

Contents

INTRODUCTION.....	2
OVERVIEW	3
ASSESSMENT OF COMPLIANCE.....	5
A. 1915(c) Waivers Operated by DMAS.....	5
B. 1915(c) Waivers Operated by DBHDS.....	5
COMPLIANCE AND MONITORING	6
PUBLIC INPUT	7
APPENDIX A: TECHNOLOGY ASSISTED WAIVER	9
APPENDIX B: ELDERLY OR DISABLED WITH CONSUMER DIRECTION WAIVER	12
APPENDIX C: ALZHEIMER’S ASSISTED LIVING WAIVER	20
APPENDIX D: DEVELOPMENTAL DISABILITIES SUPPORTS WAIVER	31
APPENDIX E: DAY SUPPORT WAIVER	40
APPENDIX F: INTELLECTUAL DISABILITY WAIVER	49
APPENDIX G: STATEWIDE TRANSITION PLAN TIMELINE	64
APPENDIX H: SUMMARY OF PUBLIC INPUT.....	66

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

INTRODUCTION

In January 2014, the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based services (HCBS) that requires states to review and evaluate home and community based (HCB) settings, including residential and non-residential settings. The HCBS final regulation, published January 16, 2014 and available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>, requires states to prepare and submit a Statewide Transition Plan. **CMS asks that statewide transition plans specifically address only the setting requirements of the final rule for home and community based services (The Rule). Therefore, this Statewide Transition Plan is specific to the analysis and recommendations regarding the settings for home and community based services.**

According to The Rule (**section 441.530**), the following characteristics must be present in order for a setting to be considered HCB:

- It is integrated in and supports full access to the greater community;
- It is selected by the individual from among a variety of setting options;
- It optimizes autonomy and independence in making life choices;
- It facilitates individual choice in selecting both services and service providers; and,
- It ensures individuals rights of privacy, dignity, respect, and freedom from coercion and restraint.

In a provider owned or operated residential setting, an individual has access to a private residential unit or dwelling where they are afforded the same protections under local landlord tenant laws (if applicable), or at offered some written agreement with provisions related to evictions and appeals processes comparable to the local jurisdiction's applicable landlord-tenant laws. Furthermore, individuals living in provider owned or operated residential settings must:

- Have access to privacy in their sleeping units;
- Have entrances lockable by the individual, with keys provided to appropriate staff as needed;
- Have a choice in selecting their roommate(s), if they share a room;
- Have the freedom to decorate and furnish their sleeping and/or dwelling unit;
- Have the ability to control their daily schedules and activities and have access to food at any time;
- Be able to have visitors at any time; and,
- Be physically accessible to the individual.

Any modifications made to any of the above criteria must be the result of identified specific needs discovered through an independent assessment, and then documented and justified in a person-centered service plan.

The Statewide Transition Plan is considered the vehicle through which states determine their compliance with The Rule's requirements for HCB settings. When improvements are needed, the plan

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

should describe to CMS the actions the state will take to assure full and ongoing compliance with the new settings requirements.

The Rule gives states time to "transition" to meet settings requirements. States have up to 5 years from the time The Rule took effect in March of 2014 to come into compliance. Virginia's transition plan expects to reach full compliance by March 2019. During the period covered by the transition plan, Virginia can continue to use Medicaid to fund all settings, including those that do not yet meet The Rule's settings requirements.

OVERVIEW

Virginia has six (6) 1915(c) waiver programs. The Department of Medical Assistance Services (DMAS) is the state Medicaid authority for all HCBS 1915(c) waivers and is also the operating agency for the following three HCBS 1915(c) waivers:

- **Technology Assisted Waiver (Tech):** The Tech waiver is a home and community-based waiver whose purpose is to provide services and supports in the community rather than in a hospital, nursing facility, or other medical long-term care facility. Individuals receiving Tech waiver services are dependent upon technological support and require substantial, ongoing skilled nursing care. There is no waiting list for this program.
- **Elderly or Disabled with Consumer Direction Waiver (EDCD):** The EDCCD waiver is a home and community based waiver whose purpose is to provide services and supports in the community rather than in a nursing facility. Individuals receiving EDCCD waiver services meet the nursing facility level of care criteria and have chosen to receive community-based services rather than being placed in a nursing facility. There is no waiting list for this program.
- **Alzheimer's Assisted Living Waiver (AAL):** The AAL waiver is a home and community based waiver whose purpose is to provide services and supports in the community rather than a nursing facility. Individuals receiving AAL waiver services meet the nursing facility level of care, receive an Auxiliary Grant, Virginia's SSI Supplement, and reside in an approved Assisted Living Facility that is licensed by the Virginia Department of Social Services. There is no waiting list for this program.

The Department of Behavioral Health and Developmental Services (DBHDS) is the operating agency for three 1915(c) waivers: the Intellectual Disability Waiver, the Individuals and Family Developmental Disabilities Supports Waiver and the Day Support Waiver.

On January 26, 2012, Virginia and the U.S. Department of Justice (DOJ) reached a settlement agreement to resolve DOJ's investigation of Virginia's training centers and community programs. The investigation concerned the Commonwealth's compliance with the Americans with Disabilities Act and the U.S. Supreme Court *Olmstead* ruling with respect to individuals with intellectual and developmental disabilities. The *Olmstead* Decision requires that individuals be served in the most integrated settings appropriate to meet their needs consistent with their choice. Every six months, the settlement's

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Independent Reviewer assesses Virginia's compliance with 122 provisions of the agreement, and the results of the review are posted on the DBHDS website.

Due to the requirements of the agreement, Virginia is currently undergoing a number of system and program changes. A cornerstone principle of the transformation is the development of increased options and choices including the separation of housing from services, such that individuals and families have increased opportunity to make service provision and housing decisions that are separate and distinct. Individuals will have increased choices about where they live and where they may obtain services. It is not possible to effectively present a transition plan for meeting the HCBS settings requirements without referencing and acknowledging the activities currently underway in response to the DOJ Settlement Agreement. Steps are being taken to comply with the agreement, and to ensure alignment of Settlement Agreement requirements with the requirements of the Rule, concurrent with the implementation of this transition plan in response to CMS' Rule.

During the course of the next four years the three 1915 (c) waivers described below will be amended to provide increased flexibility, service choices and options to better meet individual needs and represent the integrated lifestyle choices individuals and families desire. The re-designed waiver services will be fully operational and in full compliance with the settings requirements by March 2019. **This transition plan does not and cannot reflect the significant work being undertaken to transform the system per the 122 provisions of the Settlement Agreement.**

DBHDS is the operating agency for the following three HCBS 1915(c) waivers:

- **Intellectual Disability Waiver (ID):** The waiver provides services and supports in the community rather than in an Intermediate Care Facility for Individuals with Intellectual and/or Developmental Disabilities (ICF/IID). There is an active waiting list for this program.
- **Individual and Family Developmental Disabilities Supports Waiver (DD):** The waiver provides services and supports in the community rather than in an Intermediate Care Facility for Individuals with Intellectual and/or Developmental Disabilities (ICF/IID). There is currently an active waiting list for this program.
- **Day Support Waiver (DS):** The waiver provides services and supports for individuals who are on the ID waiver waiting list. Individuals may remain on the waiting list for the ID waiver while being served by the Day Support waiver and transfer to the ID waiver once a slot becomes available.

Each of these waiver programs will be amended to improve and enhance service options, choice, and quality to best meet the individualized needs and person centered goals of those within the waivers.

This Transition Plan is not intended to be a report of current and future efforts associated with compliance with DOJ and systems re-design and transformation. This transition plan is addressing the assessment of compliance with the settings requirements of the HCBS final rule and actions that need to be taken to ensure full compliance by March of 2019. Detailed information on system re-designs and transformation can be found on the DBHDS website; <http://www.dbhds.virginia.gov/individuals-and-families/developmental-disabilities/doj-settlement-agreement>.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

For each 1915(c) waiver, contained in the appendices of this Statewide Transition Plan is the following:

- The state's assessment of the extent to which its regulations, standards, policies, licensing requirements and other provider requirements ensure settings comport with the setting requirements; and, if needed,
- A description of the remedial actions the state proposes to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

A Statewide Transition Plan Timeline can be found in Appendix G. The timeline provides an overview of each waiver's compliance status, and, where needed, milestone toward meeting requirements by March 2019.

ASSESSMENT OF COMPLIANCE

A. 1915(c) Waivers Operated by DMAS

DMAS reviewed the regulations, standards, policies, licensing requirements, other provider requirements and service definitions for each HCBS waiver program operationalized by DMAS to determine whether each service/setting complies with the new HCBS settings requirements. DMAS concluded that services provided in an individual's home (a residence owned or leased by the individual or the individual's family, i.e. not a provider owned or operated setting), comply with the HCBS settings requirements. For this reason, the following DMAS administered HCBS waiver programs and/or services fully comply with the settings requirements:

- Technology Assisted Waiver: All services comply (Appendix A)
- EDCD Waiver: Consumer and Agency Directed Personal Care Services comply (Appendix B)

The following DMAS administered HCBS waiver programs and/or services require transition actions for compliance:

- EDCD Waiver: Adult Day Health Care Services (ADHC) requires action to assure full and on-going compliance (Appendix B)
- AAL Waiver: Requires action to assure full and on-going compliance (Appendix C)

B. 1915(c) Waivers Operated by DBHDS

DMAS, the state Medicaid authority, and DBHDS, the operating agency for the ID, DD and Day Support waivers, have worked together to review the regulations, standards, policies, licensing requirements, other provider requirements and service definitions for each HCB waiver program operationalized by DBHDS to determine whether each service/setting complies with the new HCBS settings requirements. DBHDS and DMAS have concluded that services provided in an individual's home (a residence owned or leased by the individual or the individual's family, i.e., not a provider owned or operated setting) comply with the HCBS settings requirements. For this reason, the following DBHDS administered HCBS waiver programs and/or services comply:

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

- DD Waiver: In-home residential services comply (Appendix D)
- ID Waiver: In-home residential services comply (Appendix E)

The following DBHDS administered HCBS waiver programs and/or services require transition actions for compliance:

- DD Waiver: Prevocational Services, Day Support and Supported Employment Services require action to ensure full and ongoing compliance (Appendix D)
- ID Waiver: Congregate Residential services, Day Support services require action to ensure full and on-going compliance (Appendix E).
- Day Support Waiver: Day Support services, Prevocational services and Supported Employment services require action to ensure full and ongoing compliance (Appendix F).

COMPLIANCE & MONITORING

All remediation actions will be completed no later than March, 2019. Progress on completion of this Statewide Transition Plan will be monitored at least every six months by the Compliance and Monitoring Team (C&MT) and a status update will be posted with opportunity for public input.

The C&MT will include individuals and family members, state agency representatives, private providers, advocacy organizations, CSB Case Management/Support Coordinators, and other stakeholders, and will be first convened in June 2015 to:

- Develop cross agency subject matter expertise on the final rule and the transition plan;
- Ensure a collective understanding and consistent interpretation of requirements, transition plan milestones and guidance documents;
- Advise and support the education and training of professionals, providers and stakeholders;
- Ensure a cohesive and broadly represented approach toward compliance, monitoring and capacity issues; and,
- Ensure successful achievement of desired outcomes and full compliance with the HCBS final rule settings requirements by March of 2019.

The development of a C&MT represents the state's intention to oversee, support and monitor full compliance with the settings requirements of the HCBS final rule. The team will be empowered to:

- Provide recommendation regarding technical assistance needs about the final rule including documentation for exceptions;
- Review and comment on developed materials and resources;
- Gather information on barriers which can assist planning for service provider and workforce development;
- Provide recommendations and assist with the development of solutions and implementation of strategies aimed at achieving desired outcomes;

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

- Oversee development and implementation of a communications strategy for providers, individuals and families regarding needed changes; and,
- Report to state leadership on the status of compliance.

In addition to the stakeholders mentioned above, the C&MT will include individuals from different divisions within agencies, and representation will reflect the geographic diversity in the state. The team will ensure due diligence for the multiple and complex aspects of achieving a seamless and aligned approach across waivers and populations. It is expected that the full team will meet twice a year. It is also expected that workgroups organized around specific transition plan goals and/or remediation actions will be established. The composition and role of the workgroups will be developed in consultation with the C&MT at its first meeting.

PUBLIC INPUT:

This Statewide Transition Plan was open for public comment for 30 days, February 5, 2015 – March 8, 2015. The public input process was designed to allow individuals receiving waiver services and their families, individuals likely to receive services, providers, stakeholders, advocacy groups and other organizations an opportunity to provide input and recommendations into the plan. All public comments and dates of public notice for the Statewide Transition Plan will be retained on record and available for review.

Throughout the 30 day public period public notice was provided through the DMAS website (http://www.dmas.virginia.gov/Content_pgs/HCBS.aspx), DBHDS "My Life, My Community" webpage (<http://www.dbhds.virginia.gov/individuals-and-families/developmental-disabilities/my-life-my-community>); and, on Sunday, February 8, 2015 a printed legal notice was placed in a large Virginia newspaper carried in libraries throughout Virginia. Additional dissemination of the notice was achieved through other state agencies posting the notice, postings/announcements in newsletters disseminated by advocacy groups and trade organizations, electronic newsletters, list serves, and social media.

An email address and fax number were established and disseminated through the public notice so that individuals, family members, and other advocates familiar with various provider settings may submit comments on the draft transition plan and share their knowledge of settings and compliance with the Final Rule. In addition, a dedicated telephone number was established for individuals/families to request a paper copy of the transition plan and to leave comment. This telephone number will also be used as a means of reporting on provider compliance status, for targeted training and technical assistance. The appendices include additional details on the ways DMAS and DBHDS solicited comments and engaged stakeholders.

DMAS and DBHDS anticipate needed updates, modifications and clarifications to the transition plan once CMS reviews the plan and provides recommendations, technical assistance and guidance. To ensure an open and transparent process including stakeholder involvement DMAS and DBHDS will seek

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

additional public input on the revised plan through a 30 day public comment period and a minimum of two notices to the public about the opportunity for public comment.

To ensure effective outreach and engagement of individuals and families targeted efforts will be carried out to address the need to ensure individuals and families are informed about The Rule and its intended outcomes and about the transition plan and expected changes to be implemented. The following steps will be taken:

- DBHDS will seek opportunities to mail information on the HCBS final rule and transition plan to individuals on the DD waiver waitlist in conjunction with other planned mailings and announcements.
- DBHDS will seek opportunities to mail information on the HCBS final rule and transition plan to individuals on the ID waiver waitlist in conjunction with other planned mailings and announcements.
- CSBs and casemanagers/support coordinators will be provided with access to flyers on the requirements of The Rule, with information on the contents and location of the transition plan on the DBHDS and DMAS websites. CSB staff will be asked to distribute the flyer to individuals during face to face visits & post in their offices.
- DBHDS will work together with the VACSB Developmental Services Council over the course of the next year and a half to develop a plan and detailed timeline for transitioning individuals displaced by providers unable to meet compliance within established deadlines.
- DMAS will mail information on the HCBS final rule and transition plan to individuals receiving AAL waiver services and their families/emergency contact as appropriate
- DMAS will contact ADHC providers and provide them with information on the HCBS final rule and transition plan and ask them to post and distribute information flyers.

DBHDS and DMAS will maintain on an ongoing basis an email address and phone number for individuals and families to provide ongoing comment and feedback, and as a means of reporting on provider compliance status, for targeted training and technical assistance. DBHDS and DMAS will explore ways to gather information on the experiences of individuals through a comprehensive assessment and service planning tool associated with the DMAS quality management review process, as well as mechanisms to get direct input from people with disabilities outside of the assessment process. Proposed questions in the tool will address a person's choice of where they live and work. It is expected that the transition plan will evolve with the incorporation of stakeholder input, and through review of provider data, as the state works to come into compliance with the HCBS setting requirements. Any substantive changes to the transition plan will be posted for public input.

RECORDS RETENTION

Pursuant to the requirements of 42 C.F.R. § 434.6 (a) and 42 C.F.R § 434.38, all books, documents, papers, electronic files and other materials in the creation and implementation of this Statewide Transition Plan will be retained by DMAS and DBHDS for the prescribed number of years.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Setting Requirement

Appendix A: Technology Assisted Waiver

APPENDIX A: TECHNOLOGY ASSISTED WAIVER

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Setting Requirement

Appendix A: Technology Assisted Waiver

INTRODUCTION

On January 16, 2014 the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based services (HCBS) that requires states to assess home and community based settings to determine compliance with the settings requirements of the final rule. The Virginia Department of Medical Assistance Services (DMAS), the state Medicaid authority, is the operating agency for the Technology Assisted (Tech) waiver. DMAS has worked to develop this Transition Plan as a means of outlining current status of compliance with Centers for Medicare and Medicaid Services (CMS) Final Rule.

Virginia's Technology Assisted waiver assessment of settings and needed actions includes the following information:

- A. Assessment of Characteristics of Tech waiver settings across the state
- B. Assessment of Tech waiver regulations and related policies
- C. Assessment activities chart
- D. Remediation Actions

ASSESSMENT OF SETTINGS & NEEDED ACTIONS

A. Assessment of Characteristics of Tech waiver settings across the state

DMAS reviewed the characteristics of settings in which individuals receiving Tech waiver services reside. The state has determined that all participants reside in settings that are fully compliant with the settings requirement of the HCBS final rule. Individuals receiving Tech waiver services reside in their own home or family home. Services are not provided in a provider owned or operated setting and the settings fully comport with CMS requirements. Each setting:

- Is integrated in and supports full access to the greater community;
- Is selected by the individual;
- Ensures an individual's right to privacy, dignity, respect and freedom from coercion and restraint;
- Optimizes individual initiative, autonomy and independence; and
- Facilitates individuals' choice regarding services and supports and who provides them.

B. Assessment of Tech waiver regulations and related policies

The assessment process included a review of Technology Assisted waiver regulations and related policies and procedures. The assessment concluded that current regulations are supportive of the HCBS final rule. Regulations require:

- Freedom of choice of service provider;
- Reasonable accommodations of individuals needs and preferences;
- Assistance with community access as needed and desired;
- The provider to protect and promote the rights of each individual; and,
- Services and supplies provided in the same quality and in the same mode of delivery as are provided to the general public.

C. A chart detailing assessment activities, progress and status begins on the next page.

D. Remediation actions are not deemed necessary for the Tech waiver. However, a Tech waiver representative will participate on the Compliance and Monitoring team and assure ongoing compliance.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Setting Requirement

Appendix A: Technology Assisted Waiver

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
Site Landscape Assessment	Evaluate the types of services being provided to individuals through the Tech waiver, and in what types of settings throughout the state. Also evaluate the types of providers rendering services through the waiver.	Consult with Tech Waiver Staff	7/14/14	Tech Waiver Staff, Waiver Operations Staff	Tech waiver staff identified that services are offered for individual waiver participants in their own or family home (e.g. there is no residential component to waiver). Provider type has been identified as Home Care agencies that provide Private Duty Nursing.
Setting Requirement Compliance Assessment	Assess sites statewide providing HCBS services to individuals in Tech waiver as compliant, partially compliant, or non-compliant.	Consult with Tech Waiver Staff, Review of QMR reports, Review of Tech Waiver Staff visit checklists.	9/15/14	Tech Waiver Staff, Waiver Operations Staff	The settings assessment concluded that services provided through this waiver are provided (mostly) within the individual's home. Home Care agency staff do provide support to individuals in the community for activities such as shopping and recreation. Tech Waiver staff assess the home environments to ensure that the home is conducive to the health and well-being of individuals receiving services.
Setting Characteristics Assessment	Assess sites statewide providing HCBS to individuals in the Tech waiver as either Home and Community Based, Institutional, or Presumed Institutional	Consult with Tech Waiver Staff	9/15/14	Tech Waiver Staff, Waiver Operations Staff	Services are provided within the home. Tech waiver services are not provided in a provider owned or operated setting, a segregated institutional setting or a setting with the characteristics of an institutional setting. The settings are already Home and Community Based.
Waiver Regulations and Policy Assessment	Review and crosswalk waiver regulations, licensing of providers for the waiver, provider manuals and policy with the settings requirements	Review DMAS and other agency regs. governing the waiver (licensing of providers for the waiver).	11/5/2014	Tech waiver Staff, Waiver Operations Staff	The assessment of settings finds that services are provided in settings that fully comply with the settings requirement and waiver regulations and policies are currently in support of the settings requirements.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Settings Requirements
Appendix B: Elderly or Disabled with Consumer Direction Waiver

APPENDIX B: ELDERLY OR DISABLED WITH CONSUMER DIRECTION WAIVER

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

INTRODUCTION

On January 16, 2014 the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based services (HCBS) that requires states to assess home and community based settings to determine compliance with the settings requirements of the final rule. The Virginia Department of Medical Assistance Services (DMAS), the state Medicaid authority, is the operating agency for the Elderly or Disabled with Consumer Direction (EDCD) waiver. DMAS has worked to develop this Transition Plan as a means of outlining current status of compliance with Centers for Medicare and Medicaid Services (CMS) Final Rule.

Virginia's EDCD waiver assessment of settings and needed actions includes the following information:

- A. Assessment of characteristics of EDCD waiver settings across the state
- B. Assessment of EDCD waiver and licensure regulations and related policies
- C. Public/Stakeholder engagement
- D. Assessment activities chart
- E. Remediation actions

ASSESSMENT OF SETTINGS

A. Assessment of characteristics of EDCD waiver settings across the state

DMAS reviewed the characteristics of settings in which EDCD waiver personal care services are provided. The state has determined that this service is provided in settings that are fully compliant with the settings requirements of the HCBS final rule. Individuals receiving EDCD waiver services reside in their own home or family home. Every individual receiving EDCD waiver personal care services is assessed in their home environment. Services are not provided in a provider owned or operated setting and the state has concluded that the settings fully comport with the CMS settings requirements. Each setting:

- Is integrated in and supports full access to the greater community;
- Is selected by the individual;
- Ensures an individual's right to privacy, dignity, respect and freedom from coercion and restraint;
- Optimizes individual initiative, autonomy and independence; and
- Facilitates individual's choice regarding services and supports and who provides them.

DMAS reviewed the characteristics of settings in which individuals receive EDCD waiver Adult Day Health Care (ADHC) services. The state identified ADHC service settings by site to include address, number of EDCD waiver participants served and contact information. The state has determined that the majority of ADHC services are provided in settings that fully comply with the settings requirements of the HCBS final

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

rule. The state has identified 50 unique providers of ADHC services and approximately 56 settings. Of the 56 settings, 53 are located in a setting that is fully compliant with The Rule. Each setting:

- Is integrated in and supports full access to the greater community;
- Is selected by the individual;
- Ensures an individual's right to privacy, dignity, respect and freedom from coercion and restraint;
- Optimizes individual initiative, autonomy and independence; and
- Facilitates individuals' choice regarding services and supports and who provides them.

Three settings serving approximately 30 of the 572 unique individuals receiving ADHC services through the EDCD waiver are located in settings presumed to be institutional because the settings are located on the grounds of a nursing facility or hospital. Telephone interviews were conducted with the staff at the three ADHC sites identified. Each site was described with the following characteristics: provides services separate from the nursing facility/hospital; does not share staff; does not participate in activities at the nursing facility or with nursing facility residents including meals and recreational activities; provides access to the greater community; and, the ADHC provider is selected by the individual.

DMAS will conduct continued assessment of the three sites presumed to be institutional to determine if they are in fact HCB settings. This assessment will be ongoing for the next 12 months (March 2016). Once the determination is made regarding the compliance of the setting with The Rule, DMAS will provide an update to CMS. Should the assessment result in a determination of compliance with The Rule, DMAS will submit evidence to CMS for heightened scrutiny of those provider agencies. If the determination is made that the settings do not comply, DMAS will submit to CMS a remediation strategy designed to support the settings to come into compliance. This strategy would include the development of additional program policies and regulatory requirements for ADHC providers to ensure compliance with The Rule. This process will involve multiple site visits, interviews, review of documentation, collection of evidence for heightened scrutiny, as appropriate, and implementation of remediation actions, as appropriate. For this reason, additional time for assessment is needed. Providers that are unable to comply with The Rule will forfeit their Medicaid Waiver provider status and be disenrolled; disenrollment will occur after DMAS has regulatory authority and no later than March of 2019. In such instances, DMAS will notify individuals receiving services and their families, as appropriate, of the provider's status, anticipated disenrollment and the need to transition to a setting that complies with the Final Rule.

Individuals receiving EDCD waiver services in an ADHC setting deemed to be non-compliant will be notified of the status of their ADHC site and the need to choose a different site. They will be provided with contact information for alternate providers. Individuals and families will have the opportunity to determine through informed choice an alternate provider of ADHC services. The process will include the following:

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

- Individuals will be provided with reasonable notice of the need to transition and select another setting.
- Individuals will be actively engaged and involved in an individualized and person-centered manner in the selection of a new provider/site 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.

B. Assessment of EDCD waiver and licensure regulations and related policies

The assessment process included a review of EDCD waiver regulations and related policies and procedures. The assessment concluded that current regulations are supportive of the HCBS final rule. Regulations require:

- Freedom of choice of service provider;
- Reasonable accommodations of individuals needs and preferences;
- Assistance with community access as needed and desired;
- The provider to protect and promote the rights of each individual; and that,
- Services and supplies provided in the same quality and in the same mode of delivery as are provided to the general public.

C. Public/Stakeholder engagement

On July 29, August 5, and August 11, 2014 from 9:00 am - 10:30 am the Department of Medical Assistance Services conducted a WebEx session (webinar) entitled **Overview of CMS Final Ruling on Home and Community Based Settings** for Medicaid providers who are classified as Adult Day Health Centers, Transition Coordinators, Services Facilitators, and Home Health Agencies. The session was specifically targeting administrators and staff that conduct assessments, develop plans of care and are involved in implementing plans of care. The agenda included the following content and discussion:

- CMS Final Rule on Home and Community Based Settings Background and Purpose
- CMS Final Rule Requirements
- Implications for Virginia Medicaid Home and Community Based Waivers
- Progress to Date
- Summary
- Questions

See the Public Input section in Introduction for information on continued public/stakeholder engagement.

D. A chart detailing assessment activities, progress and status begins below.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

Task(s)	Description of Tasks	Assessment Methods	Proposed End Date	Responsible Parties/Stakeholders	Progress / Status
Site Landscape Assessment	Evaluate the types of services being provided to individuals through the waiver, and in what types of settings throughout the state. Also evaluate the types of providers rendering services through the waiver.	Internal consultation with LTC staff, EDCD SME, consultation with providers and stakeholders.	1/15/2015	Waiver Operations Staff, EDCD SME, VDSS Licensing, Stakeholders and stakeholder associations	Met with EDCD SME and discussed the types of providers and the types of settings in which services are provided through the waiver. Determined that services are provided by providers that are primarily non-residential in nature and/or in a non-provider owned or operated setting.
Setting Requirement Compliance Assessment	Assess sites statewide providing HCBS to individuals in the EDCD waiver as compliant, partially compliant, or non-compliant.	Internal review of QMR reports, provider monthly or quarterly reports on waiver participants, observations made from site visits	1/15/2015	LTC Staff (QMR, EDCD SME, Waiver Operations Staff), VDSS Licensing	Services provided in individuals' own homes or apartments are settings that are HCB and are fully compliant. Center-based ADHC settings are mostly compliant.
Setting Characteristics Assessment	Assess sites statewide providing HCBS to individuals in the EDCD waiver as either Home and Community Based, Institutional, or Presumed Institutional	Internal review of QMR reports, observations made during site visits	1/15/2015	LTC Staff (QMR, EDCD SME, Waiver Operations Staff), VDSS Licensing	Services provided in individuals' own homes or apartments are settings that are HCB and are fully compliant. Center-based ADHC settings are mostly compliant.
Setting Presumed to be Institutional	Settings of ADHC are either located on the same grounds as institutions or have the effect of	Gather additional documentation to determine the need to request Heightened	3/17/2016	Waiver Operations Staff, Aging Service Staff, VDSS Licensing	Three ADHC sites have been identified as sites that are located in the same grounds as an

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

Task(s)	Description of Tasks	Assessment Methods	Proposed End Date	Responsible Parties/Stakeholders	Progress / Status
	isolating individuals. Settings of ADHC services will either need to undergo heightened scrutiny, or will be assessed as noncompliant by the state.	Scrutiny (for sites that can be considered HCB) and/or inability to comply: Setting Self-Assessment & validation, QMR reports, Licensing Reports (if applicable), site visits, interviews with site administrators.			institution/NF.
Regulatory & Policy Review/ Assessment	Review and assess EDCD waiver regs, as well as regs and policy through any other agency that is involved in licensing of EDCD Providers.	Staff reviews by DMAS staff and other agencies with regs. governing the waiver (licensing of providers for the waiver) for each agency's respective set of EDCD waiver regs.	1/15/2015	Waiver Operations Staff, Aging Services Staff, VDSS Licensing, Stakeholders	EDCD Waiver regulations & licensure and related policies generally support the final rule setting requirements. More specific language could be incorporated into regulation and policy to strengthen the expectation of compliance with the setting requirements.

E. Remediation Actions

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
Setting Presumed to be Institutional	Based on assessment results, notify settings deemed out of compliance of the determination and develop strategies necessary to become compliant.	6/2016	DMAS	ADHC providers will take actions to comply with The Rule.
Notification of individuals/families	Individuals and family members impacted by potential provider disenrollment notified of provider status and provided information and resources to make informed choice of alternate provider.	7/2018	DMAS	Individuals provided with reasonable notice, timeline, process and resources for choice of alternative setting.
Regulatory and Policy Updates	Based on qualitative and quantitative regulatory and policy assessments develop, propose, and implement regulatory and policy changes to better align with HCBS settings requirements. Completed by date includes the development, public comment, revision, Attorney General other required reviews, approval and promulgation of regs by 10/18.	Completed by 10/2018	DMAS Waiver Operations Staff, Aging Services Staff, VDSS Licensing	Enhancement of regulations and policies in full support and alignment with the Final Rule's settings requirements
Provider Manual Changes	Changes to provider manuals to supplement regulations to ensure that providers have the information and instruction needed to implement and comply with settings requirements, in addition to following what is	Completed by 3/2019	DMAS Waiver Operations Staff, Aging Services Staff, VDSS Licensing	Instructive provider manual providing needed guidance on settings requirements and compliance

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix B: Elderly or Disabled with Consumer Direction Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	already existent in current DMAS and VDSS regulations			
Education & Training	Design, develop and implement an education and training plan incorporating the HCBS final rule and Virginia's Statewide Transition Plan into training and education materials for providers, individuals and families, professionals and other stakeholders and interested parties.	Plan and Materials Completed by 3/2016 Activities will be Ongoing	DMAS Waiver Operations Staff and QMR Staff, Aging Services Staff, VDSS Licensing	Education and training resources and materials that reflect settings requirements and the Final Rule
Provider Enrollment	Design and implement a plan for incorporating necessary training and education into provider enrollment, orientation and provider employee training.	Implemented by 7/2018 Ongoing	DMAS Waiver Operations Staff, QMR and Provider Enrollment staff, Aging Services Staff, VDSS Licensing	Educated providers and assurance of compliance upon enrollment
Compliance Monitoring	Participate in a multi-agency/department and stakeholder compliance monitoring team.	6/2015 and Ongoing	Compliance & Monitoring Team	Multi-agency development of SME's and consistent implementation and oversight of compliance with rule and transition plan milestones

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Settings Requirements
Appendix C: Alzheimer's Assisted Living Waiver

APPENDIX C: ALZHEIMER'S ASSISTED LIVING WAIVER

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

INTRODUCTION

On January 16, 2014 the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based services (HCBS) that requires states to assess home and community based settings to determine compliance with the settings requirements of the final rule. The Virginia Department of Medical Assistance Services (DMAS), the state Medicaid authority, is the operating agency for the Alzheimer's Assisted Living (AAL) waiver. DMAS has worked to develop this Transition Plan as a means of outlining current status of compliance with Centers for Medicare and Medicaid Services (CMS) Final Rule.

Per regulation, individuals receiving AAL waiver services must reside in an Assisted Living Facility (ALF) licensed by the Department of Social Services. Currently Virginia has 16 total enrolled ALFs to provide HCBS for AAL waiver participants. Of the 16, 13 are actively providing services, and three are enrolled, but currently not providing services for any individuals on the AAL waiver. As of 12/31/14, 54 of 200 available slots for the AAL waiver are being used.

Virginia's AAL waiver assessment of settings and needed actions includes the following information:

- A. Assessment of Characteristics of AAL waiver settings across the state
- B. Assessment of AAL waiver regulations, licensing regulations and related policies
- C. Public/Stakeholder Engagement
- D. Assessment activities chart
- E. Remediation Actions

ASSESSMENT OF SETTINGS

A. Assessment of Characteristics of AAL waiver settings across the state

After completing on-site visits and processing observations made during the visits as well as analyzing provider responses to the provider self-assessment, and obtaining preliminary data from DMAS Quality Management Review (QMR), DMAS determined that current AAL waiver providers may be Home and Community Based, in spite of having characteristics that could otherwise result in an initial determination of being "Presumed to be Institutional." However, additional assessment is needed.

Based on the provider self-assessment, there is a need for AAL waiver providers to strengthen person centered planning and documentation practices in person centered plans to support, in an individualized manner, modifications to some of the setting requirements. AAL waiver providers have identified some of the setting requirements as being challenging to apply to the Alzheimer population. Providers expressed the following concerns in the self-assessment:

- 1) Individuals may require safety mechanisms regardless of the setting they are in to prevent wandering (therefore use of secured units or buildings is necessary).
- 2) Some individuals like, and may need, routine to function at their highest level.
- 3) Some individuals like being congregated with other people and the need for increased privacy has historically not been a concern.
- 4) Coming and going freely into the greater community can be a safety issue.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

- 5) Activities are primarily based in the facility and facilitated by AAL waiver provider staff. Outings into the greater community are organized by activity departments, and not always as a result of input from family/individual residents.

DMAS intends continued assessment of the settings and quality of the experience of individuals receiving AAL waiver services. Based on the results of the assessment, and if warranted, may submit justification of the ALF setting being assessed as home and community based to CMS by March 15, 2016. The information will be provided to the Secretary of Health and Human Services if it is decided that there is a need to make a final determination through heightened scrutiny that one or more AAL waiver service setting is or is not home and community based. Additional interviews with stakeholders, individuals receiving AAL waiver services and providers, and additional site visits will be used to make the final determination if an ALF(s) enrolled as AAL waiver provider(s) in Virginia can be considered home and community based. Consultation from experts in dementia will be sought. For these reasons, additional time beyond 6 months is needed to complete the assessment.

If the determination is made that the ALF setting does not comply with The Rule, but could, DMAS will submit to CMS a remediation strategy designed to support the settings to come into compliance. This strategy may include the development of additional program policies and regulatory requirements for enrolled ALF providers to ensure compliance with The Rule. Providers that are unable to comply with The Rule will forfeit their Medicaid Waiver provider status and be disenrolled; disenrollment will occur after DMAS has regulatory authority and no later than March of 2019. In such instances, DMAS will notify individuals receiving services and their families, as appropriate, of the provider's status, anticipated disenrollment and the need to transition to a setting that complies with the Final Rule.

Individuals receiving AAL waiver services in a setting deemed to be non-compliant will be informed of the need to move to a different site. They will be provided with contact information for alternate sites and individuals and families will have the opportunity to determine through informed choice an alternate provider of AAL waiver services. The process will include the following:

- Individuals will be provided with reasonable notice of the need to transition and to select another setting.
- Individuals will be actively engaged and involved in an individualized and person-centered manner in the selection of a new provider/site 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.

B. Assessment of AAL waiver regulations, licensing regulations and related policies

After a thorough comparative policy analysis of current DMAS AAL waiver regulations as well as VDSS ALF Licensing regulations, DMAS has determined that through the joint application and authority of both sets of regulations, Medicaid enrolled Assisted Living Facilities (ALFs) with secured memory care units

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

overall are already compliant with the settings requirements of the Final Rule. Through the policy analysis, DMAS did identify three major areas in need of improvement to bring all Medicaid enrolled ALFs into full compliance with all of the setting requirements:

- 1) More explicit language to encourage stronger community integration of individuals in secured memory units into the "greater community", with greater community meaning outside the ALF's grounds.
- 2) Rewording regulations related to snacks and mealtime to ensure that individuals in ALFs have access to food at all times, and not on just a set schedule determined by the facility, unless contraindicated by a physician.
- 3) Placing within the regulations for ALFs that individuals have a right to lock their room and have a choice of their roommate (so long as safety and welfare of individual is not compromised).

The first step to enforcement is having the appropriate regulations in place to which providers, licensing staff and QMR staff may refer when doing audits to ensure compliance. As part of the initial compliance assessment process, DMAS LTC engaged in conversations with VDSS Licensing staff regarding possible changes to be made to the licensing regulations for all ALFs in the Commonwealth of Virginia. These initial discussions helped to re-emphasize the need for joint enforcement of both sets of agency regulations for currently enrolled AAL providers. After conducting a comparative policy analysis of VDSS Licensing regulations for ALFs (including the licensing regulations for ALFs with secured memory care units), DMAS LTC staff concluded that based upon what is currently in the regulations, ALFs (Medicaid enrolled or non-Medicaid enrolled) are already mostly compliant with the setting requirements and are already home and community based. Any regulatory changes that will be proposed for ALFs should not present challenges to either current or future licensed ALFs.

C. Public/Stakeholder Engagement

On July 29, August 5, and August 11, 2014 from 9:00 am - 10:30 am the Department of Medical Assistance Services conducted a WebEx session (webinar) entitled **Overview of CMS Final Ruling on Home and Community Based Settings** for Medicaid providers who are classified as Adult Day Health Centers, Transition Coordinators, Services Facilitators, and Home Health Agencies. The session was specifically targeting administrators and staff that conduct assessments, develop plans of care and are involved in implementing plans of care. The agenda included the following content and discussion:

- CMS Final Rule on Home and Community Based Settings Background and Purpose
- CMS Final Rule Requirements
- Implications for Virginia Medicaid Home and Community Based Waivers
- Progress to Date
- Summary
- Questions

See the Public Input section in the Introduction for information on continued public/stakeholder engagement.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

D. A chart detailing assessment activities, progress and status begins below.

Task(s)	Description of Tasks	Assessment Methods	Proposed End Date	Responsible Parties/Stakeholders	Progress / Status
Site Landscape Assessment	Evaluate what services are being provided as part of the AAL waiver, and in how many facilities across the commonwealth. Identify how many individuals are currently utilizing the AAL waiver.	Evaluation will be conducted using the following methods/resources: DMAS Long Term Care (LTC) Provider Enrollment Records	1/15/2015	DMAS LTC Staff, Virginia Department of Social Services Licensing (VDSS), Virginia Assisted Living Association (VALA), Alzheimer's Association of Virginia	16 total enrolled ALFs in Virginia to provide HCBS for AAL waiver participants. Of the 16, 13 are actively providing services, and three are enrolled, but currently not providing services for any individuals on the AAL waiver. <ul style="list-style-type: none"> As of 12/31/14, currently 54 of 200 available slots for the AAL waiver are being used.
Provider Self-Assessment & Analysis	Enrolled Medicaid AAL providers will conduct a self-assessment of their current compliance level with the setting requirements and Person Centered Planning standards in the Final Rule, and will offer feedback to DMAS.	Assessment conducted using A modified version of CMS' Tool "Exploratory Questions" sent directly to current AAL waiver providers to fill out and return to DMAS.	9/15/2014	DMAS LTC, VALA, ALZ Association, Enrolled AAL Waiver Providers	8/29/14 – Received a total of 11 (of 16) provider self-assessments.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

Task(s)	Description of Tasks	Assessment Methods	Proposed End Date	Responsible Parties/Stakeholders	Progress / Status
<p>Setting Requirements Compliance Assessment</p>	<p>Assess currently (Medicaid) enrolled assisted living facilities (ALFs) providing HCBS to individuals participating in the AAL waiver for current, or ability for future compliance with Final Rule Setting Requirements.</p>	<p>Assessment conducted using the following methods/resources:</p> <ul style="list-style-type: none"> • DMAS sample site visits • Quality Management Review (QMR) data • VDSS Licensing Observations • Input from VALA, ALZ Association, and providers • Input from individuals and families 	<p>3/15/2017</p>	<p>LTC Staff (QMR, AAL SME, Waiver Operations Staff), VDSS Licensing, VALA, ALZ, AAL Waiver Providers</p>	<p>3/6/14 – Initial on-site visit completed for an AAL waiver provider in the Tidewater Regional area of Virginia. 5/14/14 – Input from Virginia Assisted Living Association (VALA), Alzheimer's Association, and a sample of current AAL waiver providers indicated concern regarding how the settings requirements work well with receiving AAL services. 8/18/14 – Second on-site visit to an AAL waiver provider completed in the Richmond Metro area. 8/20/14 – Third on-site visit to an AAL waiver provider completed in the southwestern region of Virginia. 9/3/14 – Preliminary data regarding areas of non-compliance based upon current regulations and requirements obtained from QMR.</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

Task(s)	Description of Tasks	Assessment Methods	Proposed End Date	Responsible Parties/Stakeholders	Progress / Status
Setting Characteristics Assessment:	Assess currently enrolled (Medicaid) ALFs providing HCBS to individuals in the AAL waiver as Home and Community Based, Institutional, or Presumed Institutional.	Assessment conducted using the following methods/ resources: <ul style="list-style-type: none"> • DMAS site visits • DMAS QMR data • VDSS Licensing observations • Stakeholder input • CMS Transition Plan Toolkit (Guidance on Settings that Isolate) 	3/17/2016	DMAS LTC, VDSS Licensing, VALA, ALZ Association, AAL Waiver Providers Gather additional documentation to determine the need to request Heightened Scrutiny (for sites that can be considered HCB): Setting Self-Assessment, QMR reports, Licensing Reports (if applicable), site visits, interviews with site administrators/families.	11/5/14 – Based on comparative policy analysis, observations made during on-site visits, as well as provider feedback, DMAS LTC determined that ALFs enrolled as AAL waiver providers are likely Home and Community Based.
Regulatory & Policy Review/ Assessment	Review and assess AAL waiver regs, as well as regs and policy through any other agency that is involved in licensing of AAL Providers.	Staff reviews by DMAS staff and other agencies with regs. governing the waiver (licensing of providers for the waiver) for each agency's respective set of regs.	11/15/2014	Waiver Operations Staff, Aging Services Staff, VDSS Licensing, Stakeholders	Comprehensive assessment and comparative analysis completed. Regulations generally support the settings requirements however, there are areas for Improvement.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

Task(s)	Description of Tasks	Assessment Methods	Proposed End Date	Responsible Parties/Stakeholders	Progress / Status
Quality of Individual Experience Assessment	Collect information regarding the quality of an individual on the AAL waiver's experience in current Medicaid enrolled ALFs.	Staff reviews by DMAS staff and other agencies with information and insight on the quality of experience. Provider self-assessment	3/15/2016	DMAS staff	3/6/14, 8/18/14, 8/20/14 – Onsite visits conducted with a sample of AAL waiver provider settings. Review of ISPs for individuals receiving AAL services. Tour of facilities conducted with administrators of facilities and observations made of how services are provided to participants during recreational and meal times.

E. Remediation Actions

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/Stakeholders	Outcome
Setting Presumed to be Institutional	Based on assessment results, notify settings deemed out of compliance of the determination develop strategies necessary to become compliant.	June/2016	DMAS, identified ALFs	AAL providers will take actions to comply with the rule. DMAS will work with those providers unable to comply on a transition

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
				strategy.
Notification of individuals/families	Individuals and family members impacted by potential provider disenrollment notified of provider status and provided information and resources to make informed choice of alternate provider.	7/2018	DMAS	Individuals provided with reasonable notice, timeline, process and resources for choice of alternative setting.
Regulatory and Policy Updates	Based on qualitative and quantitative regulatory and policy assessments develop, propose, and implement regulatory and policy changes to better align with HCBS settings requirements. Completed by date includes the development, public comment, revision, Attorney General other required reviews, approval and promulgation of regs by 10/18.	Completed by 3/2018	DMAS Waiver Operations Staff, Aging Services Staff, VDSS Licensing	Regulations and Policies in full support and alignment with the Final Rule's settings requirements
Provider Manual Changes	Changes to provider manuals to supplement regulations to ensure that providers have the information and instruction needed to implement setting requirements, in addition to following what is already existent in current DMAS and VDSS regulations	Completed by 3/2019	DMAS Waiver Operations Staff, Aging Services Staff, VDSS Licensing	Instructive Provider Manual providing guidance on settings requirements
Education & Training	Design and implement a communication plan for incorporating the HCBS final rule and Virginia's Statewide	Plan and Materials Completed by 3/2016	DMAS Waiver Operations and QMR Staff, Aging Services Staff, VDSS Licensing	Resources training and education materials reflecting settings requirements and the Final Rule

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	Transition Plan into training and education materials for providers, individuals and families, professionals and other stakeholders and interested parties.	Activities will be Ongoing		
Provider Enrollment	Design and implement a plan for incorporating necessary training and education into provider enrollment, orientation and provider employee training.	Completed by 3/2019 Ongoing	DMAS Waiver Operations Staff, QMR and Provider Enrollment staff, Aging Services Staff, VDSS Licensing	Educated providers and assurance of compliance upon enrollment
Compliance Monitoring	Participate in a multi-agency/department and stakeholder compliance monitoring team.	Team Assembled by 6/2015 Ongoing	Compliance & Monitoring Team	Multi-agency development of SME's and consistent implementation and oversight of compliance with rule and Transition Plan milestones
Monitoring Tools Assessment and Modification	Review and modify as needed QMR provider review tool to include review of compliance with settings requirements; particularly around documentation of provider modifications to residential settings requirements for AAL waiver individuals.	10/15/2015	DMAS Waiver Operations and QMR staff	QMR staff have the information, tools and resources to review and determine settings compliance during QMR review
Enforcement/Training	Develop and implement training of QMR staff and VDSS Licensing staff to incorporate requirements	6/1/2016	DMAS Waiver Operations Staff, QMR and VDSS Licensing	QMR and VDSS Licensing staff have the knowledge skill and abilities to provide

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix C: Alzheimer's Assisted Living Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	as outlined in the Final Rule into inspections and site reviews of providers requirements.			technical assistance and monitor compliance with the Final Rule requirements

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Settings Requirements
Appendix D: Individual and Families Developmental Disabilities Support Waiver

APPENDIX D: INDIVIDUAL AND FAMILIES DEVELOPMENTAL DISABILITIES
SUPPORT WAIVER

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements
Appendix D: Individual and Families Developmental Disabilities Support Waiver

INTRODUCTION

On January 16, 2014 the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based services (HCBS) that requires states to assess home and community based settings to determine compliance with the settings requirements of the final rule. The Virginia Department of Behavioral Health and Developmental Services is the operating agency for the Individuals and Families Developmental Disability Supports waiver (DD waiver). DBHDS has worked to develop this Transition Plan as a means of outlining current status of compliance with Centers for Medicare and Medicaid Services (CMS) Final Rule.

Many activities occurring in the state as part of the I/DD system transformation will impact this transition plan, however, they are mentioned here only for context. The focus of this transition plan is on the CMS HCBS settings requirements only. Additionally, elements of the CMS final rule which are not directly related to the settings requirements are likewise not addressed in this document.

Virginia's Individuals and Families Developmental Disability Supports waiver assessment of settings and needed actions includes the following information:

- A. Assessment of characteristics of DD waiver settings across the state
- B. Assessment of DD waiver regulations and related policies
- C. Assessment activities chart
- D. Remediation actions

ASSESSMENT OF SETTINGS & NEEDED ACTIONS

A. Assessment of characteristics of DD waiver settings across the state

The DBHDS assessment process included a review of DD waiver regulations, related DBHDS regulations including licensure regulations, policies and procedures, provider self-assessment, and site specific assessments. DBHDS reviewed the characteristics of settings in which individuals receiving DD waiver services reside. The state has determined that all participants reside in settings that are fully compliant with the settings requirement of the HCBS final rule. Individuals receiving DD waiver services reside in their own home or family home. Services are not provided in a provider owned or operated setting and the settings fully comport with CMS requirements. Each setting:

- Is integrated in and supports full access to the greater community;
- Is selected by the individual;
- Ensures an individual's right to privacy, dignity, respect and freedom from coercion and restraint;
- Optimizes individual initiative, autonomy and independence; and,
- Facilitates individual's choice regarding services and supports and who provides them.

Virginia is currently in the provider self-assessment follow-up phase. This self-assessment phase is incorporated within the Transition Plan for ID waiver providers which will also help inform the level of

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix D: Individual and Families Developmental Disabilities Support Waiver compliance of DD waiver services delivered in non-residential settings. The Transition Plan incorporates a settings checklist that was distributed to all DBHDS-licensed providers of prevocational and day support services, as well as group supported employment. The checklist was 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. Providers were been instructed to complete this checklist by January 31, 2015.

Concurrent with receipt of the checklist, providers were be instructed to provide feedback to DBHDS and DMAS regarding their self-assessment of their site(s). This was accomplished through responses to questions via Survey Monkey due by January 31, 2015. The self-assessment survey requires 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 is an option to request technical assistance from DBHDS staff. DBHDS is in the process of following up with providers who have not yet submitted their self-assessment or submitted incomplete information through the online survey tool.

Providers who have completed their self-assessments will be mailed a letter reiterating the timeline for the Office of Licensing monitoring activities and Quality Management Review (QMR) technical assistance that will take place between April 2015 and May of 2016. DBHDS QMR on-site monitoring will include use of a tool based upon the questions included in the provider self-assessment checklist that will help DBHDS licensing staff assess provider reported compliance or non-compliance against site visit verification. The QMR monitoring activities will help to validate that 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 and 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. 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.

DBHDS conducted an internal assessment, through the Office of Licensing, of the characteristics of currently enrolled provider settings in which certain services are delivered. The settings present in the delivery of DD waiver services and a preliminary status of compliance is provided below:

Day Support	Status of Compliance
○ Day Support	● Day Support services are provided for training in intellectual, sensory, motor, and affective social development including awareness skills,

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix D: Individual and Families Developmental Disabilities Support Waiver

	<p>sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communications and self-care, physical development, and services and support activities. These services take place outside of the individual’s home/residence.</p> <ul style="list-style-type: none"> • It has been determined that there are Day Support 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. • Additional assessment and analysis, to include information reported by the provider via the provider self-assessment described below, will be completed by March 2016.
Prevocational	Status of Compliance
<ul style="list-style-type: none"> ○ Day Support 	<ul style="list-style-type: none"> • Pre-vocational services are services aimed at preparing an individual enrolled in the waiver for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance at work, task completion, problem solving, and safety. • It has been determined that there Prevocational Day Support 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. • Additional assessment and analysis, to include information reported by the provider via the provider self-assessment described below, will be complete by March 2016.
Group Supported Employment	Status of Compliance
<ul style="list-style-type: none"> ○ Community-based work crew or enclave 	<ul style="list-style-type: none"> • Group supported Employment is continuous support provided by staff for eight or fewer individuals with disabilities in an enclave, work crew, or bench/work entrepreneurial model. • It has been determined that there are Group Supported Employment models 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. • Additional assessment and analysis, to include information reported by the provider via the provider self-assessment described below, will be complete by March 2016.

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.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements
Appendix D: Individual and Families Developmental Disabilities Support Waiver

B. Assessment of DD Waiver regulations and related regulations

In Virginia, most settings impacted by the Final Rule (particularly those settings involving provider-owned or controlled residential settings) are licensed by DBHDS. Changes to the licensure regulations have been proposed in order to implement additional provider requirements to comport with the Final Rule. 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.

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.

Based on review and analysis of all applicable DD 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 characteristics are not present in all settings:

- Required processes for modifications in the event that there are individual-specific restrictions.
- Individual services are received in the community with the same degree of access as individuals not receiving Medicaid home and community-based services.
- Services are able to be selected by the individual from among setting options, including non-disability specific settings.
- Services are integrated in and support access to the greater community.
- Services provide the opportunity to seek employment, work in a competitive integrated setting, and fully engage in community life.

Further, DMAS DD waiver regulations will require revision to place a greater emphasis on ensuring that individuals receiving HCBS 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.

C. A chart detailing assessment activities, progress and status begins below.

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
Site Landscape Assessment	Evaluate the types of services being provided to individuals through the DD waiver, and in what types of settings throughout the state. Also evaluate the types of providers rendering	Consult with DD Waiver Staff, Review of Licensing & QMR reports, provider self-assessment	1/2015	DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff	DD waiver staff identified that services are offered for individual waiver participants in their own or family home. There is no provider owned or operated component to services provided in an individual’s own home. Provider type has been identified as

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix D: Individual and Families Developmental Disabilities Support Waiver

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
	services through the waiver.				Home Care agencies and in-home residential services providers. Pre-Vocational services are center-based services. Day support services are center-based services. Group Supported Employment services are provided in integrated community work settings.
Settings Requirements Compliance Assessment	Assess sites statewide providing HCBS services to individuals in DD waiver as compliant, partially compliant, or non-compliant.	Consult with DD Waiver Staff, Review of Licensing & QMR reports, provider self-assessment	3/2016	DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff	The settings assessment concluded that services provided through this waiver within the individual's home are fully compliant. Group Supported Employment, Pre-vocational and Day Support services are delivered in settings which are fully compliant; mostly compliant, but could be fully compliant with modifications; and, not compliant, but could be fully compliant with modifications.
Setting Characteristics Assessment	Assess sites statewide providing HCBS to individuals in the DD waiver as either Home and Community Based, Institutional, or Presumed Institutional	Consult with DD Waiver Staff, Review of Licensing & QMR reports, provider self-assessment	3/2016	DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff	DD waiver services (other than day or employment related services) are not provided in a provider owned or operated setting, a segregated institutional setting or a setting with the characteristics of an institutional setting. The settings are already Home and Community Based. Group Supported Employment, Pre-vocational and Day Support services are delivered in settings which are fully compliant, not compliant and mostly compliant, but could be fully compliant with modifications.
Waiver Regulations and Policy Assessment	Review and crosswalk waiver regulations, licensing of providers for the waiver, provider manuals and policy with the settings	Review DBHDS, DMAS and other agency regulations governing the	1/15/2015	DBHDS, DD waiver Staff, DMAS Waiver Operations	DD Waiver regulations & licensure and related policies generally, but not fully, support the final rule setting requirements. More specific language could be incorporated into regulation

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix D: Individual and Families Developmental Disabilities Support Waiver

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
	requirements	waiver (licensing of providers for the waiver).		Staff	and policy to strengthen the expectation of compliance with the settings requirements.

D. Remediation Actions

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
Regulatory and Policy Updates	<ul style="list-style-type: none"> • Submit DD Waiver amendments • Develop emergency licensure regulations based on qualitative and quantitative regulatory and policy assessments • Implement regulatory and policy changes to better align with HCBS settings requirements. 	<ul style="list-style-type: none"> • Fall 2015 • 9/2015 	<ul style="list-style-type: none"> • DBHDS, DMAS 	<ul style="list-style-type: none"> • Regulations and Policies in full support and alignment with the Final Rule's settings requirements
Provider Manual Changes	<ul style="list-style-type: none"> • Update provider manuals to supplement regulations to ensure that providers have the information and instruction needed to implement setting requirements, inclusive of those services/settings not licensed by DBHDS such as group supported employment, in addition to following what is already existent in current DBHDS and DMAS regulations. 	<ul style="list-style-type: none"> • January 2016 	<ul style="list-style-type: none"> • DBHDS, DMAS 	<ul style="list-style-type: none"> • Instructive • Provider Manual • providing guidance on settings requirements
Outreach, Education & Training	<ul style="list-style-type: none"> • Design, develop and implement an education and training plan 	<ul style="list-style-type: none"> • Training to begin 10/2015-2/2016 in 	<ul style="list-style-type: none"> • DBHDS Provider Development 	<ul style="list-style-type: none"> • Resources, training and education materials reflecting settings requirements and the final rule.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix D: Individual and Families Developmental Disabilities Support Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	<p>incorporating the HCBS final rule and Virginia’s Statewide Transition Plan into training and education materials for providers, individuals and families, professionals and other stakeholders and interested parties.</p> <ul style="list-style-type: none"> • Targeted mailings to individuals on DD waiting list • Dedicated e-mail and telephone contact information for providing feedback and reporting on provider compliance for targeted training and technical assistance. • Assessment of ongoing opportunities for public input throughout the Final Rule transition plan development and implementation process 	<p>anticipation of the start of the new Waivers in 7/2017.</p> <ul style="list-style-type: none"> • Additional training will be ongoing 	<p>Staff (CRCs)</p> <ul style="list-style-type: none"> • Provider Forums • TACIDD 	<ul style="list-style-type: none"> • Targeted, timely communication to individuals waiting for DD waiver services • Additional established points of contact for input into development, implementation of transition plan as well as a confidential source of reporting information to be used for training needs assessment with regard to transition plan • Transparent feedback loop which includes ongoing process for soliciting input from affected VA stakeholders
<p>Compliance Monitoring</p>	<ul style="list-style-type: none"> • Site visits and inspections of provider settings for monitoring of requirements and delivery of technical assistance • DD waiver representative will participate on a multi-agency/department compliance monitoring team. 	<ul style="list-style-type: none"> • 4/2015-5/2016 • 6/2015 and ongoing 	<ul style="list-style-type: none"> • DBHDS Licensing staff; DMAS QMR Staff • Compliance and Monitoring Team 	<ul style="list-style-type: none"> • Evaluation and progress reporting of overall compliance status at specified intervals Multi-Agency development of SME’s and consistent implementation and oversight of compliance with rule and Transition Plan milestones • Final development of HCBS site specific assessment and planning tools that will result in measureable assessment criteria and Transition Plan milestones • Finalize Compliance

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix D: Individual and Families Developmental Disabilities Support Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
Provider Enrollment	<ul style="list-style-type: none"> Design and implement a plan for incorporating necessary training and education into provider enrollment, orientation and provider employee training. 	<ul style="list-style-type: none"> Completed by 3/2016 Ongoing 	<ul style="list-style-type: none"> DMAS, QMR and Provider Enrollment staff, 	<ul style="list-style-type: none"> Educated providers and assurance of compliance upon enrollment
Provider Sanctions	<ul style="list-style-type: none"> Letters distributed to provider agencies noting non-compliance/potential disenrollment Transition of individuals served by disenrolled providers to alternate settings Provider Disenrollment 	<ul style="list-style-type: none"> 6/2018 7/2018 3/2019 	<ul style="list-style-type: none"> DBHDS staff; DMAS QMR Staff CSB support coordinators/case managers DMAS 	<ul style="list-style-type: none"> All settings will be in full compliance

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Settings Requirements
Appendix E: Day Support Waiver

APPENDIX E: DAY SUPPORT WAIVER

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix E: Day Support Waiver

INTRODUCTION

On January 16, 2014 the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based services (HCBS) that requires states to assess home and community based settings to determine compliance with the settings requirements of the final rule. The Virginia Department of Behavioral Health and Developmental Services is the operating agency for the Day Support Waiver (DS Waiver). DBHDS has worked to develop this Transition Plan as a means of outlining current status of compliance with Centers for Medicare and Medicaid Services (CMS) Final Rule.

Many activities occurring in the state as part of the I/DD system transformation will impact this transition plan, however, they are mentioned here only for context. The focus of this transition plan is on the CMS HCBS settings requirements only. Additionally, elements of the CMS final rule which are not directly related to the settings requirements are likewise not addressed in this document.

Virginia's Individuals and Families Developmental Disability Supports waiver assessment of settings and needed actions includes the following information:

- A. Assessment of characteristics of DS Waiver settings across the state
- B. Assessment of DS Waiver regulations and related policies
- C. Assessment activities chart
- D. Remediation actions

ASSESSMENT OF SETTINGS & NEEDED ACTIONS

- A. Assessment of characteristics of DS Waiver settings across the state

The DBHDS assessment process included a review of DS Waiver regulations, related DBHDS regulations including licensure regulations, policies and procedures, provider self-assessment, and site specific assessments. DBHDS reviewed the characteristics of settings in which individuals receiving DS waiver services reside. The state has determined that all participants reside in settings that are fully compliant with the settings requirement of the HCBS final rule. Individuals receiving DS waiver services reside in their own home or family home. Services are not provided in a provider owned or operated setting and the settings fully comport with CMS requirements. Each setting:

- Is integrated in and supports full access to the greater community
- Is selected by the individual
- Ensures an individual's right to privacy, dignity, respect and freedom from coercion and restraint
- Optimizes individual initiative, autonomy and independence
- Facilitates individuals choice regarding services and supports and who provides them

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix E: Day Support Waiver

Virginia is currently in the provider self-assessment follow-up phase. The self-assessment phase is incorporated within the Transition Plan for ID waiver providers which will also help inform the level of compliance of *DS* waiver services delivered in non-residential settings. The Transition Plan incorporated a settings checklist that was distributed to all DBHDS-licensed providers of prevocational and day support services, as well as group supported employment. The checklist was 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 the checklist. The checklist was designed to help providers determine areas in which their setting(s) met or required improvement in order to comply with the settings provision of the Final Rule. Providers were been instructed to complete the checklist by January 31, 2015.

Concurrent with receipt of the checklist, providers were instructed to provide feedback to DBHDS and DMAS regarding their self-assessment of their site(s). This was accomplished through responses to questions via Survey Monkey due by January 31, 2015. The self-assessment survey required each provider to indicate whether the provider believes the setting meets the 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 is an option to request technical assistance from DBHDS staff. DBHDS is in the process of following up with providers who have not yet submitted their self-assessment or submitted incomplete information through the online survey tool.

Providers who have completed their self-assessments will be mailed a letter reiterating the timeline for the Office of Licensing monitoring activities and Quality Management Review (QMR) technical assistance that will take place between April 2015 and May 2016. DBHDS QMR onsite monitoring will include use of a tool based upon the questions included in the provider self-assessment checklist that will help DBHDS licensing staff assess provider reported compliance or non-compliance against site visit verification. The QMR monitoring activities will help to validate that 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. 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.

DBHDS conducted an internal assessment, through the Office of Licensing, of the characteristics of currently enrolled provider settings in which *DS* waiver services are delivered. The settings present in the delivery of *DS* waiver services and a preliminary status of compliance is provided below:

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix E: Day Support Waiver

Day Support	Status of Compliance
<ul style="list-style-type: none"> ○ Day Support 	<ul style="list-style-type: none"> ● Day Support services are provided for training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communications and self-care, physical development, and services and support activities. These services take place outside of the individual's home/residence. ● It has been determined that there are Day Support 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. ● Additional assessment and analysis, to include information reported by the provider via the provider self-assessment described below, will be completed by March 2016.
Prevocational	Status of Compliance
<ul style="list-style-type: none"> ○ Day Support 	<ul style="list-style-type: none"> ● Pre-vocational services are services aimed at preparing an individual enrolled in the waiver for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance at work, task completion, problem solving, and safety. ● It has been determined that there are Prevocational Day Support 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. ● Additional assessment and analysis, to include information reported by the provider via the provider self-assessment described below, will be complete by March 2016.
Group Supported Employment	Status of Compliance
<ul style="list-style-type: none"> ○ Community-based work crew or enclave 	<ul style="list-style-type: none"> ● Group supported Employment is continuous support provided by staff for eight or fewer individuals with disabilities in an enclave, work crew, or bench/work entrepreneurial model. ● It has been determined that there are Group Supported Employment models 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. ● Additional assessment and analysis, to include information reported by the provider via the provider self-assessment described below, will be

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix E: Day Support Waiver

	complete by March 2016.
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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.

B. Assessment of DS Waiver regulations and related regulations

In Virginia, most settings impacted by the Final Rule (particularly those settings involving provider-owned or controlled residential settings) are licensed by DBHDS. Changes to the licensure regulations have been proposed in order to implement additional provider requirements to comport with the Final Rule. 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.

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.

Based on review and analysis of all applicable DS 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 characteristics are not present in all settings:

- Required processes for modifications in the event that there are individual-specific restrictions.
- Individual services are received in the community with the same degree of access as individuals not receiving Medicaid home and community-based services.
- Services are able to be selected by the individual from among setting options, including non-disability specific settings.
- Services are integrated in and support access to the greater community
- Services provide the opportunity to seek employment, work in a competitive integrated setting, and fully engage in community life.

Further, DMAS DS waiver regulations will require revision to place a greater emphasis on ensuring that individuals receiving HCBS have the same degree of access to an integrated community life as individuals

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix E: Day Support Waiver

not receiving Medicaid HCBS. Needed revisions to regulations will help to ensure that all HCBS, including day services, are integrated and meet settings requirements.

C. A chart detailing assessment activities, progress and status begins below.

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
Site Landscape Assessment	Evaluate the types of services being provided to individuals through the DD waiver, and in what types of settings throughout the state. Also evaluate the types of providers rendering services through the waiver.	Consult with DD Waiver Staff, Review of Licensing & QMR reports, provider self-assessment	1/2015	DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff	DD waiver staff identified that services are offered for individual waiver participants in their own or family home. There is no provider owned or operated component to services provided in an individual's own home. Provider type has been identified as Home Care agencies and in-home residential services providers. Pre-Vocational services are center-based services. Day support services are center-based services. Group Supported Employment services are provided in integrated community work settings.
Settings Requirements Compliance Assessment	Assess sites statewide providing HCBS services to individuals in DD waiver as compliant, partially compliant, or non-compliant.	Consult with DD Waiver Staff, Review of Licensing & QMR reports, provider self-assessment	3/2016	DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff	The settings assessment concluded that services provided through this waiver within the individual's home are fully compliant. Group Supported Employment, Pre-vocational and Day Support services are delivered in settings which are fully compliant; mostly compliant, but could be fully compliant with modifications; and, not compliant, but could be fully compliant with modifications.
Setting	Assess sites statewide	Consult with DD	3/2016	DBHDS, DD	DD waiver services (other than

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix E: Day Support Waiver

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
Characteristics Assessment	providing HCBS to individuals in the DD waiver as either Home and Community Based, Institutional, or Presumed Institutional	Waiver Staff, Review of Licensing & QMR reports, provider self-assessment		Waiver Staff, DMAS Waiver Operations Staff	<p>day or employment related services) are not provided in a provider owned or operated setting, a segregated institutional setting or a setting with the characteristics of an institutional setting. The settings are already Home and Community Based.</p> <p>Group Supported Employment, Pre-vocational and Day Support services are delivered in settings which are fully compliant, not compliant and mostly compliant, but could be fully compliant with modifications.</p> <p>Self-assessment data will be used to prepare a targeted review plan for those settings presumed institutional, but that are noted as meeting expectation to facilitate the heightened scrutiny process.</p>
Waiver Regulations and Policy Assessment	Review and crosswalk waiver regulations, licensing of providers for the waiver, provider manuals and policy with the settings requirements	Review DBHDS, DMAS and other agency regulations governing the waiver (licensing of providers for the waiver).	1/15/2015	DBHDS, DD waiver Staff, DMAS Waiver Operations Staff	DD Waiver regulations & licensure and related policies generally, but not fully, support the final rule setting requirements. More specific language could be incorporated into regulation and policy to strengthen the expectation of compliance with the settings requirements.

D. Remediation Actions

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix E: Day Support Waiver

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
Regulatory and Policy Updates	<ul style="list-style-type: none"> • Submit DD Waiver amendments • Develop emergency licensure regulations based on qualitative and quantitative regulatory and policy assessments • Implement regulatory and policy changes to better align with HCBS settings requirements. 	<ul style="list-style-type: none"> • Fall 2015 • 9/2015 	<ul style="list-style-type: none"> • DBHDS, DMAS 	<ul style="list-style-type: none"> • Regulations and Policies in full support and alignment with the Final Rule's settings requirements
Provider Manual Changes	<ul style="list-style-type: none"> • Update provider manuals to supplement regulations to ensure that providers have the information and instruction needed to implement setting requirements, inclusive of those services/settings not licensed by DBHDS such as group supported employment, in addition to following what is already existent in current DBHDS and DMAS regulations. 	<ul style="list-style-type: none"> • January 2016 	<ul style="list-style-type: none"> • DBHDS, DMAS 	<ul style="list-style-type: none"> • Instructive • Provider Manual • providing guidance on settings requirements
Outreach, Education & Training	<ul style="list-style-type: none"> • Design, develop and implement an education and training plan incorporating the HCBS final rule and Virginia's Statewide Transition Plan into training and education materials for providers, individuals and families, professionals and other stakeholders and interested parties. • Targeted mailings to individuals on DS waiting list • Dedicated e-mail and telephone contact information for providing feedback and reporting on provider compliance for targeted training and technical assistance. 	<ul style="list-style-type: none"> • Training to begin 10/2015-2/2016 in anticipation of the start of the new Waivers • Additional training will be ongoing 	<ul style="list-style-type: none"> • DBHDS Provider Development Staff (CRCs) • Provider Forums • TACIDD 	<ul style="list-style-type: none"> • Resources, training and education materials reflecting settings requirements and the final rule. • Targeted, timely communication to individuals waiting for DD waiver services • Additional established points of contact for input into development, implementation of transition plan as well as a confidential source of reporting information to be used for training

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix E: Day Support Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	<ul style="list-style-type: none"> Assessment of ongoing opportunities for public input throughout the Final Rule transition plan development and implementation process 			<ul style="list-style-type: none"> needs assessment with regard to transition plan Transparent feedback loop which includes ongoing process for soliciting input from affected VA stakeholders
Compliance Monitoring	<ul style="list-style-type: none"> Site visits and inspections of provider settings for monitoring of requirements and delivery of technical assistance DD waiver representative will participate on a multi-agency/department compliance monitoring team. 	<ul style="list-style-type: none"> 4/2015-5/2016 6/2015 and ongoing 	<ul style="list-style-type: none"> DBHDS Licensing staff; DMAS QMR Staff Compliance and Monitoring Team 	<ul style="list-style-type: none"> Evaluation and progress reporting on overall compliance status at specified intervals Multi-Agency development of SME’s and consistent implementation and oversight of compliance with rule and Transition Plan milestones Final development of HCBS site specific assessment and planning tools that will result in measurable assessment criteria and Transition Plan milestones. Finalize Compliance
Provider Enrollment	<ul style="list-style-type: none"> Design and implement a plan for incorporating necessary training and education into provider enrollment, orientation and provider employee training. 	<ul style="list-style-type: none"> Completed by 3/2016 Ongoing 	<ul style="list-style-type: none"> DMAS, QMR and Provider Enrollment staff, 	<ul style="list-style-type: none"> Educated providers and assurance of compliance upon enrollment
Provider Sanctions	<ul style="list-style-type: none"> Letters distributed to provider agencies noting non-compliance/potential disenrollment Transition of individuals served by disenrolled providers to alternate settings Provider Disenrollment 	<ul style="list-style-type: none"> 6/2018 7/2018 3/2019 	<ul style="list-style-type: none"> DBHDS staff; DMAS QMR Staff CSB support coordinators/case managers <p>DMAS</p>	<ul style="list-style-type: none"> All settings will be in full compliance

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Settings Requirements
Appendix F: Intellectual Disability Waiver

APPENDIX F: INTELLECTUAL DISABILITY WAIVER

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

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.

Many activities occurring in the state as part of the I/DD system transformation will impact this transition plan, however, they are mentioned here only for context. The focus of this transition plan is on the CMS HCBS settings requirements only. Additionally, elements of the CMS final rule which are not directly related to the settings requirements are likewise not addressed in this document.

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

- A. Assessment of characteristics of ID waiver settings across the state
- B. Assessment of ID waiver regulations, licensing regulations and related policies
- C. Technical assistance & compliance monitoring
- D. Public/Stakeholder engagement
- E. Assessment activities chart
- F. Remediation actions

ASSESSMENT

DBHDS and DMAS 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 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 its 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

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix F: Intellectual Disability 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.

A. Assessment of characteristics of ID waiver settings across the state

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 modifications. It is expected that remediation strategies will bring the majority/all settings into compliance.</p>
<ul style="list-style-type: none"> ○ Supervised Apartments 	<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/all settings into compliance.</p>
<ul style="list-style-type: none"> ○ Family Homes 	<p>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.</p>
Day Support	
<ul style="list-style-type: none"> ○ Day Support 	<p>It has been determined that there are both settings that</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix F: Intellectual Disability Waiver

	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	
<ul style="list-style-type: none"> ○ 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	
<ul style="list-style-type: none"> ○ 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 also developed a settings checklist that was 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 was 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 was 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. The checklist and accompanying guidance document incorporated 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 were instructed to complete the checklist by January 31, 2015. A summary report of the results of the provider self-assessment will be available for review by April 1, 2015.

Concurrent with receipt of the checklist, providers were instructed to provide feedback to DBHDS and DMAS regarding their self-assessment of their site(s). This was accomplished through responses to questions via Survey Monkey due by January 31, 2015. This self-assessment survey required each provider to indicate whether the provider believed 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 was an option to request technical assistance from DBHDS staff. DBHDS is in the process of following up with providers who have not yet submitted their self-assessment or submitted incomplete information through the online survey tool. Those providers who have not responded will receive a provider does not respond to the survey, a follow-up letter will be sent by 3/31/15 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

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

Providers who have completed their self-assessments will be mailed a letter reiterating the timeline for the Office of Licensing monitoring activities and Quality Management Review (QMR) technical assistance that will take place between April 2015 and May 2016. DBHDS QMR on-site monitoring will include use of a tool based upon the questions included in the provider self-assessment checklist that will DBHDS licensing staff assess provider reported compliance or non-compliance against site visit verification. The QMR monitoring activities will help to validate that the provider assessment is accurate and that settings do fully comply. The letter will also inform providers of 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.

B. Assessment of ID waiver regulations, licensing regulations and related policies

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.

DMAS ID waiver regulations will require revision to place a greater emphasis on ensuring that individuals receiving HCBS 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.

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.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix F: Intellectual Disability Waiver

- 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.

The review of DBHDS Licensing regulations is occurring with 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). DBHDS, through its internal workgroup and with stakeholder input, will ensure integration of all related agency regulations to eliminate inconsistencies, subjectivity, and conflicts in interpretation and application. 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:		
<ul style="list-style-type: none"> • Identify stakeholders for work group membership 	3 weeks	1/5/15 – 1/23/15
<ul style="list-style-type: none"> • 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	

New waiver amendments will be submitted to CMS in the Fall of 2015. These amendments will be reviewed by CMS and 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).

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

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

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.

C. Technical Assistance & Compliance 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.

Training targeted to those issues identified through the provider self-assessments will be delivered beginning in December of 2015 and will continue through May of 2017 in preparation for the start of the new waivers, which are proposed for implementation in July 2017. Additional training and technical assistance will be ongoing throughout the transition period.

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. Ensuring consistency of interpretation and application of settings requirements will greatly improve the process of supporting providers with compliance. To assist with this goal there will be broad representation of the above entities, to include individuals, family members, advocates and advocacy organizations, and private providers on a multi-agency, stakeholder Compliance & Monitoring Team charged with the following:

The compliance & monitoring team will be convened in June 2015 to:

- Develop cross agency subject matter expertise on the final rule and the transition plan;
- Ensure a collective understanding and consistent interpretation of requirements, transition plan milestones and guidance documents;
- Advise and support the education and training of professionals, providers and stakeholders;
- Ensure a cohesive and broadly represented approach toward compliance, monitoring and capacity issues; and,
- Ensure successful achievement of desired outcomes and full compliance with the HCBS final rule settings requirements by March of 2019.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

The development of compliance & monitoring team represents the state's intention to oversee, support and monitor full compliance with the settings requirements of the HCBS final rule. The team will be empowered to:

- Provide technical assistance on the final rule including documentation for exceptions;
- Review and comment on developed materials and resources;
- Gather information on barriers which can assist planning for service provider and workforce development;
- Provide recommendations and assist with the development of solutions and implementation of strategies aimed at achieving desired outcomes;
- Oversee development and implementation of a communications strategy for providers, individuals and families; and,
- Report to state leadership on the status of compliance.

Additional details about this team can be found on page 6 of the statewide transition plan: Compliance & Monitoring.

DBHDS and DMAS staff will review with providers their completed the self-assessment and provide suggestions and technical assistance to remedy areas in need of improvement 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. There will be ongoing and available resource for providers, offering technical assistance, education and training related to complying with implementing the settings provisions of the Final Rule. Oversight and technical assistance between Office of Licensing staff, Community Resource Consultants as well as DMAS QMR staff will be coordinated.

- DBHDS Community Resource Consultants will be available to provide consultation to those providers that wish to comply, but are struggling with implementation.
- DMAS Long-Term Care Quality Management Review (QMR) staff will provide additional technical assistance and guidance to providers. 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.
- Office of Licensing staff will be able to assess and ensure that the provider implements and complies with the settings requirements also offering technical assistance, guidance and resources.

Beginning in April 2015, as DBHDS Office of Licensing staff conducts 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

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

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.

Furthermore, DBHDS will advise providers that, beginning in April 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.

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. Providers will then have several choices. Providers may exercise the option to voluntarily terminate their Medicaid provider agreements. Providers whose self-assessment reveals issues that are not resolvable, may choose to relocate to settings that will enable them to more easily comply.

In such instances, support coordinators/case managers working with individuals whose providers status is anticipated to change, will notify individuals receiving services and their families, as appropriate, of the provider's status and anticipated disenrollment/relocation date. The case manager and or support coordinator will work with the provider, individual, and family as appropriate, to ensure smooth transition to a setting that complies with the Final Rule. For providers who wish to maintain their Medicaid agreements, DBHDS will make every effort to assist them in coming into full compliance with the final rule, with mandatory disenrollment as an action of last resort.

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:

- Individuals will be provided with reasonable notice of the need to transition and choose another setting.
- Individuals 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.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

DBHDS proposes to work together with the VACSB Developmental Services Council over the course of the next year and a half to develop a formal plan for transitioning of dislocated individuals from disenrolled providers.

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. Efforts occurring within the state to increase provider capacity, although not part of this Transition Plan, will continue throughout the transition period.

D. Public/Stakeholder Engagement

The ID Waiver Transition Plan and waiver amendment was released for public comment for 30 days, from December 18, 2014 – January 17, 2015. The public input process was 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.

Opportunities for public comment will continue at various stages throughout this Transition Plan. 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.

To ensure effective outreach and engagement of individuals and families ongoing targeted efforts will occur to ensure that individuals and families are informed about The Rule and its intended outcomes and about the transition plan and expected changes. An email address, physical address, and fax number are available for individuals, family members, and other advocates to comment on the transition plan. A telephone voice mail line is also available for confidential reporting on provider segregated settings or segregated conduct. Provider identification will be necessary so that DBHDS and DMAS can target those providers for training or technical assistance. 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 additional 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

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation’s Settings Requirements

Appendix F: Intellectual Disability Waiver

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.

Targeted stakeholder forums or webinars may be scheduled for ongoing public outreach and input. See the Public Input section in Introduction for information on continued public/stakeholder engagement.

E. Assessment activities chart

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
Site Landscape Assessment	Evaluate the types of services being provided to individuals through the ID waiver, and in what types of settings throughout the state. Also evaluate the types of providers rendering services through the waiver.	Consult with ID Waiver Staff, Review of Licensing & QMR reports, provider self-assessment	4/2015	DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff	ID waiver staff identified that services are offered for individual waiver participants in their own or family home, provider owned and operated settings, and non-residential center and community based settings. Provider types have been identified as licensed and non-licensed service providers. Providers include congregate residential, in-home service providers, Home Care agencies, and center and non-center based pre-vocational, day support, and group supported employment service

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
					<p>providers.</p> <p>Additional detail on the outcomes of this assessment can be found in the chart on page 48.</p>
<p>Settings Requirements Compliance Assessment</p>	<p>Assess sites statewide providing HCBS services to individuals in DD waiver as compliant, partially compliant, or non-compliant.</p>	<p>Consult with DD Waiver Staff, Review of Licensing & QMR reports, provider self-assessment</p>	<p>4/2015</p>	<p>DBHDS, DD Waiver Staff, DMAS Waiver Operations Staff</p>	<p>The settings requirements assessment concluded that services provided through this waiver within the individual's home are fully compliant.</p> <p>Provider owned and operated settings are fully compliant; mostly compliant, but could be fully compliant with modifications; and, not compliant, but could be fully compliant with modifications.</p> <p>Group supported employment, pre-vocational and day support services are delivered in settings which are fully compliant; mostly compliant, but could be fully compliant with modifications; and, not compliant, but could be fully compliant with modifications.</p> <p>Additional detail on the outcomes of this assessment can be found in the chart on page 48.</p> <p>Additional assessment and analysis of provider self-assessments is needed to determine which and how many providers fall in which compliance categories.</p>
<p>Setting Characteristics Assessment</p>	<p>Assess sites statewide providing HCBS to individuals in the ID waiver as either Home and Community Based, Institutional, or Presumed Institutional</p>	<p>Consult with ID Waiver Staff, Review of Licensing & QMR reports, provider self-assessment</p>	<p>4/2015</p>	<p>DBHDS, ID Waiver Staff, DMAS Waiver Operations Staff</p>	<p>ID waiver services provided in provider owned or operated setting and center based settings have characteristics that are fully compliant; mostly compliant, but could be fully compliant with modifications; and, not compliant, but could be fully compliant with</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

Task(s)	Description of Tasks	Assessment Methods	End Date	Responsible Parties	Progress / Status
					modifications. Additional assessment and analysis of provider self-assessments is needed to determine which and how many providers fall in which compliance categories.
Waiver Regulations and Policy Assessment	Review and crosswalk waiver regulations, licensing of providers for the waiver, provider manuals and policy with the settings requirements	Review DBHDS, DMAS & other agency regs. governing the waiver (licensing of providers for the waiver).	1/15/2015	DBHDS, ID waiver Staff, DMAS Waiver Operations Staff	ID Waiver regulations & licensure and related policies generally, but not fully, support the final rule setting requirements. More specific language could be incorporated into regulation and policy to strengthen the expectation of compliance with the settings requirements.

F. Remediation actions

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
Regulatory and Policy Updates	<ul style="list-style-type: none"> • Submit ID Waiver amendments • Develop emergency licensure regulations based on qualitative and quantitative regulatory and policy assessments • Implement regulatory and policy changes to better align with HCBS settings requirements. 	<ul style="list-style-type: none"> • Fall 2015 • 11/2015 	<ul style="list-style-type: none"> • DBHDS, DMAS 	<ul style="list-style-type: none"> • Regulations and Policies in full support and alignment with the Final Rule's settings requirements
Licensing Regulation Revisions	<ul style="list-style-type: none"> • Submission for Virginia Standard Regulatory Review 	<ul style="list-style-type: none"> • 2/2017 		

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	<ul style="list-style-type: none"> & Approval process • See chart on page 50 and 51 detailing milestones. 	<ul style="list-style-type: none"> • 1/2015 – 9/2017 		
Provider Manual Changes	<ul style="list-style-type: none"> • Update provider manuals to supplement regulations to ensure that providers have the information and instruction needed to implement setting requirements, inclusive of those services/settings not licensed by DBHDS such as group supported employment, in addition to following what is already existent in current DBHDS and DMAS regulations. 	<ul style="list-style-type: none"> • 1/2016 		<ul style="list-style-type: none"> • Instructive • Provider Manual • providing guidance on settings requirements
Outreach, Education & Training	<ul style="list-style-type: none"> • Design, develop and implement an education and training plan incorporating the HCBS final rule and Virginia's Statewide Transition Plan into training and education materials for providers, individuals and families, professionals and other stakeholders and interested parties. • Targeted mailings to individuals on DD waiting list • Dedicated e-mail and telephone contact information for providing feedback and reporting on provider compliance for targeted training and technical assistance. 	<ul style="list-style-type: none"> • Training to begin 12/2015-5/2016 in anticipation of the start of the new waivers in 7/2017. • Additional training will be ongoing 	<ul style="list-style-type: none"> • DBHDS Provider Development Staff (CRCs) • Provider Forums • TACIDD 	<ul style="list-style-type: none"> • Resources, training and education materials reflecting settings requirements and the final rule. • Targeted, timely communication to individuals waiting for DD waiver services • Additional established points of contact for input into development, implementation of transition plan as well as a confidential source of reporting information to be used for training needs assessment with regard to transition plan

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements

Appendix F: Intellectual Disability Waiver

Remediation Action: Virginia proposes the actions below to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and outcomes.

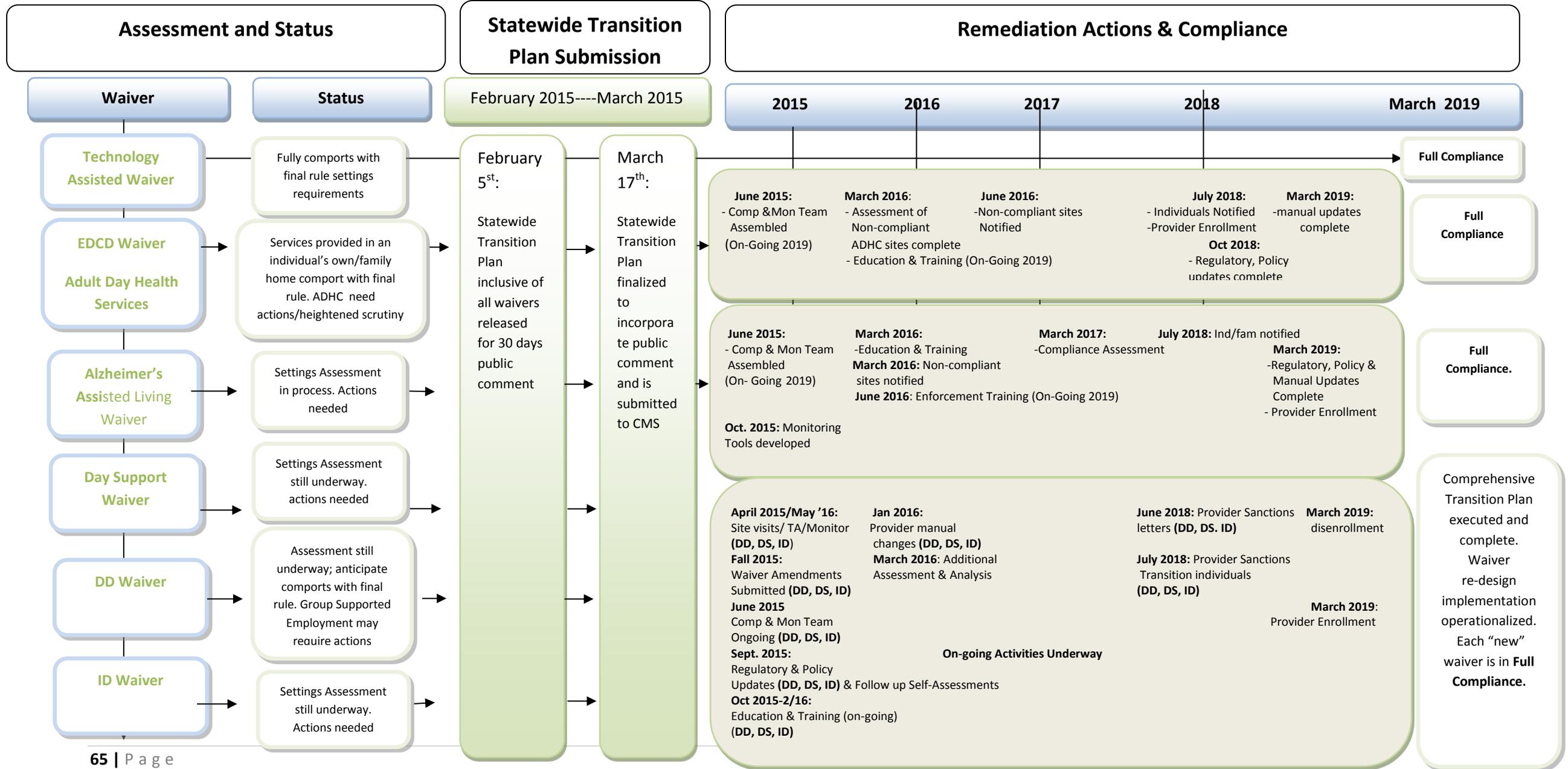
Action Item	Description	Dates	Responsible Parties/ Stakeholders	Outcome
	<ul style="list-style-type: none"> Assessment of ongoing opportunities for public input throughout the Final Rule transition plan development and implementation process 			<ul style="list-style-type: none"> Transparent feedback loop which includes ongoing process for soliciting input from affected VA stakeholders
Compliance Monitoring	<ul style="list-style-type: none"> Site visits and inspections of provider settings for monitoring of requirements and delivery of technical assistance DD waiver representative will participate on a multi-agency/department compliance monitoring team. 	<ul style="list-style-type: none"> 4/2015-5/2016 6/2015 and ongoing 	<ul style="list-style-type: none"> DBHDS Licensing staff DMAS QMR Staff Compliance and Monitoring Team 	<ul style="list-style-type: none"> Evaluation and progress reporting of overall compliance status at specified intervals Multi-Agency development of SME's and consistent implementation and oversight of compliance with rule and Transition Plan milestones Final development of HCBS site specific assessment and planning tools that will result in measureable assessment criteria and Transition Plan milestones Finalize Compliance
Provider Enrollment	<ul style="list-style-type: none"> Design and implement a plan for incorporating necessary training and education into provider enrollment, orientation and provider employee training. 	<ul style="list-style-type: none"> Completed by 3/2016 Ongoing 	<ul style="list-style-type: none"> DMAS, QMR and Provider Enrollment staff, 	<ul style="list-style-type: none"> Educated providers and assurance of compliance upon enrollment
Provider Sanctions	<ul style="list-style-type: none"> Letters distributed to provider agencies noting non-compliance/potential disenrollment Transition of individuals served by disenrolled providers to alternate settings Provider Disenrollment 	<ul style="list-style-type: none"> 6/2018 7/2018 3/2019 	<ul style="list-style-type: none"> DBHDS staff DMAS QMR Staff CSB support coordinators/case managers DMAS 	<ul style="list-style-type: none"> All settings will be in full compliance

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and
Community Based Services (HCBS) Final Regulation's Setting Requirement
Appendix G: Statewide Transition Plan Timeline

Statewide Transition Plan Timeline

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS) Final Regulation's Setting

Requirement: Statewide Transition Plan Timeline



Commonwealth of Virginia Statewide Transition Plan for Compliance with the
Home and Community Based Services (HCBS)
Final Regulation's Setting Requirement
Appendix H: Summary of Public Input

APPENDIX H: Summary of Public Input

CMS HCBS Final Rule: Public Comment Response and Analysis

Public comments received incorporated feedback on the proposed VA Statewide Transition Plan for CMS HCBS final rule compliance. Where possible, comments have been separated and categorized for clarity, targeted review and analysis.

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<i>Assessment Process</i>			
<p>While the results of their self-assessments may offer providers useful insights into the changes necessary to achieve compliance with CMS’s home and community-based service rule, the results of these internal reviews should not be the sole or primary basis for identifying areas of non-compliance that should be the focus of the state’s transition plan.</p>	<p><i>DBHDS thanks the commenter for the comment. Virginia has committed to investing in a robust self-assessment process for determining compliance with the final rule. Provider self-assessments are not intended to be the only source of information used to determine compliance with the final rule. The strategy used to achieve full compliance will occur after the self-assessment phase is complete. As described in the transition plan, the self-assessment information will be supplemented by DBHDS site visits. The aggregate self-assessment data and the data from the site visits will be reviewed to determine the steps that need to be taken to achieve system-wide compliance. The state needs this critical information from providers in aggregate, as well as feedback</i></p>	<p>No required changes to plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<i>from the stakeholders and obtained during site visits to determine what system changes must be instituted and where to target training and technical assistance activities. Stakeholder remediation, education and awareness training will be collaborative and shared by DBHDS and its community partners.</i>		
Because providers have powerful financial and programmatic incentives to minimize the impact of the rule on their respective programs, the state's HCBS transition plan should include provisions for conducting independent compliance assessments of licensed providers of services.	<i>DBHDS thanks the commenter for the comment. See response above.</i>	No required changes to plan	N
The Arc of Virginia recognizes that an independent, provider-by-provider assessment of compliance would be a time-consuming and resource intensive undertaking. But there are ways of mitigating the impact of such assessments by: (a) establishing priorities and spreading the reviews over a 12 to 18 month period; (b) inviting non-state officials, including representatives of community provider agencies, area agencies on aging, community services boards (CSBs), and advocacy organizations such as The Arc of Virginia to serve on review teams; and/or (c) out-sourcing responsibility for conducting all or some of the assessments to a	<i>DBHDS thanks the commenter for the comment. Please see previous response. As described in the transition plan, a separate Compliance and Monitoring team will be assembled with representation from VA stakeholder groups to assist with compliance monitoring. There is no state funding available to hire independent contractors to conduct the assessments/reviews.</i>	No required changes to plan	N

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
qualified, third party contractor(s).			
<p>The Board is concerned that setting compliance determination is over reliant on provider self assessments, especially for ID DD waivers. The plan has no explicit requirements for providers who wish to remain licensed to develop and demonstrate progress on a formal plan of corrective action. A formal corrective action plan should be required for remediation of areas or conditions which are not compliant with the rule.</p>	<p><i>DBHDS thanks the commenter for the comment. Virginia is committed to investing in a robust self-assessment process for determining compliance with the final rule. Provider self-assessments are not intended to be the only source of information used to determine system compliance with the final rule. The self-assessments will be accompanied by DBHDS and DMAS QMR site visits to supplement the self-assessment information. The strategy to be used to achieve full compliance will occur after the self-assessment phase is complete, including corrective action plans, if necessary.</i></p>	<p>No required changes to plan</p>	<p>N</p>
<p>The board recommends that DMAS and DBHDS establish and implement a standard process to assess settings compliance with the final rule, to include on site visits. DMAS in partnership with DBHDS incorporate results of the NCI survey as part of that assessment. NCI captures data on individuals quality of life including exercise of chose and self determination, participation in work and community activities, protection of and respect</p>	<p><i>DBHDS thanks the commenter for the comment. Please see above comment. As outlined in the transition plant, on-site visits are incorporated into the assessment process. The possibility of using NCI surveys will be taken under advisement.</i></p>	<p>No required changes to plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
for individuals rights			
The transition plan should complement the goals and direction set forth for the I/DD service system to be person-centered and integrated as stipulated in the Agreement.	<i>DBHDS thanks the commenter for the comment which is duly noted.</i>	No required changes to plan	N
The plan should consider compliance activities an opportunity to enhance future system change and improves service quality	<i>DBHDS thanks the commenter for the comment. The Compliance and Monitoring team is proposed to help address this function. ID/DD waiver redesign will incorporate final rule requirements in order to enhance the system in the future.</i>	No required changes to plan	N
This plan should include a process of gathering information to identify systemic barriers to provider compliance from site visits, technical assistance, and various reports. The Board recommends that transition plan activities include a process for information gathering on barriers which can assist planning for service provider and workforce development.	<i>DBHDS thanks the commenter for the comment. As outlined in the statewide transition plan, the self-assessment phase includes a settings checklist, provider self-assessment survey, site visits and ongoing stakeholder input. Comment regarding barriers duly noted.</i>	No required changes to plan An additional statement was added to the role of the C&MT to gather information on barriers.	NY
<i>Integrate all VA related agency regulations governing the waivers, particularly DMAS and licensing regulations.</i>			
Since the plan is heavily dependent upon the DBHDS Office of Licensing for compliance activities, we are very concerned that the timeframe described for development of revised regulations is not being met.	<i>DBHDS thanks the commenter for the comment. The state recognizes the need for consistency in waiver regulations. The change in the format of the licensing regulations has been proposed and is already underway with the updating of</i>	Updated timeline will be added to plan in light of emergency regulations proposed by DBHDS workgroup.	Y

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<i>licensing regulations.</i>		
<p>We are concerned that the initial self-assessment activity for providers may or may not produce a tool which can be used by the Office of Licensing for verification.</p>	<p><i>DBHDS thanks the commenter for the comment. DBHDS licensing will review the information submitted by the provider as part of their self-assessment, if completed. They will also use a tool developed from the settings checklist on which to base compliance status.</i></p>	<p>Additional detail will be added to plan regarding DBHDS compliance monitoring tool to transition plan.</p>	<p>Y</p>
<p>There continues to be a significant reliance on DBHDS Licensing Regulations and Licensing process/personnel to both establish the “rules” and to monitor compliance.</p> <ul style="list-style-type: none"> • DBHDS Licensing is, and should continue to be, service specific not funding source specific • Some services, which may be HCBS funded, are not “licensed” services • Many services can, and do, support individuals with a variety of funding sources. While the requirements of the CMS Rule may be aspirational they are not funded (even in the HCBS programs) and, therefore, cannot be implemented. 	<p><i>DBHDS thanks the commenter for the comment. See previous comments regarding DBHDS licensing regulations update. Differences in licensing and DMAS regulations currently exist. The state recognizes the need for consistency in waiver regulations, including service definitions and interpretation of services, across all agencies.</i></p> <p><i>The state acknowledges that some of the requirements of the final rule will require adjustments to the operational processes, practices,</i></p>	<p>No required changes to plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<p><i>and procedures of provider agencies and may not be without financial impact. These impacts are also being absorbed by the state as compliance with federal regulations is mandatory and must be implemented. Although not addressed here in the review of settings, the I/DD system transformation/waiver redesign is proposed to help address provider cost and capacity challenges in the commonwealth. Compliance monitoring activities will occur throughout DBHDS/DMAS processes during the transition period. <u>Compliance with federal regulations (i.e. the final rule requirements), is mandatory and implementation will be required for providers who anticipate to continue to bill for Medicaid Waiver services.</u></i></p>		
<p>DBHDS will be using the Office of Licensing to assure not only compliance with the Final Rule, but assistance with the transition to Final Rule stipulations. Some of the services covered by the Final Rule are not covered by the licensing office in Virginia. (e.g., Employment Services). This is</p>	<p><i>DBHDS thanks the commenter for the comment. Differences in licensing and DMAS regulations currently exist. The state recognizes the need for consistency in waiver regulations, including service</i></p>	<p>No required changes to plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
addressed in the Transition Plan by indicating non-licensed services will be covered by revised State Medicaid regulations. Based on our experience, and that of our community partners, we recommend that the oversight entity or rules be consistent for all services provided under the Final Rule.	<i>definitions and interpretation of services, across all agencies. This integration effort is already underway with planned emergency licensing regulations updates along with the I/DD system transformation/waiver redesign. DMAS does have oversight responsibilities for non-licensed waiver services and will utilize QMR staff to assist with monitoring their compliance, as stated in the document.</i>		
The Board recommends licensure changes for settings and providers serving individuals with IDD. Currently there is a single set of regulations for very diverse populations, DBHDS licensure regulations should be reorganized to have 1) a set of core standards truly applicable to all populations (I/DD, MH Substance Use disorder) and 2) distinct sections specific to each population covered by the regulations. Massachusetts example.	<i>DBHDS thanks the commenter for the comment. See previous comment regarding planned integrated regulatory updates. The transition plan includes scheduled DBHDS Licensing regulations revisions and these comments will be considered in that process.</i>	No required changes to plan	N
Evaluation of current QMRs as well as licensing observations – including respective review tools, seems advisable to ensure relevant information is obtained to make compliance decisions consistent with the final rule settings requirements	<i>DBHDS thanks the commenter for the comment.</i>	Add detail regarding DMAS/DBHDS compliance monitoring tool to transition plan.	Y
<i>Compliance and Monitoring Team</i>			
It is important that the C&M team include adequate	<i>DBHDS thanks the commenter for</i>	The Commonwealth will	Y

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>representation from the advocacy community, including self-advocates and family members. We assume that the reference on page 5 and elsewhere in the plan to include “stakeholders” is intended to encompass self-advocates, family members and advocacy professionals.</p>	<p><i>the comment. The Commonwealth has and will continue to incorporate input from all VA stakeholders and partner organizations throughout the transition plan public outreach and engagement process. This process will include stakeholder representation on the Compliance and Monitoring team, encompassing, self-advocates, advocacy organizational representatives, private providers, CSB Case managers/Support coordinators, and family members, etc. The statewide transition plan states the following: “The compliance & monitoring team will include representatives from multiple state agencies. The team will include individuals from different divisions within agencies, stakeholders, and providers. The team will ensure due diligence for the multiple and complex aspects of achieving a seamless and aligned approach across waivers and populations. It is expected that the full team will meet twice a year with smaller workgroup activities</i></p>	<p>update the plan to specifically denote each category of stakeholders that will be represented on the Compliance and Monitoring team.</p>	

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<i>associated with specific waivers and areas of expertise between team meetings.”</i>		
There is no explanation how consumers of these services and their families will be a part of the C&M team. dLVCV requests clarification of your plan to include consumers and families in this process.	<i>DBHDS thanks the commenter for the comment. Please see comment above.</i>	See previous.	Y
The Board recommends that the selection of the stakeholders for the C&MT include (but not be limited to) regional representatives, especially from rural and underserved areas, self advocates, especially those who have successfully transition into o the community from an institution, family members, CILS the Arc of VA and other disability advocacy organizations	<i>DBHDS thanks the commenter for the comment. The Commonwealth has and will continue to incorporate input from all VA stakeholders and partner organizations throughout the transition plan public comment process. In keeping with stakeholder representation on other state groups, the makeup of the group will reflect diverse geographic representation.</i>	The Commonwealth will update the plan to specifically denote each category of stakeholders that will be represented on the Compliance and Monitoring team and that there will be geographic diversity represented.	Y
It is recommended that the “Compliance and Monitoring Team” and the role of the identified team members be better defined in the transition process. Beginning in March, 2015 DBHDS Licensing is being tasked with visiting and assessing each of the hundreds of current Waiver providers throughout the state to determine compliance with the various physical settings or location requirements included in the CMS final rule. From that point forward, the “Compliance and	<i>DBHDS thanks the commenter for the comment. See above comment</i>	See previous note. It will be noted in the plan that Rrepresentation on the Compliance and Monitoring Team will include CSB/Support Coordinator/Case Manager representation.	Y

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>Monitoring Team” is supposed to provide technical assistance and compliance monitoring to assist providers as needed with coming into compliance with the requirements of the CMS final rule. It is unclear if this task would be able to be achieved by the stated timeline given the current number of licensure staff and the number of providers to be assessed, as well as the lack of clarity in regard to the actual specific role of each team member. While unsure of the Support Coordinator’s role in this process, Colonial Behavioral Health staff is more than willing to participate on the “Compliance and Monitoring Team” in order to ensure there is a sufficient number of Waiver providers to meet the service demands of the population in need.</p>			
<p>The role of the office of licensing and the new Compliance and Monitoring Team, which is implemented via that department, need to be better defined in the process. The teams function and its intended outcomes are not clearly evident.</p>	<p><i>DBHDS thanks the commenter for the comment. The statewide transition plan outlines the following description and role of the Compliance and Monitoring Team “The compliance & monitoring team will be convened by June 2015 to:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Develop cross agency subject matter expertise on the final rule and the transition plan;</i> <input type="checkbox"/> <i>Ensure a collective understanding and consistent interpretation of requirements,</i> 	<p>The Commonwealth believes that the description of the Compliance and Monitoring team in the statewide transition plan adequately describes the function of the Compliance and Monitoring team. Additional detail on outcomes will be added to show intended result/product.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<p><i>transition plan milestones and guidance documents;</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Advise and support the education and training of professionals, providers and stakeholders;</i> <input type="checkbox"/> <i>Ensure a cohesive and broadly represented approach toward compliance, monitoring and capacity issues; and,</i> <input type="checkbox"/> <i>Ensure successful achievement of desired outcomes and full compliance with the HCBS final rule settings requirements by March of 2019.</i> <p><i>The development of compliance & monitoring team represents the state’s intention to oversee, support and monitor full compliance with the settings requirements of the HCBS final rule. The team will be empowered to:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Provide technical assistance on the final rule including documentation for exceptions;</i> <input type="checkbox"/> <i>Review and comment on developed materials and resources;</i> <input type="checkbox"/> <i>Provide recommendations and assist with the development of</i> 		

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<p><i>solutions and implementation of strategies aimed at achieving desired outcomes;</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Oversee development and implementation of a communications strategy for providers, individuals and families; and,</i> <input type="checkbox"/> <i>Report to state leadership on the status of compliance.</i> <p><i>Additional details about this team can be found on page 6 of the statewide transition plan: Compliance & Monitoring.</i></p>		
<p>We believe the role of Licensing and the new, “Compliance and Monitoring Team” needs to be better defined in the process. Beginning this month, Licensure staff is being tasked with visiting each provider to determine compliance with the settings requirements. We feel that licensure staff will not have the manpower to assist providers in reaching this goal in the given timeline. The ability to monitor, review, and assist with compliance is paramount to the transition. Furthermore, throughout the document it discusses the Compliance and Monitoring Team. We would like assurance that the Community Services Boards has a fair representation on this team.</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments about Compliance and Monitoring Team representation in this section.</i></p>	<p>Please see previous note. The Commonwealth will update the plan to specifically denote each category of stakeholders that will be represented on the Compliance and Monitoring team and that there will be CSB representation.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>We also believe that the development of immediate and ongoing provisions to ensure a collective understanding of Final Rule compliance among DMAS, VA Office of Licensure, Support Coordinators and Service Providers should be a cooperative and well-planned, key component of the State Transition Plan.</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments and those in licensing and regulations section.</i></p>	<p>No changes to transition plan</p>	<p>N</p>
Stakeholder outreach and engagement			
<p>As a supplement to existing stakeholder engagement plans, The Arc of Virginia recommends that DBHDS send a communiqué to all current I/DD waiver recipients as well as individuals wait-listed for such services informing them of: (a) the state’s obligation to notify the public of any subsequent, “substantial” revisions in the transition plan and afford interested parties an opportunity to submit comments; (b) procedures for filing comments on implementation of the settings rule, including situations in which they believe specific community provider agencies are failing to adhere to the federal settings requirements; and (c) their right under the federal rule to submit timely comments directly to CMS once the Commonwealth’s statewide transition plan is submitted to the federal government.</p>	<p><i>DBHDS thanks the commenter for the comment and agrees that more targeted information on the final rule should be disseminated to waiver participants and families. DBHDS will insert information into materials already designated to be distributed to waiver participants on the requirements of the final rule and on the contents and location of the transition plan for their review. DBHDS does not have the most updated information available on individuals on the waiting list and will investigate options for reaching out to this group via CSBs or other intermediaries.</i></p>	<p>The state will incorporate the recommendations into the statewide transition plansuggestion to distribute a targeted communication to individuals on the waiting list into the plan.</p>	<p>Y</p>
<p>In the section of the transition plan titled “Public Input” the following is stated: <i>An email address and fax number have been established and disseminated</i></p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comment.</i></p>	<p>The state will incorporate the recommendations into the statewide transition</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p><i>to individuals, family members, and other advocates familiar with various provider settings so they may submit comments on the draft transition plan and share their knowledge of settings and compliance with the Final Rule. In particular, those that DMAS and DBHDS can assist with needed technical assistance. It is not felt that this information has been adequately disseminated to the Intellectual Disability and Day Support Waiver recipients and their family members. It is recommended that a more direct form of communication be provided to include a notification letter sent to each Waiver recipient regarding VA’s Transition Plan to meet the CMS Final Rule on HCBS, as well as plans for the Waiver redesign pertinent to the plan.</i></p>		<p>planSee previous note.</p>	
<p>On page 6 of the plan in the section titled “Public Input” the following is stated: “An email address and fax number have been established and disseminated to individuals, family members, and other advocates familiar with various provider settings so they may submit comments on the draft transition plan and share their knowledge of settings and compliance with the Final Rule. In particular, those that DMAS and DBHDS can assist with needed technical assistance”. We do not feel that this information has been adequately disseminated to the Intellectual Disability and Day Support Waiver recipients and their family members. Our recommendation would</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comment.</i></p>	<p>The state will incorporate the recommendations into the statewide transition planSee previous note.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation's Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>be to provide a more direct form of communication to include a notification letter sent to each Waiver recipient regarding VA's Transition Plan to meet the CMS Final Rule on HCBS, as well as plans for the Waiver redesign pertinent to the plan.</p>			
<p>We do feel that many waiver recipients and their families may not be aware or at least not fully informed on the proposed changes and the impact this may have on their services. On pg. 53 of the document it is asserted that CSB's were tasked to disseminate this information to members and constituents, but we were never provided with any specific instruction on that. From what we have learned over the years, these recipients and families often have difficulty taking in some of this complex information or deciphering what is significant and what is not. Our hope is that DBHDS will be able to provide more direct lines of communication with individuals and families to assure pertinent information is available.</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comment. A similar communication will be distributed to CSB's as well as communicated via meetings, trainings, etc.</i></p>	<p>The state will incorporate into the plan the recommendations to develop targeted communication for individuals and families via information disseminated to the CBS's for this purpose into the statewide transition plan.</p>	<p>Y</p>
<p>With regard to the overall transition plan, we recommend strengthening the mechanisms for stakeholder/ participant input into all aspects of the plan.</p> <p>1. Ensure that stakeholders are effectively engaged in each aspect of implementation: -Assessment of how well current settings are fulfilling the new standards and how this is</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments in this section and in the section on the Compliance and Monitoring Team.</i></p>	<p>The state will incorporate the various recommendations for strengthening/increasing public input into the statewide transition plan.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>impacting quality of life for HCBS participants; -Development of plans to bring settings/services into compliance; -Recommending changes to the regulatory framework (inclusive of standards/regulations as well as inspection and enforcement processes).</p> <p>2. Provide training on the goals and requirements of the new standards in a format that is easily accessible to participants/representatives, and family members. Ensure that training materials are available online, on-site, and via alternative modalities that accommodate cultural diversity and disability challenges.</p> <p>3. Expand proposed efforts to solicit input from participants themselves regarding how successfully service settings support well-integrated person-centered services and supports. Such processes should included suggested questions to be asked of participants in getting their clear and meaningful input regarding how well the new standards' goals (<i>and</i> their individualized service plan goals) are met. This is not to minimize or devalue the importance of the provider's perspective, which is also critical to this assessment.</p>			

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation's Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>However, there is no substitute for, and nothing more important than, the participant's experience, which is by definition, central to person-centered care.</p> <p>4. Expand ongoing opportunities for participants/consumers to provide direct qualitative feedback to the entity assessing the HCBS services/settings. Expanded access should include diverse modalities inclusive of interview, accessible questionnaire/surveys, and focus groups with participants as well as family members. Arrangements to ensure access to opportunities to provide input privately and/or anonymously must be included. It will be important for participants to be provided with ongoing information regarding program goals and requirements, as well as their rights vis a vis the services.</p>			
<p>dLCV would like further information about the actual composition of the audiences reached during the stakeholder sessions. We advocate for more consumer based sessions to occur.</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments in this section and the section on Compliance Monitoring.</i></p>	<p>The state will incorporate additional outlets for stakeholder input into the plan and demote audiences targeted. the recommendations into the statewide transition plan.</p>	<p>Y</p>
<p>With regard to transition plans related to the Alzheimer's waiver, two commenters recommend enlisting additional stakeholder (including persons</p>	<p><i>DMAS thanks the commenter for the comment. During the continued assessment phase of the AAL waiver</i></p>	<p>This was specified/clarified in the plan.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
with expertise in Alzheimer’s disease) input to strengthen efforts to achieve compliance with the new standards under the Alzheimer’s Waiver.	<i>settings individuals with expertise in Alzheimer’s disease, and individuals with Alzheimer’s disease, will be engaged in the assessment process.</i>		
Two commenters recommend provisions for stakeholder input (participants and their families in particular) in the assessment, monitoring, and plan development processes. The commenters stated that they recognize that there are unique challenges associated with obtaining direct input from many participants under this waiver. However, strongly encourage recognition and incorporation of the valid perspectives of participants who can give input into evaluation of the characteristics of settings and the quality and outcomes of services.	<i>DMAS thanks the commenter for the comment and DMAS agrees with this comment. There is every intention to include individuals and families in the continued assessment of the AAL waiver settings and compliance with the final rule.</i>	This was specified/clarified in the plan.	Y
Concerns about what seemed to be overly broad assumptions about this population – especially in light of current knowledge and goals regarding person-centered care, were shared. The concerns were based on some of “the language and implied assumptions in the proposed transition plan.” In particular comments about “Residents like being congregated with other people and the need for increased privacy has historically not been a concern,” and “individuals require safety mechanisms regardless of the setting they are in to	<i>DMAS thanks the commenters for the comment. The statements in the transition plan the commenters are referring to were taken from provider self-assessments and are not that of DMAS. It is DMAS’s determination based on its assessment to date additional training and education in person centered planning and practices are needed. This was referenced in the plan, however, upon review, and based on the feedback from the commenters, this was not clear in the plan and the commenters’ interpretation is</i>	This was specified/clarified in the plan.	Y

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>prevent wandering.” The comments were referred to as “overly broad categorization as potentially damaging to efforts and goals to ensure truly person-centered care based on individual needs being met in the most integrated, least restrictive setting.”</p>	<p><i>understandable. For this reason, the language in the plan has been clarified. DMAS thanks the commenters and apologizes for any confusion.</i></p>		
<p>With regard to transition plans related to the Alzheimer's waiver, we recommend enlisting additional stakeholder (including persons with expertise in Alzheimer's Disease) input to strengthen efforts to achieve compliance with the new standards under the Alzheimer's Waiver.</p> <p>We recommend provisions for stakeholder input (participants and their families in particular) in the assessment, monitoring, and plan development processes. We recognize that there are unique challenges associated with obtaining direct input from many participants under this waiver. However, we would strongly encourage recognition and incorporation of the valid perspectives of participants who can give input into evaluation of the characteristics of settings and the quality and outcomes of services. Persons with early onset dementia, for example, can often provide input of unequalled value regarding the quality of services.</p>	<p><i>DMAS thanks the commenter for the comment. Please see above response regarding the involvement of stakeholders and those with expertise in Alzheimer's in the continued assessment and on the C&MT. DMAS</i></p>	<p>This was specified/clarified in the plan.?</p>	<p>?Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>We have concerns about what seem overly broad assumptions about this population – especially in light of current knowledge and goals regarding person-centered care. Some of the language and implied assumptions in the proposed transition plan are concerning. The plan states that “Residents like being congregated with other people and the need for increased privacy has historically not been a concern.” This seems to too easily dismiss the fundamental and important right to individual privacy. At the same time, such generalizations in general would seem to undermine the central notion here of person-centered care and service.</p> <p>Similarly, the proposed transition plan states on page 19 that “individuals require safety mechanisms regardless of the setting they are in to prevent wandering [therefore use of secured units or buildings is necessary].” While we in no way minimize the true challenges of protecting the safety of participants meeting the criteria for this waiver who may have wandering behaviors, we see this overly broad categorization as potentially damaging to efforts and goals to ensure truly person-centered care based on individual needs being met in the most integrated, least restrictive setting.</p>			

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>Because of the unique challenges of ensuring that persons with Alzheimer's Disease can receive appropriate care and services in the least restrictive and most integrated environment, The commenters we strongly urged DMAS to work with stakeholders (especially those with expertise in dementia care) on effective ways to translate the new rule/standards to the unique needs and realities of participants with Alzheimer's. We recommend the development of specifically tailored assessment, measurement, and monitoring mechanisms that can evaluate and promote the goals of this transition plan through the unique filter of Alzheimer's Disease. Once these interpretations are developed, specialized training in how to interpret these standards and translate them into practice relative to persons with Alzheimer's is essential to a meaningful implementation plan. An example might be that instead of acceding to congregate gatherings as being automatically more suitable (to the participant with Alzheimer's) and therefore of greater value than the individual privacy standard, we may need to look at a setting's efforts to ensure privacy and dignity in a different way. That goal for an individual might be secured, for example, by enabling someone who has traditionally preferred 'alone time' to be assured of opportunities to enjoy being apart from the group – perhaps engaged in some individual activity (listening to favorite music, for example). Such</p>			

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>opportunities might be achieved through ensuring a sufficient number of well-trained staff to enable that option. Attention to adequate staffing to support individuals' needs then would be a critical measurement tool. Furthermore, in many ways in the specific context of Alzheimer's Disease, maximizing access to the broader community needs to be examined/strengthened as much within the living setting/unit itself as with reference to the larger surrounding community. Again, adequacy of staffing becomes a critically important variable.</p>			
<p>It would be very helpful for the appropriate DBHDS/DMAS staff in collaboration with members of the public and private provider community to host town hall style open forums around the state to describe the “Rule” and the plans to comply.</p>	<p><i>DBHDS thanks the commenter for the comment. As part of its stakeholder outreach and education, DBHDS conducted several town-hall style webinars on the CMS final rule. DBHDS will consider implementing additional such activities.</i></p>	<p>The state will review and consider the recommendation.</p>	<p>N</p>
<p>On page 6 of the plan in the section titled “Public Input” the following is stated:</p> <p><i>An email address and fax number have been established and disseminated to individuals, family members, and other advocates familiar with various provider settings so they may submit comments on the draft transition plan and share their knowledge of settings and compliance with the Final Rule. In particular, those that DMAS and DBHDS can assist</i></p>	<p><i>DBHDS thanks the commenter for the comment Please see previous comments.</i></p>	<p>The state will incorporate the various recommendations for strengthening/increasing public input into the statewide transition plan.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p><i>with needed technical assistance.</i></p> <p>We do not feel that this information has been adequately disseminated to the Intellectual Disability and Day Support Waiver recipients and their family members. Our recommendation would be to provide a more direct form of communication to include a notification letter sent to each Waiver recipient regarding VA’s Transition Plan to meet the CMS Final Rule on HCBS, as well as plans for the Waiver redesign pertinent to the plan.</p>			
<p>Regarding the “Public/Stakeholder Engagement” section described in Appendix F: Intellectual Disability Waiver on page 53, it indicates that Community Services Boards “<i>were requested to distribute information widely to their members and constituents</i>”. We do not feel that these instructions were clear and as prescriptive as indicated. CSBs received the email noted below from DBHDS, but there is no mention to distribute the information “<i>widely to members and constituents</i>”. We acknowledge that CSBs were requested to share information with stakeholders, but did not fully understand the instructions to specifically inform Waiver recipients about the posting of the public comment period ending on September 6, 2014. We feel that more coordination with all CSBs is needed to ensure all Waiver recipients are made aware of the opportunities for public comment periods</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments in this section. DBHDS will explore opportunities for additional direct engagement and outreach to stakeholders and in conjunction with CSBs.</i></p>	<p>The state will incorporate into the plan the recommendations into develop targeted communication for individuals and families via information disseminated to the CSB’s for this purpose. the statewide transition plan</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
described in the transition plan. In addition, we recommend a more direct form of communication to include a notification letter sent to each Waiver recipient regarding VA’s Transition Plan to meet the CMS Final Rule on HCBS, as well as plans for the Waiver redesign pertinent to the plan.			
<i>Role of Support Coordinators/Transitioning Displaced Participants</i>			
A concern over the role of the support coordinator and how this role will be implemented in July 2018. It appears that CSB support coordinators will be tasked to work with all of the individuals who need to transition to an alternative setting under the plan. It can be anticipated that there may be a fair number of individuals who are displaced depending on their service level and funding. We would like to see a more detailed and concrete plan regarding the CSB Support Coordinators role in terms of capacity for achieving a high volume of transitions if this occurs across the state.	<i>DBHDS thanks the commenter for the comment. DBHDS would like to work together with the VACSB Developmental Services Council over the course of the next year and a half to develop a plan.</i>	Add more detail to transition plan. The state will update the plan to add more detail with regard to developing a formal plan to transition dislocated individuals.	Y
We have concern over the role of the CSB support coordinator in July of 2018 as described in Appendix F: Intellectual Disability Waiver – Section C. Technical Assistance and Compliance Monitoring (page 52). The support coordinator will be tasked with working with individuals needing to transition to alternative settings. We would like to see a more concrete plan of transition for those individuals who may have a change in their service level and may be displaced from their current	<i>DBHDS thanks the commenter for the comment. Please see previous comments.</i>	Add more detail to transition plan. See previous note.	Y

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>service level. This has the potential to leave many of our consumers in a vulnerable situation that could affect their health and safety. We also question the statement of, “Individuals will be provided with reasonable notice of the need to transition and choose another setting”. A definition of “reasonable notice” is needed.</p>			
<p>As a provider of Support Coordination services we can most assuredly be poised to work with individuals to obtains new services should their current providers not be able to comply with final rule, however we can’t stress enough that we will need ample notice from licensure on which providers are not going to meet the new standards. Thank you again for the opportunity to provide comment.</p>	<p><i>DBHDS thanks the commenter for the comment. This information will result from the completed assessment process and review.</i></p>	<p>No changes to transition plan.</p>	<p>N</p>
<p>Support Coordination Teams have been, and will remain, key in supporting individuals impacted by training center closures. These teams are the identified coordinators of enhanced nursing and behavioral services supporting Waiver Reform. Furthermore, a significant need exists to focus supports on individuals on Medicaid Waiver waitlists and individuals who are not waiver-eligible. Securing funding to hire, train and provide workspace, and technological and other equipment and supplies, for support coordination staff for these initiatives alone is an increasing challenge. The added responsibility of Support Coordinator</p>	<p><i>DBHDS thanks the commenter for the comment. The state acknowledges that some of the requirements of the final rule are not supported by the current capacity and infrastructure existing in the state, but costs must be absorbed by the entire system as the requirements are mandatory.</i></p> <p><i>System transformation efforts underway are proposed to help improve the capacity and</i></p>	<p>No changes to transition plan.</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>training and monitoring associated with the Final Rule is not reflected in DBHDS planning documents. Therefore, we strongly recommend that the capacity issue regarding support coordination be discussed and addressed in the Transition Plan.</p>	<p><i>infrastructure of the Commonwealth to support the setting and integration requirements of the final rule making it possible to attract providers embodying these philosophies.</i></p>		
<p>We have a great concern of the role of the CSB support coordinator in July of 2018 as described in Appendix F: Intellectual Disability Waiver - Section C. Technical Assistance and Compliance Monitoring (page 52). They will be tasked with working with individuals needing to transition to alternative settings. We would like to see a more concrete plan and also question the statement of, “<i>Individuals will be provided with reasonable notice of the need to transition and choose another setting</i>”. A definition of “<i>reasonable notice</i>” is needed.</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments.</i></p>	<p>The state will update the plan to add more detail with regard to developing a formal plan to transition dislocate individuals. Add more detail to transition plan.</p>	<p>Y</p>
<p>Regarding the role of the CSB Support Coordinator in July of 2018 as described in the transition plan, more clarity is needed. The transition plans indicates that the Support Coordinator will be tasked with working with individuals needing to transition to alternative settings. It is recommended that a more concrete plan be provided. There is also concern regarding the statement, “<i>Individuals will be provided with reasonable notice of the need to transition and choose another setting</i>”. A definition of “<i>reasonable notice</i>” is needed. Our utmost</p>	<p><i>DBHDS thanks the commenter for the comment. Please see previous comments.</i></p>	<p>The state will update the plan to add more detail with regard to developing a formal plan to transition dislocate individuals. Add more detail to transition plan.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>concern is for those individuals who are currently receiving Waiver services, such as residential services in a group home, whose provider does not comply with the CMS final rule requirements. In order for Support Coordinators to ensure provider choice for the Waiver recipient; as well as to minimize disruption in the individual’s life should they choose or need to relocate to another provider, the greatest amount of time possible to allow individuals to smoothly transition to another provider is needed.</p>			
<p>“Individuals will be provided reasonable notice of the need to transition and choose another setting.” “Reasonable notice” needs to be defined</p>	<p><i>DBHDS thanks the commenter for the comment.</i></p>	<p>The state will update the plan to add more detail with regard to developing a formal plan to transition dislocate individuals. Add more detail to transition plan.</p>	<p>Y</p>
<i>Human Rights involvement</i>			
<p>The VA CSB would like the Office of Human Rights to have a more defined and stronger role in the new model of services that is being mapped out this year via the plan. We request that the office of Human Rights be placed at the forefront of service discussions and complaint resolution as we implement the plan and any changes this year and next.</p>	<p><i>DBHDS thanks the commenter for the comment, which is duly noted. The OHR is aware of the final rule requirements and the timeline for self-assessments and site visits. Additional direct involvement will be at the discretion of the OHR.</i></p>	<p>No change to plan.</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>In terms of Virginia’s preparation to meet the CMS final rule requirements pertinent to HCBS Waivers, it is strongly encouraged that the DBHDS Office of Human Rights be heavily involved in this process. Many consumers, families, authorized representatives, and legal guardians may have complaints and concerns regarding an individual’s care after providers re-structure their service arrangement to align with the CMS final rule requirements.</p>	<p><i>DBHDS thanks the commenter for the comment which is duly noted. See previous response.</i></p>	<p>No change to plan.</p>	<p>N</p>
<i>Costs/Fiscal Impact</i>			
<p>Current and proposed Medicaid Waiver rates are not adequate nor do they acknowledge increased costs to meet or document compliance and/or exceptions to compliance of the Final Rule. The issue of compliance will significantly impact expenses in service delivery and supports, costs associated with service model alternatives (i.e., options that include living with non-disabled individuals and roommate choice), as well as expenses associated with staff training and administration. With no clear indication of how costs will be covered, we strongly recommend that the Transition Plan reflect prioritization of human rights and person-centered planning with benchmarks for higher cost items (i.e., assurance of alternative service models and/or services that will at least initially require increased support, opportunities to support and actualize vendor</p>	<p><i>DBHDS thanks the commenter for the comment. The state acknowledges that some of the requirements of the final rule are not supported by the current capacity and infrastructure existing in the state, but costs must be absorbed by the entire system as the final rule requirements are mandatory. The order of priority and timeline for addressing final rule requirements has been established by CMS. This transition plan focuses only on the settings requirement of the CMS final rule, as states are required to be in full compliance by March 2019.</i></p>	<p>No changes to transition plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>choice, securing authorized representatives or alternate decision makers where informed consent regarding leases is necessary, and increased monitoring by Support Coordination Teams) that are consistent with the realization of actual fiscal capacity.</p>	<p><i>System transformation efforts underway are proposed to help improve the capacity and infrastructure of the Commonwealth to support the setting and integration requirements of the final rule, making it possible to attract providers embodying these philosophies.</i></p>		
<p>While the tentatively proposed Waiver Redesign contains a few elements that will assist providers in compliance, there has been no strategic evaluation of the potential cost associated with the implementation of this plan. Lacking significant revision of the rate structure, funded to accommodate the elements to this Rule, the exercise described in the Transition Plan will be just that – an exercise.</p>	<p><i>DBHDS thanks the commenter for the comment. The state acknowledges that some of the requirements of the final rule will require adjustments to the operational processes, practices, and procedures of provider agencies and may not be without financial impact. These impacts are also being absorbed by the state as compliance with federal regulations is mandatory and must be implemented.</i></p>	<p>No changes to transition plan.</p>	<p>N</p>
<p>Final Rule requirements and transition plans are on an inconsistent timeline with the development and passage of related legislative changes. We further recommend that both Final Rule requirements and related legislative changes be moving in the same direction at the same time.</p>	<p><i>DBHDS thanks the commenter for the comment. The Transition Plan timeline was developed in accordance with the timeline for implementation imposed by CMS which does not necessarily correlate to Virginia’s legislative process</i></p>	<p>No changes to transition plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<i>calendar. The state recognizes the multiple systems transformation efforts underway but notes that this is not a DBHDS developed requirement but a mandatory federal requirement.</i>		
<p>Many persons who are already in the least restrictive or most independent placement possible have impairments which preclude full implementation of Final Rule guidelines, and in fact, may be exposed to situations which compromise their health and safety under the Final Rule. We believe that related documentation for exceptions should not be extensive or costly. A wealth of expertise exists among all stakeholders to collaborate on a “justifiable exception process” that optimizes individual capacity and assures safety and well-being without unnecessarily compromising provider resources. Therefore, the Committee strongly recommends that collaborative efforts to identify and clarify specific documentation for exceptions occur in advance of full Final Rule implementation.</p>	<p><i>DBHDS thanks the commenter for the comment. As per the requirements of the CMS final rule, individuals shall have preference and choice in determining services and supports provided in the most integrated LRE setting possible. DBHDS and DMAS view community integration as an enriching and essential component of life for individuals with I/DD. While DBHDS respects the importance of supporting a provider’s ability to maintain an individual’s health and safety, it strongly believes that even the most intensive support needs individuals can be safely supported in an integrated setting. Therefore DBHDS does not support measures that would allow an individual to “opt out” of community integration solely for health and safety reasons. As part of its needs-based I/DD</i></p>	<p>No changes to transition plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<p><i>system philosophy, DBHDS is committed to providing training and technical assistance to providers to assist them in obtaining the skills and knowledge necessary to support high needs individuals.</i></p> <p><i>The licensing regulatory effort underway will address the commenter’s concerns regarding documentation and compliance monitoring.</i></p>		
Limited provider capacity			
<p>The Transition Plan does not address capacity issues, but does address “disenrollment” and “transitioning” to alternative settings. If a transition is needed because of provider disenrollment, there is not currently available capacity within the CSB for such a transition to take place. It will be difficult, or improbable, for persons to receive the services covered by the Final Rule if appropriate settings are not available. We highly recommend that the critical issue of capacity be addressed in the Transition Plan.</p>	<p><i>DBHDS thanks the commenter for the comment. The state acknowledges that some of the requirements of the final rule are not supported by the current capacity and infrastructure existing in the state. System transformation efforts underway, along with the results of the provider self-assessment, will help improve the capacity and infrastructure of the Commonwealth to support the setting and integration requirements of the final rule, making it possible to attract providers embodying</i></p>	<p>No changes to transition plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<i>these philosophies.</i>		
<p>Finally, lack of capacity cannot remain “the elephant in the room” if full compliance with the Final Rule is to be realized. The Committee acknowledges that a number of the requirements included in the Final Rule have already been met, and others can be met with “minor adjustments”, as is forecasted in the DBHDS preliminary status of compliance. However, the fact that other requirements cannot be met within the identified timeframe of the Final Rule without increased capacity is not referenced. The Committee strongly recommends that the crucial issue of insufficient capacity be recognized, discussed and addressed as part of the DBHDS Transition Plan.</p>	<p><i>DBHDS thanks the commenter for the comment. The state acknowledges that some of the requirements of the final rule are not supported by the current capacity and infrastructure existing in the state. System transformation efforts underway, along with the results of the provider self-assessment, will help improve the capacity and infrastructure of the Commonwealth to support the setting and integration requirements of the final rule, making it possible to attract providers embodying these philosophies.</i></p>	<p>No changes to transition plan</p>	<p>N</p>
<i>Technical assistance and training needed</i>			
<p>The concept that DBHDS Licensing Specialists, Human Rights Advocates, CRCs, CIMs, Case Managers, and DMAS QMR staff will all be equally qualified to “provide technical assistance” accurately and consistently is flawed. The resulting suggestions/direction from such a diverse and fluid group of individuals will be confusing and</p>	<p><i>DBHDS thanks the commenter for the comment. The state understands the need for significant training and technical assistance for both providers, individuals, and all system stakeholders for full implementation of the final rule.</i></p>	<p>The state will add Mmore details on provider training and technical assistance, including revised timeline, into the will be incorporated into the transition plan.</p>	<p>Y</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>detrimental to the providers attempting to comply. A small group should be tasked with the technical assistance/consultative function and, if necessary, be the resource for not only providers but the aforementioned groups. This seems to be the direction taken in the second paragraph on page 7, though it also seems to contradict the preceding paragraph.</p>	<p><i>Once the full system has been assessed for overall compliance, training will be developed and administered to target the areas identified through the provider self-assessment. Stakeholder education and awareness training will be shared by DBHDS, DMAS and their community partners.</i></p>		
<p>A recent decision from CMS that a residential setting that isolates (even if it is not HCBS funded) would eliminate the ability of the individuals to benefit from any HCBS may change the assessment that all family homes are compliant.</p>	<p><i>DBHDS thanks the commenter for the comment. The state has determined that when an individual receives services in their own home, or in the home of a parent/family member where they reside (a non-provider owned or operated setting) the setting is HCB.</i></p>	<p>No action on comment needed. No changes to plan.</p>	<p>N</p>
<p>The DBHDS Transition Plan relies heavily on provider self-assessment and provider-developed corrective action to comply with Final Rule requirements. While technical assistance is referenced in the plan, much of the related description of this assistance is directed to “...monitor and ensure ongoing compliance.” We recommend that technical assistance be toned and implemented in an intentionally collaborative manner with immediate and ongoing actual solutions, helpful suggestions, and the benefits of a broad state-wide perspective on how to efficiently</p>	<p><i>DBHDS thanks the commenter for the comment. Please see section on Compliance and Monitoring team. Documentation requirements will be addressed with the planned updating of regulations.</i></p>	<p>No changes to plan.</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>meet requirements. We further recommend that forthcoming regulations address the implementation of Final Rule requirements within available Medicaid Waiver reimbursement rates, as well as provide clear expectations regarding documentation of efforts that will be reviewed during the compliance monitoring process.</p>			
Other			
<p>The Commonwealth’s proposed HCBS transition plan, in contrast, continues to use location and size as primary criteria in identifying settings that are presumed to have institutional qualities</p>	<p><i>DBHDS thanks the commenter for the comment.</i></p>	<p>No required changes to plan.</p>	<p>N</p>
<p>The statewide transition plan applies a very restrictive criteria for determining when a congregate living or day program setting is presumed to have institutional characteristics and, therefore, deserves heightened scrutiny in determining whether it meets the regulatory settings criteria (see, for example, the discussion of Adult Day Health Center (ADHC) services under the Elderly or Disabled Consumer Directed (EDCD) waiver program on pages 11-12 of the plan).</p>	<p><i>DMAS thanks the commenter for the comment. CMS set the criteria for settings CMS presumes to be institutional. A regulatory and licensure review confirmed compliance with the setting requirements for non-residential settings. More specific language will be incorporated into regulation and policy to strengthen the expectation of compliance with the setting requirements The comment is duly noted.DMAS</i></p>	<p>No required changes to plan</p>	<p>N</p>
<p>Despite the findings of the Independent Reviewer, the Commonwealth’s transition plan contains no evidence that state officials have assessed the current capacity of non-disability settings to serve</p>	<p><i>DBHDS thanks the commenter for the comment. The state acknowledges that some of the requirements of the final rule are</i></p>	<p>No required changes to plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>HCBS waiver participants and arrive at a plan to increase capacity in such residential and non-residential settings so waiver participants are afforded a genuine choice among alternative service settings.</p>	<p><i>not supported by the current capacity and infrastructure existing in the state, including non-disability settings. System transformation efforts underway, to include stakeholder involvement, are proposed to help improve the capacity and infrastructure of the Commonwealth to support the setting and integration requirements of the final rule, making it possible to attract providers embodying these philosophies.</i></p>		
<p>The goals of the settlement agreement parallel the goals of compliance with CMS’s settings requirements since both documents seek to afford recipients of Medicaid HCBS wider choices and greater access to supports that integrate them into the fabric of community life. For this reason, it is important that the two initiatives be co-managed.</p>	<p><i>DBHDS thanks the commenter for the comment. Although the overall goals of the settlement agreement and the CMS final rule are similar, the federal agencies managing the activities and the timelines are distinct; therefore, the state must work in accordance with the parameters established by the DOJ and CMS for prescribed activities. VA I/DD system transformation efforts, including I/DD waiver redesign, is intended to ensure integration of both sets of requirements; however, this is a separate activity from the transition</i></p>	<p>No required changes to plan.</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
<p>A primary weakness in the Commonwealth’s proposed transition plan is that it seriously underestimates the barriers to creating a I/DD service delivery system built on the principles of individualization, consumer choice and full community inclusion.</p>	<p><i>plan.</i> <i>DBHDS thanks the commenter for the comment. The Commonwealth acknowledges that it will not fully know the extent of all barriers to full compliance with the requirements until the assessment process yields enough data for review.</i></p>	<p>No required changes to plan</p>	<p>N</p>
<p>At the present time, the state is in the process of restructuring its three existing I/DD waiver program in an attempt to broaden the types and intensity of supports available, with the aim of allowing participants to receive the supports they need to engage more fully in normative community activities. These existing and impending reforms, however, have yet to be melded together to form a cohesive strategy for fostering broad-scale, system-wide change. The transition plan provides an unparalleled opportunity to create such a cohesive strategy. But, the proposed plan draws a distinction between activities designed to meet the requirements of the settlement agreement and activities designed to comply with CMS’s settings rule, indicating “This transition Plan is not intended to be a report on current and future efforts</p>	<p><i>DBHDS thanks the commenter for the comment. Although the overall goals of the settlement agreement and the CMS final rule are similar, the federal agencies managing the activities and the timelines are distinct; therefore, the state must work in accordance with the parameters established by the DOJ and CMS for meeting requirements. However, VA I/DD system transformation efforts, including the I/DD waiver redesign, is intended to ensure integration of both sets of requirements. CMS has provided direction that statewide transition plans specifically address only the</i></p>	<p>No required changes to plan</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
associated with compliance with DOJ and systems redesign and transformation.” ¹	<i>setting requirements of the final rule for home and community based services; therefore, the VA Statewide Transition Plan is specific to the analysis and recommendations regarding the settings for home and community based services.</i>		
Concern was expressed regarding the analysis of the AAL waiver for compliance with HCBS requirements. Participation in this waiver mandates receipt of services in an institutional setting. Assuming people with Alz., Unlike recipients of other waiver services, can only live in only one of the 16 licensed ALFs rather than in community settings defies logic. The requirement should be altered so that this waiver is truly “home and community based”	<i>DMAS thanks the commenter for the comment. The assessment of AAL waiver sites is not complete. Continued assessment is needed prior to making a final determination regarding compliance status and presenting CMS with a determination. DMAS</i>	No required changes to plan	N
Concerned about the following language “Providers that are unable to comply with the rule will forfeit their Medicaid Waiver provider status and be disenrolled by March 2019.” This seems an extraordinarily long time to come into compliance. dLCV is not aware of a corrective action plan or DBHDS corrective action which has ever allowed for such an extended duration.	<i>DBHDS thanks the commenter for the comment. As outlined in the statewide transition plan, CMS is allowing until March 2019 for states to reach full system-wide compliance. There will be a lead time following training and technical assistance for providers to</i>	No required changes to plan	N

¹ Statewide Transition Plan, p. 3.

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

<u>Public Comment</u>	<u>Response</u>	<u>Disposition</u>	<u>Incorporated into Transition Plan Y/N</u>
	<i>show a good faith effort to achieve compliance. “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.”</i>		
Advocate for the inclusion of Applied Behavioral Analysis as a waiver service.	<i>DBHDS thanks the commenter for the comment which is duly noted. This statewide transition plan is only assessing the settings requirement of the CMS final rule. The VA I/DD system/waiver redesign is a separate activity and is not addressed in this plan.</i>	No required changes to plan	N
Transportation is a CSB challenge state-wide, particularly so in Northern Virginia. Proposed Medicaid Waiver redesign changes service reimbursement for Employment and Day services from a unit time period to an hourly time period. While this may allow for increased	<i>DBHDS thanks the commenter for the comment. This transition plan focuses only on the settings requirement of the CMS final rule as states are required to be in full compliance by March</i>	No changes to plan required	N

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

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<p>individualization which is applauded, transportation issues, and in particular, Logisticare service issues, may preclude the ability of providers to be reimbursed for the daily hours necessary to make a program fiscally viable. This issue needs significant consideration in implementation of the final rule.</p>	<p><i>2019. VA I/DD system transformation efforts, including I/DD waiver redesign, is a separate activity from the transition plan.</i></p>		
<p>Although ChelseaXXX can stand, walk and speak in a limited capacity she requires 100% supervision at all times. I have to be here to provide for my daughter. I am asking you to keep this in mind as I may only get paid for 344 days out of the year and stand to receive a potential 11% reduction in my pay. I don’t get to take sick days, I can’t say “I quit,” and I can’t stop providing care for my daughter. I am able to stay home with her due to having Sponsored Residential reimbursement along with SSI. This allows me to provide XXXChelsea to have “A Life Like Yours.”</p>	<p><i>DBHDS thanks the commenter for the comment. This transition plan focuses only on the settings requirement of the CMS final rule as states are required to be in full compliance by March 2019. VA I/DD system transformation efforts, including I/DD waiver redesign, is a separate activity from the transition plan.</i></p>	<p>No changes to plan required</p>	<p>N</p>
<p>The Commonwealth’s proposed HCBS transition plan continues to use location and size as primary criteria in identifying settings that are presumed to have institutional qualities This problem is compounded by an extremely narrow interpretation of the types of settings with institutional characteristics that should be presumed to be non-HCBS settings and, therefore, the focus of heightened scrutiny within the plan.</p>	<p><i>DBHDS thanks the commenter for the comment. Settings that have been determined to be non-compliant and that are presumed to have institutional characteristics have been specifically outlined by CMS. Results of provider self-assessments and DBHDS site visits will will determine the need to facilitate the heightened scrutiny</i></p>	<p>No changes to plan required</p>	<p>N</p>

Commonwealth of Virginia Statewide Transition Plan for Compliance with the Home and Community Based Services (HCBS)
 Final Regulation’s Setting Requirement
 Appendix H: Summary of Public Input

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	<p><i>process. CMS will also consider information collected during the public input process and information provided by other stakeholders as part of the heightened scrutiny process to review if settings determined to be non-compliant, or presumed to have institutional qualities, in fact, do not meet requirements. CMS has indicated that it may also conduct individual site visits as well.</i></p>		
<p><i>Response:</i> Response to comment <i>Disposition:</i> Summary of modifications that will or will not be made to the Transition Plan made in response to public comment; and in the case where the state’s determination differs from public comment, the additional evidence and the rationale the state used to confirm the determination (e.g. site visits to specific settings).</p>			

Commonwealth of Virginia Statewide Transition Plan for Compliance with the
Home and Community Based Services (HCBS)
Final Regulation's Setting Requirement
Appendix H: Summary of Public Input