



**District of Columbia Statewide Transition Plan to Comply with  
New Federal Home and Community Based Services Settings Requirements  
UPDATED MARCH 2016**

**Section I: Purpose**

The Centers for Medicare and Medicaid Services (CMS) issued a final rule effective March 17, 2014, that contains a new, outcome-oriented definition of home and community-based services (HCBS) settings. The purpose of the federal regulation, in part, is to ensure that people receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as people who do not receive HCBS. CMS expects all states to develop an HCBS statewide transition plan that provides a comprehensive assessment of potential gaps in compliance with the new regulation, as well as strategies, timelines, and milestones for becoming compliant with the rule's requirements. CMS further requires that states seek input from the public in the development of this transition plan.

You can learn about the new rule at [www.hcbsadvocacy.org](http://www.hcbsadvocacy.org). The website includes links to the CMS rule, webinars, and guidance; information on other states' transition plans; advocacy materials and more. Additionally, a number of national advocacy groups have created a Toolkit that provides advocates with detailed information about the HCBS Settings Rules and provides action steps for advocates to impact implementation of the new rules in their states. The toolkit contains three documents (1) The Medicaid Home and Community-Based Services Settings Rules: What You Should Know; (2) Home and Community-Based Services Regulations Q&A: Settings Presumed to be Institutional & the Heightened Scrutiny Process, and (3) The Home and Community-Based Settings Rules: How to Advocate for Truly Integrated Community Settings ([full](#) and [abridged](#)). The toolkit is available at <http://www.aucd.org/docs/policy/HCBS/>.

The Centers for Medicare and Medicaid Services (CMS) has updated their Home and Community Based Services (HCBS) website at: [www.medicaid.gov/hcbs](http://www.medicaid.gov/hcbs). Under the "Statewide Transition Plans" tab, you can find added information about efforts to keep stakeholders apprised of the status of HCBS Statewide Transition Plans (STPs). CMS has also created a "Statewide Transition Plans" chart with links to letters sent to states asking for additional information. CMS will continue providing STP status updates and post communication with states regarding STPs.

The District maintains two HCBS waiver programs: the Elderly and Persons with Disabilities (EPD) Waiver, run by the District's Department of Health Care Finance (DHCF), and the Intellectual and Developmental Disabilities (IDD) waiver, run by the District's Department of

Disability Services (DDS). The EPD waiver program is for the elderly and individuals with physical disabilities who are able to safely receive supportive services in a home and community-based setting. The IDD waiver program provides residential, day/vocational and other support services in the community for District residents with intellectual and developmental disabilities.

Below is the District of Columbia's Statewide Transition Plan for the HCBS waiver services. (The IDD Waiver-specific details are located in Appendix 1(Attachment 1), and are incorporated by reference to this Statewide Transition Plan.) Per CMS requirements, the District must submit an update of the March 2015 plan. This 2016 update was included in the D.C. Register on February 12, 2016, and posted on the DHCF and DDS websites for public comment on February 19, 2016. The plan and prior iterations are available at <http://dhcf.dc.gov/release/announcement-submitted-cms-district-columbia-plan-comply-new-federal-home-and-community>. Please see Section VI. Outreach and Engagement, for more information on the District's public comment process.

DHCF appreciates all of the public feedback we have received and the ongoing feedback of our stakeholders in activities referenced in Section VI. Outreach and Engagement, and throughout this plan. If you are interested in participating in ongoing activities, please contact Ieisha Gray at [ieisha.gray@dc.gov](mailto:ieisha.gray@dc.gov) or (202) 442-5818.

## **Section II: District of Columbia Initiatives to Increase Opportunities for Community Integration**

### **A. Training and Capacity Building**

The District of Columbia is engaged in a variety of efforts to build capacity across multiple agencies and among our provider community to support the full inclusion and integration of individuals in need of long term care services and supports into community settings. Listed below are some examples of ongoing initiatives that build capacity and support compliance with the HCBS Settings Rule.

Funded by a grant from the federal Administration on Community Living (ACL) and the Centers for Medicare and Medicaid Services (CMS), four District agencies (the Department of Disability Services (DDS), the Department of Health Care Finance (DHCF), the Aging and Disability Resource Center (ADRC) within the District of Columbia Office on Aging (DCOA), and the Department of Behavioral Health (DBH)) are collaborating to develop a plan to implement a No Wrong Door (NWD) system to streamline and facilitate access to long term care services and supports (LTCSS). A major emphasis of the District's planning activities is optimizing informed choice and promoting person-centered thinking and planning among District agency staff and service providers.

- Over the course of three months, DHCF worked with providers, stakeholders, and DHCF staff to develop its EPD waiver requirements, person-centered planning (PCP) template, and PCP policy in order to meet compliance with CMS rules on PCP. During this time, DHCF piloted the PCP process with a number of providers and conducted at least five (5) trainings for over 250 case managers, ADRC staff, and DHCF staff. The PCP policy was published in October 2015, and went into effect November 1, 2015. It is expected that by October 31, 2016, each individual in the EPD waiver will have a PCP.
- On May 18, 2015 the DC Office of Disability Rights (ODR) and Department on Disability Services (DDS) delivered a joint training on disability and the Americans with Disabilities Act to staff at the District's ADRC. This training provided a framework for working and communicating with people with disabilities, serving as a foundation for doing person-centered planning and informed consent. Building on the ODR and DDS session, on September 22, 2015, the ADRC convened a training for its staff on managing risk in transitions between long term care settings. As a part of the training, the DC Long Term Care Ombudsman presented on nursing facility residents' rights and risks in considering transition to home and community-based settings. The Quality Trust also discussed self-determination, safety, and supported decision making. In a follow-up session for the ADRC's Community Transition Team in September 2015, specific tools for informed consent at various points in the transition process were reviewed.
- During FY15, the ADRC updated its consent forms for transition from nursing facilities to home and community-based settings to ensure informed consent to participation in the District's Money Follows the Person Demonstration. These forms will be used for community transitions beginning in FY16.
- The new No Wrong Door system will be supported by a robust information management system that will optimize individual choice, person-centered planning and self-direction, and community integration. Since March of 2015, DHCF has begun the process of procuring a new clinical case management system (CCMS). The DC Department of Disability Services (DDS) and DC Office on Aging (DCOA) are partnering with DHCF in this endeavor. All three agencies operate separate legacy systems that are badly outdated and do not provide the sort of integrated, person-centered functionality necessary to implement No Wrong Door model across their many programs and services. To pursue to new CCMS, the three agencies assembled a cross-agency project management team. The Program Management (PM) team has reviewed demos from more than a half-dozen vendors, assembled requirements, and drafted an Advanced Planning Document (APD) and RFP. The PM team expects to submit the APD and draft RFP for CMS review imminently. The current project plan divides system functionality into two priority areas. The higher priority area, the shared functionality, refers to

requirements that all three agencies share—clinical assessment, eligibility determination, enrollment, incident management, reporting, and the like. The lower priority area, the unique functionality, refers to requirements needed uniquely by DHCF and DCOA that can wait until shared functionality is implemented. Examples of lower priority functionality are an electronic visit verification system for DHCF and a grants management module for DCOA. At this point, DHCF expects a contract award in February 2017, go live with shared functionality by November 2017, and go live with unique functionality by July 2018.

- DHCF has been implementing a multi-year, multi-pronged strategy to reform Medicaid-funded long-term care services and supports. The first phase of this effort focused on the development and implementation of a standardized assessment tool and a conflict-free, face to face assessment process. The tool is designed to assess an individual's needs across multiple domains, rather than determining eligibility for a particular service or service setting. The tool provides the individual with a score that allows them to choose from a range of LTCSS options. In support of this strategy, the District drafted a regulation. The first Proposed Rulemaking was published on June 6<sup>th</sup>, 2014. DHCF received comments and is in the process of getting the 2<sup>nd</sup> Proposed Rulemaking published. These rules amend the previously published standards by: (1) specifying that the face-to-face assessments shall be conducted by an R.N.; (2) specifying that requests for an assessment for LTCSS must be made by the person's referring physician ; (3) delineating who can make unscheduled requests for re-assessments when there is a significant change in the person's condition; (4) establishing timelines for conducting the face-to-face assessment and the receipt of determination notices; (5) adding a link to access the standardized needs-based assessment tool online; (6) establishing that a person shall also qualify for a level of need for PCA services if his/her functional score without medication management is four (4) or higher, or if his/her functional score without medication management is three(3) or higher with a medication management score no higher than a one (1); (7) clarifying terms and phrases used in the Section of the regulation; and (8) defining terms used in the Section of the regulation.
- DHCF developed its conflict-free case management policy, which was published on July 10, 2015, as a notice of emergency and proposed rulemaking, which received comments during the public comment period. The second notice is currently under review and will be published subsequent to that process. Per the rule, LTC providers had until October 1, 2015, to notify DHCF of their choice with regards to providing case management or direct care services. 15 of the HHAs that provided case management services submitted decisions to be conflict-free. There are 8 conflict-free case management agencies at present. On November 1st, 2015, each of those providers were required to submit a transition plan to DHCF detailing how impacted beneficiaries would be transitioned to a conflict-free case management agency (CMA) by June 30, 2015. There are approximately 1935 beneficiaries in total needing transition by June 30, 2016. Since Summer 2015, DHCF has been engaged in aggressive recruitment of new CMAs, including 2 well-attended sessions for prospective CMAs. DHCF is also working with sister agencies DBH and DCOA to enroll their providers as CMAs. DHCF has enrolled

two new conflict-free CMAs since this summer, and continues to prioritize prospective CMA applications for processing.

- DHCF and DCOA maintain Memoranda of Understanding designed to increase collaboration between DHCF and DCOA and strengthen the role of the DCOA's Aging and Disability Resource Center (ADRC) in providing choice counseling and application assistance to District residents and their families who are seeking LTCSS. ADRC application assistance for enrollees in the EPD Waiver began in June 2015. The ADRC created a new unit with Medicaid Enrollment Specialists to conduct initial assessments and provide enrollment assistance. Through a new MOA in FY16, Money Follows the Person rebalancing funds are utilized to expand ADRC options counseling and application assistance for District residents interested in the 1915(i) Adult Day Health Program.
- DHCF established a work group of DC sister agencies (DCOA, ESA) and stakeholders (case management agencies, home health agencies, Long Term Care Coalition, LTC Ombudsman's Office) which met weekly March-July 2015 to modernize and streamline the Long Term Care Administration (LTCA) workflow from a variety of angles, including for EPD waiver enrollment and recertification, State Plan enrollment and recertification, 1915i enrollment and recertification, case management agency assignment, person-centered plan development, implementation, and monitoring, conflict-free assessment for level of need, direct service provider service fulfillment, administrative denials and termination, appeals, reconsiderations, and fair hearings. Via this detailed workflow analysis exercise, the workgroup was able to identify and resolve issues which ultimately produced a more streamlined set of processes within the LTCA.
- DHCF, working in conjunction with CMS consultants, on January 21, 2015 hosted an in-service on person-centered planning for DHCF stakeholders, and will continue to work with the technical assistance providers both for planning and training purposes addressing person-centered planning and conflict-free case management. These trainings will focus on DCOA staff and DHCF staff, as well as Medicaid case managers and other staff and stakeholders in the community. The consultants will work with DHCF staff to develop a Community of Practice for DC Medicaid case managers focused on supporting and facilitating greater individualized community exploration and integration. The Community of Practice will allow for multi-directional training and information sharing: from District government to case managers; from case managers to District government; and amongst case managers. Over the course of three months, DHCF worked with case management providers, stakeholders, and DHCF staff to develop its PCP requirements, person-centered planning (PCP) template, and PCP policy in order to meet compliance with CMS rules on PCP. During this time, DHCF piloted the PCP process with a number of providers and conducted at least 5 trainings with over 250 case managers, ADRC staff,

and DHCF staff. The PCP policy was published in October 2015, and went into effect November 1, 2015. It is expected that by October 31, 2016, each individual in the EPD waiver will have a PCP. Since publication, DHCF has met with case managers on a monthly basis to provide ongoing information and technical assistance on person-centered planning.

- DHCF has engaged District staff, community stakeholders, and Medicaid service providers on the HCBS settings rule, with five trainings held in January 2014 (DHCF internal staff including the Executive Management Team), February 2014 (EPD Waiver Providers), April 2014 (EPD Waiver and Adult-Day Providers), November 2014 (Adult-Day Providers); and January 2015 (HCBS Stakeholders Group). To date, DHCF has given a number of trainings and informal information sessions on the changes made in this regulation. These trainings have occurred during the monthly EPD Waiver Provider meetings from July 2015, through December 2015. In addition, a training for staff of the District's Aging and Disability Resource Center and social workers from the senior network agencies across the city was delivered January 2016.

## **B. DHCF Waiver and State Plan Amendment Activities**

DHCF is working to increase access to home and community-based services. DHCF is working on amendments to its 1915(c) waiver and other state plan services. Specifically, DHCF recently obtained approval of a new 1915(i) State Plan Amendment to establish an adult day health program. Listed below are examples of changes that support and facilitate greater individualized community exploration and integration.

### *EPD Waiver Amendment*

DHCF submitted a Waiver Amendment to CMS on July 20<sup>th</sup>, 2015 and it was approved on October 23<sup>rd</sup>, 2015. The changes were as follows: The Waiver Amendment adds new services, amends existing service descriptions and reimbursement methodologies, adds new provider types and qualification standards and includes requirements to conform with the new Home and Community-Based Services (HCBS) requirements under 42 CFR 441.301 of the federal rulemakings by proposing new conflict-free requirements for case management and person-centered planning to comply with these regulations. It also includes a CMS required HCBS settings Transition Plan to explain how the District's assisted living facilities enrolled under the Waiver will comply with the setting requirements under 42 CFR 441.301.

The Amendment also establishes a new service delivery method or pathway by designating a new government entity (the District's Aging and Disability Resource Center) for EPD Waiver application assistance, provider referral, and options counseling, and a new process for administering the conflict-free face-to-face assessment tool to determine level of care (non-financial eligibility) for EPD Waiver services. Additionally, changes were made to elect the

Spousal Impoverishment option under Appendix B to determine a person's eligibility for services, and modify the service delivery parameters for participant-directed-services, which is an already approved service delivery method under the existing Waiver.

The major changes are as follows:

The Waiver Amendment introduces three new services- adult day health services, and occupational and physical therapy services.

Adult day health services will enable persons enrolled under the EPD Waiver to live in the community by offering non-residential medical supports and supervised, therapeutic activities in an integrated community setting, to foster opportunities for community inclusion, and to deter more costly facility-based care. These providers will be compliant with all the new HCBS "setting" requirements pursuant to the District's new Provider Readiness Review process.

Occupational therapy and physical therapy services were added to be provided by licensed professionals under a Home Care Agency or by licensed individual practitioners

The personal care aide service description was modified to mirror the PCA Service Authorization request and submission procedures in accordance with the District's Medicaid State Plan PCA services rulemaking (Chapter 50 of Title 29 of the DCMR) to include the utilization of a face-to-face standardized needs-based assessment tool that determines each person's level of need for services. Changes were also made to allow the order for PCA services to be signed by an advance practice registered nurse (APRN) or a physician; conduct beneficiary re-assessments every twelve (12) months to update plans of care; and eliminate any annual caps for the receipt of services.

Homemaker and chore aide service descriptions were amended to clarify the existing language under the service. A new provider category – general business providing housekeeping services in the District of Columbia – will be added to the list of allowable providers of homemaker and chore aide services. The training criteria for chore aides were also amended.

The Environmental Accessibility Adaptation (EAA) service description was modified to amend the requirement that both renters and certified home-owners need to initially obtain a denial letter from Handicap Accessibility Improvement Program (HAIP), administered by the District of Columbia Department of Housing and Community Development prior to applying for EAA services under the Waiver, as HAIP is only applicable to certified home-owners. Although no change to the total rate is proposed, the disaggregated cost limits associated with each type of EAA modification was removed. The limitations on amount, duration, and scope are to be modified to clarify that the total rate is inclusive of costs associated with the home inspection.

Case management and person-centered planning requirements were amended to conform to the new HCBS standards under the federal regulations. These include that any new entity cannot enroll as a Medicaid reimbursable provider of case management services if that entity is a Medicaid provider of personal care aide (PCA) services or any other direct services under the EPD Waiver, or has a financial interest, as defined under 42 CFR §411.354, in a Medicaid

provider of PCA or any other direct services under the EPD Waiver. Additionally, person-centered planning needs to be “person-driven” and focus on the needs, strengths, goals, and preferences of the person receiving services.

The case management rate reimbursement methodology was changed to a new Per Member Per Month (PMPM) payment structure. The capitation rate approach will provide a better correlation between reimbursements and the number of beneficiaries receiving case management services.

The Transition Plan included under Attachment # 2 explains the assessment, compliance, and monitoring processes that the District will undertake to ensure that assisted living facilities will conform with all the new setting requirements prescribed under 42 CFR 441.301.

The new service delivery method describes the District’s Memorandum of Agreement (MOU) between DHCF and the Office on Aging (DCOA), which designates DCOA’s Aging and Disability Resource Center as a one-stop-resource to provide information, referral and assistance, options counseling for persons enrolling in the EPD Waiver. It also changes the processes for eligibility under the EPD Waiver by designating a DHCF LTCSS Contractor to make all level of care determinations by conducting a face-to -face assessment of the individual’s physical, cognitive and behavioral health care and support needs, to determine the individual’s level of need for Waiver services and supports.

The eligibility section was amended by electing to use spousal impoverishment rules to determine eligibility for the home and community-based waiver group, whereby a certain amount of the couples’ combined income and assets are protected for the spouse not receiving services under the HCBS waiver, to be effective in EPD HCBS Waiver Year 4, or upon approval by CMS.

The Amendment modifies service definitions for participant-directed community supports (PDCS) (under employer authority) and individual-directed goods and services (under budget authority). Waiver participants who choose to self-direct these participant-directed services (PDS) will have choice and control over how they are provided and by whom. Under employer authority, waiver participants or their authorized representatives, as appropriate, will be the common law employer of the qualified participant-directed workers (PDWs) they hire. Financial management services (FMS) and information and assistance (I&A) supports will be provided to waiver participants who choose to self-direct the aforementioned PDS through a District-wide, IRS-approved Vendor Fiscal/Employer Agent (VF/EA FMS) FMS-Support Broker entity and will be provided as administrative activities. The VF/EA FMS-Support Broker entity will operate in accordance with Section 3504 of the Internal Revenue Code and Rev. Proc. 70-6, as modified by REG-137036-08 and Rev. Proc. 2013-39.

#### *DHCF State Plan Amendment*

DHCF obtained approval of its new 1915(i) State Plan Amendment to establish an adult day health program (ADHP) on February 10, 2015. The accompanying regulation was published January 29, 2016. ADHPs provide essential services including social service supports, therapeutic activities meals, medication administration, and transportation to therapeutic activities for adults, age fifty-five (55) and over, during the day, in a safe community setting

outside of their home. All AHDP providers will be compliant with the HCBS settings rule from launch of the 1915(i), which began enrollment June 1, 2015.

In addition, DHCF is amending its State Plan with respect to Home Health Care and Personal Care Assistance Services. The amendments are designed to clarify and strengthen program requirements to promote community exploration and integration, among other things.

DHCF sent the PCA SPA to CMS on August 25<sup>th</sup>, 2015 with an effective date of October 1, 2015. DHCF received and returned CMS' Request for Additional Information (RAI) and is still in the process of being approved.

DHCF also anticipates submitting a Home Health Care SPA to CMS within the next few months to establish service delivery parameters for all Home Health Services. These include Skilled Nursing, Physical Therapy, Occupational Therapy, Speech and Audiology services, and Durable Medical Equipment and Supplies.

### **Section III: DHCF collaboration with Government Partners**

#### **A. Office on Aging**

As referenced under A. Training and Capacity Building, DHCF has entered into Memoranda of Understanding with the District's Office on Aging (DCOA) that will support and facilitate greater individualized community exploration and integration. DCOA is responsible for advocating, planning, implementing, and monitoring programs in health, education, employment, and social services which promote longevity, independence, dignity and choice for District of Columbia residents 60 years of age and older and persons 18 years of age and older with disabilities. DCOA operates the Aging and Disability Resource Center (ADRC), a one-stop resource, providing information, referral and assistance; options counseling; and person-centered planning for persons seeking long term care services and supports. As a part of its information, referral and assistance services, DCOA's ADRC conducts a preliminary intake and pre-screening and assists individuals with applications for public benefits including Medicaid programs and services, i.e. the EPD Waiver, 1915(i) State Plan services and other public benefits. DCOA's ADRC is also the Local Contact Agency (LCA) for individuals in nursing homes who, in response to Section Q of the Minimum Data Set (MDS) that nursing homes are required to complete, indicate an interest in living outside of the nursing facility.

The purpose of these MOUs is to coordinate and share data in an effort to ensure that DCOA's ADRC can provide application assistance, options counseling and person-centered planning to individuals who are seeking or receiving long-term care services and supports who are current Medicaid beneficiaries or who may be eligible for Medicaid. To facilitate the implementation of the MOU, and the new processes that are accompanying it, DHCF convenes a weekly meeting with multiple stakeholders. Among the new activities that are included is the completion of person-centered plans (PCP's) for 1915(i) Adult Day Health Program enrollees. The ADRC

assumed the responsibility for these PCP's in November 2015. Further, these MOUs ensure that individuals currently living in nursing homes who are medically able, Medicaid eligible, and express an interest in moving into the community are afforded the full range of necessary resources in order to effectuate a return to the community as quickly as possible. To that end, the ADRC Community Transition Team (CTT) provides transition coordination services for these nursing home residents. In November 2014, the District consolidated its nursing home-to-community transition coordination units at the ADRC. The consolidation represented a merger of DC's Money Follows the Person (MFP) transition coordination unit, previously housed at DHCF under the MFP Demonstration, and a transition coordination unit already housed at the ADRC. In 2015, the CTT coordinated the transitions of 171 individuals from nursing facilities and hospitals to home and community-based settings.

This level of collaboration between the agencies, including the sharing of data, is necessary in order to complete and track required assessments and identify needs, assist with the eligibility determination process, support educated options counseling about Medicaid services and community supports, and satisfy all legal requirements while helping District residents attain or maintain their independence in the most integrated setting appropriate to their needs and preferences.

## **B. Department of Health**

In addition to DHCF's collaboration with DCOA, DHCF is also working with the District's Department of Health (DOH) to ensure that the HCBS settings qualities and requirements are incorporated into the District's regulatory requirements for community-based residential settings. DOH's responsibilities include identifying health risks; educating the public; preventing and controlling diseases, injuries and exposure to environmental hazards; promoting effective community collaborations; and optimizing equitable access to community resources. Within DOH, the Health Regulation and Licensing Administration (HRLA) protects the health of the residents of the District and those that do business here by fostering excellence in health professional practice and building quality and safety in health-systems and facilities through an effective regulatory framework.

Specifically, DHCF is working with DOH/HRLA's Intermediate Care Facilities Division (ICFD) which licenses group homes for persons with intellectual, developmental and physical disabilities residing in the District of Columbia. The ICFD also licenses Home Care Agencies, Community Residence Facilities, and Assisted Living Residences to ensure their compliance with local licensure requirements. In this role, HRLA staff inspects licensed health care facilities and providers who participate in the Medicare and Medicaid programs, responds to consumer and self-reported facility incidents and/or complaints, and conducts investigations. When necessary, HRLA takes enforcement actions to compel facilities and providers to come into compliance with District and Federal law. DHCF and DDS are working with HRLA to revise the regulations for community residential facilities which incorporate both licensed small group homes known

as community residence facilities and assisted living residences. The revisions specific to the community residence facility regulations will be promulgated with a formal opportunity for public comment. Final publication is anticipated in FY 2015. In FY 2016, DOH will draft regulations relative to Assisted Living Residences that support compliance with the HCBS settings rule.

DHCF, DOH, and the Department on Disability Services (DDS) are currently working together to revise the regulation for community residential facilities for Individuals with Intellectual Disabilities (CRF/IID). The revisions specific to the CRF/IID will be promulgated with a formal opportunity for public comment. Final publication is anticipated in FY 2016. It is projected that DOH will draft regulations in FY16 relative to Assisted Living Residences that support compliance with the HCBS settings rule.

#### **Section IV: Assessment Process, Remedial Strategy, and Monitoring and Compliance**

##### *Heightened Scrutiny Process*

DHCF does not have any settings in a publicly or privately-owned facility that provide inpatient treatment; or on the grounds of, or immediately adjacent to, a public institution. It is DHCF's best estimate that DC's residential settings do not have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS.

If, based upon review of assessment data, DC determines that one or more of our settings have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS; and DHCF projects that this will not be cured by March 17, 2019 via remediation (changes in service definition, regulations, certification, etc.), DHCF will either: (1) determine that the setting does not meet the HCBS Settings Rule and will transition people to a new provider and eliminate the setting from the program; or (2) submit evidence to CMS for heightened scrutiny review.

##### **A. Assessment Process**

DHCF estimates that all of our settings are at least partially compliant with the Rule, and conducted an extensive, systematic legal analysis of the laws and rules regulating the settings impacted by the HCBS settings rule, namely settings comprised of assisted living residences (*Assisted Living Residence Regulatory Act of 2000, effective June 24<sup>th</sup>, 2000, (D.C. Law 13-127, D.C. Official Code §§ 44-101.01-44-108.03)* and community residence facilities (*D.C. Mun. Regs. 22-B DCMR §§ 3401-3499; D.C. Mun. Regs. 22-B38 DCMR §§3800-3899*). While DC regulations often mirror or have equivalent federal requirements, some components of the District regulations do not comport with the new federal HCBS settings requirements. Therefore, DHCF's specific actions for coming into compliance include the following

- Identify regulations that do not comport with federal HCBS requirements (see chart below),
- Work with DOH to promulgate new regulations to revise and strengthen HCBS settings requirements (see III. DHCF Collaboration with Government Partners),
- Conduct provider training and stakeholder outreach on new regulations, Per DHCF's original submission to CMS, we committed to co-host at least 3 trainings for providers upon publication of the revised existing DOH standards and completion of the revised EPD Waiver provider requirements. As mentioned, DOH is still in the process of finalizing regulations, and the EPD waiver rules are due for publication in Spring 2016. DHCF coordinated monthly meetings with case managers to provide training and technical assistance on LTCA-related issues, including the forthcoming EPD waiver rules. Formal training will be scheduled upon the actual publication.

*Monitoring*

DHCF developed a settings self-assessment tool for use by HCBS providers (Attachment 2) and used CMS’ “Exploratory Questions to Assisted States in Assessment of Residential Settings” as a guide in developing this self-assessment. The criteria/scoring process, implementation approach, and associated remedial actions will developed and implemented in FY16. Operators that participate in Medicaid will be expected to conduct this self-assessment either as part of their initial application process to become DC Medicaid Providers, or as part of their re-enrollment process (whichever comes first). DHCF worked with its HCBS Stakeholders Subgroup: Transition Plan to develop the tool.. DHCF will conduct provider training on use of the tool ahead of implementation..

DHCF developed a comparable tool for utilization in monitoring activities (Attachment 3). During FY15, the HCBS settings provisions were incorporated in the provider readiness process for the 1915(i) Adult Day Health Program. Using the general requirements as a guide, questions were incorporated into the tool for provider readiness review at enrollment. As of February 19, 2016, six providers enrolled, and all met the general requirements as determined in on-site assessments by DHCF.

A high level summary of DHCF’s legal analysis are set forth in Table 1.

*Table 1. Legal Analysis of HCBS Settings Regulations compared to DC Regulations*

CMS HCBS Setting Requirements	Do DC Regulations Meet Federal HCBS Standards?		
	Community	Assisted	Community

	Residence Facilities	Living Residence	Residence Facilities for Mentally Ill Persons
The setting is integrated in and supports full access to the greater community	Yes	Yes	No
Is selected by the individual from among setting options	Yes	Yes	Yes
Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint	Yes	Yes	No
Optimizes autonomy and independence in making life choices	No	Yes	No
Facilitates choice regarding services and who provides them	No	No	No
The individual has a lease or other legally enforceable agreement providing similar protections	Yes	Yes	Yes
The individual controls his/her own schedule including access to food at any time	No	No	No
The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit	No	No	No
The individual can have visitors at any time	No	No	No
The setting is physically accessible	Yes	Yes	Yes

With regard to those settings impacted by this rule, there are sixteen (16) Department of Health regulated assisted living residences in the District. Of these, three (3) are Medicaid waiver-approved ALR providers and they served 39 unique individuals in 2014. There are four (4) Department of Health regulated community residence facilities for the elderly and persons with physical disabilities in the District. In FY15, DHCF enrolled six (6) providers in the District's new

1915(i) Adult Day Health Program (ADHP). The findings from the provider readiness reviews listed by provider are attached. ADHP services are currently enrolling interested individuals.

## **B. Remedial Strategy**

### *Implementing Revised State Regulations to Support the HCBS Settings Requirements*

Pursuant to final rules, which are under development in FY16, DOH will review licensing applications to ensure that applicants comply with the regulations and HCBS settings requirements as set forth in rule. DOH will require licensees be compliant with the HCBS settings rules per the regulations, where the rules must be incorporated into the licensees' policies and procedures, as necessary (including regarding visitation, choice of roommate, and food access). Please note that DHCF will work with DOH to train staff on the new HCBS settings rules within three (3) months of the rules being promulgated.

### *Partnering with Department of Behavioral Health*

DHCF is in discussions with the Department of Behavioral Health regarding revising regulations for community residence facilities for mentally ill persons to comply with the Rule. This component of the transition plan will be completed by October 1, 2015. DHCF will include this information in an amendment to the D.C. HCBS Waiver Transition Plan, and will follow the requirements for public notice and input for amendments to the Plan. DHCF expects to file the first update to the Transition Plan by March 1, 2016.

Beginning in July through October 2015, DHCF had meetings with the DBH to revise the Mental Health Community Residence Facility regulations. These regulations provide for the health, safety, and welfare of individuals with mental illness residing in mental health community residence facilities (MHCRFs). The revisions ensure that our Waiver beneficiaries reside in settings that are compliant with the HCBS rules, but also help us to ensure that any Medicaid beneficiary that attends non-residential services such as Adult Day Health must reside only in settings (Mental Health CRFs, and other CRFs) that also meet all of the requirements of the federal rules.

### *Revising Provider Requirements*

As mentioned above, DHCF's Long Term Care Administration (LTCA) is currently revising its EPD Waiver provider requirements and the application process in order to ensure organizations providing EPD services to DC residents are supporting and facilitating greater individualized community exploration and integration.

The District made significant changes to the proposed EPD Waiver Regulations to ensure compliance with CMS' settings requirements. These include the following:

Consistent with federal requirements, all EPD waiver service settings that are not an individual's natural home, including an assisting living facility and an adult day health program must meet the Home and Community-Based Setting Requirements pursuant to 42 CFR 441.301(c) (4):

- (a) Be chosen by the person receiving EPD Waiver services;
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (c) Be physically accessible to the person and allow the person access to all common areas;
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy, and opportunities for employment and meaningful non-work activities in the community;
- (e) Provide information on individual rights; and
- (f) Allow visitors at any time, with any exception based on the person's assessed need to be justified in his or her person-centered plan.

Additionally, the following requirements were added for all residential EPD settings that are not the individual's natural home must:

- (a) Be integrated in the community and support access to the greater community;
- (b) Provide opportunities for the person to engage in community life;
- (c) Allow full access to the greater community;
- (d) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to leased and provider owned properties;
- (e) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
  - (1) Privacy in his or her personal space, including entrances that are lockable by the person (with staff having keys as needed);
  - (2) Freedom to furnish and decorate his or her personal space (with the exception of Respite Daily);
  - (3) Control over his or her personal funds and bank accounts;
  - (4) Privacy for telephone calls, texts and/or emails; and
  - (5) Access to food at any time.

In addition to reengineering the internal mechanism for processing provider applications, the LTCA is adopting a new Long Term Care Provider Review Checklist that applicants must use when submitting their application materials. The Checklist will include HCBS Setting requirements and will be posted on DHCF's provider site ([www.dc-medicaid.com](http://www.dc-medicaid.com)) in FY2016. As this checklist is being refined, a section will be added that reflects the HCBS settings rule,

where applicants, when appropriate, must attest to complying with the rules and submit their policies and procedures, as appropriate. DHCF will use CMS' "Exploratory Questions to Assist States in Assessment of Residential Settings" to amend the checklist. Only applicants with approved policies and procedures will be referred to DHCF's Division of Public and Private Provider Services for enrollment as EPD waiver and 1915(i) providers. As mentioned earlier, provider readiness and enrollment processes for the District's new 1915(i) providers included on-site review of compliance with the HCBS Settings requirements. Additionally, DHCF has developed an addendum to the conflict-free assessment tool with the HCBS Setting rule requirements for prospective 1915(i) applicants. Data collection began in FY15. Preliminary data is under review.

### *Conducting Statewide Provider Training on New State Standards*

Upon publication of the revised existing DOH standards and completion of the revised EPD Waiver provider requirements, DHCF will work with DOH and DCOA's ADRC to co-host no less than three trainings for providers on both the DOH standards and the new EPD provider requirements. DHCF and the ADRC will also co-host a training for stakeholders on the DOH standards and the new EPD provider requirements. We anticipate these trainings will begin in the Fall of 2015 and will be publicized via the DHCF website and provider listserv.

### **C. Monitoring and Compliance**

- As a result of the revised regulations which are under development in FY16, DOH will account for the added requirements relative to HCBS settings during its monitoring process of ALRs and CRFs. At present, providers must have their DOH license renewed annually (within 90 days of license expiration). The renewal requires that a surveyor or team of surveyors (depending on the type/size of provider) make an unannounced site visit which includes three stages. First, the surveyors will observe staff interaction with individuals receiving HCBS services, assess whether the environment is in compliance with the regulations, and interview staff and clients. Then, the surveyors begin record verification, which includes reviewing medication administration, employment records, and policies and procedures. From this information, the surveyors make a compliance decision to determine if there are any deficient practices, which will be shared with the provider during the site visit exit interview. A written report detailing results of the site visit and the observed deficiencies is shared with the provider within ten days of the exit interview, and the provider then has ten days to respond with a corrective action plan. Upon receipt and approval of the plan, DOH may conduct an unannounced follow up site visit to ensure that the corrective action plan is being adhered to. This monitoring process will account for compliance with the HCBS settings rule and associated policies and procedures of the provider/licensee. Please note that DHCF will work with DOH to train staff on the new HCBS settings rules within three (3) months of the rules being promulgated.

- DHCF's EPD Monitoring Team has a comprehensive monitoring tool for all EPD waiver services which has a specific section dedicated to assisted living services. Amendments to this section are underway to reflect the HCBS settings requirements, and will be implemented in April 2016 upon publication of the rule. The EPD Monitoring Team will also use the aforementioned Readiness Checklist for renewals of assisted living providers' status as EPD Waiver providers. This Checklist will be implemented in FY2016.
- Beyond DHCF's efforts to monitor enrolled Medicaid providers, the LTCA engages in an assessment process for the level of need for beneficiaries who receive long term care services and supports, as mentioned above. On June 6, 2014, DHCF published a notice of public rulemaking in the DC Register establishing standards governing the Medicaid assessment process and to establish numerical scores (via use of a standardized needs assessment tool) pertaining to the level of need necessary to establish eligibility for a range of services. DHCF received and incorporated comments and is in the process of publishing a second notice of public rulemaking. Using CMS' Exploratory Questions to Assist States in Assessment of Residential Settings, DHCF developed an Addendum to the LTC conflict-free assessment tool. Nurses conducting the assessment tool were trained on this new Addendum on April 15, 2015. DHCF expects the second and final notice of rulemaking will be published by April 2015. The purpose of the long term care assessment regulation is to establish the Department of Health Care Finance (DHCF) standards governing the Medicaid assessment process for Long Term Care Services and Supports (LTCSS) and to establish numerical scores pertaining to the level of need necessary to establish eligibility for a range of LTCSS.

The face-to-face assessment using the standardized needs-based assessment tool to determine each person's level of need for LTCSS will result in a total numerical score which includes three (3) separate scores pertaining to his/her assessed cognitive/behavioral, functional, and skilled care needs.

The total numerical score consists of a value between zero to thirty-one (0-31); which may include a score of up to twenty-three (23) on the functional assessment, a score of up to three (3) on the cognitive/ behavioral assessment, and a score of up to five (5) on the skilled care needs assessment.

As mentioned under Section A. Training and Capacity Building, the first Proposed Rulemaking was published on June 6<sup>th</sup>, 2014. DHCF received comments and is in the process of getting the 2<sup>nd</sup> Proposed Rulemaking published.

On April 15<sup>th</sup>, DHCF participated in a training for all EPD Waiver Providers to ensure that they understood the setting options. The training materials communicated the various setting requirements including an individuals' rights of privacy, dignity, and respect, and the other principles incorporated in the HCBS final rule.

- EPD assisted-living service providers deemed noncompliant with the HCBS settings rule will be notified of areas of deficiency and given 30 days to submit a corrective action plan to

DHCF. DHCF will utilize this corrective action plan as a component of ongoing monitoring processes. If the provider continues to be non-compliant, DHCF will evaluate the appropriateness of various sanctions as established by DHCF's amended rules. In the event that people must be transitioned from one provider to another because the provider setting does not comply with the HCBS Settings Rule, DHCF will coordinate transitions and ensure continuity of services in accordance with DHCF's Transition policy and procedure. Enforcement of compliance rules will launch April 2016 subsequent to implementation of monitoring efforts that incorporate HCBS Settings requirements.

- DHCF will issue a transmittal informing all providers of DHCF's expectations that they will come into compliance with the HCBS Settings Rule. The transmittal is pending the publication of the revised EPD Waiver rule in FY16.

## **Section VI: Ongoing Outreach and Engagement**

- DHCF is providing e public notice through multiple venues to share the updated Statewide Transition Plan with the public, including but not limited to: (1) published notice in the DC register; (2) publication on the DHCF and DDS websites; (3) email alerts to over 500 individuals and DHCF Stakeholders; and (4) announcement at existing meetings.
- DHCF is posting the entire Statewide Transition Plan on its website and made it available in hard copy upon request and at all public meetings when its contents were under discussion.
- DHCF hosted will host two public meetings to explain the HCBS Settings Rule and this transition plan in plain language, and answer any questions. Oral comments on the plan from attendees at this meeting will be recorded and accepted as public comments.
- There will be a public comment period that runs from February 19 to March 21, 2016.
- DHCF will accept comments in a variety of formats, including in person, and by email and mail or fax submission.
- DHCF will respond to all public comments received and made changes to the Statewide Transition Plan, as appropriate, based on those comments.
- DHCF will publish the public comments and responses on its website by April 15, 2016, and store the comments and responses for CMS and the general public.
- All activities related to the Statewide Transition Plan continue in partnership with sister District agencies, in particular the Department on Disabilities Services (DDS), the

Department of Health (DOH), the Office on Aging (DCOA), and the Deputy Mayor of Health and Human Services (DMHHS).