

Pennsylvania’s Home and Community-Based Services (HCBS) Settings CMS Final Rule Statewide Transition Plan

Public Comments

March 31, 2016

Pennsylvania administers nine 1915(c) waivers that are affected by the federal Home and Community-Based Services (HCBS) Settings Center for Medicare & Medicaid (CMS) final rule (“final rule”): Infant, Toddlers, and Families Waiver (ITF), Adult Autism Waiver (AAW), Consolidated Waiver, Person/Family-Directed Support Waiver (P/FDS), Aging Waiver, Attendant Care Waiver, COMMCARE Waiver, Independence Waiver, and the OBRA Waiver.

Pennsylvania submitted a statewide transition plan (STP) to CMS on April 1, 2015, following input from a public comment process. The Department of Human Services (DHS) received a letter from CMS on September 16, 2015, outlining questions and suggested changes for the STP. DHS published a notice in the Pennsylvania Bulletin on January 9, 2016, informing stakeholders that DHS would accept comments regarding the revised STP, from January 9, 2016 through February 16, 2016. DHS gave the public three methods for submitting comments: verbally and via electronic chat during two webinars, electronically via the email address (RA-pwhcbsfinalrulepl@pa.gov), or written submission by mail.

Per CMS requirements, this document reflects summaries of the comments received during the public notice period, responses to the comments, and any modifications to the STP based upon these comments. DHS consolidated multiple comments that convey the same meaning. Comments are sorted by theme.

Acronyms:

CHC – Community HealthChoices

CMS – The Centers for Medicare and Medicaid Services

DHS – Pennsylvania’s Department of Human Services

HCBS – Home and Community-Based Services

I/DD – Intellectual or Developmental Disabilities

ITF – Infant, Toddlers, and Families Waiver

OCDEL – DHS, Office of Child Development and Early Learning

ODP – DHS, Office of Developmental Programs

OLTL – DHS, Office of Long-Term Living

STP – Pennsylvania Statewide Transition Plan

Comments Received on Settings	
Summary of Comment	Response
<p>Numerous comments concerning lack of specificity in the STP regarding types of settings which will be regarded as non-compliant, as well as those requiring heightened scrutiny. Specifically:</p> <ul style="list-style-type: none"> - Numbers of people congregated or nature of congregation. - Full spectrum of settings allowed to accommodate needs and desires of individuals with complex medical and I/DD needs. 	<p>DHS is in the process of developing regulations, policy guidance, and service definitions standards with stakeholder input that providers must adhere to in order to be compliant with the final rule. Once established, these standards will be available for public input. The populations described in this comment will be carefully considered as these policies are developed. The current STP reflects general action items. As DHS begins to implement the action items, the transition plan will be updated to include more details and target dates will be revised as necessary.</p>
<p>Pursue the CMS heightened scrutiny provision where necessary and applicable.</p>	<p>Once standards are implemented and on-site monitoring of providers is completed, DHS will determine whether settings meet the requirements for CMS heightened scrutiny.</p>
<p>Concern if administrative services will be allowed to be housed adjacent to institutional settings if the programs and staff are provided in a community setting. <i>*Two (2) similar comments received</i></p>	<p>This has not yet been determined. DHS is currently developing the standards providers must adhere to in order to be compliant with the final rule. DHS is developing these standards with stakeholder input.</p>
<p>STP should ensure that standards for waiver-funded unlicensed settings and provider-owned or controlled settings are reviewed.</p>	<p>DHS' systemic assessment of regulations, bulletins, manuals, and service definitions included a review of the existing standards for unlicensed settings that receive waiver funding and provider-owned or controlled settings. Through this assessment, DHS determined that the existing standards are not fully compliant with the final rule. As a result, DHS is developing regulations and service definitions with stakeholder input to ensure compliance.</p>
<p>Concern that services delivered in rural areas do not receive the same amount of resources received in urban areas.</p>	<p>DHS appreciates this comment and will take it into consideration as implementation of the final rule moves forward.</p>
<p>It is problematic to state that DHS presumes all waiver services provided in a private home meet the requirements</p>	<p>The CMS document titled, "<i>HCBS FINAL REGULATIONS 42 CFR Part 441: QUESTIONS AND ANSWERS REGARDING HOME AND COMMUNITY-BASED</i></p>

<p>of CMS if DHS presumes that all services provided in any other setting do not meet the requirements.</p>	<p><i>SETTINGS,</i>” states “The regulations allow states to presume the enrollee’s private home or the relative’s home in which the enrollee resides meet the requirements of HCB settings. We note that person-centered planning remains an important protection to assure that individuals have opportunities for full access to the greater community to the same degree as individuals not receiving Medicaid HCBS when they live in their own or a relative’s private home. While a private home may afford the individual a home-like setting, the person-centered plan and provision of appropriate services that support access to the greater community are critical components to ensure community integration, especially for an individual with limited social skills.”</p> <p>DHS appreciates this comment and will take it into consideration as standards are developed with stakeholder input. While developing these standards, DHS will work to balance an individual’s rights to community inclusion, health, and safety.</p>
<p>Inquiry about why three or less person homes are still under review and being scrutinized.</p>	<p>The final rule contains specific requirements for all provider-owned or controlled residential settings, regardless of the number of individuals who live in such settings. DHS is responsible for ensuring all residential settings meet the requirements.</p>
<p>Private homes should, at a minimum, complete assessments to determine community integration, types of Activities of Daily Living, and individuals’ choice.</p>	<p>The comment is appreciated and will be taken into consideration.</p>
<p>Concern about chapter 2380 and 2390 settings in high crime areas which also serve participants that live in those areas. ODP must protect the health and welfare of participants in these areas, while balancing integrative requirements.</p>	<p>ODP is in the process of developing regulations and service definitions with stakeholder input that will contain standards that provider must adhere to in order to be compliant with the final rule. While developing these standards, ODP will work to balance an individual’s rights to community inclusion, health, and safety.</p>
<p>Allow Domiciliary Care as an option.</p>	<p>DHS is still evaluating these settings. DHS intends to continue to allow Domiciliary Care as an option, but may need to adjust current standards in order for these settings to fully comply with the final rule.</p>
<p>Request that OLTL should be flexible when interpreting the</p>	<p>OLTL will consider this comment as DHS moves forward with the implementation of the</p>

final rule because a one size fits all model will not work.	STP.
Concern that STP states “the children served in the ITF Waiver receive services <i>primarily</i> in the community”.	The STP references that infants and toddlers receive services primarily in their own private homes, or in a community setting. Page 6 of the STP describes “community setting” as a child care facility, park, or grocery store that is typical for the child’s age peers, where children without a disability are likely to attend.
Comments Received on Regulations, Policies, and Service Definitions	
Summary of Comment	Response
The final rule talks about “opportunities” rather than absolute changes for every person – how will Pennsylvania differentiate opportunities vs. mandated changes?	DHS is currently developing the standards providers must adhere to in order to be compliant with the final rule. DHS is developing these standards with stakeholder input. While developing these standards, DHS will work to balance an individual’s rights to community inclusion, health, and safety.
Recommend changing standards so all services will not be provided at a single licensed setting but rather at multiple sites to facilitate community integration.	DHS is currently developing the standards that providers will need to comply with and will take this comment into consideration. DHS is developing these standards with stakeholder input. While developing these standards, DHS will work to balance an individual’s rights to community inclusion, health, and safety.
STP needs to include more detail on the systemic assessment of residential and non-residential settings standards. No timeline is included for when revisions to become compliant are given.	The STP provides a general overview of the plan to achieve compliance with the final rule on a statewide level. The waiver specific transition plans, which are included as appendices, give timelines as to when the assessment of all providers will be completed.
A statement on outcomes should identify each standard and explain how it was measured against each federal requirement for assertions of compliance to be accepted.	The systemic assessment of policy completed by both ODP and OLTL identify each final rule standard and assess DHS’ compliance and remediation approaches. This assessment included the review of each policy, bulletin, regulation, waiver, etc. to determine if the correspondence conflicts with federal settings requirements, remains silent on the specific qualities, partially complies with the requirements, or are fully compliant with the requirements. The results of this assessment are attached to the STP as Appendix I.
The provider section of the STP should include detail on the number of individuals receiving each of the services.	This information will be provided during the heightened scrutiny process scheduled for October 2018 through December 2018, as noted in the waiver specific transition plans.

<p>Numerous comments received that regulations and standards should evaluate settings and characteristics based on a participant’s integration in the community that is meaningful and person-centered, including:</p> <ul style="list-style-type: none"> - DHS should establish clear standards that govern eligibility for waiver participants receiving services in locations near other waiver participants. - STP is too restrictive in terms of eligible settings. Rather than setting definitions of what is and is not eligible, criteria should be outcome-oriented and evaluated based on how they integrate an individual with a disability into the community, rather than by physical characteristics. - Comment that HCBS settings should follow CMS and Olmstead’s interpretation of “integrated setting most appropriate to the needs of qualified individuals with disabilities.” - Comment that final rule stresses the individual’s experience should factor most into what is an identified presumed unallowable setting, rather than the physical setting. - ODP should focus on and emphasize outcomes for individuals and reject and avoid a rigid oversight process that impedes quality outcomes. - ODP must account for the rural and industrial-based chapter 2380 and 2390 settings where integration opportunities are extremely limited. - Individuals with I/DD should be able to choose to live in residential settings that are occupied by their peers, with waiver services, if they are offered opportunities for community integration. 	<p>Ultimately, DHS is committed to ensuring individuals with a disability have the services they need to achieve greater independence, choice, and opportunity in their lives.</p> <p>ODP is in the process of developing regulations and service definitions with stakeholder input that will contain standards that providers must adhere to in order to be compliant with the CMS HCBS final rule. Please note that in the transition plans for the Consolidated, P/FDS, and Adult Autism waivers (Appendices A, B, and C), ODP anticipates the drafted Ch. 6100 regulations will be released for public comment in September 2016 and the waiver service definitions will be released for public comment in October 2016.</p>
<p>Numerous comments requesting specific definitions and</p>	<p>ODP is in the process of developing regulations and service definitions with stakeholder</p>

<p>standards related to I/DD and inquiring about when these will be developed. Consumers, families, and providers want to understand clearly what ODP will pay for under their waivers. Specific topics include:</p> <ul style="list-style-type: none"> - Definition of “close proximity.” - How “access to the greater community” will be evaluated and what will be considered a suitable threshold. - Community integration, choice, and control. - Service definitions should be modified to allow a large degree of provider flexibility. - Provide directives related to requirements for Home and Community Habilitation or Community Inclusion. - The waiver system is confusing making it difficult for families to navigate and impossible for individuals with I/DD. - Further clarification on “isolated settings” and “integrated settings”. - Definition of “community-based.” - Definition of stakeholders and ensure an appropriate balance of stakeholders. 	<p>input that will contain standards that providers must adhere to in order to be compliant with the CMS HCBS final rule. Please note that in the transition plans for the Consolidated, P/FDS, and Adult Autism waivers (Appendices A, B, and C), ODP anticipates the drafted Ch. 6100 regulations will be released for public comment in September 2016 and the waiver service definitions will be released for public comment in October 2016.</p>
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Comments Received on Choice and Self-direction	
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Summary of Comment	Response
<p>STP must foster community integration, independence, and person-directed services that will enable individuals to lead a safe and self-determined life with easy access to high quality services and supports, to have opportunities to work in integrated settings, and to participate in community life. Concern that STP is more restrictive than what CMS proposes and will limit choices. Flexibility should be exercised that preserve choice and addresses the</p>	<p>DHS appreciates these comments and is committed to making sure individuals with a disability have the services they need to achieve greater independence, choice, and opportunity to live their lives.</p> <p>DHS will take this comment into consideration while developing standards.</p>

<p>individual's needs and preferences.</p> <p><i>*Three (3) similar comments received.</i></p>	
<p>Comment that present levels of administrative overhead feel unnecessary compared to direct service in participant-direction models.</p>	<p>DHS appreciates this comment and will take it into consideration.</p>
<p>What is the overall plan for Service Coordination providers as a role in the participant's self-directed care?</p>	<p>In the Consolidated and P/FDS Waivers, Supports Coordinators are responsible for providing individuals with information on participant-directed services and the various choices of service management at IDP meetings and upon request. Support Coordinators must assist individuals with decisions related to self-direction. The Consolidated and P/FDS Waiver also have a supports broker service designed to assist individuals with employer-related functions in order to be successful in self-directing some or all of the individual's needed services.</p> <p>In waivers administered by OLTL, the Service Coordinator is responsible for informing the participant about the option to self-direct his/her services and the benefits and risks to self-direction. The discussion should include at a minimum; employer related responsibilities, the need to appoint a representative if applicable, and the process of hiring, training and firing direct care workers. The Service Coordinator is responsible for informing the participant of the timeframes relative to the Vendor Fiscal/Employer Agent (VF/EA). As with any other service model, the Service Coordinator is responsible for ensuring the health and welfare of the participant by confirming the participant is receiving the services and supports identified through the person-centered needs assessment.</p>
<p>Concern that STP does not account for individuals with I/DD who are not capable of making choices that protect their health and safety and unfettered freedom will place many individuals at great risk.</p>	<p>DHS is committed to making sure individuals with a disability have the services they need to achieve greater independence, choice, and opportunity to live their lives.</p> <p>DHS will take this comment into consideration while developing standards.</p>
<p>Request that "Services My Way" be extended to all waiver programs in Pennsylvania. Specific concern from a</p>	<p>ODP is exploring the addition of "Services My Way" in the renewals of the Consolidated and P/FDS waivers that will be effective July 1, 2017.</p>

<p>participant transitioned from the Attendant Care Waiver to the Independence Waiver.</p>	<p>OLTL will consider this for future changes to the waivers and plans to include self-direction as part of Community HealthChoices.</p>
<p>Community HealthChoices should not limit the individual's choice of a doctor or hospital, as long as the doctor or hospitals are participating.</p>	<p>DHS appreciates this comment. OLTL will consider this as CHC moves forward. The draft agreement, released on March 1, 2016, includes the following language: The CHC-MCO must provide participants with choice of providers within its network, including Service Coordinators. The CHC-MCO may not attempt to steer participants to affiliates who are providers or interfere with the participants' choice of network providers. Participants may choose a provider from within the network at any time, even during a continuity of care period.</p>
<p>Comments Received on Prevocational, Adult Day, and Employment Programs</p>	
<p>Summary of Comment</p>	<p>Response</p>
<p>Concern that employment programs will be taken away that provide self-worth, safety, structure, relationships, personal money, and work skills. Participants should have a choice of where to work.</p> <p><i>*Two (2) similar comments received.</i></p>	<p>Waiver participants will continue to have a choice to pursue employment that is supported with Medicaid-funded waiver services as long as it complies with the final rule. The final rule requires that Medicaid waiver funding be used to support participants in only those settings that are integrated in, and support full access of individuals to, the great community to the same degree of access as individuals not receiving Medicaid HCBS – this includes opportunities to seek employment and work in competitive integrated settings. If an employment setting has the effect of isolating waiver participants from the broader community, then the individuals could choose to pursue such employment, but they will not be able to receive Medicaid funded waiver services.</p>
<p>STP should state that Pennsylvania will help providers to develop alternative programs that will enable participants currently in workshops/prevocational services to integrate into the community. Some individuals with complex needs could be best served in current program, with adjustments.</p>	<p>DHS is assisting existing providers by planning to adopt a two-tiered set of standards: One that must be met by current providers and a different set of standards for providers that are newly enrolling to provide services. The drafted Ch. 6100 regulations will go out for public comment in September 2016. Proposed service definitions and provider qualification criteria will go out for public comment in October 2016.</p> <p>In addition, DHS is undertaking initiatives to assist existing providers in developing capacity for services that will comply with the final rule. For example, on March 3-4,</p>

	<p>2016, DHS sponsored a “Provider Transformation Leadership Boot Camp” in which executive-level teams from 16 provider agencies participated in a two-day intensive technical assistance training session on how to move from traditional segregated programs to community-integrated ones. In addition, ODP is funding a project to develop provider capacity in Pennsylvania for Discovery and Customized Employment services. Finally, DHS is collaborating with Pennsylvania’s Office of Vocational Rehabilitation to develop additional employment resources to support people whose disability presents the greatest obstacles to employment – some of these new resources are expected to be used to work directly with sheltered workshops to assist them and their workshop participants secure and retain competitive integrated employment.</p>
<p>STP should acknowledge increased transportation barriers for competitive employment services for rural settings versus urban settings.</p>	<p>DHS recognizes transportation as a challenge for waiver participants in rural settings. DHS is considering how to address this challenge through waiver definition changes, as well as how to embrace recent innovations in technology, such as maximizing online taxi dispatch services that utilize privately owned cars and accessible vans.</p>
<p>Recommend that all staff providing employment services be credentialed for consistency across the field. Do not support the use of families as providers of employment services, unless, at a minimum, the family member meets credentialing requirements.</p>	<p>DHS is considering the issue of employment service staff credentials. DHS is currently developing the standards that providers will need to comply with. These standards are being developed with stakeholder input and DHS anticipates that such standards will be incorporated in waiver amendments, renewals, and regulations that will take effect no later than July 1, 2017.</p>
<p>Implement Employment First in Pennsylvania.</p>	<p>Employment First means that competitive integrated employment is the first consideration and preferred outcome of publicly-funded education, training, employment and related services, and long-term supports and services for working-age Pennsylvanians with a disability. DHS embraces Employment First and is working across agencies and with the Governor’s Office to adopt Employment First principles within the commonwealth.</p>
<p>Centers should have accountability for programming and skill building.</p>	<p>DHS is currently developing the standards to which providers will need to comply. These standards are being developed with stakeholder input and DHS anticipates that the ODP will incorporate the standards in waiver amendments, renewals, and regulations effective July 1, 2017.</p>

<p>Adult Training Facilities (ATFs) offer meaningful activities for participants and essential to their well-being. ATFs are a participant choice that offers safety, support, and an alternative to a competitive work environment.</p>	<p>Waiver participants will have a choice of Medicaid-funded services that comply with the final rule. The rule requires that Medicaid waiver funding be used to support participants in only those settings that are integrated in, and support full access of individuals to, the greater community to the same degree of access as individuals not receiving Medicaid HCBS. DHS is assisting existing providers by planning to adopt a two-tiered set of standards: One that must be met by current providers and a different set of standards for providers that are newly enrolling to provide services. The drafted Ch. 6100 regulations will go out for public comment in September 2016. Proposed service definitions and provider qualification criteria will go out for public comment in October 2016.</p>
<p>Numerous comments received from participants and employees of prevocational workshops, supporting the workshop and concerned that the final rule will take away this workshop as an option. Comments include:</p> <ul style="list-style-type: none"> - Caring, supportive, safe environment that provides meaningful employment for individuals with multiple disabilities in a specialized setting. - Individuals are proud of the work they do at this setting and choose to participate. - Denying this program would deny participants the chance to be employed. - Transportation is an issue for individuals with disabilities to go to work. - Concern that Pennsylvania’s interpretation of the final rule will be a violation of the Olmstead decision. - Concern that individuals with I/DD will experience victimization when they are placed out in the community to work. - Reconsider the definition of ‘workshop’ in the final rule. Employees of workshops thrive in this work. 	<p>Waiver participants will have a choice of Medicaid-funded services that comply with the final rule. The rule requires that Medicaid waiver funding be used to support participants in only those settings that are integrated in, and support full access of individuals to, the greater community to the same degree of access as individuals not receiving Medicaid HCBS. DHS is assisting existing providers by planning to adopt a two-tiered set of standards: One that must be met by current providers and a different set of standards for providers that are newly enrolling to provide services. Both sets of standards must comply with the CMS rule. The drafted Ch. 6100 regulations will go out for public comment in the September 2016. Proposed service definitions and provider qualification criteria will go out for public comment in October 2016.</p>
<p>ODP Waiver – Provider would like input into the type of data collected through the employment data collection</p>	<p>DHS welcomes input from providers as to the type of employment data that will be collected, analyzed, and published.</p>

system.	
Concerns about the Department of Labor and Industry, Office of Vocational Rehabilitation (OVR) system’s capabilities of working with individuals with disabilities and employment placing. Concerns that waiver services offer too much supervision and not enough competitive, integrated work opportunities and training skills.	DHS is working in collaboration with OVR to improve staff resources and provider capacity to meet the employment needs of individuals with significant disabilities. Similar to DHS having to comply with new CMS rules, OVR is currently undergoing efforts to comply with new federal rules pursuant to the Workforce Innovation and Opportunities Act (WIOA). WIOA requires OVR to increase access to pre-employment transition services to students with disabilities before they leave high school. It also requires OVR to provide information and counseling to all sheltered workshop participants annually to assist with securing competitive integrated employment. DHS recently signed a memorandum of understanding with OVR to pool funding to bring additional federal funds to Pennsylvania. These additional resources will enable OVR to hire more staff dedicated to serving Pennsylvanians with an intellectual disability or autism, as well as promote innovation and expansion of services.
Comments on concerns about the chapter 6100 regulations, as they are written now. <i>*Two (2) similar comments received.</i>	ODP anticipates the drafted Ch. 6100 regulations will be released for public comment in September 2016. Comments regarding the regulations should be submitted during the public comment period. The regulations will go through the Independent Regulatory Review Commissioner rulemaking process.
The STP says, on page 17, that review found that there are no regulations in conflict with the final rule but prevocational regulations prohibit clients from going into the community so there seems to be a conflict. Service definitions need to be changed to facilitate the full experience.	55 Pa. Code Chapter 2390 , Section 2390.3 (c) states, “If clients work at a location other than the facility and the facility grounds, this chapter does not apply during the time clients are away from the facility. While clients are present at the facility, the requirements of this chapter apply.” This regulation does not prohibit clients from going into the community; this regulation simply does not apply to activities that occur away from the facility.
Are there plans to utilize the 1915(i) as other states have, to allow for employment services to be offered to individuals with behavioral health challenges?	DHS appreciates this comment and will take it into consideration.
Comments Received on Residential Settings, Farmsteads, and Gated Communities	
Summary of Comment	Response

<p>Location of residential settings should be the choice of an individual.</p> <p>*Two (2) similar comments received.</p>	<p>DHS is currently developing the standards that providers will need to comply with. DHS is developing these standards with stakeholder input. Individuals will be given the choice of residential settings that comply with these standards.</p>
<p>Controlling one’s schedule, activities, and access to food at any time must be within reason.</p>	<p>CMS allows modifications to some of these requirements. Modifications must be based on an assessed need and justified in the person-centered plan. DHS is currently developing the standards that providers will need to comply with. DHS is developing these standards with stakeholder input. While developing these standards, DHS will work to balance an individual’s rights to community inclusion, health, and safety.</p>
<p>Concern that settings must allow individuals to “have visitors of their choosing at any time” is a potential safety issue and could impact the rights and privacy of fellow inhabitants.</p>	<p>DHS is currently developing the standards that providers will need to comply with. DHS is developing these standards with stakeholder input. While developing these standards, DHS will work to balance an individual’s rights to community inclusion, health, and safety.</p> <p>The CMS document titled “<i>HCBS FINAL REGULATIONS 42 CFR Part 441: QUESTIONS AND ANSWERS REGARDING HOME AND COMMUNITY-BASED SETTINGS,</i>” states, “An individual’s rights, including but not limited to roommates, visitors, or with whom to interact, must be addressed as part of the person-centered planning process and documented in the person-centered plan. Any restrictions on individual choice must be focused on the health and welfare of the individual and the consideration of risk mitigation strategies. The restriction, if it is determined necessary and appropriate in accordance with the specifications in the rule, must be documented in the person-centered plan, and the individual must provide informed consent for the restriction.”</p>
<p>Request that DHS thoroughly assess facilities that may be presenting themselves as “independent housing with HCBS” but are provider owned because they may lack requirements from HCBS.</p>	<p>DHS is currently developing the standards that providers will need to comply with. DHS is developing these standards with stakeholder input. While developing these standards, DHS will work to balance an individual’s rights to community inclusion, health, and safety.</p>
<p>Disagreement that farmsteads and gated communities are presumed ineligible settings. States that the CMS final rule does not state that these settings are likely noncompliant</p>	<p>It is true that the CMS regulations do not specifically list intentional communities, farmsteads, and other congregate settings as presumed ineligible. However, the CMS document titled, “<i>Guidance on Settings That Have the Effect of Isolating Individuals</i></p>

<p>nor presumed ineligible.</p> <ul style="list-style-type: none"> - Comments received that these are popular and innovative housing options for adults with disabilities. <p><i>*Four (4) similar comments received.</i></p>	<p><i>Receiving HCBS from the Broader Community,</i>” states that these types of settings “typically have the effect of isolating people receiving Home and Community-Based services from the broader community” and are thus included as settings that are presumed to have institutional qualities.</p>
<p>Housing components should be available for all waivers, not just the Consolidated Waiver.</p>	<p>Residential Habilitation services, the only service to which these requirements apply, are not offered in the P/FDS waiver.</p> <p>Residential Habilitation services are also available in the Adult Autism Waiver.</p>
<p>Concerns about landlord/tenant agreements or written agreements for housing for I/DD populations.</p> <p><i>*Two (2) similar comments received.</i></p>	<p>As stated in the wavier specific transition plans for the Consolidated, P/FDS, and Adult Autism waivers (Appendices A, B, and C), DHS needs to analyze Pennsylvania’s landlord tenant law and determine what constitutes comparability for residential settings. DHS will continue to have discussions with stakeholders regarding this requirement to inform future decision making.</p>
<p>Concerns that lockable doors will greatly danger individuals with I/DD.</p>	<p>CMS allows modifications to the residential setting requirements referenced in the comment. Modifications must be submitted by an assessed need and justified in the person-centered plan. The Consolidated, P/FDS, and Adult Autism Waiver transition plans (Appendices A, B, and C) currently state that DHS will develop and publish communication regarding required Individual Support Plan documentation when such a modification is needed.</p>
<p>Request for respite to be provided in a residential habilitation setting.</p>	<p>DHS appreciates this comment. The Consolidated and P/FDS Waivers currently allow individuals to receive respite in residential habilitation settings. The Adult Autism Waiver renewal has proposed to allow individuals receiving residential habilitation in family living settings to receive respite services.</p>
<p>Request that OLTL coordinates with the Bureau of Human Service Licensing, the long-term care ombudsman, and other state entities while continuing the assessment process. Request that OLTL identify locations that are</p>	<p>OLTL appreciates this comment and will continue to work with the Bureau of Human Service Licensing and begin working with the long-term care ombudsman. OLTL is in the process of identifying settings that are unlicensed and provider owned and operated by home care agencies or other waiver providers.</p>

licensed as home care agencies or waiver providers.	
Comments Received on Legacy Programs	
Summary of Comment	Response
Concern that a two-tiered approach to transition may allow a delay in forced transitions that are inconsistent with the intent of the final rule, nor planned in the interests of participants and stakeholders.	The purpose of implementing a two-tiered system is to support Pennsylvanians with intellectual and developmental disabilities to achieve greater independence, choice, and opportunity in their lives. This two-tiered system will allow DHS to ensure compliance with the final rule while also improving waiver services to support better outcomes for the individuals served.
Comments received inquiring details about DHS's vision for the structure of legacy programs and clarification, including timelines and the approval process. <i>*Seven (7) similar comments received.</i>	ODP is in the process of developing regulations and services definitions with stakeholder input that will contain standards that providers must comply with to be compliant with the final rule. Please note that in the transition plans for the Consolidated, P/FDS, and Adult Autism waivers (Appendices A, B, and C), ODP anticipates the drafted Ch. 6100 regulations will be released for public comment in September 2016 and the waiver service definitions will be released for public comment in October 2016.
Inquiry about legacy providers and if they meet the requirements will they be able to continue operation based on current licensed capacity or will they be forced to downsize through natural attrition.	While all providers must meet the federal requirements, DHS is currently developing, with stakeholder input, the standards that legacy providers and new providers will need to comply with.
Comments Received on Monitoring	
Concern that continuous monitoring will deter from quality production and the additional cost will directly reduce consumer services.	DHS appreciates this comment and take into consideration as self-assessment and onsite monitoring tool are developed.
Inquiry if new regulations will include the final rule requirements in DHS inspections and annual surveys.	The chapter 6100 regulations and wavier service definitions are being developed with stakeholder input and will contain standards that providers must adhere to in order to be compliant with the final rule. ODP will then monitor providers for compliance with these standards.
Support self-assessment procedures and the proposed use	DHS appreciates this comment and take into consideration as the department develops a

<p>of existing state resource and entities, such as QMET, to assess, offer technical assistance, and monitor compliance with final rule.</p>	<p>self-assessment and onsite monitoring tool.</p>
<p>STP should describe the methods to identify and evaluate non-compliant or presumed non-compliant settings.</p>	<p>ODP is in the process of developing regulations and services definitions with stakeholder input that will contain standards that providers must comply with to be compliant with the final rule. Providers will be monitored for compliance with the standards once they are implemented. The onsite review results will identify each of the areas of noncompliance identified during the monitoring process. After completion of the onsite monitoring reviews, settings that are presumed to have institutional qualities per the CMS requirements will be identified. These steps are outlined in the Provider Monitoring section of the STP.</p> <p>OLTL’s provider monitoring process is expressed, in detail, beginning on page 28 of the STP.</p>
<p>Too much reliance on provider self-assessments. Will not adequately ensure compliance. Concern that the assessments do not ask about work and that they do not fully capture the individuals experiences in the program.</p>	<p>The STP states that self-assessments will be followed up by onsite monitoring reviews. DHS is in the process of developing self-assessment and onsite monitoring tools that will accurately capture the required information.</p>
<p>The provider should note the date that remediation is completed in the Corrective Action Plan rather than leave the space blank.</p>	<p>DHS appreciates this comment and will take it into consideration.</p>
<p>Concern that the timeline for determining which providers are subject to heightened scrutiny is too protracted – not enough time from the publishing of the notice of compliance or non-compliance (fall 2018) to CMS deadline for providers to remediate or for individuals to find a new provider or setting.</p>	<p>ODP plans to submit the service definitions developed with stakeholder input to CMS in early 2017. These service definitions will contain the standards that providers must adhere to in order to be complaint with the CMS HCBS final rule. ODP will share these definitions with the stakeholder community. Each provider should start to assess their compliance with these standards at this time and develop plans to become complaint as needed.</p> <p>OLTL will seek stakeholder input on the proposed HCBS standards in spring 2016.</p>

<p>Request that at least fifty percent be reviewed and those who do not complete a self-assessment be reviewed automatically in addition to the percentage reviewed.</p>	<p>The Provider Monitoring section of the STP states that in the fall of 2017, all Consolidated, P/FDS, and Adult Autism waiver providers will complete a self-assessment of their compliance with current applicable waivers, newly revised regulations, and policies. ODP or its designee will then complete onsite monitoring reviews of the Consolidated and P/FDS waiver providers for compliance with the applicable waivers and regulations. ODP or its designee will also complete an onsite monitoring visit for all Consolidated and P/FDS waiver providers who either did not complete a self-assessment or whose self-assessment indicated noncompliance.</p> <p>ODP will complete onsite monitoring of all residential and day habilitation providers that serve participants in the Adult Autism Waiver.</p> <p>OLTL’s QMETs will be conducting an onsite assessment at all sites which have been identified to be in a category that requires follow-up for compliance review.</p>
<p>Concern by the use of professional assessments by ODP. Suggest the IM4Q program as an assessment tool.</p>	<p>ODP is in the process of developing regulations and service definitions with stakeholder input that will contain standards that providers must adhere to in order to be compliant with the final rule. Once this has been completed, ODP will determine the best way to monitor providers for compliance. This recommendation will be kept under consideration during this process.</p>
<p>Request for the STP to provide more detail on how the Department plans to investigate and address complaints.</p>	<p>Pg. 32 of the STP lists the OLTL participant hotline that individuals can report complaints: The OLTL Help Line (1-800-757-5042) is staffed by OLTL personnel during normal business hours. Participants, family members, and other interested parties use the Help Line to report complaints/grievances regarding the provision/timeliness of services and provider performance. OLTL will notify participants of all findings and compliance actions that are being taken.</p> <p>The following information will be added to the STP for ODP: Individuals, family members, and any other concerned party may report complaints, including settings that are noncompliant with the new federal requirements, to the Intellectual Disabilities Customer Service Line at 1-888-565-9435 or 1-866-388-1114 for individuals who are hearing impaired or by electronic mail at RA-odpcontactdpw@pa.gov. ODP tracks all complaints made to this number and ensures that they are resolved. For participants of the Adult</p>

	Autism Waiver, participants can call 1-866-539-7689.
Concern that only half of ODP settings will be subject to on-site monitoring, suggest larger percent receive on-site monitoring. STP should include criteria for selection of on-site monitoring to allow for public comment.	<p>The Provider Monitoring section of the STP states that in the fall of 2017, all Consolidated, P/FDS, and Adult Autism waiver providers will complete a self-assessment of their compliance with current applicable waivers, newly revised regulations, and policies. ODP or its designee will then complete onsite monitoring reviews of the Consolidated and P/FDS waiver providers for compliance with the applicable waivers and regulations. ODP or its designee will also complete an onsite monitoring visit for all Consolidated and P/FDS waiver providers who either did not complete a self-assessment or whose self-assessment indicated noncompliance.</p> <p>ODP will complete onsite monitoring of all residential and day habilitation providers that serve participants in the Adult Autism Waiver. ODP or its designee will also complete an onsite monitoring visit for all Adult Autism Waiver providers who either did not complete a self-assessment or whose self-assessment indicated non-compliances.</p> <p>After this process has been completed, all Consolidated Waiver and P/FDS Waiver providers will be continuously monitored on a cycle through existing monitoring processes. All Adult Autism Waiver providers will be continuously monitored. Providers will be monitored for compliance with applicable waivers, regulations, and policies which will include compliance with the CMS Rule.</p>
The Disability Rights Network offers ODP assistance with reviewing settings.	DHS appreciates the offer of assistance and will keep this offer under consideration through the revision of the provider monitoring process to ensure compliance with the final rule.
The outlined follow-up visits to OLTL providers to validate survey results for the waiver must occur. A timeline should be given for when the preliminary identifications will occur regarding the compliance of settings. STP does not specify criteria to determine which OLTL sites will require follow-up.	OLTL will consider this comment as DHS moves forward with the implementation of the STP.
Request for more details on the follow-up visits to the	OLTL will consider this comment as DHS moves forward with implementation of the STP.

<p>surveys. Specific requests on the structure of the follow-up visits include:</p> <ul style="list-style-type: none"> - DHS to release on-site assessment tools and procedures for stakeholder review. - There be survey teams to include participant representation and meaningful participant involvement. - Include interviews with participants regarding their service planning process and service setting. - OLTL should educate participants about their rights under the final rule so that interviewees have appropriate background knowledge so they can provide more informed input about their settings. - Results of the on-site visits should be made public. - Focus on participants' experiences in their settings. - Provide information on what the steps will be if the findings of the on-site. 	
<p>Support OLTL's use of a participant review tool and support a similar use by other offices and included in the STP for public comment.</p> <p><i>*Two (2) similar comments received.</i></p>	<p>DHS appreciates the comment and will take it into consideration as monitoring tools are developed.</p>
<p>Request that more information be provided on how monitoring and remediation activities will be affected by CHC. How will providers in the Southwest region of the state (where CHC will begin on January 1, 2017) be monitored? How will OLTL work with MCOs to transfer monitoring responsibilities as CHC is phased in other regions of the state?</p>	<p>As indicated in the Agreement, the CHC-MCO must provide services in the least restrictive, most integrated setting. The language included is as follows:</p> <p>This service must be provided in accordance with 42 CFR §441.301(c) (4) and (5), which outlines allowable setting for home and community-based waiver services. Settings cannot be located on the grounds of a Nursing Facility, Intermediate Care Facility, or Institute for Mental Disease or Hospital; unless it meets the standards for the heightened scrutiny process established through the HCBS Final Rule and is included in the Person Centered Service Plan. The CHC-MCO must submit documentation on a quarterly basis containing a list of settings that are non-compliant.</p>

On-going monitoring must occur in addition to self-verification for OCDEL settings.	DHS appreciates this comment. DHS has revised the STP on page 25 to include that the verification process is informed by ongoing review of the development of IFSP that documents service settings as well as observation of the implementation of IFSP services by Service Coordinators and Supervisors. This same observation strategy is also used as a form of ongoing technical assistance to programs.
Comments Received on Funding/Payments	
STP must assure that payments for services are fairly and responsibly aligned with the reasonable and documented costs of rendering high quality mandated services. The rate setting process must be open and transparent so that consumers and providers and the public understand the nature and scope of mandated services and the necessary costs that providers routinely must incur to assure access to and the provision of those services.	DHS thanks this commenter for their input and will consider this as DHS moves forward with implementing the final rule.
Inquiry if additional funding will become available to support changes that providers will need to comply with the final rule.	No additional federal funding is provided to states to implement these changes. Once DHS develops standards through regulations and waiver service definitions, the department will examine the financial impacts to providers.
Approximately 80% of the costs incurred by Waiver Program providers consist of labor. Housing costs are market driven and the costs of utilities, repair and adaptation, transportation, food and minimum wage increases are beyond the control of providers.	DHS thanks this commenter for their input.
Current Waiver Program payment rates reflect costs that are over two years old; have not been adjusted for inflation in eight years; providers self-fund any increases; and providers must recruit and retain quality staff.	ODP is currently working with residential habilitation providers in the Consolidated waiver to establish a rate that is sufficient, effective and accurate. ODP's goal is for the rate to have a relationship to the degree of support individuals need and reimburses providers for the actual costs to render residential services.
Current payment providers punish providers of services. For	ODP is currently working with residential habilitation providers in the Consolidated waiver

example, current regulations penalize providers when a consumer exercises their rights, consistent with “Everyday Lives.” The timing of a consumer’s placement depends essentially on decisions made by ODP and its agents.	to establish a rate that is sufficient, effective and accurate. ODP’s goal is for the rate to have a relationship to the degree of support individuals need and reimburses providers for the actual costs to render residential services.
The Medical Assistance Program essentially is the exclusive payer for home and community based programs. Providers are fully dependent on ODP to establish fair and reasonable payments in order to render the services that consumers need and are entitled to receive as set forth in their ISPs.	CMS requires states to ensure that payments are consistent with the efficiency, economy, and quality of care and are sufficient to enlist enough providers. Rate Determination methods are enumerated in Appendix I-2-a of each waiver which is released for public comment during amendments and renewals. Proposed rates for waiver services are also published in the Pennsylvania bulletin and released for public comment.
Concern that the cap on the P/FDS Waiver is nearly impossible to support living semi-independently.	ODP understands and recognizes this issue, but is not able to increase or supplement the funding without approval from the General Assembly.
Are there any provisions for funding availability for those with I/DD who need 24/7 support in the home and in an employment setting now and down the road?	The Consolidated and P/FDS waivers do not currently restrict individuals from receiving 24/7 support in their home. The Consolidated and P/FDS waivers also offer supported employment services in competitive integrated employment settings. ODP is currently developing regulations and service definitions with stakeholder input that will contain standards that providers must adhere to in order to be compliant with the final rule.
Comments Received on Stakeholder Input	
A representative from the Adult Day community should have representation on the MAAC Long-Term Care Subcommittee. Their member resigned in 2014.	DHS appreciates this comment and will take it under consideration.
DHS should communicate more effectively with stakeholders with timely guidance and direction to providers that will need to make changes to be compliant.	DHS appreciates this comment. DHS will continue to communicate with stakeholders as standards and guidance are developed through various mechanisms outlined in the STP, beginning on page 13.
Numerous comments received from stakeholders requesting to participate in potential advisory groups or forums as Pennsylvania develops the standards and policies.	DHS appreciates these comments and will respond to these requests with information about how to participate in stakeholder input sessions, as they are scheduled.

Request that OLTL and OCDEL create advisory committees similar to ODP to solicit stakeholder input through the development of new standards and service definitions.	DHS will take this into consideration as the implementation of the STP moves forward.
Pleased with the collaboration across the three program offices within DHS.	DHS appreciates this comment and will continue to collaborate across program offices.
More specific stakeholder outreach and engagement efforts are needed. STP should outline specific types of organizations that are considered stakeholders and specific events where flyers were distributed. Include training sessions, Service Coordinator visits, local meetings, work groups, advisory groups, webinars, and other public forums and letters.	The STP outlines the sessions that have occurred and will continue to occur where stakeholder input is solicited. The waiver specific transition plans outline information for each program office.
Request that DHS hold public forums each time there is a change to the STP.	The STP will be released for public comment and effort will be made to solicit public input if the STP is substantially updated.
STP should include how individuals with disabilities will be involved before the standards become final.	DHS appreciates this comment. HCBS waiver participants are involved in stakeholder input sessions and advisory groups. Individuals with a disability will also have the chance to provide input during the public comment period.
STP does not include how individuals will be educated about the final rule and their choices.	ODP agrees with the need to offer training to all stakeholders, including the individuals we serve and their families. ODP has developed a training that provides an overview of the CMS Final Rule. This training can be accessed at http://www.odpconsulting.net/resources/webcasts-videos/cms-final-rule . This is the first training in an ongoing series as ODP begins to move through the transition plan. The Outreach and Engagement sections of the transition plans for the Consolidated, P/FDS and Adult Autism Waivers have the following action item, "On-going engagement highlighting updates and revisions to Pennsylvania's regulations, policies, and procedures; training on compliance to the HCBS Final Rule and transitioning activities for individuals with an intellectual disability, families, supports coordinators, providers, and staff."

	<p>OLTL staff, providers, participants, family members, and Service Coordinators will receive education and training on the updated policies and procedures that are developed as a result of OLTL’s assessment and remediation efforts. OLTL will periodically offer training to HCBS providers through face-to-face methods or by webinar, which will cover clarifications relating to the final rule as well as any new policy or procedures providers will be expected to comply with. HCBS providers who need to take additional steps to come into compliance with the final rule will receive technical assistance from OLTL in order to become compliant. OLTL will also educate participants through the use of the Participant Review Tool and will have a choice of providers annually through the ISP review process.</p>
Comments Received – General	
Summary of Comment	Response
<p>STP must support the development and implementation of a more efficient, flexible, and sustainable service delivery system that is values driven.</p>	<p>DHS appreciates this comment and will take it into considerations as standards are developed and the STP is implemented.</p>
<p>Concern that Pennsylvania’s non-medical transportation rules discriminate against individuals with disabilities as non-medical transportation is not accessible by waiver recipients.</p>	<p>DHS appreciates this comment.</p> <p>The Consolidated and P/FDS Waivers currently offer public transportation, transportation trip and transportation mile as well as vehicle accessibility adaptations to make transportation accessible to the individuals we serve. ODP is exploring other innovative transportation services to help address transportation issues for individuals.</p>
<p>Request for clarification on the Corrective Action Plan (CAP) regarding whether providers will need a CAP for each of their settings that are not fully compliant and examples of specific remedial actions that could be included in a CAP.</p>	<p>Once standards are developed through regulations and service definitions, DHS will develop the criteria for the CAP to ensure compliance with the standards. DHS will share the final CAPs.</p>
<p>DHS needs to develop something to help families easily navigate the waiver system.</p>	<p>DHS appreciates this comment and will take it into consideration.</p>
<p>Request that the STP explain the appeals process and that the Department make this as transparent as possible by</p>	<p>A provider’s appeal rights are governed by Title 55, Chapter 41 of the Pennsylvania Code (55 Pa. Code § 41.1 et seq.).</p>

making appeals data public.	
<p>Person Centered Planning (PCP) is not adequately addressed in the transition plan for individuals with ID/autism. PCP is currently inadequate in Pennsylvania. Recommend ODP evaluate, with stakeholder input, the current PCP practice.</p> <ul style="list-style-type: none"> - Adequate education of self-advocates, family members, supports coordinators, provider staff on PCP. - Sufficient number of trained facilitators and funding mechanism. - Create a monitoring process for PCP. - Establish an appeals process for individuals. - Create an incentive to facilitate PCP. 	<p>CMS limits the purpose of the STP to settings where waiver services are delivered. For this reason, the person-centered planning requirements are not contained in the transition plans. The ODP acknowledges that we must comply with the person-centered plan requirements and will continue to review all policies and procedures regarding Individual Support Plans. ODP has engaged stakeholders in drafting regulations (Ch. 6100) that will govern all ODP HCBS and will include practices governing person-centered planning. In addition, ODP released Announcement 013-16, Person Centered Thinking Training for All Audiences. As part of this training participants will practice utilizing person-centered thinking resources and techniques. The information gathered using these skills can help teams develop meaningful Individual Support Plans that help people with disabilities achieve an Everyday Life.</p>
<p>Concern that current ISP process in OLTL does not include PCP or an appeals process for the Individual Service Plan (ISP) without PCP. PCP process and ISP development needs to be clear for consumers, include trained staff, and ensure that individual's needs are met.</p>	<p>OLTL has detailed policies regarding the ISP process and using a person-centered approach, including information on the process for appeals. This information can be found at: http://www.dhs.pa.gov/cs/groups/webcontent/documents/bulletin_admin/c_218075.pdf</p> <p>OLTL will consider this comment as training is developed.</p>
<p>AAW - Concern that Community Inclusion providers are not able to work with clients in their home, this should be allowed to provide individuals to develop skills in a familiar environment.</p>	<p>Community Inclusion providers are able to work with participants in their home and are allowed to provide support to individuals to develop skills in their familiar environment.</p>
<p>Under Community HealthChoices (CHC), will providers be subject to routine monitoring assessment and compliance protocols by both a state entity and a CHC-MCO? Suggest this as a function of a single entity.</p>	<p>OLTL will consider this comment as the implementation of CHC moves forward.</p>
<p>Appendix I includes several references to out of date bulletins from OLTL regarding Individual Service Plan (ISP)</p>	<p>At the time of the systemic assessment, including the review of OLTL bulletins, the ISP bulletin was in effect and current.</p>

development.	
Concern for the lack of specificity that OCDEL HCBS are automatically community integrated, may not be sufficient.	Please refer to page 6 of the STP and the description of “community setting.” This assures that there will not be center based settings used for waiver services delivered to infants and toddlers and their families.
STP may not sufficiently address the needs of individuals who will need to transition from non-compliant to compliant settings. Recommend ODP investigate the use of generic service system settings – as alternative compliant settings rather than rely on transition processes. *2	ODP appreciates the comment and suggestion. ODP should gain a better understanding about the impact of the standards on providers and individuals through the public comment process on the proposed standards. ODP can then explore whether further changes to services and standards will help individuals achieve greater independence, choice, and opportunity in their lives.
Update STP Appendices to indicate that these links are the waiver specific transition plans and not the waivers themselves.	DHS updated the STP to include this suggestion.