

Public Comments Received for Third Comment Period

Below is the table of comments on transition plans received during the period of 7/1/18 to 7/31/18.

<u>Comment Number</u>	<u>Date Received</u>	<u>Comment</u>	<u>Status</u>	<u>Response</u>
1	7/5/18	<p>I would recommend the following addition to the STP on page 22 under Initial Provider/Setting Reviews: "As new providers or settings falling under the Integrated Services Rule (settings owned or leased by provider) are created, these settings shall receive an initial State Transition Plan review prior to beginning services at the setting. This review would include technical assistance and general compliance determination. Then when the setting is fully operational, BMS would conduct a full review as they have for all other provider settings, following the procedures in Appendix M."</p> <p>This description should be included in Appendix M</p>	Change	The State Transition Plan has been changed to reflect t

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		at the beginning of Section 5.		
2	7/16/18	<p>The STP should be amended to include a provision that the CEO of each provider agency will be contacted by letter annually with a list of each setting which BMS has listed as being owned or leased by that provider. The CEO will verify annually that this is a complete listing of all settings owned or leased by the provider agency wherein IDD Waiver services are provided. This list will include both residential and non-residential settings.</p> <p>Provider agencies should be notified through this letter that if there is any change to the status of a setting, either added to the list or deleted from the list, BMS shall be notified within 15 days of the change in status.</p>	Change	The State Transition Plan has been changed to reflect t
3	7/16/18	The Protocol for annual reviews through Kepro should include a verification of all settings, census and services	Change	The State Transition Plan has been changed to reflect t

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		provided under the State Transition Plan.		
4	7/19/18	I have a few concerns with this program. My daughter utilizes this program for help with all her needs. She is 24/7 care. I am very grateful that there are programs like this however, there are many concerns I have that impact our life. We have used this program for several years and the one thing that I have issues with are the people who run these businesses such as this. Some of the people that come into business in this field do not know what services there are to be utilized and the turnover rate for the business employees is overwhelming to the families. Learning new policies and new rules for many families mean time away spent from the person that they should be helping. Also having a set schedule can be hard on the families as well b/c not everything can go accordingly maybe b/c of behavioral issues or medical issues or physical issues. With people with disabilities it takes time with them more than the average person. I think the families should be able to make up their	No action needed	The development of member schedules is one of the full and is not addressed in the State Transition Plan. Paperwork requirements are included in the IDD Waiver Case Management training requirements and Member Transition Plan.

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		<p>own schedules. The paperwork should be minimal for our families. I understand with the government there needs to be a paper trail for these programs and rules that follow but our families need business people who know what services our families need. They should be able to tell us how the services are what to expect and how to use them. I myself have shared a number of services with several of people in this business that were not aware that services even existed or even how to look for services. Also many of our families need specialized equipment that are needed so it's very important to know how to get the families what they need despite what the families income is. I know firsthand that a specialized wheelchair is over \$2,000. And as the years go on our loved ones are going to grow so again a Hoyer lift is over \$2000. So please help teach the people who are actually on a one on one basis with our families search for services that can be utilized. If our waiver programs have the</p>		

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		<p>money put it towards the families that need it first come first serve basis and help do a reverse for equipment. Like if a client can't use it anymore find another that can. Help our families. Please stop making it harder to do paperwork and keep set schedules b/c our families already work hard enough to keep a daily routine and our loved ones from being institutionalized. We try hard not for them to get sick and to stay healthy. Our families would not look for these programs if we did not need them. Thank you for all your help. I hope this helps.</p>		
5	7/20/18	<p>Supported employment is identified as being provided in a Behavioral Health facility non-residential, but not in the community. That should be reversed.</p>	Change	The State Transition Plan has been changed to reflect t
6	7/20/18	<p>Pre-Vocational services should be available in the community also (where better to learn work and social related work skills). This would better open a venue for volunteer options for pre-vocational training which are beneficial when</p>	No action needed	The definition of Pre-Vocational is included in the IDD V

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		preparing for community integrated employment.		
7	7/20/18	In-Home respite is not listed and should be identified for home and community settings.	Change	The State Transition Plan has been changed to reflect t
8	7/20/18	On page 12, In-Home respite is not identified.	Change	The State Transition Plan has been changed to reflect t
9	7/27/18	... recommends that the Department for Health and Human Resources (DHHR) expand their regulatory review to include not only regulations in direct conflict with CMS-2249-F and CMS-2296-F, but also whether additional regulatory changes are needed to support the rule.	No action needed	State Rules, Regulations and Policy Compliance with the B). Remedial actions and changes are included in this a
10	7/27/18	... is concerned that DHHR has delayed the revision of some regulations and policies, as demonstrated in Appendix B of the "Methodology for WV's Waiver Transition Plan Application".	No action needed	All policy revisions identified in Appendix B are schedule

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		<p>Several policies are scheduled to be revised by summer of 2019 or later. Due to the already cumbersome nature of regulatory processes, additional delay will result in delay of application, thus delaying the ability of individuals receiving services to engage in meaningful community integration.</p>		
11	7/27/18	<p>... is concerned with the lack of narrative or specificity listed in the Transition Plan methodology regarding the quick compliance of HCBS settings. It is unclear what metric DHHR is using to determine the accuracy of the rapid compliance.</p>	No action needed	The specific steps a provider must take to reach compliance

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		It is also unclear what substantive changes were made to transition from all providers and settings being non-compliant with the community integration rule to reaching compliance. ... recommends providing a narrative description of remediation steps used to reaching compliance.		
12	7/27/18	... is concerned with the publication of the Methodology for comment, particularly with the unclear dates for comment acceptance. DHHR's website contains a comment submission date of July 26, 2018, while the document itself	No action needed	DHHR will accept comments through July 31, 2018. This statewide newspaper Public Notice.

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		lists July 30 th as the last day for comment submission. ... recommends the state accept comments until the last possible date to ensure receipt of feedback.		
13	7/27/18	... is concerned with the use of web-based notification as the primary method for soliciting comments. West Virginia has long struggled with obtaining broadband internet in its more remote counties. Many individuals do not have the means to access a computer, particularly individuals who may be in receipt of services through Medicaid HCBS Waivers in rural counties. Dependence on	No action needed	In addition to provider distribution and web-based notification in the State's state-wide newspaper.

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		email-based comments or provider distribution of notices may not be sufficient to obtain accurate feedback on the transition plan.		
14	7/27/18	...is concerned that despite the best efforts of the transition plan, the ongoing direct care staffing crisis continues to impact the ability of individuals with disabilities to receive services in their community. ... has encountered numerous instances of individuals being required to move from their homes to find providers who have adequate staff to meet their needs. West Virginia is a unique state made up of many different	No action needed	Staffing retention and acquisition does not come under

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		<p>communities that each reflect their own cultural values. By being required to move to another region or county, an individual is often forced to give up their ties to their community, family, and culture. ... requests that the State address the ongoing crisis related to obtaining and retaining direct care workers.</p>		
15	7/27/18	<p>... is concerned with the requirement that pre-vocational skills training may only be provided in a licensed facility-based day habilitation center. These facilities are not community based and do not encourage community integration.</p>	No action needed	<p>The setting where pre-vocational services may be provided. This is stated in Exhibit 1, page 4 et seq, of the State Transition Plan.</p> <p>BMS takes exception to the statement that licensed facilities are not community based and do not encourage community integration. These settings by both BMS and Kepro confirm that they are community based. Service Plans verify that members are afforded extensive community integration.</p>

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16	7/27/18	The announcement on the Bureau for Medical Services' (BMS) webpage indicates comments on this Plan are due by July 26 th . However, the STP indicates the comment period goes through July 30 th . Will the BMS accept comments through July 30 th ?	No action needed	Yes. DHHR will accept comments through July 31, 2018 the statewide newspaper Public Notice.
17	7/27/18	The return rate of approximately 13% for the <i>Individuals and Family Members Survey</i> across all waivers is indicative of the lack of knowledge on the part of Waiver recipients and family members. We noticed the closure date for survey completion was 12/31/15. Were surveys sent during the holiday season? What has been, or will be, done to gather more information from families and Waiver recipients regarding settings and services? If pre-vocational and job development services are sub-sets of facility-based day habilitation services, but were not specifically identified in the survey, how is it possible to know	No action needed	The closure dates and surveys were completed in 2015 gathered to develop the Transition Plan. It was included in the survey. As the commenter noted in the previous paragraph, "were met."

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		if more people wish to receive those services?		
18	7/27/18	It is stated the State code for the IDDW providers' licensed behavioral health sites does not conflict with the Integrated Services Rule. Does it support or encourage the rule? We do not believe the HCBS rule addresses bedroom size and furnishings, rather it focuses on the individual's experiences there. What part of the licensure rule addresses this aspect of the HCBS rule?	No action needed	The commenter does not indicate a suggested change to about the plan. State Code for licensed settings was promulgated prior support or encourage the rule. The State Transition Plan integration is not specifically required to the same degree receiving Medicaid HCBS. §64CSR11 is currently in revis
19	7/27/18	We presume the State code referred to here is Title 64-11, which is currently being re-written. The version the Council just commented on seems to propose removing the Human Rights Committee spoken about here as providing a firm foundation to the overall protection of basic rights and any necessary restrictions. Have the proposed changes to this rule been reviewed for areas that	No action needed	§64CSR11 is indicated by name. The commenter does not Transition plan, but states questions about BMS' actions as they relate to the Integrated Services Rule.

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		may or may not support the HCBS rule?		
20	7/27/18	...is unclear on how all settings went from being noncompliant to all settings being compliant, and we do not see any specific information explaining what occurred that caused this to happen. Where are the specific steps listed that caused those settings to become compliant listed in the STP?	No action needed	The settings became compliant through the process del... reviews are contained in Appendix N, including the spec... revisit, these were corrected.
21	7/27/18	We especially do not understand how facility-based day habilitation programs across the state became compliant. Our experiences cause us to believe these settings likely are not in compliance, and as currently operated, will never meet the compliance criteria. We believe these are settings that would need heightened scrutiny. Questions and comments at the most recent QIA meeting reinforce our belief they likely are not in compliance. (Questions such as	No action needed	Heightened scrutiny is clearly defined in the CMS guidan... State Transition Plan Heightened Scrutiny Overview, and... The Bureau for Medical Services could provide further c... end of this comment. This will be brought to the attent... at their next regularly scheduled meeting for a determin... this analysis to identify settings/providers that are not i... that non-residential settings comply with the HCBS rule... broader community.

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		<p>whether coloring worksheets would be acceptable if they didn't have "preschool" written on them, and statements about individuals now watching movies in these settings.) Since the CMS letter makes clear "reverse integration" strategies are not sufficient to come into compliance; What specific things have occurred in these settings to cause them to meet the mandate? Where are people going, and how are they being supported to go out into the community after arriving at the facility-based day habilitation program? What are folks doing in the community? Are they going into the community in groups? Or, are people being supported individually to practice the skills allowed under day habilitation program services at locations in the community where the general public is located, and to take advantage of occasions to interact with</p>		

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		the general public in the community?		
22	7/27/18	CMS raised questions about how the State assures beneficiary access to non-disability specific settings in the provision of residential and non-residential services. The State is specifically asked: What investments is the State making to create or expand non-disability specific settings and/or helping develop the competencies of providers to offer services in non-disability specific settings? What has the State done to help in this regard?	No action needed	This is included in the State Transition Plan under Building Setting Access. This section iterates how the IDD Waiver address beneficiary access to non-disability specific sett
23	7/27/18	The State had indicated to CMS in the past that the WV Office of Health Facility Licensure and Certification conducts provider reviews, including site visits for all licensed sites every two years. Is BMS aware the aforementioned proposed changes to Rule 64 remove this requirement?	No action needed	BMS has commented on revisions to §64CSR11 as they
24	7/27/18	Will the only reviews conducted to ensure	Change	Answer: No

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		compliance in the future be those conducted by the ASO?		The State Transition Plan has been changed to address
25	7/27/18	The document indicates that another method of ensuring continued compliance will be through monthly home visits by Service Coordinators and refers to Appendix O as proof these visits ensure member rights and compliance with the Integrated Services Rule. Upon reviewing Appendix O, we see no indication of how that assurance is met. Have Service Coordinators received training on the Rule? Has a section been added to the form that is not shown here that assists them in making those determinations?	No action needed	Appendix O includes Service Coordinator verification that the home or facility is safe and clean and the condition of the home or facility is safe and that the person's privacy is maintained, and the person is verified as not isolated. Service Coordinators receive training on the Service Coordinator Home/Day Visit Form and complete the manual, pages 10-11 and the Service Coordinator duties manual.
26	7/27/18	In the STP Action Items, the State has indicated a report on the review of WV regulations and supporting documents of all three waiver programs would be posted on the BMS' website with an end date of 8/21/15. We are unable to locate the	No action needed	The only action item with an end date of 8/21/15 is in report page 13) Appendix A: Recommendations from the HCBS website http://www.dhhr.wv.gov/bms/Programs/Documents/WV%2025-14%29.pdf

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		report on the website. Where is the report located?		
27	7/27/18	<p>Remedial actions in the STP under the Compliance Area of Outreach and Education indicates training on new settings requirements would be provided to individuals and families by 2/28/17. We are unaware of this training. Can you direct us to information regarding the training events that were provided to them?</p> <p>The same section also indicates a webinar series to highlight the settings requirements and principles of person-centered planning would be conducted and the webinar archives posted to the BMS website by 3/31/17. We are unable to locate the webinar archive on the website. Can you please direct us to the location of this?</p>	No action needed	The Compliance Area of Outreach and Education is mentioned in the Public Notice for Transition Plan. Since then (2016) the transition plans was pushed out to March 17, 2022. The Informational Bulletin May 9.2017 (Extension of Transition Community-Based Settings Criteria). BMS is working to the date noted in the comment cited from the Second P
28	7/27/18	Have the Member Handbooks been updated to strengthen person	No action needed	These were revised and updated by 3/31/17, as noted o

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		centered HCBS requirements?		
29	7/27/18	Staffed residential settings of three or less beds should be included. Will such settings ever be reviewed for compliance? Why will those indicated as a "Cluster" not be more closely monitored? What does "Private Owner" mean? And, does that mean that a setting housing eight people will not be examined because of that label? What does "being grandfathered into the Transition Plan" mean? Was the setting, which included six people reviewed for compliance?	No action needed	BMS includes in the State Transition Plan all settings that delineated by CMS and will continue to assess those for Grandfathered homes refer to those with 4 or more beds most recent BMS manual.
30	7/27/18	First, the State only reviewed regulations for direct conflict and did not review for whether their regulations need additional changes to truly support the spirit and purpose of the new rule. The State appears to have not yet revised some regulations or policies – referring to dates in the future. - Although the	No action needed	The comments do not address any needed changes to Provider settings were first assessed when the provider compliance. After told through the individual Statement deficient practices, providers chose to enact changes that clearly defined in the CMS guidance provided to BMS. T 23 and Appendix M, Section 8.

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		<p>State did add language (in Appendix B) that it plans to use for modifying existing state standards, the language is very general, and the date of actual completion is not until 1/19.</p> <ul style="list-style-type: none"> - After finding no settings were 100% compliant on the initial visit, the follow up found 100% compliance. It is not clear what changed substantively? (p. 27-28) - Of all the settings that were initially identified as non-compliant, and then became compliant, we are concerned that none qualified for heightened scrutiny. 		
31	7/27/18	Second, the State has left outstanding issues from the Initial Approval letter	No action needed	There is no Appendix II in the plan, on pages 6 or 7 or elsewhere owned or leased by the provider in TBI and Age and Disability within the IDD Waiver program.

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		<p>and the validation process.</p> <ul style="list-style-type: none"> - The State says there are no residential/facility settings and then appears to indicate that there are residential/facility settings. (This was raised in Appendix II at page 6.) - The State does not indicate a mechanism for ensuring private homes are compliant (Appendix II at page 7). - The Initial Approval letter also raised the issue of how the State is validating the sites that were not given an onsite visit. (Appendix II at page 8). The answer is still not clear. It is also not clear if the staff received training before 		<p>Private homes are covered through the use of Service C</p> <p>Staff received training as delineated in Appendix M.</p> <p>Capacity building is addressed in the Section labeled Bu Specific Setting Access.</p>

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		<p>onsite visits.</p> <ul style="list-style-type: none"> - The Plan only lists the types of non-disability settings but gives no indication as to how the State will build capacity. This issue was raised by CMS (Appendix at 10) and still has not been addressed. 		
32	7/27/18	<p>the State went from reporting all settings being noncompliant to reporting all settings being compliant with lack of specificity as to the substantive changes that brought the settings into compliance. The state does not clearly state that the policies are in compliance with the new rule nor does it state that all documents are now in compliance.</p> <ul style="list-style-type: none"> - Were deficiencies cited, were plans of correction provided by the settings, and how were the settings evaluated to make sure they are now in 	No action needed	<p>The Reports of non-compliance and compliance are conducted through various evaluation mechanisms to ascertain compliance. BMS comments must report what is found. Case Management is not a deficiency. This comment will be addressed as the IDD Waiver Management Plan.</p> <p>Due Process notifications are covered in the Transition of Care. The comment from the commenter will be addressed as the IDD Waiver Management Plan.</p>

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		<p>compliance?</p> <ul style="list-style-type: none"> - The initial self-assessment was positive, but no providers were found to be in compliance. How did that change? - The process for provider assessments had a good design, but the low response rate from the surveys raises concerns (p. 11). Likewise, the extremely low response from people actually receiving services raises serious concerns about the validity of this method of identifying provider non-compliance (9-10). - There appears to be a number of expectations of case management that are not spelled out such as: whether natural supports can be 		

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		<p>compelled, no mention of processes for rights restrictions, no mention of individual controlling their processes or that an individual is making an informed choice. It seems like there needs to be more specificity so that everyone understands the expectations.</p> <ul style="list-style-type: none"> - There does not appear to be due process notifications to individuals who do not agree with the services. - There is a continuing issue that conflict of interest concerns are not absolute. It is our understanding that there needs to be a firewall between people who manage care and the care provider. This has been an issue 		

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		for a long time and is not clearly resolved.		
33	7/27/18	<p>Fourth, the public outreach on the Plan was not sufficiently robust.</p> <ul style="list-style-type: none"> - The Plan indicates a cross-disability workgroup advised the Plan – who was part of it? Did it include all groups affected by all waivers? When and how often did it meet? What was the role? In the second set of comments, BMS responded that they did not see a need to create a cross-disability workgroup. - CMS asked the State to “clarify the four forms of public comment” it used in the first round of comments. However, the State one again said that it “provided three 	No action needed	<p>“At this time no issues that apply to all three waivers (A) when an issue is identified, then a group comprised of i members from all 3 waiver programs will be developed the confusion regarding the end date of the comment s</p> <p>- DHHR will accept comments through July 31, 2018. TH statewide newspaper Public Notice.</p>

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		<p>separate forms of public comment," without clarifying or specify what those were.</p> <ul style="list-style-type: none"> - There was no public forum for comment in 2018. Apparently, this was because of a low public response to the first two sessions. However, we are concerned that the outreach mechanisms were not accessible and meaningful. - Email listserve notices only reflect a lack of investment in public outreach. - In addition, there was confusion about the end date of the public comment period. The Plan itself says that the public comment period is from July 1, 2018 to July 30, 2018 (page 62) and the website notice 		

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		<p>says the comment period ends on July 26, 2018. We hope that any comment submitted through July 30 will be considered in this round.</p> <ul style="list-style-type: none"> - Finally, we want to note that reportedly many consumers are afraid of retaliation and there needs to be an effort to deal with that – the State could consider an outside party gathering comments in people’s homes and submitting with no identifying information. 		