# 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 settings, provider-owned settings, person-centered planning process, service plan requirements, and conflict-free case management. The Centers for Medicare & Medicaid Services (CMS) is allowing five years (until March 17, 2019) for states and providers to transition into compliance with the all settings and provider-owned settings requirements.

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

## II. Introduction

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

- ABI participants are adults aged 18 and older with acquired brain injuries working to re-enter community life who meet nursing facility level of care.
- 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.
- HCB participants are individuals who are elderly or disabled and meet nursing facility level of care, but are able to remain or return to their homes.

- 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.
- MIIW participants are individuals who reside in their homes, 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.
- SCL participants are individuals who have an intellectual disability and meet the requirements for residence in an intermediate care facility for people with intellectual disabilities.

**A. Purpose**

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

**B. Overview**

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

### C. Timeline

The overarching timeline per year for KY's transition into compliance with the HCBS final rules is located below. The timeline highlights only the major activities that will occur from the time the statewide transition plan is approved by CMS through March2019. The timeline is developed to ensure providers have enough time to comply with the requirements and that their transition is as least disruptive as possible for participants.

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

Table 2.1 Statewide Transition Plan Timeline

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

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

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

| | | |
|---|---|---|
| *Waiver amendment public comment period* | 3/1/18 | 4/1/18 |
| Submit waiver amendments to CMS | 4/15/18 | 4/15/18 |
| Review of waiver amendments by CMS | 4/15/18 | 7/15/18 |
| CMS final approval of transition plan | 7/15/18 | 7/15/18 |
| Regulation becomes effective | 7/1/18 | 7/1/18 |
| Regulation is implemented (state and providers must be fully compliant) | 1/1/19 | 1/1/19 |

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

## III. Assessment Process – Systemic Review

### A. Regulation and Waiver Application Assessment

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

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

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

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

| **ABI & ABI-LTC Waivers – Residential** |
|---|
| **Not compliant; minor changes required. State language and requirements have similar language to the final rules, but need to be strengthened.** |
| • 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. |
| • Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. |
| • Facilitates individual choice regarding services and supports, and who provides them. |
| • Each individual has privacy in their sleeping or living unit. |
| • Individuals are able to have visitors of their choosing at any time. |
| **Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and need to be added.** |
| • 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. |
| • 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. |
| • Home and community-based settings do not include the following:<br>(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.* |
| • 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. |
| • Units have entrance doors lockable by the individuals, with only appropriate staff having keys. |
| • Individuals sharing units have a choice of roommates in that setting. |
| • Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement. |

| ABI & ABI-LTC Waivers – Residential |
|---|
| • Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. |
| • The setting is physically accessible to the individual. |
| • Modifications to provider-owned settings:<br>o The requirements must be documented in the person-centered service plan in order to modify any of the criteria.<br>o 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.<br>o Identify a specific and individualized assessed need.<br>o Document the positive interventions and supports used prior to any modifications to the person centered service plan.<br>o Document less intrusive methods of meeting the need that have been tried but did not work.<br>o Include a clear description of the condition that is directly proportionate to the specific assessed need.<br>o Include a regular collection and review of data to measure the ongoing effectiveness of the modification.<br>o Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.<br>o Include informed consent of the individual.<br>o Include an assurance that interventions and supports will cause no harm to the individual. |

Table 3.2 HCB waiver regulation and application analysis

| HCB Waiver - Non-residential |
|---|
| **Not compliant; minor changes required. State language and requirements have similar language to the final rules, but need to be strengthened.** |
| • The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, and preferences.* |
| • Facilitates individual choice regarding services and supports, and who provides them. |
| **Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and need to be added.** |
| • 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. |
| • Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. |
| • 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. |
| • Home and community-based settings do not include the following: |

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

Table 3.3 MPW regulation and application analysis

| MPW - Non-residential |
|---|
| **Not compliant; minor changes required. State language and requirements have similar language to the final rules, but need to be strengthened.** |
| • The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, and preferences.* |
| • Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. |
| • Facilitates individual choice regarding services and supports, and who provides them. |
| **Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and need to be added.** |
| • 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. |
| • 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. |
| • HCBS do not include the following:<br>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.* |

Table 3.4 SCL waiver regulation and application analysis

| **SCL Waiver – Residential** |
|---|
| **Not compliant; minor changes required. State language and requirements have similar language to the final rules, but need to be strengthened.** |
| • 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. |
| • 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. |
| • Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. |
| • 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. |
| • Facilitates individual choice regarding services and supports, and who provides them. |
| • Each individual has privacy in their sleeping or living unit. |
| • Individuals are able to have visitors of their choosing at any time. |
| **Not compliant with the following rules. Federal language and requirements do not currently exist in state policy and need to be added.** |
| • Home and community-based settings do not include the following:<br>(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.* |
| • 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. |
| • Units have entrance doors lockable by the individuals, with only appropriate staff having keys. |
| • Individuals sharing units have a choice of roommates in that setting. |
| • Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement. |

| SCL Waiver – Residential |
|---|
| • Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. |
| • The setting is physically accessible to the individual. |
| • Modifications to provider-owned settings:<br>o The requirements must be documented in the person-centered service plan in order to modify any of the criteria.<br>o 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.<br>o Identify a specific and individualized assessed need.<br>o Document the positive interventions and supports used prior to any modifications to the person centered service plan.<br>o Document less intrusive methods of meeting the need that have been tried but did not work.<br>o Include a clear description of the condition that is directly proportionate to the specific assessed need.<br>o Include a regular collection and review of data to measure the ongoing effectiveness of the modification.<br>o Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.<br>o Include informed consent of the individual.<br>o Include an assurance that interventions and supports will cause no harm to the individual. |

1. MIIW Assurance

   MIIW is a unique waiver in that the waiver only includes two highly technical services for individuals who are ventilator-dependent and require ventilator support for at least 12 hours per day. The individual must reside in his/her home and all services provided by the waiver must be rendered in the individual's home. DMS provides assurance that the MIIW complies with all setting rules since all services are performed in the individual's home and not provider-owned or controlled residential or non-residential settings. DMS presumes that each MIIW participant's home comports with all HCB setting rules. The state staff validated that all services are performed in the individual's home.

**B. Monitoring Process Assessment**

DMS has set monitoring requirements for each of the HCBS waiver providers operating in KY and these monitoring processes will continue while providers comply with the HCBS final rules. The workgroup outlined these monitoring processes, including the oversight process and participant and provider surveying process. Each process was then analyzed to determine the impact of the HCBS final rules and areas requiring revision

were identified. Some monitoring tools will need to be updated to incorporate the new federal requirements so that state staff evaluate providers appropriately. If necessary, KY will increase the frequency and percentage of providers selected for review to confirm that state staff effectively track provider compliance. After providers have fully implemented the HCBS final rules, monitoring processes will continue with compliant tools and standards. Table 3.5 below describes the current monitoring/oversight process for each waiver, the participant and/or provider surveys that are conducted, and the areas that will need to be updated to comply with the HCBS final rules. All sanctions applied to a waiver provider, also apply to services within any of Kentucky's HCBS waivers and to all of their subsidiaries. PDS is specifically separated in Table 3.5 since PDS for all waivers is centrally monitored by state staff through separate waiver monitoring processes.

Table 3.5 Current waiver monitoring processes

| **Current Monitoring Process** | | | |
|---|---|---|---|
| **Waiver** | *Current Oversight Process* | *Participant and Provider Surveys* | *Areas Requiring Revision* |
| 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)<br>• Every agency is re-certified annually by state staff to validate compliance<br>• The certification process includes a monitoring visit (distributed throughout the year) and is based on a checklist based on state regulation<br>• Case managers track agencies and locations as an additional line of monitoring<br>• 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)<br>• 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<br>• State staff do not base their evaluations on all of the new HCBS rules<br>• Case managers do not base their agency monitoring on all of the new HCBS rules |
| HCB | • Every agency must be licensed as a Home Health agency or Adult Day Health Center<br>• The DMS contracted Quality Improvement Organization (QIO) agency completes all first line evaluations of HCB providers<br>• The evaluations are on-site and include quality questions posed to participants (are you treated with respect, are you aware of | • 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 |

| Current Monitoring Process | | | |
|---|---|---|---|
| **Waiver** | *Current Oversight Process* | *Participant and Provider Surveys* | *Areas Requiring Revision* |
| | your case manager, were you given freedom of choice, etc.), agency policies and procedures, billing, and post-payment audits<br>• Waiver providers are evaluated on a two or three year cycle<br>• State staff complete second line monitoring for a random sample of the provider evaluations completed by DMS contracted QIO agency<br>• The citation and sanctions process is outlined in regulation | | • State staff and monitoring QIO agency do not base their evaluations on all of the new HCBS rules<br>• Monitoring process manuals do not include all of the new HCBS rules |
| 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<br>• Every agency is recertified/licensed by either respective waiver state staff annually<br>• The DMS contracted QIO completes first line monitoring for a sample of MPW participants<br>• 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<br>• State staff do not base their evaluations on all of the new HCBS rules |
| SCL | • Every agency must be certified by state staff prior to the initiation of a service<br>• Every agency is recertified at least once during their certification period (bi-annually, annually, or biennially)<br>• The citation and sanctions process is outlined in regulation | • Providers are required by regulation to participate in all department survey initiatives, including surveying participants | • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules |
| PDS (All waivers) | • Every agency is evaluated annually<br>• The monitoring process includes reviewing participant records, incident reports, and complaints<br>• Home visits or phone interviews with waiver participants are completed<br>• The citation and sanctions process is outlined in regulation | • Participant satisfaction surveys are distributed during monitoring | • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules<br>• State staff do not base their monitoring on all of the new HCBS rules |

| Current Monitoring Process | | | |
|---|---|---|---|
| **Waiver** | *Current Oversight Process* | *Participant and Provider Surveys* | *Areas Requiring Revision* |
| | | | • Consumer PDS training is not based on the new HCBS rules |

**IV. Provider Assessment**

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

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

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

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

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

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

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

Table 4.1 ABI and ABI-LTC residential provider compliance estimates

| **ABI/ABI-LTC Residential Providers Estimates** | | |
|---|---|---|
| **Category** | **Estimate Number of Providers** | **Main Areas of Non-Compliance** |
| (1) Fully align with the federal requirements | 1 (12.5%) | |
| (2) Do not comply with the federal requirements and will require modifications | 6 (75%) | • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community<br>• Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices<br>• Lease agreement<br>• Individuals have the freedom and support to control their own schedules and activities |

| ABI/ABI-LTC Residential Providers Estimates | | |
|---|---|---|
| **Category** | **Estimate Number of Providers** | **Main Areas of Non-Compliance** |
| (3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals | 0 (0%) | |
| (4) Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process) | Not Isolating: 0 (0%) | • Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS<br>• 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<br>• Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS<br>• Operated in a remote location (rural, farmstead, etc.) |
| | Potentially Isolating: 0 (0%) | |
| | Isolating: 1 (12.5%) | |
| **Total** | 8 | |

Table 4.2 SCL residential provider compliance estimates

| SCL Residential Providers Estimates | | |
|---|---|---|
| **Category** | **Estimate Number of Providers** | **Main Areas of Non-Compliance** |
| (1) Fully align with the federal requirements | 0 (0%) | |
| (2) Do not comply with the federal requirements and will require modifications | 45 (38%) | • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community<br>• Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices |

| SCL Residential Providers Estimates | | |
|---|---|---|
| **Category** | **Estimate Number of Providers** | **Main Areas of Non-Compliance** |
| | | • Individuals/tenants have lease agreements<br>• Individuals have the freedom and support to control their own schedules and activities |
| (3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals | 0 (0%) | |
| (4) Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process) | Not Isolating: 39 (33%) | • Located in a building that is also a facility that provides in-patient institutional treatment<br>• On the grounds of, or immediately adjacent to an institution<br>• Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS<br>• 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<br>• Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS<br>• Operated in a remote location (rural, farmstead, etc.) |
| | Potentially Isolating: 22 (18%) | |
| | Isolating: 13 (11%) | |
| **Total** | 119 | |

### B. Non-Residential Settings

In addition to a survey targeted for residential providers, the workgroup created a similar survey for non-residential providers that focused on the HCB setting requirements. The workgroup developed this survey using CMS' toolkits and distributed it to non-residential providers via email

and provider letters. The non-residential survey is outlined in Appendix B. The target provider types for this survey were adult day health centers (ADHC), home health agencies, adult day training (ADT), and other non-residential waiver providers, such as case managers, who render services to the waiver population. Approximately 40% of the total non-residential waiver providers in the state completed the survey. The providers who responded to the survey render a variety of services, including ADT, ADHC, home health agencies, case management, behavior supports, and physical/occupational/speech therapy.

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

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

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

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

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

Table 4.3 Non-residential provider compliance estimates

| **Non-Residential Providers (ABI, ABI-LTC, SCL, MPW, HCB) Estimates** | | |
|---|---|---|
| **Category** | **Estimate Number of Providers** | **Main Areas of Non-Compliance** |
| (1) Fully align with the federal requirements | 0% | |
| (2) Do not comply with the federal requirements and will require modifications | 62% | • The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community<br>• Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices |
| (3) Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals | 0% | |
| (4) Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process) | Not Isolating: 5% | • Located in a building that is also a facility that provides in-patient institutional treatment<br>• On the grounds of, or immediately adjacent to an institution<br>• Setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS<br>• 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<br>• Operated in multi-family properties with more than one unit occupied by individuals receiving Medicaid HCBS<br>• Operated in a remote location (rural, farmstead, etc.) |
| | Potentially Isolating: 18% | |
| | Isolating: 15% | |

## V. Remedial Strategies

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

### A. State Level Remedial Strategies

#### 1. Policy

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

Table 5.1 Potential waiver regulation and application actions for compliance

| **Waiver Regulation and Application** | | | |
|---|---|---|---|
| Rule | Potential Actions to be Compliant | Timeline | Status |
| The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS; | ABI, ABI-LTC, HCB, MPW, SCL:<br>• Clarify indicators of integration into the greater community into the regulation<br>• Add stronger language that focuses on outcomes related to the individual's experience<br>ABI, ABI-LTC, and MPW:<br>• Add required evidence to ensure an individual's integration into the community<br>HCB:<br>• Include clarifying language that community integration is individual appropriate and outlined in the plan of care (POC)<br>SCL:<br>• Note: Language in the SCL manual is very close, but needs to include access to personal resources | 7/15/2017 – 1/1/2018 (Second Round) | Not Started |
| The setting is selected by the individual from among setting options including non- | ABI, ABI-LTC, HCB, MPW, SCL: | 1/1/2015 – 4/30/2015 | Not Started |

| Waiver Regulation and Application | | | |
|---|---|---|---|
| Rule | Potential Actions to be Compliant | Timeline | Status |
| disability specific settings and an option for a private unit in a residential setting.<br><br>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; | • Include assurance that individuals must be informed of every available setting option each time s/he is selecting a new setting, every time the individual moves or changes service provider<br>• Require case manager to document all available settings options considered and selected by the individual in the POC<br>• Include explanation of how informed choice should be provided<br>ABI, ABI-LTC, and SCL:<br>• Include assurance that the individual is included in both the selection of the provider and setting (location), taking into account individual resources and provider restrictions<br>HCB and MPW:<br>• Include assurance that the individual is included in both the selection of the provider and setting (location) | (First Round) | |
| Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint; | ABI, ABI-LTC, HCB, MPW, SCL:<br>• Add language ensuring the individual's privacy, dignity, and respect | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. | ABI, ABI-LTC, HCB, MPW, SCL:<br>• Add general language to clearly define this rule<br>• Add language allowing the individual to select daily activities and with whom they interact with | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Facilitates individual choice regarding services and supports, and who provides them. | ABI, ABI-LTC, HCB, MPW, and SCL Application,:<br>• Add clear and centrally located definition of freedom of choice<br>All Waivers (Regulation and Application):<br>• Use HCBS rule language | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Home and community-based settings do not include the following:<br>(i) A nursing facility;<br>(ii) An institution for mental diseases; | ABI, ABI-LTC, HCB, MPW, SCL:<br>• Include restrictions for providers that have qualities of an institutional setting | 7/15/2017 – 1/1/2018 (Second Round) | Not Started |

| Waiver Regulation and Application | | | |
|---|---|---|---|
| Rule | Potential Actions to be Compliant | Timeline | Status |
| (iii) An intermediate care facility for individuals with intellectual disabilities;<br>(iv) A hospital; or<br>(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. | • Include restrictions for providers that are located within, on the grounds of, or immediately adjacent to a public institution, or any other setting that has the effect of isolating individuals receiving HCBS<br>• Include HCBS rule language | | |
| (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a | ABI, ABI-LTC, and SCL:<br>• Add a lease agreement requirement for all residential services<br>• Outline lease agreement process and standards | 7/15/2017 – 1/1/2018 (Second Round) | Not Started |

| Waiver Regulation and Application | | | |
|---|---|---|---|
| Rule | Potential Actions to be Compliant | Timeline | Status |
| 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. | | | |
| Each individual has privacy in their sleeping or living unit | ABI, ABI-LTC, and SCL:<br>• Add specific language: "Individual has the right to privacy in their living unit" | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors | ABI, ABI-LTC, and SCL:<br>• Add requirement requiring the individual to have keys/locks for both their bedroom door and main house door<br>• Require that only appropriate staff have bedroom door keys | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Individuals sharing units have a choice of roommates in that setting | ABI, ABI-LTC, and SCL:<br>• Add clarifying language allowing the individual to choose to live alone or with a roommate<br>• Add clarifying language allowing the individual to choose roommates and housemates where applicable and based on available resources for room and board | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement | ABI, ABI-LTC, and SCL:<br>• Add requirement allowing individuals the freedom to decorate/furnish their living unit as outlined in their lease | 1/1/2015 – 4/30/2015 (First Round) | Not Started |

| Waiver Regulation and Application | | | |
|---|---|---|---|
| Rule | Potential Actions to be Compliant | Timeline | Status |
| Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time | ABI, ABI-LTC, and SCL:<br>• Add additional language clarifying that individuals must have freedom to control their own schedules<br>• POC should take into account individuals preferences for schedule and activities, including food preferences<br>• Add requirement allowing individuals access to food/kitchen at any time or as outlined in the POC | 7/15/2017 – 1/1/2018 (Second Round) | Not Started |
| Individuals are able to have visitors of their choosing at any time | ABI, ABI-LTC and SCL:<br>• Add language allowing individuals to have visitors of their choosing at any time | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| The setting is physically accessible to the individual | ABI, ABI-LTC, and SCL:<br>• Define physical accessibility<br>• Add language requiring the individual to be able to physically access their building and other appropriate buildings at all times | 1/1/2015 – 4/30/2015 (First Round) | Not Started |
| Any modification of the additional residential conditions except for the setting being physically accessible requirement, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:<br>• Identify a specific and individualized assessed need.<br>• Document the positive interventions and supports used prior to any modifications to the person-centered service plan. | ABI, ABI-LTC, and SCL:<br>• Add language that treats POC residential modifications like a "rights restriction" | 1/1/2015 – 4/30/2015 (First Round) | Not Started |

| Waiver Regulation and Application | | | |
|---|---|---|---|
| Rule | Potential Actions to be Compliant | Timeline | Status |
| • Document less intrusive methods of meeting the need that have been tried but did not work.<br>• Include a clear description of the condition that is directly proportionate to the specific assessed need.<br>• Include regular collection and review of data to measure the ongoing effectiveness of the modification.<br>• Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.<br>• Include the informed consent of the individual.<br>• Include an assurance that interventions and supports will cause no harm to the individual. | | | |

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

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

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

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

**2. Operations**

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

Table 5.2 Potential waiver operational actions for compliance

| **All Waivers** | | | |
|---|---|---|---|
| **Item** | **Potential Actions to be in Compliance with HCBS Rules** | **Timeline** | **Status** |
| **Internal Processes:** | | | |
| Prior authorizations (PA) | All Waivers:<br>• Update PA processes to incorporate new HCBS rules in regards to the participant setting selection process | 1/1/2015 – Ongoing | Not Started |
| State staff training | All Waivers:<br>• Train PA staff, focusing on the POC and case management in relation to PAs | 1/1/2015 – Ongoing | Not Started |

| All Waivers | | | |
|---|---|---|---|
| **Item** | **Potential Actions to be in Compliance with HCBS Rules** | **Timeline** | **Status** |
| | • Train state staff on HCBS rules<br>• Train state staff on transition process, new monitoring processes and checklists, related to the HCBS rules | | |
| **Provider Processes:** | | | |
| Requirements (mission/values) | All Waivers:<br>• Providers should update their mission/values and policies/procedures to align with the new DMS regulations | 1/1/2015 – Ongoing | Not Started |
| Trainings | All Waivers:<br>• Update relevant provider trainings and offer providers all relevant information and trainings | 1/1/2015 – Ongoing | Not Started |
| Transition process | All Waivers:<br>• Develop HCBS evaluation tool (monitoring tool) and HCBS compliance plan template to be used by providers, outlining their plan for complete compliance<br>• Host webinars for waiver providers<br>• Validate each provider's level of compliance during annual evaluation<br>• Notify providers outlining their level of compliance<br>• Based on provider and waiver staff provider evaluations, complete on-site reviews for groups 3 and 4<br>• Review, track, and approve/deny the providers' HCBS compliance plans<br>• Assist providers to ensure compliance and resolve any access issues found<br>• Use processes outlined in state regulations for provider corrective action or actions not to certify or to terminate non-compliant providers | 1/1/2015 – Ongoing | Not Started |
| **Monitoring Processes:** | | | |
| Requirements | All Waivers: | 1/1/2015 – Ongoing | Not Started |

| All Waivers | | | |
|---|---|---|---|
| **Item** | **Potential Actions to be in Compliance with HCBS Rules** | **Timeline** | **Status** |
| | • Validate that the current monitoring processes are sufficient to monitor new and existing providers against the HCBS rules and modify as necessary | | |
| Tools (on-site items, checklists, etc.) | • Update provider checklists and surveying tools for provider sites (residential, ADT, ADHC, etc.) based on the revised regulations that comply with the HCBS rules<br>• Implement provider requirements using the CMS toolkit to determine the materials/evidence providers need to submit as validation of HCB setting under heightened scrutiny | 1/1/2015 – Ongoing | Not Started |
| Provider surveying process | All waivers:<br>• Update PDS provider on-site surveys | 1/1/2015 – Ongoing | Not Started |
| **Miscellaneous:** | | | |
| Communication plan for additional stakeholders (advocacy groups, provider associations, etc.) | • Develop communication plan for stakeholders (advocacy groups, provider associations, etc.) to educate them and partner with them to inform participants and their families<br>• Communication activities could include periodic email updates with rule summaries, webinars, and presentations at conferences and advocacy group meetings upon request | 8/1/2014 – Ongoing | In Process |
| Relocation Process (due to HCBS rules) | All Waivers:<br>• Determine relocation process<br>ABI, ABI-LTC, and SCL:<br>• Determine how the lease agreement requirement will affect the relocation process<br>• Require the POC team/case manager to be involved in every move of the individual, ensuring the individual has a choice in every move or change in service provider | 1/1/2015 – 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 state staff to conduct further monitoring of providers. In addition to public notices, state staff will organize outreach to participants to inform them of the key changes to their programs, and confirm they understand their rights. In certain cases, participants may need to be relocated based upon the results of the provider assessments. If the provider falls under category three (not compliant and never will be), state staff will follow the same protocols to relocate participants as currently are in place when providers are terminated.

Table 5.3 Potential participant actions for compliance

| **All Waivers** | | | |
|---|---|---|---|
| **Rule** | **Potential Actions to be in Compliance with HCBS Rules** | **Timeline** | **Status** |
| All HCBS rules | All Waivers:<br>• Develop communication and implement process for informing participants of the HCBS rules<br>• Send information to waiver participants targeted to each participant's situation explaining waiver changes related to HCBS rules<br>  • Include information outlining the new participant rights, provider requirements, and links to all related information | 1/1/2015 – Ongoing | Not Started |
| Residential rules | ABI, ABI-LTC, and SCL:<br>• Develop and implement communication process for informing residential waiver participants of waiver changes related to HCBS rules<br>  • Include information outlining the list of new participant rights, provider requirements, and links to related information<br>  • Include lease information and example leases | 1/1/2015 – Ongoing | Not Started |

**4. Technology**

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

Table 5.4 Potential technology actions for compliance

| **Medicaid Waiver Management Application** | | | |
|---|---|---|---|
| **Forms:** | **Potential Actions to be in Compliance with HCBS Rules** | **Timeline** | **Status** |
| Plan of care/prior authorization form, long term care facilities and home and community based program certification form, Medicaid waiver assessment form, SCL demographic and billing information form, and SCL freedom of choice and case management conflict exemption form | All Waivers:<br>• Modify forms/screen within MWMA to comply with HCBS rules | 1/1/2015 – 12/15/2015 | Not Started |

**B. Provider Level Remedial Strategies**

As described in section III, the workgroup categorized providers and their level of compliance into four groups on a preliminary basis: 1) fully aligned with federal requirements and require no changes, 2) do not comply with federal requirements and require modifications, 3) cannot meet the federal requirements and require removal from the program and relocation of individuals, and 4) presumed not to be HCB and requires heightened scrutiny. The preliminary categorization of each provider was determined based on surveys and state staff knowledge, but it may change over time, as additional information is obtained and providers present evidence of their compliance. State staff will implement the following activities from January 2015 to July 2018 to assist providers in transitioning to compliance.

1. Develop an HCBS evaluation tool (monitoring tool) and HCBS compliance plan template for providers to identify actions they will complete to address areas of non-compliance
    a. First round: January 2015 to March 2015
    b. 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. Distribute HCBS compliance plan template to providers and inform providers of their compliance level
    b. The HCBS compliance plan template will follow similar protocols to the current waiver provider corrective action plan (907 KAR 7:005 – section 4)
    c. First round: March 1, 2015 to March 31, 2015
    d. Second round: October 2017 to January 2018
3. State staff will review and approve/deny providers' plans
    a. First round: May 2015 to October 2015
    b. Second round: January 2018 to June 2018
4. Conduct routine evaluations and on-site assessments with the updated HCBS evaluation tool to validate each provider's compliance plan and level of compliance
    a. Both rounds: March 2015 to ongoing

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

For providers in group two (do not comply and require modifications), changes are required for the provider to become compliant with the HCB 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. The remedial activities included in Table 5.5 below are examples of activities that the providers may complete to come into compliance with the HCB setting rules. State staff will implement the following activities from March 2015 to July 2018:

1. Track provider compliance plans
    a. First round: May 2015 to October 2015
    b. Second round: January 2018 to June 2018
2. Conduct routine review to review providers' progress towards complete compliance
    a. Both rounds: March 2015 to ongoing

3. For non-compliant providers, each waiver will follow the termination process outlined in Kentucky regulations

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

**1. Settings presumed not to be HCB**

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

1. Notify providers that they will need to undergo heightened scrutiny
2. Coordinate with providers on additional documentation that must be presented as evidence of being HCB
3. Add additional requirements to the HCBS compliance plan template
4. Conduct additional detailed on-site visits to obtain further evidence, as needed

5. Submit provider's evidence to CMS for determination
6. For non-compliant providers or providers determined not to be an HCB setting, the termination process outlined in regulation 907 KAR 7:005 (Certified waiver provider requirements) or 907 KAR 1:671 (Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions) will be followed

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

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

Table 5.5 Potential provider actions for compliance

| **Provider Requirements** | |
|---|---|
| **Rule** | **Potential Actions to be Compliant & Timeline**<br>• **Short-term (0-3 months)**<br>• **Long-term (3-12 months)** |
| 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; | Short-term<br>• Assist/provide training to individuals on how to access public transportation<br>• Support individuals in their job search with activities such as supported employment<br>• Encourage individuals to participate in community activities of their choosing and explore community access opportunities<br>• Ensure individuals have access to personal resources<br>• Provider staff training<br>Long-term<br>• Provide transportation to community activities if public transportation is not available<br>• Work with individuals to help them establish valuable relationships within the community<br>• Update mission/values to meet the rule |

| **Provider Requirements** | |
|---|---|
| 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; | Short-term<br>• Provide individuals with all setting options available and ensure individual makes an informed choice for both setting and provider<br>• Offer individuals choice of a private unit if available in the setting selected<br>• Document all setting and provider options presented and considered by the individuals in the POC<br>• Ensure setting options align with individual's needs and preferences<br>• Provider staff training |
| Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint; | Short-term<br>• Ensure individual has privacy<br>• Encourage the individual to come and go as s/he wishes, consistent with the POC and provide necessary supports to facilitate<br>• Ensure provider staff speak to individuals with respect<br>• Provider staff training<br>Long-term<br>• Update and implement mission/values to meet the rule |
| Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact; | Short-term<br>• Encourage the individual to create his/her own schedule and provide necessary supports to facilitate<br>• Encourage the individual to make independent choices during POC planning and on a daily basis<br>• Establish policies and procedures which encourage individual choice of activities<br>• Provider staff training<br>Long-term<br>• Update and implement mission/values to meet the rule |
| Facilitates individual choice regarding services and supports, and who provides them. | Short-term<br>• Provide necessary information (documents, site visits, etc.) that allows the individual to indicate his/her preferences for services and supports and who provides them<br>• Document all setting and provider options presented and considered by the individuals in the POC |

| **Provider Requirements** | |
|---|---|
| | • Provider staff training |
| Home and community-based settings do not include the following:(i) A nursing facility;<br>(ii) An institution for mental diseases;<br>(iii) An intermediate care facility for individuals with intellectual disabilities;<br>(iv) A hospital; or<br>(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. | Short-term<br>• Depending on level of compliance category, develop corrective action plan to become compliant with HCBS rules<br>• Consolidate evidence of community integration among recipients<br>• Provide evidence that setting does not have qualities of an institution<br>• Remove isolating barriers or institutional qualities<br>• Provider staff training<br>Long-term<br>• Cooperate with state staff and CMS on-site assessments |

Table 5.6 Potential residential provider actions for compliance

| **Provider Owned/Controlled Setting Requirements** | |
|---|---|
| **Rule** | **Potential Actions to be Compliant**<br>**Timeline**<br>• **Short-term (0-3 months)**<br>• **Long-term (3-12 months)** |
| 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. | Short-term<br>• Draft lease or legally enforceable document that provides individuals the same responsibilities and protections from eviction that tenants have under KY law<br>• Include furnish/decoration rules within each lease<br>• Provider staff training<br>Long-term<br>• Review lease document with each individual and his/her case manager to reach agreement on the rights and responsibilities included in the lease<br>• Finalize and agree to lease with each individual residing in the home |
| Each individual has privacy in their sleeping or living unit; | Short-term<br>• Allow the individual to have a private bedroom if available or explore other options with the POC team<br>• Define and implement what privacy means to each individual<br>• Provider staff training<br>Long-term<br>• Re-structure sleeping/living units to allow for optimal privacy for each individual if medically appropriate |

| Provider Owned/Controlled Setting Requirements | |
|---|---|
| **Rule** | **Potential Actions to be Compliant**<br>**Timeline**<br>• **Short-term (0-3 months)**<br>• **Long-term (3-12 months)** |
| Units have entrance doors lockable by the individuals, with only appropriate staff having keys; | Short-term<br>• Ensure that each individual has a key to his/her sleeping unit as well as a key to the entrance of the home if medically appropriate<br>• Provide keys to participant rooms only to appropriate provider staff<br>• Provider staff training<br>Long-term<br>• Require each sleeping unit to have a lockable entrance door and ensure that the individual has a key if medically appropriate<br>• Provide keys to participant rooms only to appropriate provider staff |
| Individuals sharing units have a choice of roommates in that setting; | Short-term<br>• Ensure that each individual has chosen his/her roommate and/or housemate<br>• Re-locate individuals to a different room or home if a change is desired<br>• Provider staff training<br>Long-term<br>• Establish process that allows each individual to have choice of roommate or housemate<br>• Include roommate and housemate discussions |
| Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement; | Short-term<br>• Allow individuals to furnish and decorate sleeping and living areas<br>• Provider staff training<br>Long-term<br>• Include furnish/decoration rules within each lease |
| Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time; | Short-term<br>• Encourage individuals to control their own schedule as indicated in POC and provide support to facilitate<br>• Give individuals an option to help plan, shop, and cook meals<br>• Allow access to appropriate areas of kitchen at any time as indicated in POC |

| Provider Owned/Controlled Setting Requirements | |
|---|---|
| **Rule** | **Potential Actions to be Compliant**<br>**Timeline**<br>• **Short-term (0-3 months)**<br>• **Long-term (3-12 months)** |
| | • Provider staff training<br>Long-term<br>• Provide supports to enable individuals to do unscheduled social/community activities |
| Individuals are able to have visitors of their choosing at any time; | Short-term<br>• Revise operating procedures or policies, if necessary, to specify that individuals may have visitors at any time if medically appropriate<br>• Discuss roommate preferences to set appropriate limits to visitor hours, if the individual has a roommate<br>• Provider staff training |
| The setting is physically accessible to the individual. | Short-term<br>• Distribute keys to appropriate entrance doors to each individual residing in the home if medically appropriate<br>• Provider staff training |

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**VI. Public Comment Process**

In order to allow stakeholders time to provide input in a convenient and accessible manner, DMS is submitting 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 provides stakeholders a 30-day public notice and comment period. The following website can be used to view the proposed Statewide Transition Plan: http://www.chfs.ky.gov/dms.

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 submitted to DMS through mail, email, advocacy groups or the HB144 commissioner meeting will be evaluated by the workgroup. The workgroup will categorize similar comments together, summarize the comments, and respond and/or update the transition plan accordingly. The summary and response of all comments will be 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 will be included. If the state's determination agreed with the public comment, then the location of the supporting evidence in the transition plan will be 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 Comments** | |
|---|---|
| Summary of Public Comment | State's Response and/or Modification to Transition Plan |
| | • |

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 late than the date of submission to CMS.

## VII. Appendix

### A. Residential Provider Survey

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

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

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

22. Name:
23. Agency Name:

**B. Non-Residential Provider Survey**

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

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

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

**C. Proof of Public Notice**

27. Website posting
28. Newspaper posting

**D. Proof of Public Comment**

29. Email and mail
30. HB144 commissioner meeting