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). The following descriptions offer a high-level summary of the scope and participation for each of KY's HCBS waivers:

- 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 7:010; formerly 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 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 providing 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 plan 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 HCBS 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 to become compliant with the HCBS final rules is located below. The timeline highlights the major activities that will occur from the time the Statewide Transition Plan is approved by CMS through March 2019 (the date by which the transition must be completed). The timeline was developed to give providers enough time to comply with the requirements and to minimize disruption for participants through the transition. The HCBS final rules will be implemented in two rounds. The first round changes include HCB setting requirements that are simpler to implement, while the 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**	**Ongoing**
Submit transition plan to CMS	12/19/14	12/19/14
Receive transition plan approval	12/19/14	Ongoing
Provider Compliance	**1/1/15**	**Ongoing**
First Round Changes[1]		
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.)	2/1/15	5/31/15
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
Regulations	**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	8/15/15
File revised regulations	8/15/15	10/15/15
Regulation public comment period	8/15/15	9/30/15
2016		
	Start Date	**End Date**
Regulations	**1/1/15**	**1/1/19**
Revised HCBS regulations become effective	2/1/16	12/15/16
Heightened Scrutiny	**1/1/16**	**4/15/17**
Develop tool for on-site visits of providers	1/1/16	1/31/16
Conduct on-site reviews of providers who may require heightened scrutiny based on their submitted compliance plan template and mapping	2/1/16	8/31/16

Finalize list of providers who will require heightened scrutiny based upon documentation collected from compliance plan templates, mapping, and on-site visits	9/1/16	10/31/16
Organize documentation from compliance plan templates, mapping, on-site visits, and review by stakeholders for each setting who will need heightened scrutiny	10/31/16	3/31/16
Host external stakeholder session to review documentation of first group of settings that will be submitted for heightened scrutiny	11/29/16	11/29/16
Update statewide transition plan to include details on heightened scrutiny process and completed provider assessment results	11/1/16	12/15/16
Transition plan public comment period	12/21/16	1/19/17
2017		
Provider Compliance	**1/1/15**	**1/1/19**
Heightened Scrutiny		
Public comment period for first heightened scrutiny submission	1/20/17	2/18/17
Submit updated transition plan to CMS	1/25/17	1/25/17
Submit first heightened scrutiny submission to CMS	2/24/17	2/24/17
CMS conduct heightened scrutiny of providers	2/24/17	12/31/17
Continue review of heightened scrutiny evidence packages with stakeholders	4/1/17	12/31/17
Continue submission of heightened scrutiny evidence packages to CMS (after each package and setting has been published for the required public comment period)	6/1/17	12/31/17
Second Round Changes[1]		
Host public forums for providers and participants (families, advocates, etc.) related to the implementation of the second round of changes	3/1/17	7/31/17
Regulations	**1/1/15**	**1/1/19**
Determine regulation language with workgroup for second round of changes	1/15/17	5/1/17
Draft revised regulations	5/1/17	8/1/17
Review regulations by department/leadership	8/1/17	12/31/17
2018-2019		
Provider Compliance	**1/1/15**	**Ongoing**
Second Round Changes[1]		
Review and approve/deny heightened scrutiny providers' plans for compliance	1/1/18	7/1/18
Implement relocation plans for participants who are receiving services from providers who are deemed not to be home and community-based based on heightened scrutiny	3/1/18	12/31/18
Incorporate second round HCBS final rules in all ongoing reviews	7/1/18	Ongoing

Regulations & Waiver Amendments	1/1/15	1/1/19
File revised regulations	1/1/18	1/1/18
Regulation public comment period	1/1/18	2/28/18
2018-2019		
Regulations	**1/1/15**	**1/1/19**
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 HCBS 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.

Below is the summary analysis of each HCBS waiver operating in KY as it relates to the HCBS final rules. DMS filed revised regulations for each of the HCBS waivers using the language of the federal requirements to bring them into compliance with the HCBS final rules. None of the waiver regulations were fully compliant with all of the components of the HCBS final rules. ABI and ABI-LTC waiver regulations are now effective with the first round requirements, as of February, 2016. HCB and SCL waiver regulations are currently awaiting federal approval of waiver renewal applications before they can become effective in state policy, anticipated July, 2016. MPW regulation will be effective in June, 2016.

Table 3.1: Compliance status of each HCBS waiver regulation

HCBS Final Rule – Setting Requirements	**ABI (907 KAR 3:090)**	**ABI-LTC (907 KAR 3:210)**	**HCB (907 KAR 7:010; formerly 907 KAR 1:160)**	**MPW (907 KAR 1:835)**	**SCL (907 KAR 12:010)**
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.[1] 1. Second round change	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Similar requirement is included in current regulation but must be strengthened; anticipated filing in 1/18
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.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Compliant – effective 9/15/16	Compliant – effective 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Compliant – effective 9/15/16	Compliant – effective 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17

HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
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.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Compliant – effective 9/15/16	Compliant – effective 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
Facilitates individual choice regarding services and supports, and who provides them.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Compliant – effective 9/15/16	Compliant – effective 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
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.[1]	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Requirement does not exist in current regulation and must be added; Anticipated filing in 1/18

1. Second round change

HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
Each individual has privacy in their sleeping or living unit.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
Units have entrance doors lockable by the individuals, with only appropriate staff having keys.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
Individuals sharing units have a choice of roommates in that setting.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include	N/A – this waiver does not include	Included requirement in compliant regulation filed

HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
			residential services	residential services	in 8/15 – anticipated effective in 1/17
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.[1] 1. Second round change	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18
Individuals are able to have visitors of their choosing at any time.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
The setting is physically accessible to the individual.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17

HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
Modifications to provider-owned settings requirements: ○ 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.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 1/17
Home and community-based settings do not include the following: (i) A nursing facility; (ii) An institution for mental diseases;	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be

HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
(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 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.[1] 1. Second round change	added; anticipated filing in 1/18	added; anticipated filing in 1/18	added; anticipated filing in 1/18	added; anticipated filing in 1/18	added; anticipated filing in 1/18

1. MIIW Assurance (907 KAR 1:595)
   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 CHFS waiver 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 during the transition period and beyond. 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. CHFS has developed four additional tools that state waiver staff use during regular monitoring visits to check for compliance with the HCBS final rules. These tools were implemented in May, 2017 and include:

1. Non-residential participant survey
2. Non-residential staff survey
3. Residential participant survey
4. Residential staff survey

These survey tools require state waiver staff to discuss the experience of the individuals receiving services with both participants and provider staff. All survey questions are open-ended and are structured to generate conversation with specific details about the individual's experience related to the following areas:

1. Integration
2. Setting selection/choice
3. Rights/Privacy
4. Autonomy/Schedule control
5. Visitors
6. Roommates

In addition to the survey questions, we require state waiver staff to observe how staff speak to/treat the individuals, if the residence is physically accessible to the individual, if individuals are able to lock their bedroom doors, and if bedrooms are able to be personalized. After state waiver staff complete the monitoring tools, the results are entered into a database where trained staff indicate if the provider is complying with the requirement, and if not, the primary reason for non-compliance. CHFS is using this data to identify trends for both individual providers and all HCBS waiver providers to develop targeted technical assistance. Discrepancies between staff and participant responses will be noted on the

setting monitoring report. All instances where non-compliance is indicated, whether through the staff or participant survey, will be flagged for follow-up. Therefore, if only one type of survey response indicates non-compliance, it would still be flagged even though the other survey type may indicate compliance.

Since our technical assistance to providers is determined by needs identified during monitoring, we do not have specific timelines and milestones related to technical assistance. Rather, CHFS will continuously provide technical assistance to providers as needed through the transition period and beyond to assure ongoing compliance with the HCBS final rules. The following types of technical assistance are offered to providers:

1. Statewide webinars that provide detailed guidance on the HCBS final rules, specifically related to integration, individual choice, and autonomy
2. "Positive practices" – examples of impactful initiatives undertaken by providers throughout the Commonwealth that fully comply with the HCBS Final Rules
3. One-on-one provider training for providers with identified needs in specific areas of the HCBS Final Rules

HCBS waiver providers are required to comply with requirements detailed in Kentucky's Medicaid waiver regulations. During regular monitoring, waiver state staff evaluate providers' compliance with these regulations, which include the HCBS final rules. When waiver state staff encounter areas of non-compliance, they provide technical assistance to support the provider in remediating the issue. Providers who still are not able to demonstrate compliance with the HCBS final rules after all technical assistance methods have been used will be issued corrective action plans per 907 KAR 7:005.

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 CHFS waiver staff through separate waiver monitoring processes.

Table 3.2 Current waiver monitoring processes

Current Monitoring Process				
Waiver	*Current Oversight Process*	*Participant and Provider Surveys*	*Areas Requiring Revision*	*In Progress /Complete*
ABI, ABI-LTC	• 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 • 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	• ABI/ABI-LTC participant surveys are distributed annually by state staff	• 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 • 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	Complete
HCB	• Adult Day Health Centers (ADHC) are licensed by the Office of Inspector General (OIG) • 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	• Participant interviews are carried out during on-site monitoring	• 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	Complete

Current Monitoring Process				
Waiver	*Current Oversight Process*	*Participant and Provider Surveys*	*Areas Requiring Revision*	*In Progress /Complete*
	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		• 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	• 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 • 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		• 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 • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence	Complete
SCL	• 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)	• Providers are required by regulation to participate in all department survey	• The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules	Complete

Current Monitoring Process				
Waiver	*Current Oversight Process*	*Participant and Provider Surveys*	*Areas Requiring Revision*	*In Progress /Complete*
	• The citation and sanctions process is outlined in regulation	initiatives, including surveying participants	• 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)	• 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	• Participant satisfaction surveys are distributed by the provider prior to monitoring and are reviewed by state staff during the monitoring process	• 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 • 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	Complete

IV. Provider Assessment

To determine the providers' compliance level, the workgroup used provider surveys as an initial estimate and followed up with more detailed compliance plan templates. Providers "self-assessed" their compliance with the HCBS final rules through these surveys. The CHFS waiver staff reviewed the survey results, validated each provider's response based upon their extensive knowledge of settings, and assigned each provider a level of compliance. After the review of the provider surveys, the state required providers to complete a compliance plan template, where the

providers were asked to provide more detailed information to demonstrate their current compliance with each component of the setting requirements or describe how they would become compliant. The state began reviewing compliance plan templates as they were received and used the following methods of validating the providers' responses:

Validation

- **Staff review:** CHFS waiver staff, including Quality Assurance (QA) staff, who regularly visit providers and settings reviewed each of the surveys to identify areas where they did not think the provider and settings was compliant
- **Mapping:** Each setting location of the provider was mapped to determine its proximity to any non-HCB settings (institutions, nursing facilities, etc.) as well as if the provider had multiple settings co-located and operationally related
- **On-Site Visits**: Each site identified by staff review or mapping as Category 4 (presumed not to be home and community-based) received a site visit from state staff and when possible, self-advocates and family members, to obtain information related to its location and observations and interviews of the experiences of the individuals receiving services at the setting
- **On-going Monitoring**: Each setting in the Commonwealth where individuals receive HCBS will have an on-site visit prior to the compliance deadline of 2019 to verify compliance with the Final Rules

For settings who remained in category 4 after the state's validation process, DMS conducted on-site visits to these 356 settings to confirm if the settings would need to undergo heightened scrutiny. The on-site visit process was developed with input from self-advocates, family members, advocates, and providers. During that on-site visit, the CHFS site visitors collected information related to the setting's home and community-based characteristics, including:

- The setting's location and its surrounding area;
- Observations of the interior and exterior of the setting as well as interactions between individuals and staff;
- Interviews with participants and staff to discuss their experiences.

For providers in category 2, beginning in January, 2017, CHFS waiver staff will be conducting regular certification reviews with revised monitoring tools that include the HCBS Final Rules. Every ABI, ABI-LTC, SCL and the majority of MPW providers will receive an on-site visit to at least one of their settings in calendar year 2017 to validate their progress in complying with the HCBS Final Rules. While not every provider setting will be visited in 2017, Kentucky will work with each provider to discuss areas requiring remediation, and will determine if the remediation needs to apply to all of the provider's settings. All HCB settings and ADHCs serving MPW members will receive an on-site visit from January 2017 through

December 2018 to monitor progress towards implementation of the HCBS Final Rules. Providers will be required to draft transition plans for areas requiring remediation.

Below are the updated categorizations of provider compliance for both residential and non-residential providers, based upon initial surveys, compliance plan templates, and the state's validation process, including on-site visits. Providers will have ample opportunity to review their compliance level and make modifications where possible to come into compliance. Providers were initially notified of their updated compliance level in November 2015, and we have continued to communicate updates to providers as needed.

Integration

Kentucky recognizes that the requirement for settings to be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community is a key component of the HCBS Final Rules. This requirement is part of the second round rules, which will be implemented in regulation in January, 2019. CHFS assessed providers on how they currently comply with the integration component within the provider self-assessments and compliance plan templates, but did not expect providers to be fully compliant with this requirement until 2019. CHFS will continue providing ongoing education and technical assistance to waiver participants and providers to ensure that waiver participants understand their rights and that providers understand that reverse integration alone is not enough to be fully compliant with this requirement.

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 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, CHFS waiver 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 CHFS waiver staff during regular on-site provider evaluations. The workgroup selected the CHFS waiver 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 (category 1)
- Do not comply with the federal requirements and will require modifications (category 2)
- Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals (category 3)
- 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) (category 4)

In order to more accurately evaluate providers and settings, the state required each provider to complete a compliance plan template. After the compliance plan templates were reviewed and validated through the state's process, each provider's compliance level was updated based on the additional information. The updated results of the residential provider survey, validation by CHFS waiver staff, compliance plan template, and mapping are outlined in Tables 4.1 and 4.2 below. Private homes where individuals do not receive HCBS residential services were presumed to be compliant with the HCBS Final Rules; regular monitoring of these settings will occur through case managers when health, safety, welfare checks are completed. The total number of providers is captured in Table 4.1 while the total number of setting locations is captured in Table 4.2.

The total number of settings in Category 4 has fluctuated as we have continued to receive guidance from CMS on settings presumed not to be home and community-based and staff, self-advocates and family members completed site visits providing validation of our initial assessment of each setting. Based upon a discussion we had with CMS in October 2016 about settings that may be considered isolating, we were able to remove over 100 residential settings from Category 4

Table 4.1 All residential providers.

Compliance Level	**Number of Providers**	**Main Areas of Non-Compliance**
Provider only has settings that fall under Category (1) Fully align with the federal requirements	**0**	
Provider only has settings that fall under Category (2) Do not comply with the federal requirements and will require modifications	Level I (Staffed Residence, Group Home): **72**	• The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community

Compliance Level	Number of Providers	Main Areas of Non-Compliance
	Level II (Adult Foster Care, Family Home Provider): **26**	• 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
Provider only has settings that fall under Category (3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals	**0**	
Provider only has settings that fall under Category (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)	Level I (Staffed Residence, Group Home): **6** Level II (Adult Foster Care, Family Home Provider): **0**	• Multiple settings co-located and operationally related • Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS • Operated in a remote location (farmstead)
Provider has settings that are in both categories (2) and (4)	Level I (Staffed Residence, Group Home): **33** Level II (Adult Foster Care, Family Home Provider): **9**	

1. The large majority of Level I providers are staffed residences. There are only 14 group home providers in the Commonwealth of Kentucky.

Table 4.2 All residential settings

Compliance Level	Number of Settings	Main Areas of Non-Compliance
(1) Fully align with the federal requirements	**0**	

Compliance Level	Number of Settings	Main Areas of Non-Compliance
(2) Do not comply with the federal requirements and will require modifications	Level I (Staffed Residence, Group Home): **1,063**	• 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
	Level II (Adult Foster Care, Family Home Provider): **373**	
(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)	Level I (Staffed Residence, Group Home): **249**	• Multiple settings co-located and operationally related • Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS • Operated in a remote location (farmstead
	Level II (Adult Foster Care, Family Home Provider): **3**	

1. The large majority of Level I setting locations are staffed residences. There are only 14 group home providers in the Commonwealth of Kentucky.

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 ADHCS, home health agencies, day training (DT), 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 DT, ADHC, home health agencies, case management, behavior supports, and physical/occupational/speech therapy.

There was not 100% participation in the provider self-assessment survey by non-residential providers, but DMS obtained 100% participation from providers and settings in completing a compliance plan template that described how they are currently compliant, or will come into compliance, with all components of the HCBS Final Rules. Similar to the residential survey data, after receiving providers' responses, the workgroup analyzed the providers' self-reported compliance level. The CHFS waiver 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 (category 1)
- Do not comply with the federal requirements and will require modifications (category 2)
- Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals (category 3)
- 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) (category 4)

The results of the non-residential provider survey, compliance plan templates, and the state's validation process are outlined in Table 4.3. If a provider serves participants across waivers, and/or renders both DT and ADHC, the provider was only counted once. The number of providers in Table 4.3 represents the number of provider agencies, while Table 4.4 represents the number of non-residential setting locations. Please note, case management and home health agencies who provide services only in the home are not included in the counts. If a provider operates both residential and a non-residential day program, they were counted twice: once in table 4.1 as a residential provider and once in table 4.3 as a non-residential provider.

Our total number of settings in Category 4 has fluctuated as we have continued to receive guidance from CMS on settings presumed not to be home and community-based and staff , self-advocates and family members completed site visits providing additional validation of our initial assessment of each setting. CHFS believes that its non-residential settings, based solely on setting type and/or the services provided, are neither

institutional in nature nor that they automatically comply with the HCBS Final Rules. Therefore, DMS will continue providing ongoing technical assistance and education to these providers and settings to ensure that they fully comply with each of the HCBS Final Rules settings components by 2019. All of these settings will be continually assessed with on-site visits as part of regular monitoring.

Table 4.3 All non-residential providers

Category	Number of Providers	Main Areas of Non-Compliance
Provider only has settings that fall under Category (1) Fully align with the federal requirements	ADHC: **3**	
	DT: **4**	
	Supported Employment: **2**	
	Behavior/Community Support: **7**	
Provider only has settings that fall under Category (2) Do not comply with the federal requirements and will require modifications	ADHC: **63**	• 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
	DT: **110**	
	Supported Employment: **4**	
	Behavior/Community Support: **35**	
Provider only has settings that fall under Category (3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals	**0**	
Provider only has settings that fall under Category (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)	ADHC: **1**	• Multiple settings co-located and operationally related
	DT: **1**	
	Supported Employment: **0**	
	Behavior/Community Support: **0**	
	ADHC: **8**	• Located in a building that is also a facility that provides in-patient institutional treatment • On the grounds of, or immediately adjacent to a public institution
Provider has settings that are in both categories (2) and (4)	ADHC: **0**	
	DT: **2**	

Category	Number of Providers	Main Areas of Non-Compliance
	Supported Employment: **0**	
	Behavior/Community Support: **0**	

Table 4.4 All non-residential settings

Category	Number of Settings	Main Areas of Non-Compliance
(1) Fully align with the federal requirements	ADHC: **13**	
	DT: **4**	
	Supported Employment: **2**	
	Behavior/Community Support: N/A	
(2) Do not comply with the federal requirements and will require modifications	ADHC: **74**	• 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
	DT: **191**	
	Supported Employment: **12**	
	Behavior/Community Support: N/A	
(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)	ADHC: **1**	• Multiple settings co-located and operationally related
	DT: **3**	
	Supported Employment: **0**	
	Behavior/Community Support: N/A	
	ADHC: **8**	• Located in a building that is also a facility that provides in-patient institutional treatment • On the grounds of, or immediately adjacent to a public institution

V. Remedial Strategies

The strategies identified in this section are the results of assessments completed to date and include updates based on completed activities.

A. State Level Remedial Strategies

1. Policy

The workgroup completed a thorough review of waiver regulations and applications, as outlined in section III. The following table includes the identified changes to each regulation 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. The first round changes include the setting requirements that are simpler to implement, while the second round changes include the setting requirements that are more complex to implement and/or could have a potential budget impact on the state.

While the second round of changes will not be effective in KY regulations until 2019, DMS and its operating agencies have been educating participants, families, advocates and providers about these requirements since 2014. DMS has solicited input from both participants/families/advocates and providers through a series of meetings/webinars held in 2015 and 2016. Key stakeholder engagement/education sessions include:

- Participants/Families/Advocates Public Input Forums – These forums were in-person meetings focused on gathering input from participants about how the HCBS final rules should be implemented. DMS staff traveled to various locations throughout the state to obtain a variety of input. Locations include:
    - Frankfort, KY – 2/4/15
    - Prestonsburg, KY – 3/17/15
    - Bowling Green, KY – 3/25/15
    - Paducah, KY – 3/26/15
    - Florence, KY – 3/31/15
    - Louisville, KY – 4/1/15
    - Lexington, KY – 4/13/15

- Stakeholder Webinars/Meetings – DMS has been asked to present on the HCBS final rules to various provider associations and conferences since 2015. Whenever possible, DMS provides updates and guidance on the HCBS final rules at these meetings. Additionally, DMS has hosted webinars and meetings to educate and gather input from providers, self advocates, family members and advocates. The following is a non-exhaustive list of the stakeholder engagement sessions with providers.
    - Provider Association Meetings/Conferences – 2/11/15, 3/18/15, 5/13/15, 11/4/15, 1/26/16, 4/13/16, 5/18/16, 6/1/16, 6/15/16, 11/19/2016
    - Periodic updates of statutorily designated advisory/advocacy groups, including Commonwealth Council on Developmental Disabilities and Kentucky Commission on Services and Supports for Individuals with Intellectual and Developmental Disabilities (HB 144 Commission)
    - Compliance Plan Webinars – 3/10/15, 3/12/15
    - Input on Evaluating Compliance – 2/10/16, 2/11/16
    - Stakeholder Update Session – 9/22/2016, 9/30/2016
    - Heightened Scrutiny Transition Plan Training – 10/19/2016
    - Heightened Scrutiny Stakeholder Review Session – 11/29/2016

This education will continue to be conducted through webinars, forums throughout the state, as well as through individual site visits and discussions with providers.

The timeline of 2019 was selected primarily to allow more time for providers to implement these more time-consuming changes. 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.

Waiver Redesign

Kentucky is in the process of evaluating its HCBS programs to identify potential opportunities to improve these programs and enable them to better meet the needs of individuals. This redesign is expected to continue through most of calendar year 2017. Currently, all individuals have options for receiving services in non-disability specific settings, including residential options in a Family Home Provider setting, and for both residential and non-residential services, the Participant Directed Services (PDS) option allows individuals to receive services in their own home or community. As part of waiver redesign, the Commonwealth will be assessing various options to encourage more integration, autonomy, and choice of non-disability specific settings for individuals.

Table 5.1 Waiver regulation actions for compliance

Waiver Regulation			
Rule	Action for Compliance	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 (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): • Add the following requirements to the regulations: ○ The setting must be integrated into the greater community and the provider must support full access of participants into the greater community ○ The provider must assure that the participant has opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, according to his/her choices and preferences, to the same degree of access as individuals not receiving Medicaid HCBS	Anticipated date for filing regulations: 1/1/2018 (Second Round)	In Progress
The setting is selected by the individual from among setting options including non-disability specific settings and an	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): • Added the following requirements in the revised regulations that have been filed:	Regulations filed between 8/2015 – 10/2015; effective	Complete

Waiver Regulation			
Rule	Action for Compliance	Timeline	Status
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;	○ A provider must assure the participant has the freedom to choose services, providers, settings from among setting options including non-disability specific settings, and where to live with as much independence as possible in the most community-integrated environment ○ The setting options and choices shall be identified and documented in the person-centered service plan and based on the participant's needs and preferences	dates span 2/2016 – 1/2017 (First Round)	
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint;	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed: ○ A provider must assure the participant has rights of privacy, dignity, respect, and freedom from coercion and restraint	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
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.	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed: ○ A provider must assure the participant has freedom of choice, as defined by the experience of independence, individual initiate, or autonomy in making life choices, both in small everyday matters (what to eat and what to wear), and in large, life-defining matters (where and with whom to live and work)	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
Facilitates individual choice regarding services and supports, and who provides them.	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed:	Regulations filed between 8/2015 – 10/2015; effective	Complete

Waiver Regulation			
Rule	Action for Compliance	Timeline	Status
	○ A provider must assure the participant has the freedom to choose services, providers, settings from among setting options including non-disability specific settings, and where to live with as much independence as possible in the most community-integrated environment	dates span 2/2016 – 1/2017 (First Round)	
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 scrutiny, based on information presented by the State or	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): • Add the following requirements to the regulations: ○ A provider setting must not be: a nursing facility, an institution for mental diseases, an intermediate care facility for individuals with intellectual disabilities, a hospital, nor any other locations that have qualities of an institutional setting, including: ▪ A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment ▪ A setting in a building on the grounds of, or immediately adjacent to, a public institution ▪ A setting that has the effect of isolating participants from the broader community of individuals not receiving Medicaid HCBS	Anticipated date for filing regulations: 1/1/2018 (Second Round)	In Progress

Waiver Regulation			
Rule	Action for Compliance	Timeline	Status
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.			
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 (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Add the following requirements to the regulations: ○ A residential provider setting must be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the participant ○ Within this legally enforceable agreement, the participant must have the same responsibilities and protections from eviction that tenants have under the landlord/tenant law (KRS 383.505-383.705)	Anticipated date for filing regulations: 1/1/2018 (Second Round)	In Progress
Each individual has privacy in their sleeping or living unit	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed:	Regulations filed between 8/2015 – 10/2015; effective	Complete

Waiver Regulation			
Rule	Action for Compliance	Timeline	Status
	○ The provider must assure the participant has privacy in the sleeping unit and living unit in a residential setting	dates span 2/2016 – 1/2017 (First Round)	
Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed: ○ The provider must assure the participant has a unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
Individuals sharing units have a choice of roommates in that setting	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed: ○ The provider must assure the participant has a choice of roommate or housemate	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed: ○ The provider must assure the participant has the freedom to furnish or decorate their sleeping or living units within the lease or other agreement	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Add the following requirement to the regulations: ○ A provider must assure that a participant has the freedom to: control their own schedules and activities and have access to food at any time	Anticipated date for filing regulations: 1/1/2018 (Second Round)	In Progress

Waiver Regulation			
Rule	Action for Compliance	Timeline	Status
Individuals are able to have visitors of their choosing at any time	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirement in the revised regulations that have been filed: ○ The provider must assure the participant has visitors of the participant's choosing at any time and access to a private area for visitors	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
The setting is physically accessible to the individual	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirements in the revised regulations that have been filed: ○ The provider must assure the participant has physical accessibility, defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability ○ Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting ○ All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.)	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete
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	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): • Added the following requirements in the revised regulations that have been filed: ○ Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 1/2017 (First Round)	Complete

Waiver Regulation			
Rule	Action for Compliance	Timeline	Status
documented in the person-centered service plan: • 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 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.	need and justified in the participant's person-centered service plan. ○ Regarding a modification, the following shall be documented in a participant's person-centered service plan: ○ That the modification is the result of an identified specific and individualized assessed need; ○ Any positive intervention or support used prior to the modification; ○ Any less intrusive method of meeting the participant's need that was tried but failed; ○ A clear description of the condition that is directly proportionate to the specific assessed need; ○ Regular collection and review of data used to measure the ongoing effectiveness of the modification; ○ Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated; ○ Informed consent by the participant or participant's representative for the modification; and ○ An assurance that interventions and supports will cause no harm to the participant.		

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 drafted the regulation language for the first round from January 1, 2015 to February 28, 2015. The first round of revised ordinary regulations were filed in August 2015 and became effective in February through January 2017. DMS will draft the regulation language for the second round from January 2017 to August 2017, and leadership will begin their review in August, 2017. The second round of revised ordinary regulations will be filed 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.

2. Operations

CHFS waiver 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, along with hosting a webinar for waiver providers. Once updated state policies take effect, CHFS waiver 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 Waiver operational actions for compliance

All Waivers			
Item	**Actions to be in Compliance with HCBS Rules**	**Timeline**	**Status**
Internal Processes:			
Prior authorizations (PA)	All Waivers: • Update PA processes to incorporate new HCBS rules in regards to the participant setting selection process	1/1/2015 – Ongoing	Complete
State staff training	All Waivers: • Train PA staff, focusing on the service plan and case management in relation to PAs • Train state staff, including waiver and QA staff, on HCBS rules to be able to provide technical assistance to providers	1/1/2015 – Ongoing	In Progress

All Waivers			
Item	**Actions to be in Compliance with HCBS Rules**	**Timeline**	**Status**
	• Train state staff, including waiver and QA staff, on the transition process, new monitoring processes and checklists, related to the HCBS rules		
Capacity, resources, and services	All Waivers: • 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	In Progress
Provider Processes:			
Requirements (mission/values)	All Waivers: • Providers should update their mission/values and policies/procedures to align with the new DMS regulations	1/1/2015 – Ongoing	In Progress
Trainings	All Waivers: • Update relevant provider trainings and offer providers all relevant information and trainings	1/1/2015 – Ongoing	In Progress
Transition process	All Waivers: • 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 of their compliance level • Complete on-site reviews for all groups based on provider and CHFS 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	1/1/2015 – Ongoing	In Progress

All Waivers			
Item	**Actions to be in Compliance with HCBS Rules**	**Timeline**	**Status**
	• Use processes outlined in state regulations for provider corrective action or actions not to certify or to terminate non-compliant providers		
Monitoring Processes:			
Requirements	All Waivers: • 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	Complete
Tools (on-site items, checklists, etc.)	• Update provider checklists and survey tools for provider sites (residential, ADT, ADHC, etc.) based on the revised regulations that comply with the HCBS rules • Implement provider requirements using the CMS toolkit to determine the materials/documentation providers need to submit as validation of HCB setting under heightened scrutiny	1/1/2015 – Ongoing	Complete
Surveying process	All waivers: • Update PDS provider on-site surveys • Establish process for participant surveys	1/1/2015 – Ongoing	Complete
Grievance process	All waivers: • 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	In Progress
Miscellaneous:			
Communication plan for additional stakeholders (advocacy groups, provider associations, etc.)	• 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 • Host public forums and/or focus groups for providers and participants, representatives, family members, and advocates	1/1/2015 – Ongoing	In Progress

All Waivers			
Item	**Actions to be in Compliance with HCBS Rules**	**Timeline**	**Status**
	• 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		
Relocation Process (due to HCBS rules)	All Waivers: • Determine relocation process ABI, ABI-LTC, and SCL: • Determine how the lease agreement requirement will affect the availability of services and the relocation process • Require the service plan team/case manager to be involved in every move of the participant, ensuring the participant has a choice in every move or change in service provider	1/1/2018 – Ongoing	Not Started

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 CHFS waiver staff to conduct further monitoring of providers. In addition to public notices, CHFS waiver 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), CHFS waiver staff will follow the same protocols to relocate participants as currently are in place when providers are terminated.

Table 5.3 Participant actions for compliance

All Waivers			
Rule	**Actions to be in Compliance with HCBS Rules**	**Timeline**	**Status**
All HCBS rules	All Waivers: • 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 • Include information outlining the new participant rights, provider requirements, and links to all related information	1/1/2015 – Ongoing	In Progress
Residential rules	ABI, ABI-LTC, and SCL: • Develop and implement communication process for informing residential waiver participants of waiver changes related to HCBS rules • 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	In Progress

4. Technology

In April 2015, the Medicaid Waiver Management Application (MWMA), which converts the majority of waiver processes to a central online system, was implemented. The system tracks the application, assessment, and service plan process. Many of DMS' existing waiver forms have been switched from paper to electronic through MWMA, and the HCBS setting final rules impact the language that must be included on the MWMA screens. Below are the primary changes required for the MWMA to comply with the federal requirements.

Table 5.4 Technology actions for compliance

Medicaid Waiver Management Application			
Forms:	**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: • Modify forms/screen within MWMA to comply with HCBS rules	1/1/2015 – 12/15/2015	Complete

B. Provider Level Remedial Strategies

As described in section III, the workgroup categorized providers into four compliance levels: 1) fully align 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 compliance level of each provider was determined based on surveys, CHFS waiver staff knowledge, compliance plan templates, mapping, and site visits.

The compliance plan template is a tool that the HCBS workgroup developed 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. The HCBS workgroup developed templates for each type of provider (case management, residential, non-residential, and any combination of these). Then, each provider received an individualized template containing their responses to the surveys, if the provider participated in the survey, as well as additional questions that the provider must answer. These additional questions have assisted in providing sufficient information to DMS about the current compliance of the provider. Lastly, the provider was asked for their plan for compliance for each of the federal rules that apply. The completed compliance plan template will be continuously used to facilitate discussions with providers about their compliance as well as assist DMS with ongoing monitoring of providers.

CHFS waiver staff implemented the following activities from January 2015 to November 2016 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 levels
   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
3. CHFS waiver staff will review and approve/deny providers' plans
   a. First round: May 2015 to November 2015

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. CHFS waiver 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. CHFS waiver staff will be conducting site visits on at least one of the settings of each of these providers during calendar years 2017 and 2018, with the majority of them being completed in 2017.

Kentucky has determined that it does not currently have providers in compliance level three (not compliant and never will be). If it is determined, through the heightened scrutiny process or the Kentucky waiver review process, that a setting is not compliant with the HCBS Final Rules, Kentucky will offer the waiver provider additional technical assistance to come into compliance. If a waiver provider indicates that they are not willing to come into compliance, or they are unable to achieve full compliance by the time the final rules are implemented through Kentucky's administrative regulations, that provider setting 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).

Participant Relocation Process: DMS will identify the waiver participants who will be impacted by provider termination, when needed, as these decisions are reached. All affected participants will be relocated following Kentucky's existing relocation process. Participants will be notified in

writing of the decision to terminate a provider within 30 days of the decision to terminate, and with a minimum of 60 days remaining before the provider termination. As part of the notification to the participant, CHFS will require that a person-centered team meeting be conducted, where the participant will be given the opportunity, the information, and the supports necessary to make an informed choice of an alternate setting. The CHFS waiver staff will provide reasonable notice and due process to all parties. The transition from the non-compliant provider will not occur until all critical service and supports are in place for the participant to assure consistency in services.

1. **Settings presumed not to be HCB (heightened scrutiny process)**

Settings were identified as presumed not to be home and community-based through the results of provider self-assessments and validation, including mapping. Settings that are located inside of a building that are also publicly or privately operated facilities that provide inpatient treatment were identified. Additional settings that have the effect of isolating individuals from the broader community because the setting is a farmstead or is co-located and operationally related to other HCBS settings were identified. No waiver settings in Kentucky are located on the grounds of, or immediately adjacent to, a public institution, so this component of the definition of settings presumed not to be HCB is not applicable in Kentucky. As stated previously, Kentucky does not believe that any setting, based solely on setting type and/or the services provided, are institutional in nature nor that they automatically comply with the HCBS Final Rules. Therefore, no group of settings based solely on setting type were presumed not to be home and community-based.

All settings in category 4 received an on-site visit. The on-site visit process was developed with input from self-advocates, family members, advocates, and providers. DMS conducted on-site visits of settings presumed not to be home and community-based between 4/1/16 and 8/31/16, and will continue coordinating closely with these category 4 providers and settings. Providers were offered opportunities to submit additional documentation to demonstrate they have the qualities of a HCB setting.

To assist providers in establishing documentation that they have the qualities of a HCB setting, CHFS waiver staff has completed the following activities.

1. Notified providers that they will be receiving an on-site visit and may need to undergo heightened scrutiny
2. Collaborated with providers on additional documentation that must be presented as evidence of being HCB
3. Developed tools for on-site visits of settings in compliance level four

4. Conducted training sessions for CHFS waiver staff who would be completing the site visits, as well as self-advocates and advocates who volunteered to assist with site visits, on the HCBS Final Rules and the tools that they would use to capture information about each setting during the site visit
5. Completed on-site visits to obtain further information on each setting's home and community-based characteristics
6. Hosted a transition plan training session in order to assist providers in coming into compliance with areas where they are not currently compliant
7. Compiled 10 page heightened scrutiny evidence packages for the first group of settings that summarize site visitor-collected and provider-submitted evidence
8. Conducted a heightened scrutiny evidence review session with self-advocates, family members, advocates, and provider agencies to review the evidence collected for the first group of settings and determine if these settings are ready to go to CMS
9. Published heightened scrutiny evidence packages, with transition plans included, for public comment
10. Incorporated public comments into each setting's heightened scrutiny evidence template
11. Submitted provider's documentation to CMS for determination

Heightened Scrutiny Setting Submission Process

Based on the feedback provided by CMS, Kentucky has decided to adopt a staggered submission process for settings that are presumed not to be HCB. The submissions began in April 2017 and will continue through the end of calendar year 2017. Working with CMS and various stakeholders, including two stakeholder information sessions hosted at the end of September, Kentucky collected input on how to structure the submission process to ensure stakeholders would have ample opportunities to be informed of both the settings being submitted and the overall review process.

Based on this feedback, Kentucky decided to begin the staggered submission process with a group of settings that represent a variety of types of providers, locations of settings, and participants served. The selected providers and 23 settings they collectively operate represent our first submission that was submitted to CMS in April 2017. Stakeholders indicated that a smaller first submission would be helpful in having an understanding of the submission and review process. Kentucky concurred with the stakeholders and also thought that a smaller first submission would allow for testing of the state's review process and procedures, including the approach to incorporating stakeholder participation in the review process.

Once the first submission has been submitted to CMS for review, the state will work to complete reviews and submissions of the remainder of settings presumed not to be HCB periodically, every three to four months. Stakeholders encouraged a regional process for submission in order to provide more localized support through the heightened scrutiny process. Therefore Kentucky has decided to utilize the 15 Area Development Districts as the basis for regionalization. These districts will be grouped in order to form three to four additional submissions to CMS.

Heightened Scrutiny Evidence Review Process

Before submitting settings presumed not to be HCB to CMS for review, Kentucky will conduct a thorough review of documentation that state staff and volunteers collected during their on-site visit of settings as well as additional information that providers have submitted about their settings. As recommended by CMS, each setting will have a 10 page setting Evidence Summary Package that includes information related to compliance with All Setting (for Non-Residential and Residential settings) and Residential Setting Requirements (for Residential settings). This package will also summarize participant and staff surveys, photos, and information submitted by each provider (as it is available). An Evidence Summary Package template was submitted to CMS for review and feedback at the beginning of October to ensure that Kentucky includes content that CMS requires in order to make a decision.

Kentucky understands that not all settings presumed not to be HCB are in complete compliance and may instead be working towards compliance at the date of their submission to CMS. Therefore, Kentucky decided to include a Transition Plan as part of each setting's evidence summary package. This plan highlights each setting's current area(s) of non-compliance and lists actionable steps, with anticipated dates of completion, the provider is taking to come into compliance. For the first submission, Kentucky hosted a training on completing the Transition Plan and asked the providers included to share some of the steps they were taking to come into compliance with the Federal Final Rules. DMS plans to guide all providers with settings being submitted to CMS as part of heightened scrutiny through this training at some point in 2017. In addition, we hope to include some of our first submission providers in this training to share their experience with the other providers.

Once the Transition Plan is complete, Kentucky has a process to involve stakeholders in the review of documentation, including the Transition Plan, before a decision is made on if the setting is ready to be submitted to CMS. An external contractor is compiling the Evidence Submission packages for each setting to ensure the review process is objective. Once the documentation is compiled, a group of stakeholders including self-advocates, family members, advocates, and providers chosen by Kentucky advocate and provider agencies reviews templates with identifying information removed from the documentation. The stakeholders determine if they think the evidence package overcomes or will overcome, with the modifications outlined in the transition plan, the presumption of not being HCB and if a setting does not overcome the presumption, why it does not. The determining factors for deciding if a setting is ready for CMS review include:

1. Consensus among stakeholders – agreement across the variety of stakeholders that the setting does overcome the presumption
2. Evidence of integration – individual has opportunities to indicate their personal preferences for going out into the community and has supports to go out into the community individually
3. Evidence of individual choice – individual is able to choose their activities and their setting(s) where they receive services
4. Evidence of autonomy – individual has opportunities for independence, including when setting their daily schedule

The stakeholders may identify areas in the evidence summary package that should be strengthened or verified before submission to CMS. The setting and stakeholder recommendation are reviewed by CHFS staff and a recommendation will be made to DMS leadership as to whether a setting is ready to be submitted to CMS or if additional outreach needs to occur with the provider. If the group does not feel a setting is ready, they will determine the next steps that need to be taken for that setting (additional remediation, updates to their Transition Plan, request for additional documentation, etc.).

For non-compliant providers or providers determined not to be a HCB setting after heightened scrutiny is conducted by CMS, 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. If the provider is terminated, the aforementioned participant relocation process will be implemented.

Table 5.5 below includes examples of suggested provider level remedial activities that providers may need to complete to come into compliance with the HCBS federal final rules. These examples are based upon CHFS waiver staff observations in reviewing the providers' compliance plan templates.

Table 5.5 Provider actions for compliance

Provider Requirements	
Rule	**Remedial 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	Staffed Residence/Adult Foster Care (AFC)/Family Home Provider (FHP)/Group Home Providers: • Facilitate participation in the greater community by providing transportation or assisting the participant with accessing public transportation • Encourage community integration by assisting participants to make real connections to their community with the goal of increasing independence and decreasing need for paid supports ADHC/DT Providers:

Provider Requirements	
same degree of access as individuals not receiving Medicaid HCBS;	• Facilitate participation in the greater community based on individual's preferences and interests • Bring the greater community to the day site to interact with the participants in a meaningful way in areas of interest to them, while understanding reverse integration alone is not enough action to make a provider compliant with the Final Rules All Providers: • Ensure participants receive the support and information needed to make choices about the kinds of work and activities they prefer • Support participants in their job search with supported and customized employment • Encourage participants to participate in community activities of their choosing and explore community integration opportunities • Ensure participants have access to personal resources • Work with participants 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;	Staffed Residence/AFC/FHP/Group Home Providers: • Ensure that the participant has options that include non-disability specific settings and a private unit if available in the selected setting • Ensure that the participant is given enough information to make an informed choice based on available options and resources. ADHC/DT Providers: • Document all setting options that were considered in the service plan All Providers: • Provide participants with all setting options available and ensure the participant makes an informed choice for both setting and provider • Case manager must offer each participant a private unit if available in the setting selected • Ensure setting options align with participant's needs and preferences • Provide staff training
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint;	Staffed Residence/AFC/FHP/Group Home Providers: • Ensure that the participant has privacy in his/her bedroom and living areas ADHC/DT Providers: • Train staff on how to treat participants with respect and dignity

Provider Requirements	
	All Providers: • Ensure participant has privacy in all areas • Encourage the participant to come and go as s/he wishes, consistent with the service plan and provide necessary supports to facilitate those needs • Update and implement mission/values and policies 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;	Staffed Residence/AFC/FHP/Group Home Providers: • Empower the participant to make choices about their living arrangements and activities ADHC/DT Providers: • Ensure that the participant has choice of daily activities at the day site All Providers: • Encourage the participant to create his/her own schedule and provide necessary supports to facilitate choice of activities • Encourage the participant to make independent choices during service plan planning and on a daily basis • Establish policies and procedures which encourage individual choice of activities • Update and implement mission/values to meet the rule
Facilitates individual choice regarding services and supports, and who provides them.	Staffed Residence/AFC/FHP/Group Home Providers: • Ensure that the participant has a choice of not only provider setting, but also the direct service provider within that setting • Actively solicit participants' preferences regarding services and staff that provide them All Providers: • Provide necessary information (documents, site visits, etc.) that allows the participant to indicate his/her preferences for services and supports and who provides them • Document all setting and provider options presented and considered by the participant in the service plan • 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;	Staffed Residence/AFC/FHP/Group Home Providers: • Consider alternate housing locations when Medicaid HCBS homes are clustered together • Document all integration activities as evidence that the participants are not isolated and that the setting does not have the qualities of an institution ADHC Providers:

Provider Requirements	
(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 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.	• Consider integration options for participants who require a high level of medical services DT Providers: • Consider options for bringing non-Medicaid HCBS individuals to the setting for meaningful interaction based on participants' interests All Providers: • Depending on compliance level, develop compliance plan to become compliant with HCBS rules • Consolidate documentation of community integration among recipients • Provide documentation that the setting does not have qualities of an institution • Remove isolating barriers or institutional qualities • Cooperate with CHFS waiver staff and CMS on-site assessments

Table 5.6 Residential provider actions for compliance

Provider Owned/Controlled Setting Requirements	
Rule	**Actions to be Compliant**
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	Staffed Residence/AFC/FHP/Group Home Providers: • Research state laws for leases to understand how to comply • Draft lease or legally enforceable document that provides participants the same responsibilities and protections from eviction that tenants have under KY law • Include furnishing/decorating guidelines within each lease

Provider Owned/Controlled Setting Requirements	
Rule	**Actions to be Compliant**
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.	• Review lease document with each participant or guardian and his/her case manager to reach agreement on the rights and responsibilities included in the lease • Finalize and agree to lease with each participant residing in the home
Each individual has privacy in their sleeping or living unit;	Staffed Residence/AFC/FHP/Group Home Providers: • Continue to offer the participant a private bedroom or explore other options with the service plan team • Define and implement what privacy means to each participant both in bedroom and living areas • Provide staff training on privacy for participants
Units have entrance doors lockable by the individuals, with only appropriate staff having keys;	Staffed Residence/AFC/FHP/Group Home Providers: • Ensure that each participant has a key to his/her sleeping unit, unless there is a modification in the person-centered plan • Provide keys to participant rooms only to appropriate provider staff • Provide staff training on when it is appropriate to enter the participants' rooms • Require each sleeping unit to have a lockable entrance door and ensure that the participant has a key, unless there is a modification in the person-centered plan
Individuals sharing units have a choice of roommates in that setting;	Staffed Residence/AFC/FHP/Group Home Providers: • Continue to ensure that each participant has chosen his/her roommate and/or housemate • Re-locate participants to a different room or home if a change is desired • Include the participant in new housemate discussions
Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement;	Staffed Residence/AFC/FHP/Group Home Providers: • Allow participants to furnish and decorate sleeping and living areas • Provide staff training

Provider Owned/Controlled Setting Requirements	
Rule	**Actions to be Compliant**
	• Include furnishing/decorating guidelines within each lease
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;	Staffed Residence/AFC/FHP/Group Home Providers: • Encourage participants to control their own schedule and provide support to facilitate • Give participants an option to help plan, shop, and cook meals • Give participants support needed to exercise their rights as a citizen • Allow access to appropriate areas of kitchen and food at any time as indicated in the service plan • Provide staff training • Provide supports to enable participants to do unscheduled social/community activities
Individuals are able to have visitors of their choosing at any time;	Staffed Residence/AFC/FHP/Group Home Providers: • Create standard policies related to visitors that are respectful of all participants who are living in the residence, while specifying that participants may have visitors at any time unless there is a modification in the person-centered service plan • Discuss roommate preferences to set appropriate limits to visitor hours, if the participant has a roommate
The setting is physically accessible to the individual.	Staffed Residence/AFC/FHP/Group Home Providers: • Assure that the participants can enter the home at any time, no matter if they are alone or with staff • Consider participants' abilities and safety in the environment and make any needed design modifications to promote access and safety. • Comply with all ADA requirements • Determine how all participants residing in the home will be given independent access to all entrance doors such as keys or keypads

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VI. Public Comment Process

A. Public Comment – December, 2016 – January, 2017

DMS posted this Statewide Transition Plan for public comment through many of the same channels previously utilized during prior submissions of the Statewide Transition Plan. These channels included an announcement on the DMS website, publication in newspapers, informal emails to providers, provider associations, and advocacy groups. The public notice was published and posted on December 20, 2016 and provided stakeholders a 30-day public notice and comment period. The public notice can be found at the following website: http://chfs.ky.gov/dms/.

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

If you would like to receive a hard copy of the Statewide Transition Plan, please call (502) 564-4321 or email CMSfinalHCBRule@ky.gov.

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 January 19, 2017:

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

All public comments were submitted to DMS through mail or email, and were evaluated by the workgroup. The workgroup summarized the comments, and responded accordingly. The summary and response of all comments is described in Table 6.3. 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 (Public Comment – December, 2016 – January, 2017)

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter inquired about day settings and wanted to know how Kentucky plans to integrate its day services population into the broader community.	Thank you for your comment. All providers will be required to demonstrate integration and choice through continuous waiver monitoring,	No, DMS disagrees with the suggestion to alter the evaluation method for providers who may be

Comment Summary (Number Received)	Response	Update to Transition Plan
Additionally, the commenter was surprised that the number of non-residential settings scored as category 4 had decreased to 11 settings. This commenter noted that day settings would be most likely to have the effect of isolating individuals, specifically because of CMS's response that "states cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting; compliance requires a plan to integrate beneficiaries into the broader community."	regardless of whether or not they are scored as category 4 and subject to heightened scrutiny. Kentucky does not believe that any setting, based solely on setting type and/or the services provided is institutional or isolating in nature nor that is automatically complies with the HCBS Final Rules. Therefore, no group of settings based solely on setting type were presumed not to be home and community based. We continue to monitor CMS' sub-regulatory guidance on non-residential settings and will develop or modify implementation strategies based on their guidance. Throughout our evaluation process it was evident that many day settings had evidence of integration, both with participants going into the greater community, and the greater community coming into the day setting. DMS is aware that reverse integration alone is not enough to make a setting community-based and will verify non-residential settings provide additional integration opportunities during on-going monitoring.	subject to heightened scrutiny and is not planning to change its evaluation method.
One commenter indicated their support of individuals having full access to benefits of community living and opportunity to receive services in "the most integrated setting appropriate." The commenter stated that the revised Statewide Transition Plan is well-designed to support greater access and integration.	Thank you for your comment. DMS appreciates your input.	DMS interprets that the comment does not warrant a change to the transition plan.

B. Public Comment – November-December, 2015

DMS posted this Statewide Transition Plan for public comment through many of the same channels previously utilized during the initial submission of the Statewide Transition Plan. These channels included an announcement on the DMS website, publication in newspapers, informal emails to providers, provider associations, and advocacy groups, and a public forum. The public notice was published and posted on November 10, 2015 and provided stakeholders a 30-day public notice and comment period. The public notice can be found at the following website: http://chfs.ky.gov/dms/.

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

If you would like to receive a hard copy of the Statewide Transition Plan, please call (502) 564-4321 or email CMSfinalHCBRule@ky.gov.

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 10, 2015:

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

All public comments were submitted to DMS through mail, email, and the public forum 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 6.2 Summary of public comments and response (Public Comment – November-December, 2015)

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter noted that a barrier to accessing the community is lack of transportation, and just because someone lives in a community, it does not guarantee that the individual will be able to access the community. The commenter noted that individuals may live in rural area where there is no public transportation, and this could lead to the individual being very isolated.	Thank you for your comment. DMS agrees that transportation is an important part of community integration. The Statewide Transition Plan outlines DMS' implementation strategy of the HCBS Final Rules and will not address the specific details about waiver services. Transportation is currently available through the State Plan and transportation is also addressed in specific waiver regulations.	DMS interprets that the comment does not warrant a change to the transition plan.
Multiple commenters (7) stated that it is important for families and consumers to have involvement in the implementation of the HCBS Final Rules. They suggested being involved in the process through public comment and surveys as well as providers.	Thank you for your comment. DMS agrees that it is important for families and participants to be involved in the implementation of the HCBS Final Rules. DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	Yes, DMS agrees that stakeholders should be involved in the process and has updated Sections IV. and V. to indicate that stakeholders will be involved in developing the process for on-site reviews of providers.
Multiple commenters (7) noted that person-centered planning should allow for personal choice and that person-centered options should include several options, not just one.	Thank you for your comment. DMS agrees that person-centered planning should allow for several choices.	DMS interprets that the comment does not warrant a change to the transition plan.
Multiple commenters (7) indicated that adult day training services need to offer community-based services, while recognizing that some need the consistency of a routine and on-site programs. They also stated that integration and inclusion are important for all and should be done with the respect of the individual.	Thank you for your comment. DMS agrees that integration and inclusions are important for all and each individual should choose their level of integration and inclusion.	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter noted that Kentucky adjusted its timeline to move up when it will submit the finalized list of providers requiring heightened scrutiny to CMS (October 14, 2016). The commenter expressed concern that the relocation process is not specific enough in this statewide transition plan.	Thank you for your comment. Based upon recent guidance from CMS, KY is adjusting its timeline slightly to submit its revised statewide transition plan, including the final list of providers, by September 30, 2016. Since the heightened scrutiny process by CMS has not yet occurred and KY does not yet know the number of participants who will need to be relocated, the operational details of the relocation process, should relocation be needed for some waiver members, have not been developed yet. This relocation process will afford participants the same assurances as the current relocation processes described in the residential waivers' regulations (907 KAR 12:010, 907 KAR 3:090, and 907 KAR 3:210). KY expects to have a more detailed relocation plan in August, 2016.	Yes, the timeline was adjusted to reflect a submission date of September 30, 2016 to CMS.
One commenter inquired about day settings and wanted to know if Kentucky plans to offer individualized day services. Additionally, the commenter was surprised that only 12 non-residential settings were scored as a category 4. The commenter asked if many of the settings would be better suited as a category 4 rather than 2. This commenter noted that day settings would be most likely to have the effect of isolating individuals and asked if Kentucky only took into account physical locations when determining	Thank you for your comment. Person-centered planning and allowing individuals to have choice in their daily activities are important pieces of the HCBS Final Rules, and KY has included these requirements in their regulations which will be effective in 2016. All providers will be required to demonstrate integration and choice through waiver monitoring, regardless of whether or not they are subject to heightened scrutiny. CMS has	No, DMS disagrees with the suggestion to alter the evaluation method for providers who may be subject to heightened scrutiny and is not planning to change its evaluation method.

Comment Summary (Number Received)	Response	Update to Transition Plan
which providers would be subject to heightened scrutiny.	not provided any guidance suggesting that a day setting, by its very nature, would be subject to heightened scrutiny on the basis of isolation. Many day settings had evidence of integration, both with participants going into the greater community, and the greater community coming into the day setting.	
One commenter suggested that individuals with disabilities be added to the list of people who will be conducting on-site reviews and for determining what compliance category the provider falls into.	Thank you for your comment. DMS agrees that it is important to include self-advocates and participants in the process of assessing providers. DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	Yes, DMS agrees that stakeholders should be involved in the process and has updated Sections IV. and V. to indicate that stakeholders will be involved in developing the process for on-site reviews of providers.
Two commenters expressed concern that in regards to the monitoring process, it has yet to be determined who will be involved in that process. The commenter noted that providers are a key part of the implementation of the HCS Final Rules.	Thank you for your comment. DMS agrees that providers are an important part of the implementation of the HCBS Final Rules. DMS hosted 2 webinars (March 10th and March 12th, one in the morning, one in the afternoon for convenience) to show providers the compliance plan template, explain its purpose, and request their input on the tool. Providers were allowed 2 weeks to provide their comments on the tool prior to it being distributed. DMS agrees that it is important to include self-advocates and participants in the process of assessing providers. DMS is planning to include	Yes, DMS agrees that stakeholders should be involved in the process and has updated Sections IV. and V. to indicate that stakeholders will be involved in developing the process for on-site reviews of providers.

Comment Summary (Number Received)	Response	Update to Transition Plan
	self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	
Two commenters inquired what the heightened scrutiny process will look like. They also asked if providers, participants, and families will be involved in that process. They also noted that while public notice was given, providers and families did not understand the importance or that the surveys were going to be a part of determining providers' levels of compliance.	Thank you for your comment. Heightened scrutiny will be conducted by CMS, not DMS, and will consist of gathering additional information to confirm that the setting is in fact home and community-based. This information may include, but is not limited to, gathering written policies and procedures from providers, on-site visits by CMS to observe practices, and interviews with participants, direct service providers, and family members. DMS agrees that it is important to involve providers, participants, and families in the heightened scrutiny process. In the next revision of the statewide transition plan (anticipated August 2016), the public will have the opportunity to comment on each of the providers that will be subject to heightened scrutiny.	DMS interprets that the comment does not warrant a change to the transition plan.
Two commenters asked what "the setting is integrated" means. They stated many in Kentucky have been led to believe that ADTs will not exist in the future. These commenters also asked what the process will be to determine integration and who will be involved in that process.	Thank you for your comment. The "setting is integrated" comes from the federal regulation. DMS' interpretation of this requirement is that an individual has the same opportunity as other individuals not receiving Medicaid HCBS to engage in the broader community.	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
	CMS has not provided any guidance to suggest that ADTs will not exist. Once the integration rule is included in the DMS waiver regulations (anticipated 2019), the provider will be evaluated by CHFS waiver staff of their compliance with this requirement through the monitoring process, including as necessary review of provider policies, on-site visits, waiver participant interviews, etc.	
Two commenters inquired what it means to facilitate individual choice. They also asked if choices will be honored if the choice is to have a variety of services, or if the individual chooses a blend of integration and non-integration.	Thank you for your comment. Facilitating individual choice comes from the federal regulation. DMS' interpretation of this requirement is that providers should be offering choice to individuals, providing education about potential options so individuals can make an informed choice, and assisting the individual so that their choice may be met. DMS believes that each individual should have as much choice as someone not receiving Medicaid HCBS, and that includes choice of integration activities and level of integration.	DMS interprets that the comment does not warrant a change to the transition plan.
Two commenters stated that multi-family properties offer opportunities for individuals to live in safe, inclusive neighborhoods and suggested these units be assessed based on the inclusion and community involvement offered within those buildings.	Thank you for your comment. DMS believes it is important for inclusion and community involvement to be characteristics of many types of settings. Based upon guidance from CMS, the nature of multi-family properties could have the effect of isolating individuals	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
	and therefore, these properties may be subject to heightened scrutiny. If the services available in these properties are based on inclusion and individual choice, guidance from CMS indicates that these properties should be found, through heightened scrutiny, to be appropriate home and community-based settings.	
Two commenters asked how multiple settings co-located and operationally related were determined and how DMS will determine inclusion and non-institutional settings.	Thank you for your comment. As described in this transition plan, multiple settings co-located and operationally related were determined through mapping the area. A provider who owned multiple settings in a close proximity was scored as a category 4. If the provider only owned one setting in the area and did not own any other settings in close proximity, the settings are not operationally related and therefore, the provider would not be scored as a category 4. Through heightened scrutiny, CMS will be determining inclusion and non-institutional settings. It is important to note that CMS will be making the final determination of these settings.	DMS interprets that the comment does not warrant a change to the transition plan.
Two commenters asked what it meant by the state remedial action of add required documentation to ensure participants are integrated into the community. They also noted that there is much time spent on writing to meet requirements and posed the	Thank you for your comment. DMS must include requirements in its regulations to ensure that providers are held to the standards established. This remedial action will be important for providers to show how they are	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
question that if more documentation is required, will DMS eliminate some current requirements.	compliant with the integration rule. This will not occur until 2019.	
Two commenters asked for clarity on the federal requirement of allowing the individual to select a setting from among setting options, including non-disability specific settings.	Thank you for your comment. The individual selecting the setting from among setting options, including non-disability specific settings comes from the federal regulation. DMS' interpretation of this is that an individual should be offered choice of setting to the same degree as though not receiving Medicaid HCBS, including a non-disability specific setting, within the means of their resources.	DMS interprets that the comment does not warrant a change to the transition plan.
Two commenters asked for clarity on the federal requirement of the setting being physically accessible to the individual. They stated that making a home physically accessible would make it stand out in the community and it is cost prohibitive for providers if it is not necessary.	Thank you for your comment. The setting being physically accessible to the individual comes from the federal regulation. DMS' interpretation of this is that physical accessibility is not just ADA compliance. Physical accessibility means that each individual is able to enter the setting at any time. This does not require that each individual has a key to the setting, but it does require the ability for him/her to get into the home at any time. This rule does not require a provider to change the layout of the setting unless the provider is serving an individual who requires it.	DMS interprets that the comment does not warrant a change to the transition plan.
Two commenters asked for clarity about stakeholder engagement and noted that providers, participants, and families want to be involved in the process. One	Thank you for your comment. DMS agrees it is important to involve providers, participants, and families in this process. DMS is planning to	Yes, DMS agrees that stakeholders should be involved in the process and has updated Sections IV. and V. to indicate that stakeholders will be

Comment Summary (Number Received)	Response	Update to Transition Plan
also commented that there has been no stakeholder engagement or involvement except for forums which were mandates and provided general information that anyone could find searching Medicaid.gov. The same commenter stated that no timeframe has been communicated to providers for their plan for compliance.	include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016. Forums were not mandated; rather, DMS chose to provide forums to help educate and involve stakeholders. DMS has presented on the HCBS Final Rules many times over the last year and when possible, accepts all invitations to come to speak to various provider group and advocacy organizations. The following is a non-exhaustive list of sample stakeholder engagement opportunities: participant forums, provider presentations (including KAPP in March 2015), provider webinars to gather input on the compliance plan template (March 2015), and advocacy meetings, including the workgroup's status updates at each of the HB144 quarterly meetings and regular updates at CCDD meetings. Specific information about where Kentucky is in the implementation of the HCBS Final Rules has been provided at all aforementioned stakeholder meetings.	involved in developing the process for on-site reviews of providers.
One commenter inquired about how autonomy will be determined. She noted that the 3 person staffed residence model was approved yet some are insisting that each person live independent and staffing be provided for each, which is not funded or sustainable in the current system.	Thank you for your comment. DMS interprets autonomy to mean that the setting, regardless of number of participants, provides opportunities for independence in making life choices, including their daily activities.	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
	Regardless of which type of residential setting a participant chooses, each participant's person centered team is responsible for determining the needs of that participant. All participants are to be afforded opportunities for autonomy. Waiver regulations do not define a required staff to participant ratio for residential settings.	
One commenter stated that no provider was involved in the evaluation tool and that on-site assessment with the updated tool to validate a providers' compliance did not occur.	Thank you for your comment. DMS hosted 2 webinars (March 10th and March 12th, one in the morning, one in the afternoon for convenience) to show providers the compliance plan template, explain its purpose, and request their input on the tool. Providers were allowed 2 weeks to provide their comments on the tool prior to it being distributed. DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	Yes, DMS agrees that stakeholders should be involved in the process and has updated Sections IV. and V. to indicate that stakeholders will be involved in developing the process for on-site reviews of providers.
One commenter stated that the forums held between February and March, 2015 were not held in locations convenient for families and participants to attend and that there was only 1 forum for providers which was held at the HB 144 Commission meeting.	Thank you for your comment. DMS scheduled the locations of the forums with the Commonwealth Council on Developmental Disabilities (CCDD) and other advocacy groups in various locations throughout the Commonwealth (Frankfort, Lexington, Prestonsburg, Paducah, Florence, Louisville and Bowling Green) in order to accommodate as many individuals as possible.	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
	DMS has made presentations to various provider groups, including KAPP, and conducted webinars in March for providers to provide input on the compliance plan template.	
One commenter asked what the state is doing to ensure that there are enough providers, especially in remote areas, to the meet the timeframe. The commenter also asked if the providers will have an opportunity to review the heightened scrutiny tool prior to going through the process. The commenter stated that providers were not given information why they were scored the way that they were scored.	Thank you for your comment. DMS recognizes that there are providers in KY who are affected by these rules, particularly the location rule and the integration rule. In order to ensure that there are enough providers who will be compliant with these HCBS Final Rules, KY established a timeframe that gives providers the maximum time allowable to come into compliance with these rules (anticipated effective date of 2019). DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016. Heightened scrutiny will be conducted by CMS, not DMS, and will consist of gathering additional information to confirm that the setting is in fact home and community-based. DMS distributed compliance plan template evaluation sheets that included explanations for each rule in which the provider was not scored as compliant.	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter stated that the issue with the assessment was that the state gave no guidance on how to complete the assessment.	Thank you for your comment. DMS distributed seven pages of instructions to providers with the compliance plan template, which included screen shots, to provide as much guidance as possible to providers.	DMS interprets that the comment does not warrant a change to the transition plan.
One commenter expressed concern that there was low response, 40%, in the non-residential setting survey. They questioned if this was because the survey was confusing and asked if that 40% was a true representation of non-residential services throughout the state.	Thank you for your comment. The 40% was the estimate of non-residential providers who completed the survey conducted in October, 2014. The compliance plan template had 100% participation of both residential and non-residential providers and therefore, this comment is not applicable.	DMS interprets that the comment does not warrant a change to the transition plan.
One commenter asked how capacity of resources and evaluating if covered services are adequately meeting the needs of the participants is being reviewed. They also stated that to date, no information had been shared with providers about this process.	Thank you for your comment. As noted in our transition plan, this is an item that is still in progress. As part of this process, DMS intends to assess the overall adequacy of waiver services and design to support integration. DMS will communicate with providers the results of this review.	DMS interprets that the comment does not warrant a change to the transition plan. Table 5.2 includes a capacity, resources, and services analysis section.
One commenter said that the statewide transition plan acknowledges that there may be providers who lose their ability to render services because of the HCBS Final Rules. The commenter asked what is being done to ensure there are enough providers and stated that it appears there is no plan to assist providers in complying with the rule.	Thank you for your comment. DMS recognizes that there are providers in KY who are affected by these rules, particularly the location rule and the integration rule. In order to ensure that there are enough providers who will be compliant with these HCBS Final Rules, KY established a timeframe that gives providers the maximum time allowable to come into compliance with these rules (anticipated effective date of 2019).	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
	DMS is committed to assisting providers in coming into compliance with the HCBS Final Rules, particularly those who were deemed to be in category 4.	
One commenter expressed concern that providers are supposed to be utilizing MWMA with all forms because they stated the system has not been successful with the case management portion.	Thank you for your comment. This is not applicable to the transition plan.	Not applicable to the transition plan.
One commenter asked if Kentucky's Exchange, kynect, ends in 2016, will that mean MWMA would also end. The commenter requested that all references to MWMA be removed from the statewide transition plan.	Thank you for your comment. Kentucky's health insurance exchange, kynect, and MWMA are not interrelated as the commenter suggests. Rather, MWMA is integrated in the Commonwealth's enrollment and eligibility system, called benefind.	No, DMS disagrees with the comment and will keep the references to MWMA in the plan.
One commenter stated that there have been no clear instructions given from the Cabinet regarding the implementation of the Final Rule in Kentucky. The commenter stated that the QAs were not allowed to provide technical assistance about the Final Rule and MWMA. The same commenter stated that providers who called their QAs were given no help.	Thank you for your comment. DMS continues to provide regular updates on its progress of the implementation of the HCBS Final Rules through provider, participant, and advocacy presentations. There is an ongoing effort to educate CHFS waiver staff to provide technical assistance on the HCBS Final Rules.	DMS interprets that the comment does not warrant a change to the transition plan. Table 5.2 includes remedial actions for state staff training.
One commenter asked who providers should turn to for guidance and planning to ensure they are on the right track to meet the Final Rule standards. They stated there is an email address which you may or may not get a response from.	Thank you for your comment. Providers may contact CHFS waiver staff should they have any questions. DMS established an email address specifically for questions and comments related to the HCBS Final Rules. DMS makes every	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
	effort to respond to those emails in a timely matter. There is an ongoing effort to educate waiver CHFS waiver staff to provide technical assistance on the HCBS Final Rules.	
One commenter suggested that the support teams have participation by the QAs to review each case where a person's residential setting conflicts with the standards set forth in the HCBS Final Rules, which would allow for individual input especially if the person has lived in the home for years.	Thank you for your comment. While CHFS waiver staff are not available to participate in discussions about each individual waiver participant, CHFS waiver staff, including SCL QA staff, will be available for technical assistance.	DMS interprets that the comment does not warrant a change to the transition plan. Table 5.2 includes remedial actions for state staff training.
One commenter stated that community access and supported employment are not the solution for increased community integration. The commenter referenced the statement of consideration process that was done when new regulations were filed to comply with the HCBS Final Rules. The commenter stated that they were shocked to read that community access is not intended to be an alternate for day training, and that there should not be a requirement that it be a service that must be faded out. The commenter also stated that the expectation that individuals can only obtain supported employment or community access if they can fade out of services is inconsistent with the waiver itself. The people the commenter supports are not patients, yet the QIO (SHPS/Carewise) refers to them as patients when providers call.	Thank you for your comment. The Statewide Transition Plan outlines DMS' implementation strategy of the HCBS Final Rules and will not address the specific details about waiver services.	Not applicable to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter requested that providers and self-advocates be made part of the Final Rules workgroup.	Thank you for your comment. DMS agrees that participants and self-advocates are an important part of the process. DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	DMS interprets that the comment does not warrant a change to the transition plan.
One commenter stated that if KAPP had been part of the workgroup from the beginning and assisted in developing the assessment tools, they could have helped providers understand the process. The same commenter noted that confusion and lack of understanding led to agency directors delegating out the assessment process, not realizing it would result in a "score".	Thank you for your comment. DMS hosted 2 webinars (March 10th and March 12th, one in the morning, one in the afternoon for convenience) to show providers the compliance plan template, explain its purpose, and request their input on the tool. Providers were allowed 2 weeks to provide their comments on the tool prior to it being distributed. Additionally, DMS presented on the HCBS Final Rules and the compliance plan template at the end of March 2015 to KAPP. DMS distributed detailed instructions to providers with the compliance plan template, which included screen shots, to provide as much guidance as possible to providers.	DMS interprets that the comment does not warrant a change to the transition plan.
One commenter is worried how providers who are not KAPP members are absorbing and understanding the process.	Thank you for your comment. DMS will continue communications with all waiver providers to ensure providers are aware of the HCBS Final Rules.	DMS interprets that the comment does not warrant a change to the transition plan.
One commenter stated that in the second round of evaluations, KAPP providers were more prepared.	Thank you for your comment. The CHFS workgroup carefully evaluated each provider to	No, DMS disagrees with this comment.

Comment Summary (Number Received)	Response	Update to Transition Plan
While the scores improved, the commenter believes there are many settings that are a "4" unnecessarily and now subject to site visits and heightened scrutiny.	determine their compliance category. CHFS will be conducting on-site reviews with each provider in category 4 to confirm that they may be subject for heightened scrutiny.	
One commenter noted that the goal of the process is 100% compliance and stated the Cabinet should not be trying to catch providers doing something wrong. The commenter continued to state that the goal should not be to close providers nor should the goal be to relocate individuals. The commenter stated that KAPP understands the rules and agrees with their intent. The commenter stated they need support and assistance, as well as funding, and that the answer cannot be more regulations.	Thank you for your comment. DMS agrees that the goal of the process is 100% compliance and does not want to have to close providers or relocate individuals. DMS is committed to providing support and assistance to providers. Revisions to regulations were required in order to make DMS' waiver regulations compliant with the federal HCBS Final Rules.	Yes, DMS agrees and clarified in Table 5.2 that DMS is training staff to be able to provide support and technical assistance to providers.
One commenter asked if natural alternative options for treating autism would be covered by Medicaid.	Thank you for your comment. Specific waiver services are not a part of this statewide transition plan.	Not applicable to the transition plan.
One commenter stated that she feels individuals should have personal choice about their living arrangements and options regarding how support is provided. The commenter agreed it is important to interact with nondisabled persons but thinks it is unreasonable to dictate volunteers rather than paid, trained support personnel. The commenter also noted that she has been very happy with the services Dreams with Wings has provided to her child for the past ten years. Lastly, the commenter stated that provider, families, and consumers should be involved in the process through public comment and surveys.	Thank you for your comment. DMS agrees that individuals should have choice about their living arrangements and options for how support is provided. DMS also agrees that providers, families, and consumers should be involved via public comment and surveys. DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	DMS interprets that the comment does not warrant a change to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
One commenter described her personal situation and noted that her son goes to a day program that provides daily opportunity to go out into the community. The commenter noted that one size does not fit all and while some individuals love to be out and about and have the ability to work, some do not. The commenter also stated that where or how her son lives should not be based on a mandate, but rather what the best situation is for him. Lastly, the commenter noted that it is important to involve families and consumers in the process of deciding what is best for participants and urged CHFS to listen to the providers and families.	Thank you for your comment. DMS realizes that one size does not fit all and agrees that individuals should have choice of activities and where they live. The HCBS Final Rules will not mandate where an individual lives, but it does set guidelines for those residential settings, as well as non-residential settings. Within those guidelines, the individual will be able to choose a setting that is best aligned with his/her needs and preferences. DMS also agrees that families and consumers should be involved. DMS is planning to include self-advocates, family members, advocates, and providers in the design of the process of on-site reviews and will be following up with stakeholders in 2016.	DMS interprets that the comment does not warrant a change to the transition plan.

Summary of modifications based on public comments:

- I. Background – timeline adjusted to allow more time for heightened scrutiny and participant relocation (if necessary)
- IV. Provider Assessment – assurance of stakeholder input for on-site reviews added
- V. Remedial Strategies – assurance of stakeholder input for on-site reviews added and clarification that DMS will be training staff to be able to provide technical assistance added

C. Initial Public Comment – November-December, 2014

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.

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 6.2. 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 6.3 Summary of public comments and response (Initial Public Comment – November-December, 2014)

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 included in the final submission to the Centers for Medicare & Medicaid Services (CMS).	Yes, DMS agrees that documentation in Appendix C and D was missing. Appendix C and D have been updated with the appropriate evidence.
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	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	Not applicable to the transition plan.

Comment Summary (Number Received)	Response	Update to Transition Plan
that require the individual to pay for this, and recommend a different source of funding for this cost.	and DMS is actively working on alternative options.	
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 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."	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.	Not applicable to the transition plan.
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.

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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.
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.	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.	Not applicable to the transition plan.
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.	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	Not applicable to the transition plan.

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	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.	
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.	Thank you for your comment. The specificity for all waivers is contained in the Statewide Transition Plan.	DMS interprets that the comment does not warrant a change to the transition plan.
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.	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.	Not applicable to the transition plan.
One commenter inquired about giving participants and families access to provider statuses when citations or corrective actions have been issued.	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.
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	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.	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.

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commenter asked how the transition plan will affect safety net programs in Kentucky.	DMS will give each provider the opportunity to come into compliance. 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.	
One commenter inquired if the Medicaid Waiver Management Application (MWMA) will interface with electronic health records (EHR).	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.	Not applicable to the transition plan.
One commenter inquired if there are ways to use technology to help Kentucky achieve these requirements and promote integration.	Thank you for your comment. DMS will continue to look at additional options to achieve and promote integration.	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.
One commenter inquired about the SCL cutbacks and thinks there needs to be changes to SCL.	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	Not applicable to the transition plan.

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	process. Your comment will be passed along to the appropriate waiver staff.	
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.	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.
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,	Thank you for your comment. DMS appreciates your input.	Yes, DMS agrees.

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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.		
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.	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. 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	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.

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	work with providers to come into compliance. Providers will have an opportunity to review their initial compliance level and take actions come into compliance.	
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 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.	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 provider compliance and heightened scrutiny processes, but information and technical assistance will be shared with providers on a routine basis. 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. 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	Yes, DMS agrees additional information is needed regarding the heightened scrutiny, compliance plan template, and stakeholder engagement process. The provider 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.

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	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.	
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.	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. 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. 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	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.

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	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. 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. 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.	
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	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	Yes, DMS agrees additional information is needed regarding the provider compliance survey, on-site visits, provider level categorization, and the opportunity for providers to

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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 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.	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 staff to incorporate new rules into monitoring tools. 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. Providers will have opportunities to work with the state to complete the template and identify and resolve areas of non-compliance.	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.
Several (13) commenters inquired about the federal regulation requirement of community integration. Comments include that the plan is unclear and does	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	Yes, DMS agrees that integration is important. Table 5.1 (page 21) outlines the potential actions each

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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 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. 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.	final rules, the individual needs of the waiver participants should be included in the person-centered plan. 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 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. 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 We have referred your comment to the appropriate waiver staff who will be following-up on your comment.	waiver must complete in order to be compliant. Table 5.2 has been updated to include additional details about stakeholder engagement as well.
Multiple (5) commenters stated that there should be a grievance process for participants and their families to file complaints about non-compliant settings.	Thank you for your comment. There is an established grievance and/or complaint process for each waiver. Based on public comments	DMS agrees that more awareness of the grievance process on the participant side is needed. Table 5.2

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	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.	has been updated to include a section on reviewing and publicizing the grievance processes.
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 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.	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 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. DMS also recognizes the importance of advocacy group engagement in the creation of participant surveys and the implementation of the HCBS final rules.	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 include the development of a participant surveying process.
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.	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.	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.

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	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.	
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.	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. 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.	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.

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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.	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.	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.
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.	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). 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. DMS will pass your comment to the appropriate waiver staff.	The comment did not request a change to the transition plan.
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.	Thank you for your comment. DMS has selected the timeline outlined in the Statewide Transition Plan for the following reasons: 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	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

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	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.	updated to include the reasons for the extended timeline.
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.	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.	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.
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	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	Yes, DMS agrees that additional evaluation of waiver services and resources is required. Table 5.2 has

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payment and performance mechanism for provision of transportation.	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.	been updated to include a resources analysis section and action.
One commenter inquired about how the transition plan will affect home health and adult day care facilities, as well as “non-mental health” patients.	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.	DMS interprets that the comment does not warrant a change to the transition plan.
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.	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	DMS is still developing the specific requirements of the rules and the transition plan will not be updated at this time.

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	Transition Plan and will continue to use CMS guidance as a reference. CMS has provided additional information and resources regarding residential services: 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	
One commenter noted it takes over three weeks to get a criminal record check for employees in the CDO program.	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.
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.	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. 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.	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.

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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 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.	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 complete the heightened scrutiny process and provide evidence of compliance. 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	DMS interprets that the comment does not warrant a change to the transition plan.
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.	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. 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-	DMS interprets that the comment does not warrant a change to the transition plan.

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	Based-Services/Home-and-Community-Based-Services.html	
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.	Thank you for your comment. Lease options will be considered when lease requirements are defined. 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.	DMS interprets that the comment does not warrant a change to the transition plan.
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.	Thank you for your comment. DMS appreciates your input.	DMS interprets that the comment does not warrant a change to the transition plan.
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.	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	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.

Comment Summary (Number Received)	Response	Update to Transition Plan
	be developed and discussed as a part of the implementation process.	
One commenter stated that the transition plan is not detailed about how it will ensure individuals are offered choices of non-disability specific settings.	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.	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.
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.	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.	DMS is still developing the specific requirements of the rules and the transition plan will not be updated at this time.
One commenter inquired about the process for setting selection, how individuals will select settings, and what informed consent means for individuals. The	Thank you for your comment. Legal guardians are an integral part of the process, as well as parents, family members and/or individuals	Yes, DMS agrees that legal guardians are synonymous with participants and that they play an integral part of

Comment Summary (Number Received)	Response	Update to Transition Plan
questions include how legal guardians and parents or other family members are involved in the setting selection process.	identified by the member. More detail/definition is needed for informed consent and setting selection, which will be part of the development process.	the process. The purpose section (section 1, page 2) has been updated.
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	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
	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.	
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.	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. 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. The workgroup will develop the evaluation tools and surveys based on the finalized definition and operationalization of the rules.	Yes, DMS agrees additional information is needed regarding stakeholders and their engagement process. Table 5.2 has been updated to include additional details.

Comment Summary (Number Received)	Response	Update to Transition Plan
	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.	
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.	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. 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.	DMS interprets that the comment does not warrant a change to the transition plan.
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.	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	Yes, DMS agrees additional information regarding participant education is needed. Table 5.3 has been updated with additional information.

Comment Summary (Number Received)	Response	Update to Transition Plan
	guardians, and families will be involved in defining key elements of the rule.	
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.	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). • 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.) Additional information regarding potentially isolating settings can be found at the following	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.

Comment Summary (Number Received)	Response	Update to Transition Plan
	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 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.	

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

Website Posting – 2015

Provider List

Managed Care Oversight Contract Management Branch

Managed Care Oversight Quality Branch

Managed Care Oversight Quality Branch Reports

MCO Archived updates

Member Information

Program Integrity

Program Quality and Outcomes

KENTUCKY EHR INCENTIVE PROGRAM

KHIE KENTUCKY HEALTH INFORMATION EXCHANGE

Kids' Health

Reporting Health Care Fraud

Services Webinar Information Announcement

CMS Final Rule Webinar

Nov. 9, 2015 - **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, 2014 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. The submitted Statewide 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 KY Statewide Transition Plan

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. 10, 2015:
Department for Medicaid Services
HCB Final Rule Statewide Transition Plan
Commissioners Office
275 E. Main St., 6W-A
Frankfort, KY 40621

Adjusted Primary Care Payment Update

Sept. 17, 2015 - In accordance with the Patient Protection and Affordable Care Act (ACA), certain physicians were eligible to receive adjusted Medicaid

- Humana
- Kentucky Spirit
- Passport
- Wellcare

Federal and State Resources

- Kentucky Medicaid Management Information System (KYMMIS)
- Centers for Medicare and Medicaid Services
- Medicaid.gov
- Office of the Ombudsman

Website posting – 2014

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

11:14 AM
11/6/2014

Newspaper posting – 2015

270-929-5826

Fill Your Purse Through the Classifieds

South-Close to Mall 2 bd, w/d hook-up, appls NO PETS. Credit/Job refs. 1 yr lease $550/mo+dep 925-6089

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 revised 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 Statewide Transition Plan is a revision to the initial draft submitted to CMS in December, 2014, and 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.

The following website can be used to view the proposed Statewide Transition Plan: http://www.chfs.ky.gov/dms.

If you would like to receive a hard copy of the Statewide Transition Plan, please call (502) 564-4321 or email CMSfinalHCBRule@ky.gov.

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 10, 2015:

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

NEW FOR YOU TODAY

East-2033 Arlington Blvd. Colony Estates 2 bdrm., 2 bath, No Pets $595 mo. + $595 dep. 903-5683

For Rent - 3 Bedroom 2 Bath Mobile Home in Colony Estates, Owensboro. $625 per month, $625 deposit. 270-315-3769

NOTICE O

The President of Daviess County Pu
11:00 A.M., C.T., on November 17,
nounced at least forty-eight hours ir
system), receive at the office of th
Room 202, Owensboro, Kentucky 42
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be dated their date of initial issuar
bonds in denominations in multiple
maturing as to principal in varying ar
2017 through 2028. Bonds of this iss
are subject to redemption prior to th
1, 2026. Alternatively, written seale
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Bids must be on Official Bid Form co
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tion, 377 East Main Street, Lexington
the Official Terms and Conditions of
Official Statement for further details
shall be submitted via BiDCOMP™/
BiDCOMP™/PARITY™ may be obta
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Sale on tax-exempt basis, subject t
Shohl LLP, Bond Counsel, Covington
"qualified tax-exempt obligations"
Internal Revenue Code of 1986, as
Right to reject bids or waive informal
DAVIESS COUNT

By: /s/ Al M
Preside

Newspaper posting – 2014

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

Email and mail

HB144 commissioner meeting