

Intellectual Disability Waiver Transition Plan Regarding Compliance with the HCBS Final Rule Elements December 18, 2014

INTRODUCTION

The Virginia Department of Medical Assistance Services (DMAS), the state Medicaid authority, and Department of Behavioral Health and Developmental Services (DBHDS), the operating agency for the Intellectual Disability (ID) waiver, have worked together to develop this Transition Plan as a means of outlining current status and needed actions to bring the ID waiver services and providers into compliance with CMS's Final Rule by March of 2019. This plan includes assessments and proposed actions for both agencies, as well as all affected providers.

Virginia's ID waiver transition plan includes the following information:

- 1. Assessment of Settings**
 - a. Description of Assessment process
 - b. Assessment of ID waiver regulations
 - c. Assessment of related DBHDS regulations
 - d. Assessment of Characteristics of ID waiver settings across the state
 - e. Individual and Family Feedback

- 2. Remediation Strategies**
 - a. ID waiver regulations & policy manuals
 - b. DBHDS Licensing Regulations
 - c. Outreach & Technical Assistance, Monitoring and Corrective Action
 - d. Provider Sanctions and Disenrollment
 - e. Provider Enrollment

- 3. Public Comment**
 - a. Public Input Process
 - b. Public Engagement & Stakeholder Involvement

ASSESSMENT

Description of Assessment Process

The Departments of Behavioral Health and Developmental Services and Medicaid Assistance Services are working with provider organizations, individuals receiving ID waiver services and their families and allies, stakeholders and advocacy organizations and other state and local entities to collect the data and information needed to assess Virginia's current compliance with HCBS Final Rule settings requirements. The assessment process includes a review of ID waiver regulations, related DBHDS regulations including licensure regulations, policies and procedures, provider self-assessment, and site specific assessments.

Virginia is currently in the assessment phase with an anticipated end date of 2/28/15. Virginia has completed an initial review of rules, regulations, policies and procedures, developed a provider self-assessment tool, developed a settings analysis tool for Licensure and fact sheets and guidance documents for Quality Management Reviews, and will obtain information about the experience of individuals and families from the National Core Indicators' survey. Virginia is intent on fully meeting CMS Transition Plan expectations through a comprehensive assessment of compliance status of current settings, robust and meaningful remediation strategies and transparent and interactive public comment and stakeholder involvement. Virginia's current ID waiver system is experiencing significant transition in response to a Department of Justice Settlement Agreement. An extended assessment timeframe will enable Virginia to conduct its comprehensive assessment and align remediation strategies with new service definitions, rules, regulations, policy and systems re-design.

Assessment of Intellectual Disability Waiver Regulations

Based on review and analysis of ID waiver regulations, Virginia acknowledges that the current regulations do not fully support the new CMS HCBS Final Rule settings requirements. A review indicates that the following elements are not present:

- Reference to options for a private unit in a residential setting.
- The expectation that a lease, residency agreement or other written agreement is in place to provide the individual protections from eviction.
- An emphasis on privacy in individuals' sleeping/living units, including lockable entrance doors and choice of roommates in shared units.
- Freedom and support to control their schedules and activities.
- Access to food and visitors at any time.
- Required processes for modifications in the event that there are individual-specific restrictions.

Further, DMAS ID waiver regulations will require revision to place a greater emphasis on ensuring that individuals receiving HCBS services have the same degree of access to an integrated community life as individuals not receiving Medicaid HCBS. Needed revisions to regulations will help to ensure that all HCBS, including day services, are integrated and meet settings requirements.

Assessment of Related DBHDS Regulations

In Virginia, most settings impacted by the Final Rule (particularly those settings involving provider-owned or controlled residential settings) are licensed by DBHDS. The DBHDS has reviewed and assessed its Licensing regulations. Changes to the regulations have been proposed in order to implement additional provider requirements to comport with the Final Rule. The review indicated that the following elements are not present in the current regulations:

- The expectation that a lease, residency agreement or other written agreement is in place to provide the individual protections from eviction.
- The expectation of privacy in individuals' sleeping/living units, including lockable entrance doors and choice of roommates in shared units.
- Access to food and visitors at any time.
- The expectation that individuals have freedom and support to control their schedules and activities.
- Required processes for modifications in the event that there are individual-specific restrictions.

This review of DBHDS Licensing regulations initially involved an internal (DBHDS) process of review and proposal of edits and changes. This effort will be expanded to incorporate ongoing input from a stakeholder workgroup (comprised of representatives of other state agencies, providers, Community Services Boards, advocacy organizations and individuals/family members) as illustrated in the “Remediation” section of this Transition Plan. A proposed timeline follows.

Timeline for DBHDS Licensing Regulations Review		
Internal Review & Assessment		
Identify Office of Licensing (OL) review team	2 weeks	8/1/14 – 8/15/14
OL review and recommendations for changes	2 months	8/18/14 – 10/17/14
Identify DBHDS review team	2 weeks	10/6/14 – 10/17/14
DBHDS review and recommendations for changes	3 – 4 months	10/20/14 – 1/30/15

Additionally, all providers licensed by DBHDS must comply with DBHDS Office of Human Rights regulations. DBHDS completed a cross-walk assessment of its current Human Rights regulations to the Final Rule in the spring of 2014. The current Human Rights regulations were found to be consistent with and supportive of the Final Rule elements.

Assessment of Characteristics of ID Waiver Settings across the State

After an assessment of all applicable regulations related to settings and service provisions for ID waiver populations, DBHDS conducted an internal assessment, through the Office of Licensing, of the characteristics of currently enrolled provider settings. The settings present in the delivery of ID waiver services and a preliminary status of compliance is provided below. Additional assessment is needed to determine the number of setting that fully comply, do not comply but will with modifications, do not and cannot comply, and settings that require heightened scrutiny.

Waiver Service & Type of Setting	Preliminary Status
Residential Support	
<ul style="list-style-type: none"> ○ Group Homes 	<p>It has been determined that there are both settings that fully comply with the requirements and settings that do not comply and will require modifications. It is expected that remediation strategies will bring the majority of settings into compliance.</p> <p>Additional analysis is needed to determine if there are settings that do not and cannot comply and settings that will require heightened scrutiny.</p>
<ul style="list-style-type: none"> ○ Sponsored Homes (similar to a “host home” model) 	<p>It has been determined that there are both settings that fully comply with the requirements and settings that do not comply and will require</p>

	modifications. It is expected that remediation strategies will bring the majority/all settings into compliance.
○ Supervised Apartments	It has been determined that there are both settings that fully comply with the requirements and settings that do not comply and will require modifications. It is expected that remediation strategies will bring the majority/all settings into compliance.
○ Family Homes	All ID waiver services provided in family home settings are fully compliant with the settings requirements, these homes are private residences that an individual owns, leases or resides with family. Each setting is integrated with full access to the community, is chosen by the individual, ensures an individual's right to privacy, dignity, respect, and freedom from coercion and restraint, optimizes individual initiative, and facilitates individual choice.
Day Support	
○ Day Support	It has been determined that there are both settings that fully comply with the requirements and settings that do not comply and will require modifications. It is expected that remediation strategies will bring the majority/all settings into compliance.
Prevocational	
○ Day Support	It has been determined that there are both settings that fully comply with the requirements and settings that do not comply and will require modifications. It is expected that remediation strategies will bring the majority/all settings into compliance.
Group Supported Employment	
○ Community-based work crew or enclave	It has been determined that there are both settings that fully comply with the requirements and settings that do not comply and will require modifications. It is expected that remediation strategies will bring the majority/all settings into compliance.

DBHDS has developed a settings checklist that will be distributed to all DBHDS-licensed providers of ID waiver residential and day support services, as well as ID waiver providers of group supported employment. The checklist will be accompanied by an overview of the CMS Final Rule, including a link to the CMS toolkit website, and guidance information to assist the provider with understanding the

intent of the requirements being evaluated in order to accurately complete of the checklist. The checklist is designed to help providers determine areas in which their setting(s) meet or require improvement in order to comply with the settings provision of the Final Rule. This checklist and accompanying guidance document incorporate all of the elements pertinent to settings, elements of the “Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community,” as well as referring providers to the questions in the “Exploratory Questions to Assist States in Assessment of Residential Settings.” Providers have been instructed to complete this checklist by January 31, 2015.

Concurrent with receipt of the checklist, providers will be instructed to provide feedback to DBHDS and DMAS regarding their self-assessment of their site(s). This will be accomplished through responses to questions via Survey Monkey due by January 31, 2015. This self-assessment survey will require each provider to indicate whether the provider believes the setting meets setting requirements and the intent of the rule; whether modifications will be required in order to comply; or whether the setting does not and cannot meet requirements. In addition, there will be an option to request technical assistance from DBHDS staff.

Qualitative and quantitative data from the self-assessments will be used to further determine compliance status, remediation needs and strategies, and the potential need to transition individuals from non-compliant settings.

Assessment Findings

By March 1, 2015 an Assessment Findings summary report will be developed and shared with stakeholders and providers. The report will provide a summary of the following assessment activities and outcomes:

- Assessment of ID waiver regulations
- Assessment of related DBHDS regulations and policies
- Provider self-assessment

Additionally, the report will describe the process and opportunities for providers to receive education, training and technical assistance to comply with the Final Rule.

After completion and submission of the Survey Monkey provider self-assessment, providers will be mailed a letter reiterating the Office of Licensing monitoring activities and Quality Management Review (QMR) technical assistance that will take place between March 2015 and April 2016. The monitoring activities will help to ensure the provider self-assessment is accurate and settings do fully comply. The letter will also inform providers that indicate via the self-assessment that they do not fully comply, but can comply with modifications of resources, contact information to receive guidance and technical assistance to assist with coming into compliance.

A process and protocol for follow up self-assessments will be developed and implemented by September 2015. The purpose of follow-up self-assessments is to assist with monitoring providers’ progress with coming into compliance and the need for technical assistance.

REMEDIATION

Intellectual Disability Waiver Regulations Remediation

New waiver amendments will be submitted to CMS in the spring of 2015. As these amendments are being reviewed by CMS, state Medicaid regulations necessary for their implementation, as well as subsequent policy manuals, will be developed and made ready for implementation. These will include all new Final Rule settings requirements, inclusive of those services/settings not licensed by DBHDS (such as group supported employment). The process for regulatory promulgation and final acceptance involves stakeholder comments and can take several years; however, plans are to request the authority to issue Emergency Regulations, with the intention of their taking effect by the end of 2015, so that implementation can begin early in 2016 (see timeline at the end of this document).

DBHDS Licensing Remediation Strategies

As previously mentioned, DBHDS Licensing regulations will be revised to better support enforcement of the Final Rule expectations in settings licensed by that agency. The following chart details the proposed timeline beyond the assessment phase and incorporates remediation actions inclusive of the state regulatory process.

Timeline for DBHDS Licensing Regulations Revisions		
Stakeholder Involvement:		
• Identify stakeholders for work group membership	3 weeks	1/5/15 – 1/23/15
• Review DBHDS assessment and recommendations for licensing regulation changes	6 months	2/2/15 – 7/31/15
DBHDS final revisions and approval	1 – 2 months	8/3/15 – 9/30/15
Review by Office of Attorney General	1 – 5 months	10/1/15 – 2/29/16
Submission for Virginia Standard Regulatory Review & Approval process	6 – 12 months	3/1/16 – 2/28/17
Promulgation and training of providers	4 – 6 months	3/1/17 – 9/1/17
Total Time (includes assessment activities from previous chart)	Approx. 36 months	

Outreach, Technical Assistance & Monitoring

DBHDS staff have begun to reach out to providers, support coordinators/case managers and advocacy organizations to inform them of the Final Rule requirements. Presentations were made at two large stakeholder forums in the spring of 2014. Additionally, two webinars were held in August 2014 to educate providers on the requirements of the HCBS Final Rule. It is the Department's intent that through regularly scheduled forums such as meetings of The Advisory Consortium on Intellectual and Developmental Disabilities (TACIDD: a broad-based stakeholder group), DBHDS newsletters, DMAS communications, quarterly provider roundtables, and support coordination and waiver provider trainings, the Commonwealth will continue to educate providers about the need to comply with and the nuances of the Final Rule.

DBHDS Licensing Specialists, Human Rights Advocates, Community Resource Consultants, Community Integration Managers, Community Services Board support coordinators/case managers, and DMAS Quality Management Review staff have frequent entrées to provider settings as they conduct inspections, provide technical assistance and engage in monitoring of individuals receiving waiver services. These professionals will use these opportunities to engage and educate providers about the Final Rule components and requirements. DBHDS and DMAS staff will review with providers their completed the self-assessment and provide suggestions and technical assistance to remedy areas of deficiency in relation to the settings requirements, as outlined in the Final Rule. DBHDS Community Resource Consultants (regionally-based technical assistance and training staff) will also review the Survey Monkey self-assessments of providers in their region. They will serve as an ongoing resource for providers, offering technical assistance, education and training related to complying with implementing the settings provisions of the Final Rule.

DBHDS Community Resource Consultants will be available to provide consultation to those providers that wish to comply, but are struggling with implementation. In addition, DMAS Long-Term Care Quality Management Review (QMR) staff will provide additional technical assistance and guidance to providers. Coordination of oversight and technical assistance between Office of Licensing staff, Community Resource Consultants as well as DMAS QMR staff will be essential in helping new providers who enroll in the future. While Office of Licensing staff will be able to assess and ensure that the provider implements and complies with the settings requirements, QMR staff will provide technical assistance and guidance related to ensuring that the setting as a whole is complying and that the quality of Medicaid waiver participants' experiences with receipt of services are comparable to those not receiving Medicaid funded HCBS. This will occur primarily through review of provider records for waiver participants and documentation to support any individually assessed restrictions that may be in place per the individual's person-centered service plan.

Beginning in March 2015, as DBHDS Office of Licensing staff conduct their routine visits, and as part of license renewals, they will provide technical assistance on current and future compliance with the settings provisions of the Final Rule. Additionally, the settings checklist that providers were required to complete and maintain on-site will, in coordination with the settings analysis tool developed for compliance monitoring, be incorporated into Office of Licensing staff's routine inspection items to monitor and ensure ongoing compliance. Provider responses to the Survey Monkey self-assessment will be reviewed by DBHDS staff, inclusive of Office of Licensing staff familiar with provider agencies, to validate the accuracy of providers' responses and identify issues that providers failed to note. If the provider does not respond to the survey, a follow-up letter will be sent by 2/27/15 advising the provider of the request to complete and submit the survey, the potential remediation actions that will be taken by the Office of Licensing upon promulgation of new regulations, and the potential disenrollment of providers whose settings do not comply with the CMS HCBS Final Rule settings requirements by March 2019.

Furthermore, DBHDS will advise providers that, beginning in March of 2015, Office of Licensing staff will visit each provider entity, as part of their license renewal, and determine the provider's ability for full compliance with the settings requirements. This activity will be completed for all DBHDS-licensed providers by April 2016. Those that do not demonstrate full compliance will be provided with technical assistance and guidance on actions to take to come into compliance.

Provider Sanctions and Disenrollment

Providers not currently meeting the settings requirements will be asked to regularly report on the status of their compliance with the requirements through the completion of follow-up self-assessments. Those provider agencies that do not comply by June of 2018 will receive a letter notifying them that they will likely forfeit their Medicaid Waiver provider status and be disenrolled by March of 2019. Some may opt to terminate their Medicaid provider agreements and some providers whose self-assessment reveals significant issues may choose to relocate to settings that will enable them to more easily comply. In such instances, support coordinators/case managers will notify individuals receiving services and their families, as appropriate, of the provider's status, anticipated disenrollment/relocation and the need to transition to a setting that complies with the Final Rule.

Support coordinators/case managers for individuals receiving supports in those settings will begin to work with the individuals needing to transition to alternate settings in July of 2018. Support coordinators/case managers will ensure a person-centered process and informed choice of alternate providers and locations for persons who wish to continue to receive waiver services. The process will include the following:

- Participants will be provided with reasonable notice of the need to transition and relocate to another setting.
- Participants will be actively engaged and involved in the development of their person-centered transition/relocation plan to include a relocation timeline and information and supports to make an informed choice for an alternate setting that complies with the settings requirements.
- Transition activities and assurances that services and supports are planned for and will be in place when an individual transitions.

Provider Enrollment & Licensing

As the new regulations are promulgated, Virginia will develop and operationalize procedures to validate conformance with settings requirements into existing processes for provider enrollment and licensing. The developed and implemented changes will be designed to ensure that, as new providers enroll and are licensed, they fully meet the settings requirements.

PUBLIC INPUT

Public Input Process

This ID Waiver Transition Plan is open for public comment for 30 days, December 18, 2014 – January 17, 2015. The public input process has been designed to allow individuals receiving waiver services, individuals likely to receive services, providers, stakeholders and advocacy and other organizations an opportunity to provide input and recommendations into the plan. All public comments and dates of public notice for the ID waiver transition plan will be retained on record and available for review.

Virginia will seek public comment through the DBHDS "My Life, My Community" webpage, DMAS and other specific state agency websites, print articles in newsletters disseminated by advocacy groups and trade organizations, electronic newsletters, list serves, social media and a print advertisement placed in a large Virginia newspaper carried in libraries throughout Virginia.

An email address, fax number and voicemail telephone line will be established for individuals, family members, and other advocates familiar with various provider settings to provide input to DBHDS on this draft transition plan and regarding their knowledge of provider settings' compliance with the Final Rule. And, in particular, those that DBHDS and DMAS can target for needed technical assistance.

Public Engagement & Stakeholder Involvement

Previous public engagement and stakeholder involvement activities resulted in public input, recommendations and guidance that have been considered and incorporated into this plan, as appropriate. A summary of activities follows:

- A presentation about the Final Rule was made at the 6/20/14 meeting of The Advisory Consortium on Intellectual and Developmental Disabilities, at which approximately 80 stakeholders (representing CSBs, private providers, family members, individuals, advocacy organizations and other state agency staff) were present. Input was gathered following the presentation.
- A preliminary draft Transition Plan was posted on the DBHDS website on August 5, 2014 [<http://www.dbhds.virginia.gov/individuals-and-families/developmental-disabilities>]. Comments were received via an accompanying email address for 30 days, ending September 6, 2014. Notification of this posting was sent to representatives of Community Services Boards, private provider associations, and advocacy groups, who were requested to distribute the information widely to their members and constituents. This posting did not serve as Virginia's formal notice of public input; however, information and comments gleaned from input on the posted draft and stakeholder/provider engagement activities did inform the development of this plan.
- Statewide "town hall style" webinars, sponsored by DMAS and DBHDS staff, were held on August 12, 2014 and August 26th (two separate webinars were held on that day) regarding the Final Rule elements and the Virginia draft Transition Plan, during which questions and input were also received from participants. These webinars were announced in the preliminary draft Transition Plan posted on the DBHDS website and via emails to representatives of Community Services Boards, private provider associations, advocacy groups, and other state agencies, which were requested to distribute the information widely to their members and constituents. In total, these three webinars accommodated the participation of approximately 300 individuals.

ID Waiver Transition Plan Timeline Regarding Compliance with CMS Final Rule 11-21-14

