



Kentucky 1915 (c) Waiver Statewide Transition Plan

I. Background

On March 17, 2014, updated Home and Community Based Services (HCBS) final rules became effective in the Federal Register for 1915(c) waivers, 1915(i) state plan services, and 1915(k) community first choice state plan option. As they pertain to 1915(c) waivers, these rules include requirements for several areas of HCBS: all residential and non-residential settings, provider-owned residential settings, person-centered planning process, service plan requirements, and conflict-free case management. The goal of the HCBS final rules is to improve the services rendered to HCBS participants and to maximize the opportunities to receive services in integrated settings and realize the benefits of community living. The Centers for Medicare & Medicaid Services (CMS) is allowing five years (until March 17, 2019) for states and providers to transition into compliance with the all settings and provider-owned settings requirements.

As part of the five year transition period, states must submit transition plans to CMS that document their plan for compliance. The first of these transition plans is a waiver-specific transition plan and is required when a state submits a waiver renewal or amendment. The other required transition plan is a statewide transition plan to bring all 1915(c) waivers into compliance, and is due 120 days after the submission of the first transition plan. This statewide transition plan describes the process to bring all 1915(c) waivers for a state into compliance with the HCBS all settings and provider-owned settings requirements.

II. Introduction

The Commonwealth of Kentucky (KY) Department for Medicaid Services (DMS) operates six HCBS waivers under the 1915(c) benefit: Acquired Brain Injury (ABI), Acquired Brain Injury-Long Term Care (ABI-LTC), Home and Community-Based (HCB), Michelle P. (MPW), Model Waiver II (MIIW), and Supports for Community Living (SCL). ABI, ABI-LTC, and SCL waivers are residential, while HCB, MPW, MIIW are non-residential. Each waiver, except for MIIW, includes the option for Participant Directed Services (PDS).

- ABI participants are adults aged 18 and older with acquired brain injuries working to re-enter community life who meet nursing facility level of care (907 KAR 3:090).
- ABI-LTC participants are adults aged 18 and older who meet nursing facility level or care and have a primary diagnosis of an acquired brain injury which necessitates supervision, rehabilitative services, and long term supports (907 KAR 3:210).



- HCB participants are individuals who are elderly or disabled and meet nursing facility level of care, but are able to remain in or return to their homes (907 KAR 1:160).
- MPW participants are those with a developmental or intellectual disability and who require a protected environment while learning living skills, having educational experiences, and developing awareness of their environment. MPW allows individuals to remain in their homes with services and supports (907 KAR 1:835).
- MIIW participants are individuals who reside in their homes and meet ventilator dependent status and require ventilator support for at least twelve (12) hours per day. MIIW participants receive only skilled nursing and respiratory therapy services in their home (907 KAR 1:595).
- SCL participants are individuals who have an intellectual or developmental disability and meet the requirements for residence in an intermediate care facility for people with intellectual disabilities. SCL allows individuals to remain in their homes with services or to live in residential settings (907 KAR 12:010).

A. Purpose

The purpose of this statewide transition plan is to outline the assessments that DMS has completed, and planned remedial actions to bring all HCBS waivers into compliance with the HCB setting final rules. DMS submitted the transition plan specific to the MPW on August 28, 2014 to CMS, which started the 120 day clock to submit this Statewide Transition Plan. This Statewide Transition Plan serves as a guide for transitioning all HCBS waivers into compliance with the all settings and provider-owned settings rules. The goal of the implementation of these requirements is to facilitate the integration and access of waiver participants into the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals not receiving Medicaid HCBS.

Another objective of this document is to give stakeholders an opportunity to provide input on KY's process to comply with the HCBS final rules. Stakeholders include waiver participants, legal guardians, families, parents, siblings, wives, husbands, advocacy groups, friends, and providers. Throughout this process, one of DMS' goals is to actively engage stakeholders in the implementation of the final rules. For the purposes of this document, if a participant has a legal guardian, the legal guardian is included in all references of the participant.



B. Overview

This Statewide Transition Plan contains the process that DMS is using to evaluate and revise the Kentucky 1915(c) waivers. The first section describes the assessments that were conducted to determine the compliance of each waiver with HCBS final rules at the state level. The assessments focused on two components: policy (regulation and waiver application) and monitoring processes. The second section is the provider assessment, which includes residential and non-residential settings, and the results of provider surveys. After the assessment section, the remedial strategy section is outlined, with a focus on state and provider remedial actions. The state remedial strategy includes four sub-sections: 1) policy, 2) operations, 3) participants, and 4) technology. The provider-level remedial strategy includes the process for settings presumed not to be HCBS as well as suggested sample remedial actions. The fourth and final section of this transition plan includes the process for public comment.

C. Timeline

The overarching timeline per year for KY's transition into compliance with the HCBS final rules is located below. The timeline highlights only the major activities that will occur from the time the Statewide Transition Plan is approved by CMS through March 2019. The timeline is developed to ensure providers have enough time to comply with the requirements and that their transition is as least disruptive as possible for participants. The HCBS final rules will be implemented in two rounds. First round changes include HCB setting requirements that are simpler to implement, while second round changes include the HCBS setting requirements that are more complex, and therefore, more challenging to implement.

The transition activities are split into four activity categories: transition plan, provider compliance, heightened scrutiny, and regulations and waiver application amendments. Each activity category has subsequent sub-activities within it and a proposed start/finish time.



Table 2.1 Statewide Transition Plan Timeline

2014-2015		
	Start Date	End Date
Transition Plan	12/19/14	3/19/15
Submit transition plan to CMS	12/19/14	12/19/14
Transition plan approval	12/19/14	3/19/15
Provider Compliance	1/1/15	Ongoing
First Round Changes¹		
Develop HCBS evaluation tool (monitoring tool for determining compliance)	1/1/15	3/31/15
Develop compliance plan template for providers to complete and notify providers of initial compliance level	1/1/15	3/31/15
Host public forums for providers and participants (families, advocates, etc.)	1/1/15	3/31/15
Conduct routine evaluations and on-site assessments with the updated HCBS evaluation tool to validate each provider's compliance plan and level of compliance	3/1/15	10/31/15
Host webinars for providers and distribute compliance plan template	4/1/15	4/30/15
Review and approve/deny providers' plans	5/1/15	10/1/15
Deadline for providers to submit compliance plans for first round changes	9/15/15	9/15/15
Incorporate first round HCBS final rules in all ongoing reviews	11/1/15	Ongoing
Regulations & Waiver Amendments	1/1/15	1/1/19
Determine regulation language with workgroup for first round of changes	1/1/15	2/28/15
Draft revised regulations	3/1/15	4/1/15
Review regulations by department/leadership	4/1/15	4/14/15
Submit revised regulations	4/15/15	4/15/15
Regulation public comment period	4/15/15	6/1/15
Draft revised waiver amendments	1/1/15	2/15/15
Review waiver amendments by department/leadership	2/15/15	2/28/15
Waiver amendment public comment period	3/1/15	3/31/15
Submit HCB waiver amendments to CMS	4/1/15	4/1/15
Submit SCL waiver amendment to CMS	6/1/15	6/1/15
Submit MIIW waiver renewal to CMS	7/1/15	7/1/15
Submit MPW, ABI, ABI-LTC waiver amendments to CMS	8/1/15	8/1/15
Regulations become effective	11/1/15	11/1/15
Begin operational changes	1/1/15	Ongoing



2016		
	Start Date	End Date
Heightened Scrutiny	1/1/16	4/15/17
Update compliance plan template with required evidence	1/1/16	3/31/16
Conduct on-site reviews for providers requiring heightened scrutiny	4/1/16	12/31/16
Include evidence of HCB settings for those under heightened scrutiny in updated transition plan	2/1/16	3/1/17
2017		
Provider Compliance	1/1/15	1/1/19
Second Round Changes¹		
Develop HCBS evaluation tool (monitoring tool for determining compliance)	7/1/17	9/30/17
Develop compliance plan template for second round changes	7/1/17	9/30/17
Host webinars for providers and distribute compliance plan template	10/1/17	1/1/18
Host public forums for providers and participants (families, advocates, etc.)	1/1/15	3/31/15
Heightened Scrutiny	1/1/16	4/15/17
<i>Transition plan public comment period</i>	3/1/17	4/1/17
Submit updated transition plan to CMS	4/15/17	4/15/17
Regulations & Waiver Amendments	1/1/15	1/1/19
Determine regulation language with workgroup for second round of changes	7/15/17	10/1/17
Draft revised regulations	10/1/17	11/15/17
Review regulations by department/leadership	11/15/17	12/31/17
Draft revised waiver amendments	11/1/17	3/1/18
2018-2019		
Provider Compliance	1/1/15	Ongoing
Second Round Changes¹		
Review and approve/deny providers' plans	1/1/18	6/1/18
Deadline for providers to submit compliance plans for second round changes	5/15/18	5/15/18
Incorporate second round HCBS final rules in all ongoing reviews	7/1/18	Ongoing
Regulations & Waiver Amendments	1/1/15	1/1/19
Submit revised regulations	1/1/18	1/1/18
<i>Regulation public comment period</i>	1/1/18	2/28/18



Review waiver amendments by department/leadership	2/15/18	3/1/18
2018-2019		
Regulations & Waiver Amendments	1/1/15	1/1/19
<i>Waiver amendment public comment period</i>	3/1/18	4/1/18
Submit waiver amendments to CMS	4/15/18	4/15/18
Review of waiver amendments by CMS	4/15/18	7/15/18
CMS final approval of transition plan	7/15/18	7/15/18
Regulations become effective	7/1/18	7/1/18
Regulations are implemented (state and providers must be fully compliant)	1/1/19	1/1/19

1. First round changes include HCB setting requirements that are simpler to implement, while second round changes include the HCBS setting requirements that are more complex, and therefore, more challenging to implement.

III. Assessment Process – Systemic Review

A. Regulation and Waiver Application Assessment

To evaluate the compliance of the KY HCBS waivers with the HCBS final rules, DMS established a regimented process led by a workgroup of staff from three departments representing each waiver from across the Cabinet for Health and Family Services (CHFS). The review included a detailed analysis of each waiver regulation, including manuals incorporated by reference, each application approved by CMS, and related state regulations, such as provider and enrollment regulations, against each requirement of the federal HCBS rule.

The workgroup categorized and color-coded state regulations and applications into three groups: 1) state policy and requirements meet the final rules (green), 2) state policy and requirements have similar language to the final rules, but need to be strengthened (yellow), and 3) state policy and requirements do not specifically address all provisions of final rules, so language needs to be added (red). For group one, no action is required. For group two, language and requirements in state policy have similar language to the final rules, but need to be strengthened. While some operational practices comply with the federal standards, state policies do not fully meet the final rules, and therefore, DMS needs to implement policy changes. For group three, current state policy does not specifically address all provisions of final rules, so language needs to be added. While some operational practices have similar intent to the federal standards, they do not fully meet the final rules and therefore, DMS needs to add additional requirements to policies.



Below is the summary analysis of each HCBS waiver operating in KY as it relates to the HCBS final rules. DMS will need to update waiver policies (regulations), operational areas, and monitoring practices to comply with the final rules. The tables below contain only the applicable HCBS final rules or applicable parts of the HCBS final rules. All HCBS final rules that were edited for the purposes of this document are indicated with an*.

Table 3.1 ABI and ABI-LTC waiver regulation and application analysis

ABI & ABI-LTC Waivers – Residential
Not compliant; minor changes required. State policy and requirements have similar language to the final rules, but need to be strengthened.
<ul style="list-style-type: none"> The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.
<ul style="list-style-type: none"> Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
<ul style="list-style-type: none"> Facilitates individual choice regarding services and supports, and who provides them.
<ul style="list-style-type: none"> Each individual has privacy in their sleeping or living unit.
<ul style="list-style-type: none"> Individuals are able to have visitors of their choosing at any time.
Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and requirements and need to be added.
<ul style="list-style-type: none"> The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
<ul style="list-style-type: none"> Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
<ul style="list-style-type: none"> Home and community-based settings do not include the following: <ul style="list-style-type: none"> (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.*
<ul style="list-style-type: none"> The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must



ABI & ABI-LTC Waivers – Residential
ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to the jurisdiction’s landlord/tenant law.
<ul style="list-style-type: none"> • Units have entrance doors lockable by the individuals, with only appropriate staff having keys.
<ul style="list-style-type: none"> • Individuals sharing units have a choice of roommates in that setting.
<ul style="list-style-type: none"> • Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement.
<ul style="list-style-type: none"> • Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
<ul style="list-style-type: none"> • The setting is physically accessible to the individual.
<ul style="list-style-type: none"> • Modifications to provider-owned settings: <ul style="list-style-type: none"> ○ The requirements must be documented in the person-centered service plan in order to modify any of the criteria. ○ The person-centered service plan be reviewed, and revised upon reassessment of function need, at least every 12 months, when the individual’s circumstances or needs change significantly, or at the request of the individual. ○ Identify a specific and individualized assessed need. ○ Document the positive interventions and supports used prior to any modifications to the person centered service plan. ○ Document less intrusive methods of meeting the need that have been tried but did not work. ○ Include a clear description of the condition that is directly proportionate to the specific assessed need. ○ Include a regular collection and review of data to measure the ongoing effectiveness of the modification. ○ Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. ○ Include informed consent of the individual. ○ Include an assurance that interventions and supports will cause no harm to the individual.

Table 3.2 HCB waiver regulation and application analysis

HCB Waiver - Non-residential
Not compliant; minor changes required. State policy and requirements have similar language to the final rules, but need to be strengthened.
<ul style="list-style-type: none"> • The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, and preferences.* • Facilitates individual choice regarding services and supports, and who provides them.
Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and requirements and need to be added.



HCB Waiver - Non-residential
<ul style="list-style-type: none"> The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
<ul style="list-style-type: none"> Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
<ul style="list-style-type: none"> Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
<ul style="list-style-type: none"> Home and community-based settings do not include the following: (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.*

Table 3.3 MPW regulation and application analysis

MPW - Non-residential
Not compliant; minor changes required. State policy and requirements have similar language to the final rules, but need to be strengthened.
<ul style="list-style-type: none"> The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, and preferences.*
<ul style="list-style-type: none"> Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
<ul style="list-style-type: none"> Facilitates individual choice regarding services and supports, and who provides them.
Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and requirements need to be added.
<ul style="list-style-type: none"> The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
<ul style="list-style-type: none"> Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
<ul style="list-style-type: none"> HCBS do not include the following:



<p>MPW - Non-residential</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.*</p>

Table 3.4 SCL waiver regulation and application analysis

<p>SCL Waiver – Residential</p>
<p>Not compliant; minor changes required. State policy and requirements have similar language to the final rules, but need to be strengthened.</p>
<ul style="list-style-type: none"> • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
<ul style="list-style-type: none"> • The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.
<ul style="list-style-type: none"> • Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
<ul style="list-style-type: none"> • Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
<ul style="list-style-type: none"> • Facilitates individual choice regarding services and supports, and who provides them.
<ul style="list-style-type: none"> • Each individual has privacy in their sleeping or living unit.
<ul style="list-style-type: none"> • Individuals are able to have visitors of their choosing at any time.
<p>Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and requirements and need to be added.</p>
<ul style="list-style-type: none"> • Home and community-based settings do not include the following: <ul style="list-style-type: none"> (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the



SCL Waiver – Residential
Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.*
<ul style="list-style-type: none"> • The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to the jurisdiction’s landlord/tenant law.
<ul style="list-style-type: none"> • Units have entrance doors lockable by the individuals, with only appropriate staff having keys.
<ul style="list-style-type: none"> • Individuals sharing units have a choice of roommates in that setting.
<ul style="list-style-type: none"> • Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement.
<ul style="list-style-type: none"> • Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
<ul style="list-style-type: none"> • The setting is physically accessible to the individual.
<ul style="list-style-type: none"> • Modifications to provider-owned settings: <ul style="list-style-type: none"> ○ The requirements must be documented in the person-centered service plan in order to modify any of the criteria. ○ The person-centered service plan be reviewed, and revised upon reassessment of function need, at least every 12 months, when the individual’s circumstances or needs change significantly, or at the request of the individual. ○ Identify a specific and individualized assessed need. ○ Document the positive interventions and supports used prior to any modifications to the person centered service plan. ○ Document less intrusive methods of meeting the need that have been tried but did not work. ○ Include a clear description of the condition that is directly proportionate to the specific assessed need. ○ Include a regular collection and review of data to measure the ongoing effectiveness of the modification. ○ Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. ○ Include informed consent of the individual. ○ Include an assurance that interventions and supports will cause no harm to the individual.

1. MIIW Assurance

MIIW is a unique waiver in that the waiver only includes two highly technical services for individuals who are ventilator-dependent and require ventilator support for at least 12 hours per day. The individual must reside in his/her home and all services provided by the waiver must be rendered in the individual’s home. DMS provides assurance that the MIIW complies with all setting rules since all



services are performed in the individual’s home and not provider-owned or controlled residential, or non-residential settings. DMS presumes that each MIIW participant’s home comports with all HCB setting rules. The state staff validated that all services are performed in the individual’s home.

B. Monitoring Process Assessment

DMS has set monitoring requirements for each of the HCBS waiver providers operating in KY and these monitoring processes will continue while providers comply with the HCBS final rules. The workgroup outlined these monitoring processes, including the oversight process and participant and provider surveying process. Each process was then analyzed to determine the impact of the HCBS final rules and areas requiring revision were identified. Some monitoring tools will need to be updated to incorporate the new federal requirements so that state staff evaluates providers appropriately. If necessary, KY will increase the frequency and percentage of providers selected for review to confirm that state staff effectively track provider compliance. After providers have fully implemented the HCBS final rules, monitoring processes will continue with compliant tools and standards. Table 3.5 below describes the current monitoring/oversight process for each waiver, the participant and/or provider surveys that are conducted, and the areas that will need to be updated to comply with the HCBS final rules. If the department acts regarding a certified waiver provider due to the provider’s behavior in one 1915(c) HCBS waiver program, the action regarding the certified waiver provider shall apply in every 1915(c) HCBS waiver program in which the provider is participating. PDS is specifically separated in Table 3.5 since PDS for all waivers is centrally monitored by state staff through separate waiver monitoring processes.

Table 3.5 Current waiver monitoring processes

Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
ABI, ABI-LTC	<ul style="list-style-type: none"> • Every agency must be certified by state staff prior to the initiation of a service (new agencies are reviewed at regular intervals) • Every agency is re-certified annually by state staff to validate compliance • The certification process includes monitoring throughout the year and is based on compliance with state regulation • Case managers track agencies and locations as an additional line of monitoring 	<ul style="list-style-type: none"> • ABI/ABI-LTC participant surveys are distributed annually by state staff 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • State staff do not base their evaluations on all of the new HCBS rules

Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
	<ul style="list-style-type: none"> • If there are reported issues/complaints, then the state staff might conduct a site visit, review the agency, investigate the issue, or refer the issue to the Office of Inspector General (OIG) • The citation and sanctions process is outlined in regulation 		<ul style="list-style-type: none"> • Case managers do not base their agency monitoring on all of the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence
HCB	<ul style="list-style-type: none"> • Every agency must be licensed as a Home Health agency or Adult Day Health Center • The DMS contracted Quality Improvement Organization (QIO) agency completes all first line evaluations of HCB providers • The evaluations are on-site and include quality questions posed to participants (are you treated with respect, are you aware of your case manager, were you given freedom of choice, etc.), agency policies and procedures, billing, and post-payment audits • Waiver providers are evaluated on a two or three year cycle • State staff complete second line monitoring for a random sample of the provider evaluations completed by DMS contracted QIO agency • The citation and sanctions process is outlined in regulation 	<ul style="list-style-type: none"> • Participant interviews are carried out during on-site monitoring 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • State staff and monitoring QIO agency do not base their evaluations on all of the new HCBS rules • Monitoring process manuals do not include all of the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence
MPW	<ul style="list-style-type: none"> • Every agency must be certified by state SCL staff (including all SCL training and processes) or be licensed by OIG to provide Medicaid HCB services 		<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not

Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
	<ul style="list-style-type: none"> • Every agency is recertified/licensed by respective waiver state staff annually • The DMS-contracted QIO agency completes first line monitoring for a sample of MPW participants • The citation and sanctions process is outlined in regulation 		<ul style="list-style-type: none"> • include all of the new HCBS rules • State staff do not base their evaluations on all of the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence
SCL	<ul style="list-style-type: none"> • Every agency must be certified by state staff prior to the initiation of a service • Every agency is recertified at least once during their certification period (bi-annually, annually, or biennially) • The citation and sanctions process is outlined in regulation 	<ul style="list-style-type: none"> • Providers are required by regulation to participate in all department survey initiatives, including surveying participants 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence
PDS (All waivers)	<ul style="list-style-type: none"> • Every agency is evaluated annually • The monitoring process includes reviewing participant records, incident reports, and complaints • Home visits or phone interviews with waiver participants are completed • The citation and sanctions process is outlined in regulation 	<ul style="list-style-type: none"> • Participant satisfaction surveys are distributed by the provider prior to monitoring and are reviewed by state staff during the monitoring process 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • State staff do not base their monitoring on all of the new HCBS rules



Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
			<ul style="list-style-type: none"> • Consumer PDS training is not based on the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence

IV. Provider Assessment

To determine the providers’ compliance level, the workgroup used a combination of provider surveys and state staff knowledge. Providers “self-assessed” their compliance with the HCBS final rules through surveys, providing examples to demonstrate their compliance. The state staff reviewed the survey results, validated each provider’s response, and assigned each provider a level of compliance. In order to validate setting locations, the workgroup mapped the addresses of waiver provider settings and non-HCB settings (ICF/IID, hospitals, institutions for mental disease, and nursing facilities). Locations with high density waiver provider settings and non-HCB settings were analyzed to help determine each provider’s compliance level.

Below are the initial categorizations of provider compliance for both residential and non-residential providers. This is not intended to be the final analysis of provider compliance with the HCBS final rules, but rather is a starting point to identify areas that providers will need to change to come into compliance. Providers will have ample opportunity to review their compliance level and make modifications where possible to come into compliance. Providers will be notified of their initial compliance level when DMS distributes the compliance plan template, during the first quarter of calendar year 2015.



A. Residential Settings

As part of evaluating provider compliance with the HCBS final rules, the workgroup conducted a web-based survey in June 2014 for residential providers to measure each provider's compliance level with the rules. The workgroup drafted questions using language provided by CMS, and included text boxes for providers to offer additional information for each requirement of the rule. The survey had 100% participation from all HCBS residential waiver providers in KY (ABI, ABI-LTC, and SCL) and is included in Appendix A. Achieving 100% participation required individual outreach to each provider by members of the workgroup. The workgroup then summarized the provider data to establish initial estimates of compliant/non-compliant providers.

After analyzing the providers' self-reported compliance level, state Quality Assurance (QA) staff from each residential waiver thoroughly reviewed provider responses. The purpose of this review was to validate that the survey responses submitted align with what has been observed by QA staff during regular on-site provider evaluations. The workgroup selected the QA staff to complete this validation because of their deep knowledge and experience with the residential providers. After completing survey validation, the workgroup categorized each residential provider into one of four compliance levels, as defined by CMS:

- Fully align with the federal requirements
- Do not comply with the federal requirements and will require modifications
- Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals
- Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process)

The providers in compliance level four were further analyzed and categorized into the following categories:

- Not isolating – These providers probably fall into compliance level two, but additional information is needed to ensure that these settings will not require heightened scrutiny.
- Potentially isolating – These providers will potentially fall into compliance level four, but additional information is needed to determine if these settings will or will not require heightened scrutiny.
- Isolating – The characteristics of these provider settings are not HCB, but rather institution-like, and these providers will require heightened scrutiny.

The results of the residential provider survey and validation by QA staff are outlined in Table 4.1 below. The estimated number of providers used in Tables 4.1 and 4.2 represent the number of provider agencies, not the number of individual settings each provider operates.



Table 4.1 ABI and ABI-LTC residential provider compliance estimates

ABI/ABI-LTC Residential Providers Estimates		
Compliance Level	Estimate Number of Providers	Main Areas of Non-Compliance
(1) Fully align with the federal requirements	1 (12.5%)	
(2) Do not comply with the federal requirements and will require modifications	6 (75%)	<ul style="list-style-type: none"> • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community • Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices • Lease agreement • Individuals have the freedom and support to control their own schedules and activities
(3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals	0 (0%)	
(4) Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process)	Not Isolating: 0 (0%)	<ul style="list-style-type: none"> • Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS • Operated in an area (e.g., a neighborhood, a street or a neighboring street, etc.) where there is more than one residence in the area that is occupied by individuals receiving HCBS • Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS • Operated in a remote location (rural, farmstead, etc.)
	Potentially Isolating: 0 (0%)	
	Isolating: 1 (12.5%)	
Total	8	

Table 4.2 SCL residential provider compliance estimates

SCL Residential Providers Estimates		
Category	Estimate Number of Providers	Main Areas of Non-Compliance
(1) Fully align with the federal requirements	0 (0%)	
(2) Do not comply with the federal requirements and will require modifications	45 (38%)	<ul style="list-style-type: none"> • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community • Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices • Individuals/tenants have lease agreements • Individuals have the freedom and support to control their own schedules and activities
(3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals	0 (0%)	
(4) Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process)	Not Isolating: 39 (33%)	<ul style="list-style-type: none"> • Located in a building that is also a facility that provides in-patient institutional treatment • On the grounds of, or immediately adjacent to an institution • Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS • Operated in an area (e.g., a neighborhood, a street or a neighboring street, etc.) where there is more
	Potentially Isolating: 22 (18%)	



SCL Residential Providers Estimates		
Category	Estimate Number of Providers	Main Areas of Non-Compliance
	Isolating: 13 (11%)	<p>than one residence in the area that is occupied by individuals receiving HCBS</p> <ul style="list-style-type: none"> • Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS • Operated in a remote location (rural, farmstead, etc.)
Total	119	

B. Non-Residential Settings

In addition to a survey targeted for residential providers, the workgroup created a similar survey for non-residential providers that focused on the HCB setting requirements. The workgroup developed this survey using CMS’ toolkits and distributed it to non-residential providers via email and provider letters. The non-residential survey is outlined in Appendix B. The target provider types for this survey were adult day health centers (ADHC), home health agencies, adult day training (ADT), and other non-residential waiver providers, such as case managers, who render services to the waiver population. Approximately 40% of the total non-residential waiver providers in the state completed the survey. The providers who responded to the survey render a variety of services, including ADT, ADHC, home health agencies, case management, behavior supports, and physical/occupational/speech therapy.

For non-residential providers who did not complete this survey, DMS will provide additional opportunities for providers to submit information, which will indicate their compliance level. However, DMS believes that the distribution of non-residential providers who completed the survey closely represents the non-residential provider population as a whole.

Similar to the residential survey data, after receiving providers’ responses, the workgroup analyzed the providers’ self-reported compliance level. The QA staff reviewed and validated the survey responses and the workgroup then categorized each non-residential provider into one of four compliance levels, as defined by CMS:

- Fully align with the federal requirements



- Do not comply with the federal requirements and will require modifications
- Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals
- Are presumptively non-HCB but for which the state may provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process)

The providers in compliance level four were further analyzed and categorized into the following categories:

- Not isolating – These providers probably fall into compliance level two, but additional information is needed to ensure that these settings will not require heightened scrutiny.
- Potentially isolating – These providers will potentially fall into compliance level four, but additional information is needed to determine if these settings will or will not require heightened scrutiny.
- Isolating – The characteristics of these provider settings are not HCB, but rather institution-like, and these providers will require heightened scrutiny.

The results of the non-residential provider survey and validation by state staff are outlined in Table 4.3 below. Percentages are used instead of counts because there was not 100% participation among non-residential providers. These percentage estimates in Table 4.3 are based on the number of provider agencies, not the number of actual settings each provider has. If a provider serves participants across waivers, and/or renders both ADT and ADHC, the provider was only counted once.

Table 4.3 Non-residential provider compliance estimates

Non-Residential Providers (ABI, ABI-LTC, SCL, MPW, HCB) Estimates		
Category	Estimate Number of Providers	Main Areas of Non-Compliance
(1) Fully align with the federal requirements	0%	
(2) Do not comply with the federal requirements and will require modifications	62%	<ul style="list-style-type: none"> • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community • Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices



Non-Residential Providers (ABI, ABI-LTC, SCL, MPW, HCB) Estimates		
Category	Estimate Number of Providers	Main Areas of Non-Compliance
(3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals	0%	
(4) Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process)	Not Isolating: 5%	<ul style="list-style-type: none"> • Located in a building that is also a facility that provides in-patient institutional treatment • On the grounds of, or immediately adjacent to an institution • Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS • Operated in an area (e.g., a neighborhood, a street or a neighboring street, etc.) where there is more than one residence in the area that is occupied by individuals receiving HCBS • Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS • Operated in a remote location (rural, farmstead, etc.)
	Potentially Isolating: 18%	
	Isolating: 15%	

V. Remedial Strategies

DMS will implement several strategies over the next five years to transition policies and operations into compliance with the HCBS final rules. The strategies identified in this section are the results of assessments completed by the workgroup over the past five months.

A. State Level Remedial Strategies



1. Policy

The workgroup completed a thorough review of waiver regulations and applications, as outlined in section III. The overarching goal is for each regulation and waiver application to be in compliance with the HCBS final rules. The following table includes the identified changes to each regulation and application that are required to transition KY’s waiver policies into compliance with each HCBS rule related to settings.

DMS is implementing the HCBS final rules in two rounds to assure that providers have adequate time to become compliant with all rules. Additional reasons for the extended timeline are as follows.

1. The rules included in the second round may have a significant impact on KY HCBS providers and create an access issue depending on the number of providers who will lose the ability to render services because of the rules, if adequate time is not allowed for implementation.
2. DMS has allotted a full year to work with the high volume of providers who will need to undergo heightened scrutiny to assure that DMS can spend adequate time working with each provider.
3. DMS is giving time for providers to stabilize the first round of changes before moving into the second round.
4. DMS will be educating providers as soon as the rules are fully defined and operationalized. The education and compliance process for the second round changes will start before 2018 giving providers ample time to become compliant.

Table 5.1 Potential waiver regulation and application actions for compliance

Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS;	ABI, ABI-LTC, HCB, MPW, SCL: <ul style="list-style-type: none"> • Clarify indicators of integration into the greater community and incorporate into the regulation • Add stronger language that focuses on outcomes related to the individual’s experience • Identify potential opportunities to use technology to promote integration ABI, ABI-LTC, and MPW:	7/15/2017 – 1/1/2018 (Second Round)	Not Started

Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
	<ul style="list-style-type: none"> • Add required evidence to ensure an individual’s integration into the community, including how opportunities and resources were presented, and the choice(s) made by the participant HCB: <ul style="list-style-type: none"> • Include clarifying language that community integration is individualized, appropriate, and outlined in the plan of care (POC) SCL: <ul style="list-style-type: none"> • Note: Language in the SCL manual is very close, but needs to include access to personal resources 		
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.</p> <p>The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board;</p>	ABI, ABI-LTC, HCB, MPW, SCL: <ul style="list-style-type: none"> • Include assurance that individuals must be informed of every available setting option each time s/he is selecting a new setting, every time the individual moves or changes service provider • Require case manager to document all available settings options considered and selected by the individual in the POC • Include explanation of how informed choice should be provided ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Include assurance that the individual is included in both the selection of the provider and setting (location), taking into account individual resources and provider restrictions HCB and MPW: <ul style="list-style-type: none"> • Include assurance that the individual is included in both the selection of the provider and setting (location), and describe how the setting options were presented to the participant 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint;	ABI, ABI-LTC, HCB, MPW, SCL: <ul style="list-style-type: none"> • Add language ensuring the individual’s privacy, dignity, and respect 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Optimizes, but does not regiment, individual initiative, autonomy, and	ABI, ABI-LTC, HCB, MPW, SCL: <ul style="list-style-type: none"> • Add general language to clearly define this rule 	1/1/2015 – 4/30/2015	Not Started



Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<ul style="list-style-type: none"> • Add language allowing the individual to select daily activities and with whom they interact 	(First Round)	
Facilitates individual choice regarding services and supports, and who provides them.	ABI, ABI-LTC, HCB, MPW, and SCL Application,: <ul style="list-style-type: none"> • Add clear and centrally located definition of freedom of choice All Waivers (Regulation and Application): <ul style="list-style-type: none"> • Use HCBS rule language 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Home and community-based settings do not include the following: (i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened	ABI, ABI-LTC, HCB, MPW, SCL: <ul style="list-style-type: none"> • Include restrictions for providers that have qualities of an institutional setting • Include restrictions for providers that are located within, on the grounds of, or immediately adjacent to a public institution, or any other setting that has the effect of isolating individuals receiving HCBS • Include HCBS rule language 	7/15/2017 – 1/1/2018 (Second Round)	Not Started

Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			
(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add a lease agreement requirement for all residential services • Outline lease agreement process and standards 	7/15/2017 – 1/1/2018 (Second Round)	Not Started
Each individual has privacy in their sleeping or living unit	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add specific language: “Individual has the right to privacy in their living unit” 	1/1/2015 – 4/30/2015 (First Round)	Not Started



Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add requirement requiring the individual to have keys/locks for both their bedroom door and main house door • Require that only appropriate staff have bedroom door keys 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Individuals sharing units have a choice of roommates in that setting	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add clarifying language allowing the individual to choose to live alone or with a roommate • Add clarifying language allowing the individual to choose roommates and housemates where applicable and based on available resources for room and board • Include requirement that providers show evidence of how they presented roommate options to the participant 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add requirement allowing individuals the freedom to decorate/furnish their living unit as outlined in their lease 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add additional language clarifying that individuals must have freedom to control their own schedules • POC should take into account individuals preferences for schedule and activities, including food preferences • Add requirement allowing individuals access to food/kitchen at any time or as outlined in the POC • Include requirement that providers show evidence of agency policy relating to how participants can control their own schedules and activities, and have access to food at any time 	7/15/2017 – 1/1/2018 (Second Round)	Not Started
Individuals are able to have visitors of their choosing at any time	ABI, ABI-LTC and SCL: <ul style="list-style-type: none"> • Add language allowing individuals to have visitors of their choosing at any time • Include language regarding responsibility of the individual and respect for others living in the residential setting 	1/1/2015 – 4/30/2015 (First Round)	Not Started

Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
The setting is physically accessible to the individual	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Define physical accessibility • Add language requiring the individual to be able to physically access their building and other appropriate buildings at all times 	1/1/2015 – 4/30/2015 (First Round)	Not Started
Any modification of the additional residential conditions except for the setting being physically accessible requirement, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: <ul style="list-style-type: none"> • Identify a specific and individualized assessed need. • Document the positive interventions and supports used prior to any modifications to the person-centered service plan. • Document less intrusive methods of meeting the need that have been tried but did not work. • Include a clear description of the condition that is directly proportionate to the specific assessed need. • Include regular collection and review of data to measure the ongoing effectiveness of the modification. • Include established time limits for periodic reviews to determine if the 	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Add language that treats POC residential modifications like a “rights restriction” 	1/1/2015 – 4/30/2015 (First Round)	Not Started



Waiver Regulation and Application			
Rule	Potential Actions to be Compliant	Timeline	Status
modification is still necessary or can be terminated. • Include the informed consent of the individual. • Include an assurance that interventions and supports will cause no harm to the individual.			

DMS will submit revised ordinary regulations for setting-related rules in two rounds in order to allow stakeholders time to review and providers time to implement. The HCBS final rules will be implemented in two rounds based on the ease of implementation and complexity of the change. DMS will draft the regulation language for the first round from January 1, 2015 to February 28, 2015. The first round of revised ordinary regulations will be submitted in April 2015 and effective in November 2015. DMS will draft the regulation language for the second round from July 2017 to October 2017. The second round of revised ordinary regulations will be submitted in January 2018, with an effective date in July 2018, and an implementation date of January 2019. The implementation date of January 2019 is when all providers must be compliant with all HCBS settings final rules.

DMS will draft the waiver amendment language for the first round from January 1, 2015 to February 28, 2015. The revised waiver amendments are targeted for submission to CMS for approval on the below dates. These dates were selected to coincide with waiver renewal dates and are during or immediately after regulation adoption timelines to assure consistency.

- HCB – April 1, 2014
- SCL – June 1, 2015
- MIIW – July 1, 2015 (Waiver Renewal Only)
- MPW, ABI, ABI-LTC – August 1, 2015

To confirm that the applications and regulations mirror the same requirements for each waiver, DMS will draft the waiver amendment language for the second round from November 2017 to March 2018 and submit revised waiver applications for all waivers to CMS for approval in April 2018. The goal is for the both the regulations and applications to be approved and effective in July 2018.



2. Operations

State staff and the workgroup will be preparing operational practices for compliance over the next three years. This includes developing a tool for providers that outlines the federal requirements and how they will be evaluated, and hosting a webinar for waiver providers. Once updated state policies take effect, state staff will transition from current operational practices to revised, compliant protocols to administer the HCBS waivers. The HCBS final rules affect several areas of DMS' waiver operations including, but not limited to, internal processes, monitoring, and service delivery. Below is a list of operational changes required for each waiver to bring their practices into compliance.

Table 5.2 Potential waiver operational actions for compliance

All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
Internal Processes:			
Prior authorizations (PA)	All Waivers: <ul style="list-style-type: none"> • Update PA processes to incorporate new HCBS rules in regards to the participant setting selection process 	1/1/2015 – Ongoing	Not Started
State staff training	All Waivers: <ul style="list-style-type: none"> • Train PA staff, focusing on the POC and case management in relation to PAs • Train state staff, including waiver and QA staff, on HCBS rules • Train state staff, including waiver and QA staff, on the transition process, new monitoring processes and checklists, related to the HCBS rules 	1/1/2015 – Ongoing	Not Started
Capacity, resources, and services	All Waivers: <ul style="list-style-type: none"> • Evaluate provider capacity throughout the state • Determine appropriateness of resources for providers • Evaluate if covered services are adequately meeting the needs of the participants, in view of any changes required by the HCBS final rules 	10/1/2015 – Ongoing	Not Started
Provider Processes:			
Requirements (mission/values)	All Waivers:	1/1/2015 – Ongoing	Not Started

All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
	<ul style="list-style-type: none"> Providers should update their mission/values and policies/procedures to align with the new DMS regulations 		
Trainings	All Waivers: <ul style="list-style-type: none"> Update relevant provider trainings and offer providers all relevant information and trainings 	1/1/2015 – Ongoing	Not Started
Transition process	All Waivers: <ul style="list-style-type: none"> Develop HCBS evaluation tool (monitoring tool) and HCBS compliance plan template to be used by providers, outlining their plan for complete compliance Host webinars for waiver providers Validate each provider’s compliance level during annual evaluation Notify providers outlining their compliance level Complete on-site reviews for all groups based on provider and waiver staff provider evaluations Review, track, and approve/deny the providers’ HCBS compliance plans Assist providers to ensure compliance and resolve any access issues found Use processes outlined in state regulations for provider corrective action or actions not to certify or to terminate non-compliant providers 	1/1/2015 – Ongoing	Not Started
Monitoring Processes:			
Requirements	All Waivers: <ul style="list-style-type: none"> Validate that the current monitoring processes are sufficient to monitor new and existing providers against the HCBS rules and modify as necessary 	1/1/2015 – Ongoing	Not Started
Tools (on-site items, checklists, etc.)	<ul style="list-style-type: none"> Update provider checklists and survey tools for provider sites (residential, ADT, ADHC, etc.) based on the revised regulations that comply with the HCBS rules 	1/1/2015 – Ongoing	Not Started



All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
	<ul style="list-style-type: none"> • Implement provider requirements using the CMS toolkit to determine the materials/evidence providers need to submit as validation of HCB setting under heightened scrutiny 		
Surveying process	All waivers: <ul style="list-style-type: none"> • Update PDS provider on-site surveys • Establish process for participant surveys 	1/1/2015 – Ongoing	Not Started
Grievance process	All waivers: <ul style="list-style-type: none"> • Review grievance process and implement updates as needed for participants to file complaints about non-compliant providers • Determine method to confirm participants are aware of grievance process 	10/1/2015 – Ongoing	Not Started
Miscellaneous:			
Communication plan for additional stakeholders (advocacy groups, provider associations, etc.)	<ul style="list-style-type: none"> • Develop stakeholder engagement process to obtain input on implementation of the final rules, focusing on defining and operationalizing rules before policies and tools are established <ul style="list-style-type: none"> • Host public forums and/or focus groups for providers and participants, representatives, family members, and advocates • Attend meetings of established public consumer, advocacy, and provider groups to review and provide feedback on key changes • Accept public comments from stakeholders during public comment periods for waiver regulations, waiver amendments, and waiver renewals • Communication activities could include periodic email updates with rule summaries, educational materials, webinars, and presentations at conferences and advocacy group meetings upon request 	1/1/2015 – Ongoing	In Process
Relocation Process (due to HCBS rules)	All Waivers: <ul style="list-style-type: none"> • Determine relocation process 	1/1/2015 – Ongoing	Not Started

All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> • Determine how the lease agreement requirement will affect the availability of services and the relocation process • Require the POC team/case manager to be involved in every move of the individual, ensuring the individual has a choice in every move or change in service provider 		

3. Participants

The significance of the changes to DMS’ HCBS waivers warrants continuous communication with waiver participants and advocacy groups that communicate with participants and their families. Communicating regularly with participants also provides opportunities for state staff to conduct further monitoring of providers. In addition to public notices, state staff will organize outreach to participants to inform them of the key changes to their programs, and confirm they understand their rights. In certain cases, participants may need to be relocated based upon the results of the provider assessments. If the provider falls under compliance level three (not compliant and never will be), state staff will follow the same protocols to relocate participants as currently are in place when providers are terminated.

Table 5.3 Potential participant actions for compliance

All Waivers			
Rule	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
All HCBS rules	All Waivers: <ul style="list-style-type: none"> • Develop stakeholder engagement and education plan and implement process for informing participants of the HCBS rules • Send information to waiver participants targeted to each participant’s situation explaining waiver changes related to HCBS rules <ul style="list-style-type: none"> • Include information outlining the new participant rights, provider requirements, and links to all related information 	1/1/2015 – Ongoing	Not Started



All Waivers			
Rule	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
Residential rules	ABI, ABI-LTC, and SCL: <ul style="list-style-type: none"> Develop and implement communication process for informing residential waiver participants of waiver changes related to HCBS rules <ul style="list-style-type: none"> Include information outlining the list of new participant rights, provider requirements, and links to related information Include lease information and sample leases 	1/1/2015 – Ongoing	Not Started

4. Technology

Kentucky has operated the Kentucky Health Benefit Exchange (KHBE), also known as kynect, since October 2013. Included in the next release of KHBE in April 2015, is a Medicaid Waiver Management Application (MWMA), which converts the majority of waiver processes to a central online system. The system tracks the application, assessment, and POC process. Many of DMS' existing waiver forms will be switched from paper to electronic through MWMA, and the HCBS setting final rules impact the language that must be included in the MWMA screens. Below are the primary changes required for the MWMA to comply with the federal requirements.

Table 5.4 Potential technology actions for compliance

Medicaid Waiver Management Application			
Forms:	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
Plan of care/prior authorization form, long term care facilities and home and community based program certification form, Medicaid waiver assessment form, SCL demographic and billing information form, and SCL freedom of choice and case management conflict exemption form	All Waivers: <ul style="list-style-type: none"> Modify forms/screen within MWMA to comply with HCBS rules 	1/1/2015 – 12/15/2015	Not Started



B. Provider Level Remedial Strategies

As described in section III, the workgroup categorized providers into four compliance levels on a preliminary basis: 1) fully aligned with federal requirements and require no changes, 2) do not comply with federal requirements and require modifications, 3) cannot meet the federal requirements and require removal from the program and relocation of individuals, and 4) presumed not to be HCB and requires heightened scrutiny. The preliminary compliance level of each provider was determined based on surveys and state staff knowledge, but it may change over time, as additional information is obtained and providers present evidence of their compliance.

The compliance plan template is a tool that the HCBS workgroup will be developing with input from stakeholders to assist providers in identifying potential areas of non-compliance. This tool is meant for collaboration and is not a corrective action plan. State staff will implement the following activities from January 2015 to July 2018 to assist providers in transitioning to compliance.

1. Develop an HCBS evaluation tool (monitoring tool) and HCBS compliance plan template for providers to be notified of their initial compliance and identify actions they will complete to address areas of non-compliance
 - a. Distribute HCBS compliance plan template to providers and inform them of their compliance level
 - b. First round: January 2015 to March 2015
 - c. Second round: July 2017 to September 2017
2. Develop and implement HCBS final rule communication plan for providers and stakeholders through webinars, presentations at conferences, and provider association meetings
 - a. The HCBS compliance plan template will follow similar protocols to the current waiver provider corrective action plan (907 KAR 7:005 – section 4)
 - b. First round: April 1, 2015 to April 30, 2015
 - c. Second round: October 2017 to January 2018
3. State staff will review and approve/deny providers' plans
 - a. First round: May 2015 to October 2015
 - b. Second round: January 2018 to June 2018
4. Conduct routine evaluations and on-site assessments with the updated HCBS evaluation tool to validate each provider's compliance plan and level of compliance
 - a. Both rounds: March 2015 to ongoing



For providers in compliance level one (fully align with federal requirements), there will be no changes required of the provider and they can continue providing services. State staff will continue to monitor these providers and participants with on-site visits to verify compliance based on each waiver's updated monitoring process (as outlined in section III).

For providers in compliance level two (do not comply and require modifications), changes are required for the provider to become compliant with the HCBS setting rules. These changes may be short-term (0-3 months) or long-term (3-12 months), but all changes must be completed before the updated state policies are implemented in January 2019. The remedial activities included in Table 5.5 below are examples of activities that the providers may complete to come into compliance with the HCB setting rules. State staff will implement the following activities from January 2015 to July 2018:

1. Track provider compliance plans
 - a. First round: May 2015 to October 2015
 - b. Second round: January 2018 to June 2018
2. Conduct routine on-site monitoring to review providers' progress towards complete compliance
 - a. Both rounds: March 2015 to ongoing
3. For non-compliant providers, each waiver will follow the termination process outlined in Kentucky regulations

For providers in compliance level three (not compliant and never will be), state staff will complete an additional on-site meeting with the provider to confirm that the setting does in fact fall under compliance level three. If after the on-site meeting, the setting is confirmed to be in compliance level three, state staff will offer the opportunity for the provider to relocate the setting before the updated state policies become effective. If the provider is able to successfully relocate to a setting that complies with the federal requirements and to assure that operations in that setting comply with the HCBS rules, the provider will not be terminated. Should a provider not comply or qualify with HCBS rules for a particular service, they could potentially provide other HCBS services, as long as they comply with the applicable HCBS requirements for those services. However, if the provider chooses not to relocate, is unable to find an appropriate setting, or is unable to come into compliance with the HCBS rules, the provider will be terminated. The provider's termination will be based on 907 KAR 7:005 (Certified waiver provider requirements) or 907 KAR 1:671 (Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions) after revised waiver regulations are effective. DMS will identify the waiver participants who will be impacted by provider termination and the process will be outlined. All affected participants will be relocated within 90 days of their providers' termination, following the current relocation process. The relocation process will follow the person-centered planning process. The state staff will provide reasonable notice and due process



to all parties. If state staff determines the provider should not be in compliance level three, then they will fall under compliance level four and will require heightened scrutiny.

1. Settings presumed not to be HCB

For settings in compliance level four (presumed not to be HCB), providers will be required to submit evidence to the state first, outlining how their settings do not have the qualities of an institution and do have the qualities of an HCB setting. State staff will conduct an additional on-site assessment and will coordinate closely with these providers to verify they are providing the necessary documentation to prove they have the qualities of HCB setting. DMS will corroborate provider evidence and determine whether to send the evidence to CMS for the heightened scrutiny process. DMS will further define the process of heightened scrutiny when further guidance is provided by CMS. To assist providers in establishing evidence that they have the qualities of an HCB setting, state staff will complete the following activities from January 2016 to July 2018.

1. Notify providers that they will need to undergo heightened scrutiny
2. Collaborate with providers on additional documentation that must be presented as evidence of being HCB
3. Add additional requirements to the HCBS compliance plan template
4. Conduct additional detailed on-site visits to obtain further evidence, as needed
5. Submit provider's evidence to CMS for determination
6. For non-compliant providers or providers determined not to be an HCB setting, the termination process outlined in regulation 907 KAR 7:005 (Certified waiver provider requirements) or 907 KAR 1:671 (Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions) will be followed

Once these providers submit evidence of having the qualities of HCB settings in the HCBS compliance plan template, state staff will evaluate the provider's submission. As needed, state staff will reserve time for more assessments and will prioritize this group of providers when scheduling on-site evaluations. After state staff's analysis, the provider's evidence will be submitted to CMS for final determination. If the determination is that the provider does not have the qualities of a HCB setting, state staff will evaluate the provider as now falling under compliance level three, and the provider will need to relocate the setting and comply with all HCBS rules, or face termination.

Table 5.5 below includes some examples of suggested provider level remedial activities that providers may complete to come into compliance with the HCB setting rules. The activities are identified as short-term (0-3 months) or long-term (3-12 months) depending on their ease of implementation.

Table 5.5 Potential provider actions for compliance

Provider Requirements	
Rule	Potential Actions to be Compliant & Timeline
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS;	<p>• Short-term (0-3 months)</p> <p>• Long-term (3-12 months)</p> <p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Assist/provide training to individuals on how to access public transportation • Support individuals in their job search with activities such as supported employment • Encourage individuals to participate in community activities of their choosing and explore community access opportunities • Ensure individuals have access to personal resources • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Provide transportation to community activities if public transportation is not available • Work with individuals to help them establish valuable relationships within the community • Update mission/values to meet the rule
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board;	<p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Provide individuals with all setting options available and ensure individual makes an informed choice for both setting and provider • Case manager must offer each individual a private unit if available in the setting selected • Document all setting and provider options presented and considered by the individuals in the POC • Ensure setting options align with individual’s needs and preferences • Provide staff training
Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint;	<p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Ensure individual has privacy

Provider Requirements	
	<ul style="list-style-type: none"> • Encourage the individual to come and go as s/he wishes, consistent with the POC and provide necessary supports to facilitate • Ensure provider staff speak to individuals with respect • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Update and implement mission/values to meet the rule
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact;	<p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Encourage the individual to create his/her own schedule and provide necessary supports to facilitate • Encourage the individual to make independent choices during POC planning and on a daily basis • Establish policies and procedures which encourage individual choice of activities • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Update and implement mission/values to meet the rule
Facilitates individual choice regarding services and supports, and who provides them.	<p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Provide necessary information (documents, site visits, etc.) that allows the individual to indicate his/her preferences for services and supports and who provides them • Document all setting and provider options presented and considered by the individuals in the POC • Provide staff training
Home and community-based settings do not include the following:(i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately	<p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Depending on compliance level, develop compliance plan to become compliant with HCBS rules • Consolidate evidence of community integration among recipients • Provide evidence that setting does not have qualities of an institution • Remove isolating barriers or institutional qualities • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Cooperate with state staff and CMS on-site assessments

Provider Requirements	
<p>operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.</p>	

Table 5.6 Potential residential provider actions for compliance

Provider Owned/Controlled Setting Requirements	
Rule	Potential Actions to be Compliant
	<p>Timeline</p> <ul style="list-style-type: none"> • Short-term (0-3 months) • Long-term (3-12 months)
<p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other</p>	<p>Short-term (based on the individual’s person-centered plan)</p> <ul style="list-style-type: none"> • Draft lease or legally enforceable document that provides individuals the same responsibilities and protections from eviction that tenants have under KY law • Include furnish/decoration rules within each lease • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Review lease document with each individual and his/her case manager to reach agreement on the rights and responsibilities included in the lease

Provider Owned/Controlled Setting Requirements	
Rule	Potential Actions to be Compliant Timeline
	<ul style="list-style-type: none"> • Short-term (0-3 months) • Long-term (3-12 months)
designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to the jurisdiction's landlord/tenant law.	<ul style="list-style-type: none"> • Finalize and agree to lease with each individual residing in the home
Each individual has privacy in their sleeping or living unit;	<p>Short-term (based on the individual's person-centered plan)</p> <ul style="list-style-type: none"> • Allow the individual to have a private bedroom if available or explore other options with the POC team • Define and implement what privacy means to each individual • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Re-structure sleeping/living units to allow for optimal privacy for each individual based on the person-centered plan
Units have entrance doors lockable by the individuals, with only appropriate staff having keys;	<p>Short-term (based on the individual's person-centered plan)</p> <ul style="list-style-type: none"> • Ensure that each individual has a key to his/her sleeping unit as well as a key to the entrance of the home based on factors in the person-centered plan • Provide keys to participant rooms only to appropriate provider staff • Provide staff training <p>Long-term</p> <ul style="list-style-type: none"> • Require each sleeping unit to have a lockable entrance door and ensure that the individual has a key based on factors in the person-centered plan • Provide keys to participant rooms only to appropriate provider staff
Individuals sharing units have a choice of roommates in that setting;	<p>Short-term (based on the individual's person-centered plan)</p> <ul style="list-style-type: none"> • Ensure that each individual has chosen his/her roommate and/or housemate

Provider Owned/Controlled Setting Requirements	
Rule	Potential Actions to be Compliant
	Timeline <ul style="list-style-type: none"> • Short-term (0-3 months) • Long-term (3-12 months)
	<ul style="list-style-type: none"> • Re-locate individuals to a different room or home if a change is desired • Provide staff training Long-term <ul style="list-style-type: none"> • Establish process that allows each individual to have choice of roommate or housemate • Include roommate and housemate discussions
Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement;	Short-term (based on the individual’s person-centered plan) <ul style="list-style-type: none"> • Allow individuals to furnish and decorate sleeping and living areas • Provide staff training Long-term <ul style="list-style-type: none"> • Include furnish/decoration rules within each lease
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;	Short-term (based on the individual’s person-centered plan) <ul style="list-style-type: none"> • Encourage individuals to control their own schedule as indicated in POC and provide support to facilitate • Give individuals an option to help plan, shop, and cook meals • Allow access to appropriate areas of kitchen and food at any time as indicated in POC • Provide staff training Long-term <ul style="list-style-type: none"> • Provide supports to enable individuals to do unscheduled social/community activities
Individuals are able to have visitors of their choosing at any time;	Short-term (based on the individual’s person-centered plan) <ul style="list-style-type: none"> • Revise operating procedures or policies, if necessary, to specify that individuals may have visitors at any time based on factors in the person-centered plan • Discuss roommate preferences to set appropriate limits to visitor hours, if the individual has a roommate • Provide staff training
The setting is physically accessible to the individual.	Short-term (based on the individual’s person-centered plan)



Provider Owned/Controlled Setting Requirements	
Rule	Potential Actions to be Compliant Timeline <ul style="list-style-type: none"> • Short-term (0-3 months) • Long-term (3-12 months)
	<ul style="list-style-type: none"> • Determine how all participants residing in the home will be given independent access to all entrance doors, such as keys or keypads • Provide staff training

VI. Public Comment Process

This Statewide Transition Plan is submitted to CMS and posted on December 19th, 2014. The following website can be used to view the plan: <http://www.chfs.ky.gov/dms>.

In order to allow stakeholders time to provide input in a convenient and accessible manner, DMS submitted this Statewide Transition Plan for public comment through an announcement on the DMS website, publication in newspapers, public forum, and informal channels. The public notice was published and posted on November 5, 2014 and provided stakeholders a 30-day public notice and comment period. CHFS distributed individual emails to waiver providers, provider associations, members of the HB144 Commission and the Commonwealth Council on Developmental Disabilities (CCDD), and DMS’ advocacy distribution list to notify those stakeholders of the Statewide Transition Plan. The following website can be used to view the proposed Statewide Transition Plan: <http://www.chfs.ky.gov/dms>.

The following is the public comment process instructions for stakeholders that was included in the initial posting of the Statewide Transition Plan.

If you wish to submit written comments regarding this public notice please do so by emailing them to CMSfinalHCBRule@ky.gov or by mailing them to the following address by December 5, 2014.

Department for Medicaid Services
 HCB Final Rule Statewide Transition Plan
 Commissioners Office
 275 E. Main Street, 6W-A
 Frankfort, Kentucky 40621



To ask additional questions during the public comment period, please attend the scheduled public meeting. The HB144 Commission member meeting (Kentucky Commission on Services and Supports for Individuals with Intellectual and Other Developmental Disabilities) is open to all citizens and scheduled for December 4, 2014. The meeting will be from 1:00 to 3:00 PM at the following location:

Room 131 of the Capitol Annex Building
Frankfort, Kentucky

The public notice and comment period was published in six newspapers (*Lexington Herald Leader, Cincinnati/Northern KY Enquirer, Louisville Courier Journal, Bowling Green Daily News, Owensboro Messenger, Kentucky/Cincinnati Enquirer*) on November 5, 2014. The evidence for both statements of public notice is outlined in Appendix C and D. DMS and the workgroup also promoted and made informal communication about the transition plan and comment period to the following groups: waiver providers, provider associations, HB144 Commission members, the Commonwealth Council on Developmental Disabilities, and other advocacy groups.

A. Public Comments

All public comments were submitted to DMS through mail, email, advocacy groups and the HB144 Commission meeting and were evaluated by the workgroup. The workgroup categorized similar comments together, summarized the comments, and responded and/or updated the transition plan accordingly. The summary and response of all comments is described in Table 6.1. If the state’s determination differed from the public comment, then additional evidence and the rationale the state used to confirm its determination was included. If the state’s determination agreed with the public comment, then the location of the supporting evidence in the transition plan was indicated. All public comments on the transition plan will be retained and available for CMS review during the duration of the transition period or approved waiver, whichever is longer.

Table 6.1 Summary of public comments and response

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter inquired about the missing evidence (statements of public notice) in Appendix C or D.	Thank you for your response. The evidence (statements of public notice) was not available at the time the transition plan was posted for public comment. The evidence has been	Yes, DMS agrees that documentation in Appendix C and D was missing. Appendix C and D have been updated with the appropriate evidence.



Comment Summary (Number Received)	Response	Update to Transition Plan
	included in the final submission to the Centers for Medicare & Medicaid Services (CMS).	
Multiple (6) commenters inquired about why the proposed Statewide Transition Plan did not include a plan or process to match resources/funding with any changes that may be indicated or required. What resources or funding mechanisms (including the US Department of Housing and Urban Development (HUD) funding) will be provided to support mandated changes and processes?	Thank you for your comment. Medicaid's budget does not include the expansion of any Medicaid program, so if additional funding is necessary, then a budget expansion request would be required. Once the specific provider requirements associated with the HCBS final rules are identified, the necessary funding and/or resources will be evaluated.	Yes, DMS agrees that additional waiver services and resources evaluation is required. Table 5.2 has been updated to include a capacity, resources, and services analysis section and action.
One commenter stated that the cost of background checks (\$372) for PDS providers deters or prevents participants from selecting participant directed services (PDS). Medicaid should review the regulations that require the individual to pay for this, and recommend a different source of funding for this cost.	Thank you for your comment. This is not a component of the transition plan, but rather relates to the operations of the waivers. It has been brought to the attention of waiver staff and DMS is actively working on alternative options.	Not applicable to the transition plan.
One commenter inquired about giving participants the same rights as non-participants in regards to having a direct care worker paid for time assisting the participant when the participant goes on a vacation out of state or goes out of state for any purpose. CMS should clarify that this is allowable.	Thank you for your comment. The Department for Medicaid Services (DMS) has not seen any guidance from CMS on this topic.	Not applicable to the transition plan.
Multiple (4) commenters would like KY to continue to recognize that pre-vocational services may be provided in a variety of community settings and requests that the following language be included in the Plan under nonresidential services: "Consistent with an individualized planning process, pre-vocational services will continue to be regarded as having the	Thank you for your comment. Specific details about individual waiver services are not addressed in the transition plan. Any changes in individual waiver services associated with the new HCBS final rules will be addressed in regulations and will be open for public comment as part of the overall stakeholder	Not applicable to the transition plan.



Comment Summary (Number Received)	Response	Update to Transition Plan
potential to be considered community-based to the extent such services are compliant with the guidance for pre-vocational services as contained in the CMS Informational Bulletin published September 16, 2011."	involvement process and throughout the Kentucky regulation review process.	
Multiple (15) commenters feel that there is a lack of respite, applied behavioral analysis (ABA) therapy, behavior support, affordable housing, community access, and transportation in their area, specifically for Michelle P Waiver (MPW) and members with autism spectrum disorders. They also feel that DMS should allow both PDS and traditional agencies to provide respite.	Thank you for your comment. Specific details about individual waiver services are not addressed in the transition plan. Any changes in individual waiver services associated with the new HCBS final rules will be addressed in regulations and will be open for public comment as part of the overall stakeholder involvement process and throughout the Kentucky regulation review process. Your comment will be passed along to the appropriate waiver staff.	Not applicable to the transition plan.
One commenter inquired why the seventh waiver (Home and Community-Based Services (HCBS) Transitions) which provides services for individuals with physical disabilities (and the aged) that have left medical facilities through the Kentucky Transitions Program was not included in the transition plan.	Thank you for your comment. All active Kentucky HCBS waivers were addressed in the transition plan. The Transitions waiver was never funded/implemented in the Commonwealth and was terminated on 9/30/14.	No, DMS disagrees with this comment since the HCBS transition waiver was terminated on 9/30/14.
One commenter's son has met people, gone places, made friends and experienced life with other people outside of his family that he would have never been able to do with just the assistance from his immediate family. They are great supporters of these and other services (MPW) because they have witnessed first-hand the impact that they make on individuals.	Thank you for your comment. DMS appreciates your input.	DMS interprets that the comment does not warrant a change to the transition plan.



Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Multiple (2) commenters inquired if members will still have the freedom to choose and use consumer directed option (CDO). If so, the commenter asked if there are restrictions on who can provide the services.</p>	<p>Thank you for your comment. Specific details about consumer or participant directed services are not addressed in the transition plan. Any changes in this option associated with the new HCBS final rules will be addressed in regulations and will be open for public comment as part of the overall stakeholder involvement process and throughout the Kentucky regulation review process. Your comment will be passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>
<p>One commenter expressed the importance of waiver services to individuals on the autism spectrum and emphasized the importance of waiver members being able to live in the community and having the choice of living situations.</p>	<p>Thank you for your comment. Choice is intended to be a key component of the HCBS final rules. Specific details about individual waiver services are not addressed in the transition plan. Any changes in individual waiver services associated with the new HCBS final rules will be addressed in regulations and will be open for public comment as part of the overall stakeholder involvement process and throughout the Kentucky regulation review process. Your comment will be passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>
<p>One commenter wondered if the MPW transition plan will be updated with more specifics or is the specificity deemed to be found in the Statewide Plan.</p>	<p>Thank you for your comment. The specificity for all waivers is contained in the Statewide Transition Plan.</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>



Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Multiple (4) commenters urge the Cabinet for Health and Family Services (CHFS) to develop the person-centered planning (PCP) and self-directed components as soon as possible. They feel that through the PCP process the independent assessments of an individuals' needs and strengths will allow them to receive the services they need in a manner that they choose. A commenter inquired if there will be any anticipated changes or new requirements in this area.</p>	<p>Thank you for your comment. Person-centered planning is not a component of the transition plan and CHFS is working expeditiously on these areas. Your comment has been passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>
<p>One commenter inquired about giving participants and families access to provider statuses when citations or corrective actions have been issued.</p>	<p>Thank you for your comment. This is not a component of the Kentucky Statewide Transition Plan and your comment will be passed along to the appropriate waiver staff. .</p>	<p>Not applicable to the transition plan.</p>
<p>Multiple (5) commenters inquired about day programs, including that the transition plan should address how the adult day services will be modified to assure that participants have the opportunity to interact with individuals without disabilities. Another commenter indicated that they have many questions about congregate day programs level of funding. One commenter asked how the transition plan will affect safety net programs in Kentucky.</p>	<p>Thank you for your comment. As indicated in the transition plan, there are a number of federal rules that impact all provider types, including day programs. DMS is currently waiting for guidance from CMS related to non-residential services, including day programs. DMS will give each provider the opportunity to come into compliance.</p> <p>Medicaid's budget does not include the expansion of any Medicaid program, so if additional funding is necessary, then a budget expansion request would be required. Once the specific provider requirements associated with the HCBS final rules are identified, the services and/or necessary resources will be evaluated.</p>	<p>Yes, DMS agrees that additional waiver services and resources evaluation is required. Table 5.2 has been updated to include a capacity, resources, and services analysis section and action.</p>



Comment Summary (Number Received)	Response	Update to Transition Plan
<p>One commenter inquired if the Medicaid Waiver Management Application (MWMA) will interface with electronic health records (EHR).</p>	<p>Thank you for your comment. Specific details about systems supporting the waivers are not addressed in the transition plan. Your comment will be passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>
<p>One commenter inquired if there are ways to use technology to help Kentucky achieve these requirements and promote integration.</p>	<p>Thank you for your comment. DMS will continue to look at additional options to achieve and promote integration.</p>	<p>Yes, DMS agrees and Table 5.1 has been updated to include a state action of identifying potential opportunities to use technology to promote integration.</p>
<p>One commenter inquired about the SCL cutbacks and thinks there needs to be changes to SCL.</p>	<p>Thank you for your comment. Specific details about overall funding and policies for individual waivers are not addressed in the transition plan. Any changes in individual waiver services associated with the new HCBS final rules will be addressed in regulations and will be open for public comment as part of the overall stakeholder involvement process and throughout the Kentucky regulation review process. Your comment will be passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>
<p>Multiple (3) commenters want to require that all individuals have an option for residential and non-residential services. They feel that Kentucky should require each provider that refuses to provide a service to put the refusal in writing with the reason for the denial so Kentucky can review the causes of failure to provide services and develop a plan to address the issues.</p>	<p>Thank you for your comment. This is not a component of the Kentucky Statewide Transition Plan and your comment will be passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>



Comment Summary (Number Received)	Response	Update to Transition Plan
Multiple (3) commenters inquired about if there are different ways to let residents and families know of HCBS, its services, and its availability.	Thank you for your comment. This is not a component of the Kentucky Statewide Transition Plan and your comment will be passed along to the appropriate waiver staff.	Not applicable to the transition plan.
One commenter stated that there is a possibility that the HCBS final rule impact will cause little to [no] significant change for Kentucky provider agencies.	Thank you for your comment.	The comment did not request a change to the transition plan.
Multiple (2) commenters stated that the plan states that Supports for Community Living (SCL) "participants are individuals who have an intellectual disability", but that it should also include individuals who have other developmental disabilities.	Thank you for your comment. DMS apologizes if the brief summary included in the transition plan did not fully describe the population served through the SCL waiver. The complete definition of the population served in the SCL waiver is outlined in 907 KAR 12:010.	Yes, DMS agrees and the purpose section (section I, page 2) has been updated to include the waiver regulation number for reference.
Multiple (6) commenters commended Kentucky on several positive elements of the Statewide Transition Plan. They liked the use of multiple sources of information for its evaluation of settings, including review of regulations, information from state staff who conduct on-site licensing visits of these settings, and engagement with providers. They believe the Transition Plan proposes to build an on-going monitoring of compliance with the HCBS regulations into its oversight system. The plan outlines a relocation process for individuals who are being provided services in settings that cannot come into compliance with the regulations and includes an initial analysis and transition plan for non-residential settings.	Thank you for your comment. DMS appreciates your input.	Yes, DMS agrees.

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Multiple (3) commenters asked how changes in provider compliance level will be assessed and communicated, while another inquired about the appeals process. DMS received a question asking how controlling schedules and activities will work with ADT and how providers who did not respond to the survey were evaluated.</p>	<p>Thank you for your comment. DMS is still developing the provider compliance and heightened scrutiny processes, but information and technical assistance will be shared with providers on a routine basis. DMS is currently waiting for additional guidance from CMS related to the heightened scrutiny process. DMS made an assumption that the remaining providers not surveyed reflect the same distribution of compliance levels as the providers surveyed. Providers who did not respond to the survey will have additional opportunities to provide information at a future point.</p> <p>The Kentucky sanctions regulation (907 KAR 1:671) provides more information on the appeals process. The determination of a compliance level is not one of the actions that can be appealed. However, the initial compliance level is an estimate and DMS will work with providers to come into compliance. Providers will have an opportunity to review their initial compliance level and take actions come into compliance.</p>	<p>Yes, DMS agrees additional information is needed regarding the provider compliance and heightened scrutiny process. The provider assessment (section IV, page 14), the provider level remedial strategies (section V, page 31), and the settings presumed not to be HCB (section V, page 34) sections have been updated to include additional details.</p>
<p>Multiple (5) commenters asked for more details regarding the heightened scrutiny process for those providers who will be presumed not to be home and community-based. The transition plan does not indicate that it is the state who determines whether to</p>	<p>Thank you for your comment. DMS has the responsibility to review findings and consolidate sufficient evidence for providers who qualify for heightened scrutiny before submission to CMS. DMS is still developing the</p>	<p>Yes, DMS agrees additional information is needed regarding the heightened scrutiny, compliance plan template, and stakeholder engagement process. The provider</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>submit evidence to CMS. Commenters stated that the heightened scrutiny process does not explain how DMS will seek input from stakeholders, such as participants and families and some suggested that DMS collect input from participants, families, and advocates when evaluating providers under heightened scrutiny.</p>	<p>provider compliance and heightened scrutiny processes, but information and technical assistance will be shared with providers on a routine basis.</p> <p>The initial compliance level results are targeted to be shared with providers during the first quarter of calendar year 2015. The compliance level of providers is expected to change over time as provider survey responses are validated, additional information is collected, and providers change their practices to comply with the HCBS final rules.</p> <p>The workgroup is developing the compliance plan template and evaluating provider responses. DMS is developing a stakeholder engagement process to obtain input on the implementation of the setting-related HCBS final rules. There will be public forums for providers and for advocates, participants, and families before policies and tools are established. The forums will be focused on Kentucky's plan for defining and operationalizing the setting-related HCBS final rules. Prior to implementation of policies, DMS will use established public consumer, advocacy, and provider groups to review and provide feedback on key changes as well.</p>	<p>assessment (section IV, page 14 and 18), the provider level remedial strategies (section V, page 31), the settings presumed not to be HCB (section V, page 32), and the Table 5.2 sections have been updated to include additional details.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Multiple (29) commenters asked who will be developing the compliance plan template and if providers will have the opportunity to provide input into the template. Another commenter suggested that DMS build off of the surveys and develop the compliance plan template to be very detailed and contain specific checklists and criteria. One commenter requested that the public have an opportunity to give input to the compliance plans before they are approved by DMS.</p>	<p>Thank you for your comment. The workgroup is developing the compliance plan template/tool and evaluating provider responses. The provider compliance plans are not formalized corrective action plans, but draft documents that DMS will use as a means of communicating and assisting the providers' effort to become compliance.</p> <p>When stakeholders were referenced in the transition plan, DMS meant legal guardians, families, participants, parents, siblings, wives, husbands, advocacy groups, friends, and providers. The definition of stakeholders has been added to the Statewide Transition Plan on page 2.</p> <p>DMS is developing a stakeholder engagement process to obtain input on the implementation of the setting-related HCBS final rules. There will be public forums and/or focus groups for providers and for advocates, participants, and families before policies and tools are established. The forums will be focused on Kentucky's plan for defining and operationalizing the setting-related HCBS final rules. Prior to implementation of policies, DMS will use established public consumer, advocacy, and provider groups to review and provide feedback on key changes as well.</p>	<p>Yes, DMS agrees additional information is needed regarding the workgroup and stakeholder engagement process. The purpose (section I, page 2), regulation and waiver application assessment (section III, page 6), provider assessment (section IV, page 14 and 18), provider level remedial strategies (section V, page 31), Table 5.2, and Table 5.3 sections have been updated to include additional details.</p>

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	<p>DMS is also working on a plan to educate participants and/or legal guardians about the HCBS final rules and the potential impacts. Moving forward participants, legal guardians, families, and legal guardians will be involved in defining key elements of the rule. All revisions to the transition plan and updates regarding the HCBS final rules will be posted to the DMS website.</p> <p>There will be many opportunities over the five year transition timeframe when comments may be submitted regarding waivers. Stakeholder comments can be submitted each time changes are proposed to any waiver regulation, waiver application, and waiver renewal.</p>	
<p>Several (18) commenters inquired about when and how DMS will notify providers of their level of compliance with the HCBS final rules. DMS received similar comments asking if providers will be able to submit additional information to justify their level of compliance. Some commenters suggested publishing the list of providers that fall within each category of compliance, while others urged DMS to conduct on-site reviews to validate provider level of compliance. DMS received a suggestion of listing isolating factors and specific areas of non-compliance for each provider. Several commenters provided feedback on the process for determining provider’s category of</p>	<p>Thank you for your comment. Given the large number and varying types of non-residential providers in the Commonwealth, calculating percentages provided the most accurate representation of the compliance level. DMS fully intends to complete on-site visits of all providers, regardless of compliance level to confirm compliance with the HCBS final rules. The on-site visits will use an updated monitoring tool and will occur through regular monitoring visits. Providers identified as non-compliant will potentially require additional on-site visits. Training will be conducted for waiver</p>	<p>Yes, DMS agrees additional information is needed regarding the provider compliance survey, on-site visits, provider level categorization, and the opportunity for providers to provide additional information. The provider assessment (Section IV, page 18), provider level remedial strategies (section V, page 33), and Table 5.2 sections have been updated to include additional details.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>compliance. Some commenters stated that participants and families should be involved in the categorization of the settings. Overall, commenters requested more details describing how providers' level of compliance will be evaluated and what modifications must be made to providers' settings for them to achieve compliance.</p>	<p>staff to incorporate new rules into monitoring tools.</p> <p>The categorization of provider compliance included in the transition plan was based on survey and waiver staff data, and is not final. The provider compliance level is an initial estimate and the final categorization will not be based solely on survey data. The compliance plan template is still being developed, and DMS will be seeking provider and participant input on the template. When the plan templates are distributed to providers, providers will be notified of their initial categorization, during the first quarter of calendar year 2015.</p> <p>Providers will have opportunities to work with the state to complete the template and identify and resolve areas of non-compliance.</p>	
<p>Several (13) commenters inquired about the federal regulation requirement of community integration. Comments include that the plan is unclear and does not go far enough to see significant change and that there needs to be clear definitions around expectations and outcomes and what full community access means. One commenter stated that providers will need more information regarding how to become more integrated in the greater community. Several participants commented that they do not always have the opportunity to go into the community, even when</p>	<p>Thank you for your comment. Integration is a critical component of the new rules and a key part of Medicaid waivers today. Per the HCBS final rules, the individual needs of the waiver participants should be included in the person-centered plan.</p> <p>The Statewide Transition Plan outlines DMS' implementation of the plan for the next five years. DMS agrees that more information regarding how community integration will be</p>	<p>Yes, DMS agrees that integration is important. Table 5.1 (page 21) outlines the potential actions each waiver must complete in order to be compliant. Table 5.2 has been updated to include additional details about stakeholder engagement as well.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>they want to. Questions from commenters include what the requirements for integration look like, if providers must calculate ratios of patients with disabilities versus no disabilities to determine integration, and how the state will take into account the varying needs of waiver participants when identifying integration.</p> <p>One commenter described that if a Community Living Support (CLS) staff person is out with an illness, the participant cannot go out into the community.</p>	<p>operationalized and measured is needed. The development of these definitions and requirements is part of the transition process. Stakeholders will be involved in the process prior to the implementation of policies as outlined on page 31.</p> <p>CMS has provided additional information and resources regarding residential services: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html</p> <p>We have referred your comment to the appropriate waiver staff who will be following-up on your comment.</p>	
<p>Multiple (5) commenters stated that there should be a grievance process for participants and their families to file complaints about non-compliant settings.</p>	<p>Thank you for your comment. There is an established grievance and/or complaint process for each waiver. Based on public comments received, DMS will further analyze the process, ensuring it is clearly defined and publicized. Please see page 31 of the Statewide Transition Plan for additional details.</p>	<p>DMS agrees that more awareness of the grievance process on the participant side is needed. Table 5.2 has been updated to include a section on reviewing and publicizing the grievance processes.</p>
<p>Several (12) commenters inquired about participant surveys. These include that all compliance monitoring should involve participant surveys, the surveys must be free of influence from providers, and that the</p>	<p>Thank you for your comment. DMS is working to establish a participant surveying process that will be used to validate provider compliance. The survey process will include mechanisms to</p>	<p>Yes, DMS agrees a participant surveying process needs to be developed and/or updated. Table 3.5 and Table 5.2 have been updated to</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>participants should be involved in the initial assessment of provider compliance. Some commenters suggested that DMS create an online survey tool specifically for participants, while others suggested submitting questionnaires to participants to evaluate how much choice they have in settings and services, as well as allow them to rate the settings. One commenter recommended that consumer organizations be involved in the creation of the participant surveys.</p>	<p>minimize potential provider influence. The survey will be developed with input from participants and families. DMS will explore the various options of tools for conducting a participant survey.</p> <p>DMS also recognizes the importance of advocacy group engagement in the creation of participant surveys and the implementation of the HCBS final rules.</p>	<p>include the development of a participant surveying process.</p>
<p>Several (6) commenters expressed concern over settings presumed not to be HCB. One commenter noted that the transition plan should address in detail how the settings should be modified while another questioned the process that would be implemented if the current programs could not comply with the new rules. One commenter noted that the transition plan should recognize that some of the settings may need to be removed from HCBS.</p>	<p>Thank you for your comment. The Statewide Transition Plan is intended to be a planning roadmap of how CHFS will bring HCBS waivers into compliance with the setting-related HCBS final rules. Please refer to page 36 in the Statewide Transition Plan. The specific details of how settings must be modified has yet to be determined and will vary based on the specific areas of non-compliance for each setting. Providers and participants will have opportunities to provide input into the process.</p> <p>Please refer to page 35 of the Statewide Transition Plan for more information about compliance level 3 and the relocation process for information on what will occur if settings need to be removed from the HCBS.</p>	<p>Yes, DMS agrees that additional information regarding how settings should be modified to become compliant is needed. The provider level remedial strategies (section V, page 34) section and Table 5.5 outline the process for settings presumed not to be HCB and potential actions to become compliant.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Multiple (3) commenters expressed concern regarding the provider surveys. One commenter noted that the questions for providers to self-assess were inadequate, while another suggested conducting a second non-residential survey to capture more of the providers.</p>	<p>Thank you for your comment. The provider assessment and compliance level determination is a continuous process that will change as new information is presented and changes are made. DMS made an assumption that the remaining providers that did not respond to the survey reflect the same distribution of compliance levels as the providers who responded. Providers who did not respond to the survey will have additional opportunities to provide information. The provider compliance plan template process, which is still under development, will facilitate the communication and documentation of the providers' compliance level with DMS.</p> <p>The questions from the surveys were modeled from CMS suggested questions. Providers will have additional opportunities to provide input and information on their compliance levels throughout the process.</p>	<p>DMS disagrees with the comment since the survey questions were modeled off the CMS toolkit and ample time was provided for providers to complete the survey. The provider assessment - non-residential settings (section IV, page 18) section describes the provider surveying process.</p>
<p>One commenter suggested that the waiver participant be involved in the relocation process for providers who will not be able to comply with the HCBS final rules.</p>	<p>Thank you for your comment. DMS agrees that participant involvement is very important, and will follow the person-centered planning process for individuals who may need to be relocated. Please refer to page 35 of the Statewide Transition Plan for more information on the relocation process.</p>	<p>Yes, DMS agrees that the relocation process will follow the person-centered planning process and that the individual will be included. The provider level remedial strategies (section V, page 33) section has been updated with additional information.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Multiple (3) commenters offered feedback about participants controlling their own schedules. Some participants are not able to control their own schedule, depending on staffing, and one participant indicated s/he wanted to work but staff would not allow him/her to have supported employment. Another commenter asked how this requirement would work with the current ADT program.</p>	<p>Thank you for your comment. DMS believes that choice is a critical component of the HCBS final rules and a key part of Medicaid waivers today. The lack of flexibility and autonomy in residential services is being addressed by the HCBS final rules outlined in Table 5.1 (page 26).</p> <p>DMS is still in the process of operationalizing the definitions and the requirements of the HCBS final rules, but information and technical assistance will be shared with providers on a routine basis.</p> <p>DMS will pass your comment to the appropriate waiver staff.</p>	<p>The comment did not request a change to the transition plan.</p>
<p>Several (6) commenters suggested that the timeline for implementation of some of the setting rules is too extended. Suggestions include addressing the most problematic settings earlier to achieve compliance by 2019.</p>	<p>Thank you for your comment. DMS has selected the timeline outlined in the Statewide Transition Plan for the following reasons:</p> <ol style="list-style-type: none"> 1. The rules included in the second round may have a significant impact on KY HCBS providers and create an access issue depending on the number of providers who will lose the ability to render services because of the rules, if adequate time is not allowed for implementation. 2. DMS has allotted a full year to work with the high volume of providers who will need to undergo heightened scrutiny to assure that 	<p>DMS disagrees because the extended timeline allows more providers to come into compliance, ensuring access to HCB services. The state level remedial strategies section (section V, page 21) has been updated to include the reasons for the extended timeline.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
	<p>DMS can spend adequate time working with each provider.</p> <p>3. DMS is giving time for providers to stabilize the first round of changes before moving into the second round.</p> <p>4. DMS will be educating providers as soon as the rules are fully defined and operationalized. The education and compliance process for the second round changes will start before 2018 giving providers ample time to become compliant.</p>	
<p>Multiple (2) commenters stated that trainings will be critical for providers and asked how provider trainings will be conducted. Another commenter suggested that organizations will need guidance on how to become more integrated into the greater community. One commenter suggested that webinar technology needs to be updated if information is going to be disseminated to providers through that channel.</p>	<p>Thank you for your comment. DMS is developing the training process and a stakeholder education plan. Part of the planning process will include evaluating different options for broadcasting the information. DMS will work to reduce technological issues moving forward. Additionally, all meetings are recorded and available on the DMS website.</p>	<p>Yes, DMS agrees a training and education plan is required. Table 5.3 has been updated to include the development of a communication and education plan for participants.</p>
<p>Several (4) commenters highlighted the importance of transportation as it relates to access. Suggestions include making transportation a more prominent component of the transition plan and clarifying the payment and performance mechanism for provision of transportation.</p>	<p>Thank you for your comment. DMS agrees that transportation is an important part of HCBS waivers. The Statewide Transition Plan outlines DMS' implementation strategy and will not address the specific details about waiver services. Once the specific provider requirements associated with the HCBS final rules are identified, the services will be evaluated.</p>	<p>Yes, DMS agrees that additional evaluation of waiver services and resources is required. Table 5.2 has been updated to include a resources analysis section and action.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>One commenter inquired about how the transition plan will affect home health and adult day care facilities, as well as “non-mental health” patients.</p>	<p>Thank you for your comment. The setting-related HCBS final rules have two sections, one that applies to all settings, including non-residential settings and one section that only applies to residential settings. The first five requirements of the rules listed in Table 3.2 and 3.3 apply to all settings and services, including adult day care facilities. All patients who receive services from an HCBS waiver are affected in the same way, regardless of diagnosis.</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>
<p>Several (2) commenters stated that the rule changes need to be more specific, which will make the requirements more easily enforceable. Additionally, one commenter suggested that DMS utilize guidance from CMS and update the transition plan as more guidance is released.</p>	<p>Thank you for your comment. The Statewide Transition Plan outlines DMS' implementation strategy for the setting-related HCBS final rules over the next five years. DMS agrees that more information regarding the rules is needed and that further development of the definitions and requirements is part of the transition process. Stakeholders will be involved in the process prior to the implementation of policies as outlined in Table 5.2. The Statewide Transition Plan will be updated and assessed as additional guidance is provided by CMS. The workgroup used CMS toolkits to develop the Statewide Transition Plan and will continue to use CMS guidance as a reference.</p> <p>CMS has provided additional information and resources regarding residential services:</p>	<p>DMS is still developing the specific requirements of the rules and the transition plan will not be updated at this time.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
	http://www.medicaid.gov/Medicaid-CHIPso-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html	
<p>One commenter noted it takes over three weeks to get a criminal record check for employees in the CDO program.</p>	<p>Thank you for your comment. This is not a component of the Kentucky Statewide Transition Plan and your comment will be passed along to the appropriate waiver staff.</p>	<p>Not applicable to the transition plan.</p>
<p>Multiple (4) commenters inquired about freedom of choice for participants. Comments include a participant who was told by staff that s/he could not live alone, even if s/he were to get married, while another participant said s/he has never been given a choice of where to live or roommates. Another comment was that participants cannot have freedom of choice without capacity, and so, capacity will need to be evaluated and increased. The transition plan needs to be made clear that the provider is not allowed to evade the requirement of giving the participants the choice of a private room.</p>	<p>Thank you for your comment. DMS believes that choice is a critical component of the HCBS final rules and a key part of Medicaid waivers today. The implementation of the HCBS final rules ensures that each individual has the option to select a private room and that roommate selection is an individual choice.</p> <p>Once the specific provider requirements associated with the HCBS final rules are identified, services and provider capacity will be evaluated. A section in Table 5.2 has been added to the Statewide Transition Plan outlining the evaluation process.</p>	<p>Yes, DMS agrees the language needs to be strengthened. Table 5.2 has been updated to include a capacity, resources, and services analysis section and action. Table 5.5 has been updated with clarifying language.</p>
<p>Multiple (3) commenters asked what information would need to be presented in order to determine that the provider does not have characteristics of an institution. Another commenter expressed concern that DMS is defining an area where there is more than one residence occupied by individuals receiving HCBS</p>	<p>Thank you for your comment. CMS released additional information regarding potential isolating and non-HCBS settings that provides clarification. All settings identified as presumed not to be HCBS will have the opportunity to</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>as potentially having the characteristics of an institution. Further, the commenter stated that having a couple of houses on the same road or some neighborhood does not meet the definition of isolating.</p>	<p>complete the heightened scrutiny process and provide evidence of compliance.</p> <p>Please follow the below link for more information regarding settings that have the potential to isolate: http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf</p>	
<p>Several (2) commenters discussed heightened scrutiny. One commenter stated that providers with numerous homes on one street would fall under heightened scrutiny while another confirmed his/her understanding that providers who fall under heightened scrutiny will need to submit evidence to the state first.</p>	<p>Thank you for your comment. Yes, DMS agrees that providers presumed not to be in compliance must submit evidence to DMS first and then DMS will corroborate the evidence. DMS will make the decision to submit evidence to CMS. DMS is however still waiting on further clarification from CMS on the specific heightened scrutiny process.</p> <p>Additional information regarding potential isolating settings and the heightened scrutiny process can be found at the following link: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
<p>Several (4) commenters asked questions related to the lease requirement. These include other requirements that will be developed, if the lease will hinder the individual moving to another provider, and if a provider who owns multiple houses may have one lease for all of their locations, and what is required in the case of a room change. One commenter suggested that the state implement consistent tenant rights and responsibilities.</p>	<p>Thank you for your comment. Lease options will be considered when lease requirements are defined.</p> <p>Kentucky's interpretation of the rule is that an individual will have the option of choice each time s/he moves residences. The requirements of the lease agreement are still being developed, but should reflect the actual residence where the individual resides.</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>
<p>Several (4) commenters summarized key components of the plan and noted positive aspects. Comments include that stakeholders are pleased that modifications will be considered rights restrictions. Other commenters noted the transparency that Kentucky is assuring with the details of the plan.</p>	<p>Thank you for your comment. DMS appreciates your input.</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>
<p>Multiple (3) commenters stated their concern of individuals having keys to the exterior of the house, for fear that the key would be lost, stolen, or copied and potentially leading to breaking and entering. Another suggestion is to clarify who "appropriate staff" having keys are. Another comment stated that the discussion of physical accessibility is inadequate and to be accessible, a setting must meet certain construction standards.</p>	<p>Thank you for your comment. The HCBS final rule requires physical accessibility and a potential example of implementing this rule is by giving individuals residence keys. This is just an example and DMS agrees that it will be important to identify options that allow accessibility and promote safety. As part of the person-centered planning process the individual's team should decide the appropriate individuals and staff who can have full access to keys. More details/definitions will be developed and discussed as a part of the implementation process.</p>	<p>DMS agrees that additional examples of implementation actions are needed. The specific requirements are still being developed, but Table 5.6 has been updated with clarifying language.</p>

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<p>One commenter stated that the transition plan is not detailed about how it will ensure individuals are offered choices of non-disability specific settings.</p>	<p>Thank you for your comment. DMS will update the Statewide Transition Plan to address provider capacity and service assessment as we implement the HCBS final rules.</p>	<p>Yes, DMS agrees that an evaluation of additional waiver services, capacity, and resources is required. Table 5.2 has been updated to include a capacity, resources, and services analysis section and action.</p>
<p>Several (5) commenters stated that they do not have a choice of roommate in their residential setting. Other commenters asked for clarification around what choice of roommate means, and if participants will be able to live alone if they choose. Overall, commenters are requesting more detail of how this rule will be implemented.</p>	<p>Thank you for your comment. DMS believes that choice is a critical component of the HCBS final rules and a key part of Medicaid waivers today. The HCBS final rules are focused on choice and DMS hopes that individuals will have multiple service and setting options. The individual will have to weigh his/her options, including residential providers, locations, availability, resources, and roommate options. The implementation of the HCBS final rules ensures that each individual has the option to select a private room and that roommate selection is an individual choice. Kentucky's interpretation is that choice to live alone means a private room in a house occupied by other waiver recipients. Based on a person's needs and desires, it may also be appropriate for a person to choose to live alone with necessary supports.</p>	<p>DMS is still developing the specific requirements of the rules and the transition plan will not be updated at this time.</p>
<p>One commenter inquired about the process for setting selection, how individuals will select settings, and what informed consent means for individuals. The questions include how legal guardians and parents or</p>	<p>Thank you for your comment. Legal guardians are an integral part of the process, as well as parents, family members and/or individuals identified by the member. More detail/definition is needed for informed</p>	<p>Yes, DMS agrees that legal guardians are synonymous with participants and that they play an integral part of the process. The purpose section (section 1, page 2) has been updated.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
other family members are involved in the setting selection process.	consent and setting selection, which will be part of the development process.	
One commenter asked if the rule allowing visitors at any time will require a 24-hour staffed residence.	Thank you for your comment. Currently, the opportunity to have visitors at any time is addressed through the person-centered process for providers to accommodate the person’s choices. This opportunity should be afforded to anyone receiving residential services and does not require a 24 hour setting. This expectation is stated in the HCBS final rules and will continue in the future	DMS interprets that the comment does not warrant a change to the transition plan.
One commenter urged DMS and CHFS to support improvements without undermining existing safety net programs.	Thank you for your comment. The goal of the HCBS final rules is to improve home and community based services, including public safety net programs.	Yes, DMS agrees with the comment, but interprets that the comment does not warrant a change to the transition plan.
Multiple (5) commenters asked who the members of the workgroup are and what opportunities are available for stakeholders to be a part of the process.	Thank you for your comment. At this time the workgroup is an internal CHFS group comprised of staff from three departments representing each HCBS waiver operated in the Commonwealth. DMS is developing a stakeholder engagement process to obtain input on the implementation of the setting-related HCBS final rules. There will be public forums and/or focus groups for providers and for advocates, participants, and families before policies and tools are established. The forums will be focused on Kentucky's plan for defining and operationalizing the setting-related HCBS final rules. Prior to implementation of policies,	Yes, DMS agrees additional information is needed regarding the workgroup and stakeholder engagement process. The regulation and waiver application assessment (section III, page 6) and Table 5.2 sections have been updated to include additional details.

Comment Summary (Number Received)	Response	Update to Transition Plan
	<p>DMS will use established public consumer, advocacy, and provider groups to review and provide feedback on key changes as well.</p>	
<p>Several (5) commenters inquired about participant/legal guardian/family involvement in the implementation of the HCBS final rules. These include the importance of seeking input from waiver participants and families, and specifically giving these individuals opportunities to provide input on the compliance plan template. One commenter noted that the transition plan does not include sufficient opportunities for input and suggested that additional steps be taken to ensure that these stakeholders have meaningful opportunities to comment. Another commenter suggested written notice be provided to participants and that educational forums be hosted.</p>	<p>Thank you for your comment. When stakeholders were referenced in the transition plan, DMS meant legal guardians, families, participants, parents, siblings, wives, husbands, advocacy groups, friends, and providers. The definition of stakeholders has been added to the Statewide Transition Plan on page 2.</p> <p>DMS is developing a stakeholder engagement process to obtain input on the implementation of the setting-related HCBS final rules. There will be public forums and/or focus groups for providers and for advocates, participants, and families before policies and tools are established. The forums will be focused on Kentucky's plan for defining and operationalizing the setting-related HCBS final rules. Prior to implementation of policies, DMS will use established public consumer, advocacy, and provider groups to review and provide feedback on key changes as well.</p> <p>The workgroup will develop the evaluation tools and surveys based on the finalized definition and operationalization of the rules.</p>	<p>Yes, DMS agrees additional information is needed regarding stakeholders and their engagement process. Table 5.2 has been updated to include additional details.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
	<p>The provider compliance plans are not formalized corrective action plans, but draft documents that DMS will use as a means of communicating and assisting providers with compliance.</p>	
<p>Several (7) commenters offered feedback on the public comment process. One commenter asked how updates will be posted on the DMS' webpage, while another suggested adding a public comment link to the homepage. Some commenters stated that they believe the 30 day timeframe was too short to provide meaningful comments and that there was a lack of public input into the creation of the transition plan. Two commenters noted that there were no Kentucky-sponsored public meetings to inform stakeholders of changes. One commenter urged DMS to seek stakeholder input as regulations are being developed. In addition to comments, DMS received several questions about the public comment, including if comments may only be made in reference to the subject of the public comment period, if there are only two one-month periods where comments may be submitted on the waivers, and if family members should have expanded opportunities to comment.</p>	<p>Thank you for your comment. DMS is working on tight timelines established by CMS. The Kentucky Statewide Transition Plan was open for public comment from November 5th through December 5th and publicized via newspapers, DMS website, emails to individual waiver providers, provider associations, members of the HB144 Commission and the Commonwealth Council on Developmental Disabilities (CCDD), DMS' advocacy email distribution list, a presentation to the CCDD, and the HB 144 meeting.</p> <p>There will be many opportunities over the five year timeframe when comments may be submitted regarding waivers. Stakeholder comments can be submitted each time changes are made to any waiver regulation, waiver application, and waiver renewal.</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan.</p>
<p>A commenter suggested that Kentucky provide written notice to participants and provide educational forums throughout the state. Additionally, one commenter requested that Kentucky inform participants that their comments may also be directed to CMS.</p>	<p>Thank you for your comment. DMS is working on a plan (materials and dissemination options) to educate participants and/or legal guardians about the HCBS final rules and the potential impacts. Moving forward participants, legal</p>	<p>Yes, DMS agrees additional information regarding participant education is needed. Table 5.3 has been updated with additional information.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
	guardians, and families will be involved in defining key elements of the rule.	
<p>A commenter stated it is hard to tell how DMS determined if a setting was isolating. The commenter requested DMS to list the specific isolating factors of each setting, that the specific setting under each category should be made public, and that public input should be sought before the categorization of the setting is finalized.</p>	<p>Thank you for your comment. DMS is further developing the definitions and requirements of the HCBS final rules. The categorization of providers in compliance level four (presumed not to be HCB) was based on the below rules (outlined in the settings section starting on page 17).</p> <ul style="list-style-type: none"> • Located in a building that is also a facility that provides in-patient institutional treatment • On the grounds of, or immediately adjacent to an institution • Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS • Operated in an area (e.g., a neighborhood, a street or a neighboring street, etc.) where there is more than one residence in the area that is occupied by individuals receiving HCBS • Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS • Operated in a remote location (rural, farmstead, etc.) <p>Additional information regarding potentially isolating settings can be found at the following</p>	<p>DMS interprets that the comment does not warrant a change to the transition plan. Links to additional information was provided. As processes are developed, information will be shared with stakeholders.</p>

Comment Summary (Number Received)	Response	Update to Transition Plan
	<p>link: http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf</p> <p>The provider compliance level is an initial estimate and the final categorization will not be based solely on survey data. Providers will be notified of their estimated compliance level when the provider compliance plan template is released.</p>	

Summary of modifications based on public comments:

- I. Background – more details added
- II. Introduction – references added
- II. Introduction
 - A. Purpose – more details added
 - Table 2.1 – more details and public forums added
- III. Assessment Process Systemic Review
 - A. Regulation and Waiver Application Assessment – more details added
 - Table 3.5 – participant surveys added
- IV. Provider Assessment – more details added
- IV. Provider Assessment
 - B. Non Residential Settings – more details added
- V. Remedial Strategies
 - A. State Level Remedial Strategies
 - 1. Policy – more details added



- Table 5.1 – more details added
- Table 5.2
 - State staff training – more details added
 - Capacity, resources, and services – section added
 - Surveying process – participant surveys added
 - Grievance process – section added
 - Communication plan for stakeholders – stakeholder engagement process added
- Table 5.3 – education plan added
- B. Provider Level Remedial Strategies – more details added
 - 1. Settings presumed not to be HCB – clarifications added
 - Table 5.5 – clarifications added

At the time the Statewide Transition Plan is filed with CMS, the transition plan will also be posted to the state website. The URL for the filed transition plan is <http://www.chfs.ky.gov/dms>. The Statewide Transition Plan, with any modifications made as a result of public input, will be posted for public information no later than the date of submission to CMS.



VII. Appendix

A. Residential Provider Survey

The below survey questions were administered to all residential waiver providers through a web-based survey tool. The providers were notified of the survey either by email or provider letter.

1. Name
2. Agency (if identified)
3. Are any of your residences on the grounds of, or adjacent to, an institution?
 - i. If yes, please provide the name and address of the residence(s):
 - ii. Comments:
4. Do any of your residences operate in an area (e.g., a neighborhood, a street or a neighboring street, etc.) where there is more than one residence in the area that is occupied by individuals receiving Medicaid Home and Community-Based Services?
 - i. If yes, please provide the name and address of the residence(s)
 - ii. Comments:
5. Do you operate any multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS?
 - i. If yes, please provide the name and address of the properties:
 - ii. Comments:
6. Do you operate a residence in a rural setting?
 - i. If yes, please provide the name and address of the residence(s):
 - ii. Comments:
7. Do individuals participate in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS?
 - i. Consider the following in your response.
 1. Does the individual regularly access the community?
 - ii. Comments:
8. For how many people does your agency provide residential services?
 - i. Comments:
9. Of those members receiving residential services, how many does your agency provide day services for?
 - i. Comments:
10. Of those members receiving residential services, how many people attend a sheltered workshop?
 - i. Comments:



11. Are individuals employed or active in the community?
 - i. Consider the following in your response.
 1. Does the individual work in an integrated community setting?
 2. If the individual would like to work, is there activity that ensures the opportunity to work?
 - ii. Comments:
12. Of those members receiving residential services, how many work in the community making minimum wage or better?
 - i. Comments:
13. Of those members receiving residential services, how many people volunteer in the community?
 - i. Comments:
14. (Q11) 12. Do individuals choose and control a schedule that meets his or her wishes in accordance with a person-centered plan?
 - i. Consider the following in your response.
 1. How is it made clear that the individual is not required to adhere to a set schedule?
 - ii. Comments:
15. Do individuals control their personal resources?
 - i. Consider the following in your response.
 1. Does the individual have a checking or savings account or other means to control his/her funds?
 2. Does the individual have access to his or her resources?
 - ii. Comments:
16. Does the individual have choice of meal time, place and menu?
 - i. Comments:
17. Does the individual have full access to typical home facilities such as kitchen, dining area, laundry?
 - i. Comments:
18. Is assistance provided to an individual in private when needed and in such a language the individual understands?
 - i. Comments:
19. Is the individual's health information kept private?
 - i. Comments:
20. Do you create a lease agreement or residential contract with individuals receiving Medicaid HCBS living in any of your residences? Please email your lease agreement as instructed in the cover email by May 29th.
 - i. Comments:
21. Are individuals protected from eviction and afforded appeal rights in the same manner as all persons in the State who are not receiving HCBS?
 - i. Please describe policy or procedure:



- 22. Name:
- 23. Agency Name:

B. Non-Residential Provider Survey

The below survey questions were administered to all non-residential waiver providers through a web-based survey tool. The providers were notified of the survey either by email or provider letter.

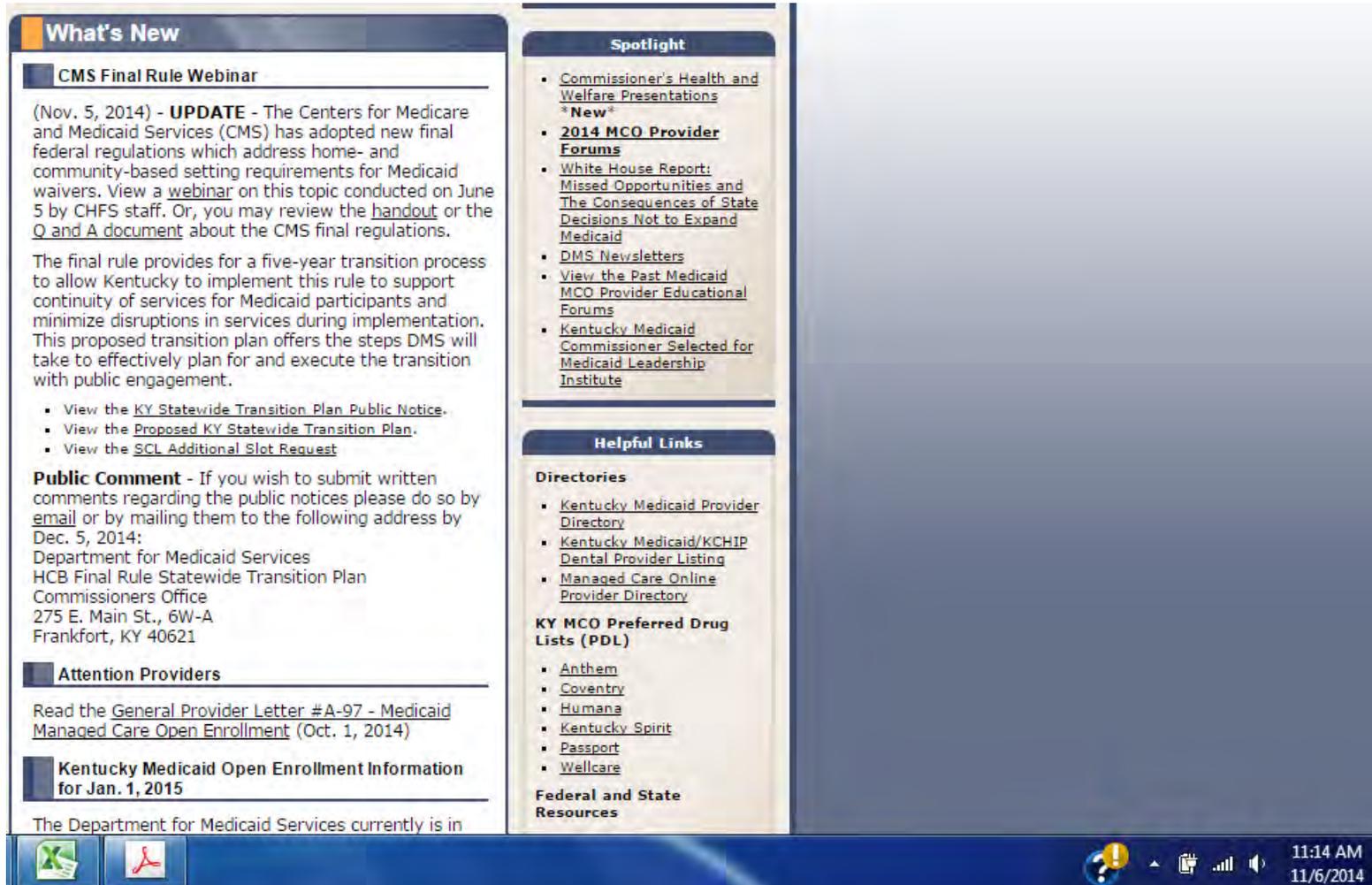
- 1. Name:
- 2. Agency:
- 3. Email Address:
- 4. Please provide the addresses of all of your settings, if applicable:
- 5. Please select the Medicaid HCB waiver for which your agency/organization provides services: ABI, ABI-LTC, HCB, MPW, MII or SCL
- 6. Please select which of the following provider types best describes your agency: ADHC, Home Health Agency, or Other
 - i. Other Non-residential Provider (specify here): ADT, Case Management, OT, PT, ST, CLS, etc.
- 7. Are participants' schedules for PT, OT, medications, restricted diet, etc., posted in a general open area for all to view?
 - i. Please explain how privacy is ensured/protected:
- 8. As part of your waiver services, do your participants participate in activities in the greater community?
 - i. Please provide examples of activities that participants engage in in the greater community:
- 9. Do participants have the freedom to make their own choices while receiving services at your program (if s/he is able to make independent choices)?
 - i. Consider the following in your response:
 - 1. Do participants have autonomy to choose daily activities?
 - 2. Do participants choose who they interact with?
 - ii. Please provide examples of how participants have freedom of choice:
- 10. Do you facilitate the participants' choice of services, supports, and who provides them?
 - i. Please explain:
- 11. Are participants given a choice of available options regarding where to receive services (not applicable to ADHCs)?
 - i. Please explain how the participants are given choice:
- 12. Is it made clear that participants are not required to adhere to a set schedule for activities, etc.?
 - i. Please explain your response to set schedules for participants:



13. Do participant schedules vary from others in the same setting?
 - i. Please explain your response to varying schedules among participants:
14. Do participants have access to things that interest them and can they schedule such activities at their convenience?
15. Are any of your programs within, on the grounds of, or adjacent to, an institution (nursing facility, institution for mental disease, intermediate care facility for participants with intellectual disabilities, or hospital)?
 - i. Please provide address/addresses of any programs within, on the grounds of, or adjacent to, an institution:
16. Do any of your programs operate in an area (e.g. a neighborhood, a street or a neighboring street, etc.) where there is more than one facility/program in the area providing services to individuals receiving Medicaid Home and Community-Based Services (HCBS)?
 - i. If you answered yes in the previous question, please provide examples of how your agency helps participants engage in the broader community:
 - ii. Please provide the address/addresses of your programs where there is more than one facility/program in the area providing services to individuals receiving Medicaid HCBS:
17. Is the non-residential site considered to be remote and outside of a city limits?
18. Do you ensure that participants have rights of privacy, dignity and respect, and freedom from coercion and restraint?
 - i. Please provide justification that you ensure participants have rights of privacy, dignity and respect and freedom from coercion and restraint:
19. Does staff converse with participants while providing assistance and during the regular course of daily activities?
20. Does staff address participants in the manner in which they would like to be addressed?
21. Is individual choice facilitated in a manner that leaves the participant feeling empowered to make decisions?
 - i. Please provide justification that individual choice is facilitated to make the participant feel empowered:
22. Does staff ask participants about their needs and preferences?
23. Does your program accommodate the participant's needs and preferences?
 - i. Please explain how your program does, or does not, accommodate the participant's needs and preferences:
24. Do participants know how to change or request a change to their program, service, or activity they receive?
25. Does the participant know how and to whom to make a request for a new provider?
 - i. Please explain the process for how participants request a new provider:
26. Do you ask your participants if they are satisfied with their services, outside of surveying?
 - i. If yes, please explain how you use that information:
 - ii. If no, please explain why you do not ask the participants if they are satisfied:

C. Proof of Public Notice

27. Website posting



What's New

CMS Final Rule Webinar

(Nov. 5, 2014) - **UPDATE** - The Centers for Medicare and Medicaid Services (CMS) has adopted new final federal regulations which address home- and community-based setting requirements for Medicaid waivers. View a [webinar](#) on this topic conducted on June 5 by CHFS staff. Or, you may review the [handout](#) or the [Q and A document](#) about the CMS final regulations.

The final rule provides for a five-year transition process to allow Kentucky to implement this rule to support continuity of services for Medicaid participants and minimize disruptions in services during implementation. This proposed transition plan offers the steps DMS will take to effectively plan for and execute the transition with public engagement.

- View the [KY Statewide Transition Plan Public Notice](#).
- View the [Proposed KY Statewide Transition Plan](#).
- View the [SCL Additional Slot Request](#)

Public Comment - If you wish to submit written comments regarding the public notices please do so by [email](#) or by mailing them to the following address by Dec. 5, 2014:
 Department for Medicaid Services
 HCB Final Rule Statewide Transition Plan
 Commissioners Office
 275 E. Main St., 6W-A
 Frankfort, KY 40621

Attention Providers

Read the [General Provider Letter #A-97 - Medicaid Managed Care Open Enrollment \(Oct. 1, 2014\)](#)

Kentucky Medicaid Open Enrollment Information for Jan. 1, 2015

The Department for Medicaid Services currently is in

Spotlight

- [Commissioner's Health and Welfare Presentations *New*](#)
- [2014 MCO Provider Forums](#)
- [White House Report: Missed Opportunities and The Consequences of State Decisions Not to Expand Medicaid](#)
- [DMS Newsletters](#)
- [View the Past Medicaid MCO Provider Educational Forums](#)
- [Kentucky Medicaid Commissioner Selected for Medicaid Leadership Institute](#)

Helpful Links

Directories

- [Kentucky Medicaid Provider Directory](#)
- [Kentucky Medicaid/KCHIP Dental Provider Listing](#)
- [Managed Care Online Provider Directory](#)

KY MCO Preferred Drug Lists (PDL)

- [Anthem](#)
- [Coventry](#)
- [Humana](#)
- [Kentucky Spirit](#)
- [Passport](#)
- [Wellcare](#)

Federal and State Resources

28. Newspaper posting



**COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES**

DEPARTMENT FOR MEDICAID SERVICES

PUBLIC NOTICE

The Cabinet for Health and Family Services (CHFS), Department for Medicaid Services (DMS), in accordance with 42 CFR 441.301, hereby provides a 30-day public notice and comment period for its Statewide Transition Plan for all Home and Community-Based Services waivers to comply with the requirements set forth in *Final Rule - CMS 2249-F – 1915(i) State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, Setting Requirements for Community First Choice, and CMS 2296-F 1915(c) Home and Community-Based Services Waivers* (Final Rule).

The Final Rule provides for a five-year transition process that will allow Kentucky to implement this rule in a manner that supports continuity of services for Medicaid participants and minimizes disruptions in service during implementation. This proposed Statewide Transition Plan offers the steps that DMS will facilitate in order to effectively plan for this transition and then successfully execute the transition, with the engagement of the public.

DMS also provides a 30-day public notice and comment period for the Supports for Community Living (SCL) waiver amendment to add 200 additional slots in state fiscal years 2014-2015 and 240 additional slots in state fiscal years 2015-2016.

The following website can be used to view the proposed Statewide Transition Plan and the SCL waiver amendment:
<http://www.chfs.ky.gov/dms>.

Public Comment

If you wish to submit written comments regarding this public notice please do so by emailing them to CMSfinalHCBRule@ky.gov or by mailing them to the following address by December 5, 2014:



Department for Medicaid Services
HCB Final Rule Statewide Transition Plan

Commissioners Office
275 E. Main Street, 6W-A
Frankfort, Kentucky 40621

D. Proof of Public Comment

- 29. Email and mail
- 30. HB144 commissioner meeting