self-advocacy group)
November 10, 2014	The ARC of Howard County - People Power
December 6, 2014	People on the Go Statewide Meeting
February 4, 2015	Maryland Works
September 19, 2016	Medicaid HCBS Final Rule Stakeholder Meeting
January 26, 2017	DDA Transition Advisory Team Meeting: STP Public Input and Comment
February 28, 2017	St. Peter's Presentation: Community Setting Rule
April 7, 2017	Medicaid HCBS Final Rule Stakeholder Meeting: STP Public Comment
April 12, 2017	DDA Transition Advisory Team Meeting: Validation Strategies
May 3, 2017	Medicaid HCBS Stakeholder Meeting: Provider Education Manual
June 28, 2017	Medicaid HCBS Stakeholder Meeting: CMS Feedback

Additional outreach includes but is not limited to the following meetings;

<b>Date</b>	<b>Meeting</b>
May 27, 2015	Transition Advisory Team Meeting
June 1, 2015	DDA Transition Advisory Team Meeting
June 23, 2015	DDA Transition Team Meeting
June 24, 2015	Transition Advisory Team Meeting
August 21, 2015	Transition Advisory Team Meeting: Hilltop Institute
August 25, 2015	HCBS Stakeholder Meeting
September 14, 2015	DDA Transition Team Meeting
September 25, 2015	Transition Advisory Team Meeting
October 20, 2015	DDA Transition Team Meeting
December 17, 2015	DDA Transition Team Meeting

December 18, 2015	Transition Advisory Team Meeting
<b>Date</b>	<b>Meeting</b>
January 11, 2016	HCBS Transition Team Meeting
January 25, 2016	DDA Transition Team Meeting
February 3, 2016	Eastern Shore DDA Public Outreach Meeting
February 16, 2016	Central Region DDA Public Outreach Meeting
February 29, 2016	Western Maryland DDA Public Outreach Meeting
March 2, 2016	Southern Maryland DDA Public Outreach Meeting (Town Hall)
March 3, 2016	DDA Transition Team Meeting
March 4, 2016	HCBS Stakeholder Meeting
April 8, 2016	DDA Transition Team Meeting
April 12, 2016	HCBS Stakeholder Meeting
June 2, 2016	DDA Transition Team Meeting
June 9, 2016	HCBS Stakeholder Meeting
September 12, 2016	Southern Region DDA Public Outreach Meeting
September 19, 2016	Western Region DDA Public Outreach Meeting
September 26, 2016	Central Region DDA Public Outreach Meeting
October 3, 2016	Eastern Shore DDA Public Outreach Meeting
September 12, 2016	DDA Statewide Discussion Session: Self-Direction, State Transition
September 19, 2016	DDA Statewide Discussion Session: Self-Direction, State Transition
September 26, 2016	DDA Statewide Discussion Session: Self-Direction, State Transition
September 27, 2016	DDA Stakeholder Meeting: HCBS Final Rule
October 3, 2016	DDA Statewide Discussion Session: Self-Direction, State Transition
November 16, 2016	DDA Transition Team Meeting: Provider Transition Plan
February 13, 2017	DDA Transition Team Meeting
February 28, 2017	DDA Transition Team Meeting



Provider meetings include but are not limited to the following;

Date	Meeting
November 6, 2014	Maryland Association of Community Services (MACS) workgroup
November 12, 2014	MACS Annual Conference Closing Plenary
June 21, 2016	MDC Provider Meeting
July 1, 2016	MDC Provider Meeting
August 2, 2016	Residential Habilitation and Therapeutic Integration Providers for Autism Waiver Meeting (Webinar and In Person)
August 16, 2016	DDA "Tiered Standards" Meeting
September 20, 2016	MDC Waiver Advisory Council Meeting
December 21, 2016	MACS Presentation: Provider Transition Plan (PTP)
February 28, 2017	MDC Waiver Advisory Council Meeting

It is the intention of the Maryland to assist each participant with understanding the full benefit of the HCB setting rule and to assist each provider in reaching full compliance. Continued stakeholder input will be emphasized in this process to guide Maryland in the remediation and transition processes. Participant and representative input concerning the provision of their current services and freedom of choice will be crucial to implement systems change. It will also be imperative to continue to analyze and monitor the provision of services through participant surveys, State agents, and providers. Maryland's plan includes HCBS program specific transition teams to provide guidance on the unique populations and service delivery systems. Our focus is to ensure that individuals receive Medicaid HCBS in settings that are integrated and that support full access to the greater community and to provide technical assistance to aid in providers coming into compliance. Maryland relies on the various provider service delivery networks to serve the people in our programs.