

Methodology for WV's Waiver Transition Plan Application Sixth Iteration

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Introduction

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (2014 Home and Community Based Services Final Rule. CMS-2249-F and CMS 2296-F) to ensure that individuals receiving long term services and supports (LTSS) through home and community-based services (HCBS) programs under 1915(c) and 1915(i) have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as individuals not receiving Medicaid HCBS.

The West Virginia Medicaid Program is administered pursuant to Title XIX of the Social Security Act and Chapter 9 of West Virginia Code. The Bureau for Medical Services (BMS) in the West Virginia Department of Health and Human Resources (DHHR) is the single State agency responsible for administering the Program. This program, therefore, must also function within federally defined parameters.

West Virginia underwent the process of developing a transition plan pursuant to 42 CFR 441.301(c)(6) that contained the actions the State took to bring all West Virginia waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5). West Virginia has three HCBS waivers that are affected by this Rule: Aged and Disabled Waiver (ADW), Individuals with Intellectual and/or Developmental Disabilities Waiver (IDDW), and Traumatic Brain Injury Waiver (TBIW).

The Aged and Disabled Waiver program serves individuals over the age of 18 who choose home and community-based services as a long-term care alternative to nursing home placement. The goals and objectives of the program are focused on providing services that are person-centered to promote choice, independence, self-direction, respect, dignity, and community integration.

The Intellectual and Developmental Disabilities Waiver program is West Virginia's home and community-based services program for individuals with intellectual and/or developmental disabilities over the age of 3 and is an alternative to Intermediate Care Facilities for Individuals with Intellectual Disabilities. The goals and objectives of this program are to instruct, train, support, supervise, and assist individuals who have intellectual and/or developmental disabilities in achieving the highest level of independence and self-sufficiency possible. The IDDW program provides services based on the member's annual functional assessment and assigned individualized budget in natural settings including the member's home and public locations in the member's community.

The Traumatic Brain Injury Waiver Program is a long-term care alternative which provides services that enable individuals over the age of 3 to live at home rather than receiving nursing facility care. The member must have a documented traumatic brain injury, defined as a nondegenerative, non-congenital insult to the brain caused by an external physical force resulting in total or partial functional disability and/or psychosocial impairment or an injury caused by anoxia due to near drowning. The goals and objectives of this program are focused on providing services that are person-centered, that promote choice, independence, self-direction, respect, dignity and community integration.

West Virginia worked with the various providers, members, guardians, and other stakeholders engaged in HCBS to implement the proposed transition plan. This document summarizes the steps West Virginia's Bureau for Medical Services (BMS) undertook to develop the transition plan as well as planned activities related to compliance.

Phase I

Regulatory Review

This review has been conducted in two sections. To begin the transition plan development process, BMS conducted a review of the HCBS services provided by the three West Virginia waivers impacted by the new rule (**Exhibit 1**) as well as the waivers' supporting documentation (operation manuals, authorizing legislation, waiver applications, etc.). The State used CMS guidance documents, particularly "Summary of Regulatory Requirements for Home and Community Based Settings" to guide the analysis. The West Virginia Department of Health and Human Resources (WVDHHR) Recommendations from the HCBS Regulatory Review were first published on the BMS Website 2/5/2015 (**Appendix A**). To complete the process, a Crosswalk for the Systemic Assessment for the West Virginia HCBS State Transition Plan was also developed in 1/31/2016. (**Appendix B**).

Services provided by licensed entities were identified for all three waivers. There were no categories or settings either licensed or otherwise that were presumed de facto to comply with the rule. The ADW and the TBIW do not offer services at licensed settings. All services are in home or in the community. **Exhibit 1** lists the services provided by all three waivers and identifies services that may be provided in licensed behavioral health sites. Of the services listed only the IDDW services of Facility Based Day Habilitation and Pre-Vocational services must be provided in a Licensed Behavioral Health Center. All licensed settings where services are provided were assessed for compliance with the HCBS federal requirements and will continue to be assessed on an annual basis.

Exhibit 1

HCBS Waiver	Service/Setting Type	Service may be provided in:	Service may be provided in:		Specialized Family Care Home Settings	Service may be provided in:	Original Approval Date	Effective Date
		Licensed Behavioral Health Center Non-Residential Facility	Licensed Behavioral Health Center Residential Facility	Community		Non-Licensed Residential Home (Member's Home)		
Aged and Disabled	<ul style="list-style-type: none"> Case Management 	No	No	Yes	SFC homes not used	Yes	07/01/1985	07/01/2015

Waiver Program	<ul style="list-style-type: none"> Personal Assistant Services 	No	No	Yes	in this program	Yes		
	<ul style="list-style-type: none"> Transportation 	No	No	Yes		No		
Intellectual/ Developmental Disabilities Waiver Program	<ul style="list-style-type: none"> Case Management 	Yes	Yes	Yes	Yes	Yes	07/01/1985	07/01/2015
	<ul style="list-style-type: none"> Behavior Support Professional 	Yes	Yes	Yes	Yes	Yes		
	<ul style="list-style-type: none"> Facility Based Day Habilitation* 	No	Yes	Yes	No	No		
	<ul style="list-style-type: none"> Person - Centered Support - Family 	No	No	Yes	Yes	Yes		
	<ul style="list-style-type: none"> Person-Centered Support – Home-Based 	No	No	Yes	Yes	Yes		
	<ul style="list-style-type: none"> Person-Centered Support - Licensed Group Home 	No	Yes	Yes	No	No		
	<ul style="list-style-type: none"> Person-Centered Support – Unlicensed Home 	No	No	Yes	No	Yes		

	<ul style="list-style-type: none"> • Person-Centered Support - Crisis Respite Site 	No	Yes	Yes	No	No		
	<ul style="list-style-type: none"> • Crisis Services 	No	Yes	Yes	Yes	Yes		
	<ul style="list-style-type: none"> • Supported Employment 	No	No	Yes	No	No		
	<ul style="list-style-type: none"> • Electronic Monitoring Surveillance System and On-Site Response 	No	No	No	No	Yes		
	<ul style="list-style-type: none"> • Skilled Nursing - Nursing Services by a Licensed Practical Nurse 	No	Yes	Yes	Yes	Yes		
	<ul style="list-style-type: none"> • Skilled Nursing – Nursing Services by a Registered Nurse 	No	Yes	Yes	Yes	Yes		
	<ul style="list-style-type: none"> • Pre-vocational Services 	No	Yes	No	No	No		
	<ul style="list-style-type: none"> • Job Development 	No	No	Yes	No	No		
	<ul style="list-style-type: none"> • Transportation 	Yes	Yes	Yes	Yes	Yes		

	<ul style="list-style-type: none"> • Out of Home Respite 	No	No	Yes	Yes	No		
Traumatic Brain Injury Waiver Program	<ul style="list-style-type: none"> • Case Management 	No	No	Yes	No	Yes	12/23/2011	7/1/2015
	<ul style="list-style-type: none"> • Personal Attendant Services 	No	No	Yes	No	Yes		
	<ul style="list-style-type: none"> • Transportation 	No	No	Yes	No	No		

During this review process, BMS conducted interviews of key West Virginia staff conducting waiver implementation to identify strengths and areas for potential growth for the State for inclusion within the report and transition plan.

Public/Stakeholder Input

To promote transparency and encourage stakeholder buy-in and input, West Virginia BMS solicited public/stakeholder input through three main channels: website, publication in the legal section of the State's largest newspaper and a public forum. Additionally, BMS sent emails to all stakeholders' groups asking them to post the flyer referencing the public comment periods and to share the information with the persons they served. Although CMS required only two forms of public comment, BMS utilized three or four forms of public comment. There was a total of five comment periods each using a similar format. They were November 26, 2014, to December 26, 2014, June 13, 2016, through July 13, 2016, July 1, 2018, through July 31, 2018, and March 14, 2019 through April 14, 2019. The Public forum was not held for the 2018 comment period or the 2019 comment periods due to low public response at the first two sessions. There was no public form for the 2021 public comment due to the global pandemic, but notice was published on the BMS website, the BMS Facebook page, the BMS twitter feed, sent to all waiver agencies and case managers were asked to share the information with members during their monthly calls.

The sixth public comment period was also held from **June 14, 2022, to July 13, 2022**. There was no public forum for the 2022 public comment due to the global pandemic, but notice was published on the BMS

Facebook page, the BMS twitter feed, the BMS website and notice was sent to all waiver agencies and case managers were asked to share the information with members during their monthly calls/visits.

Website

From the period of November 26, 2014, to December 26, 2014, West Virginians were invited to comment on the first version of the proposed Statewide and waiver-specific transition plans drafted by BMS. A new webpage was linked from the HCBS home page of the BMS website and was developed for posting the public notice. The public notice may be viewed in this link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/%21st-Iteration-Draft-.aspx>

In addition to the current waivers and proposed transition plans, individuals could also access materials related to background information/documents on the new rule, multiple contact information channels to provide comment (email, phone and mailing address) on the public notice webpage. Upon posting the public notice to the website, BMS widely circulated the link and an invitation to comment to multiple ListServ and contacts. The public notice may be viewed in this link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/%21st-Iteration-Draft-.aspx>

ListServ participants were requested to print the public notice and post it in a visible accessible site as well. Agency staff were also requested to share the notice and information with persons they served. It should be noted that the announcement also included a phone number enabling members and interested parties to call and obtain a hard copy of the transition draft.

BMS conducted a second 30-day public comment from June 13, 2016, through July 13, 2016, following the same website format. Materials for this public comment period may be viewed at this link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/2nd-Iteration-Draft-Version-.aspx>

BMS conducted a third 30-day public comment from July 1, 2018, through July 31, 2018, following the same website format. Materials for this public comment period may be viewed at this link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/3rd-Iteration-Draft-Version-.aspx>

BMS conducted a fourth 30-day public comment from March 14, 2019, through April 14, 2019, following the same website format. After the addition of the Specialize Family Care homes to the IDD Waiver databases and analyses, Materials for this public comment period may be viewed at this link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/4th-Iteration-Draft-Version-.aspx>

BMS conducted a fifth 30-day public comment from March 1, 2021, through March 31, 2021, following the same website format. Materials for this public comment period may be viewed at this link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/5th-Iteration-Draft-Version-.aspx>

BMS conducted a sixth 30-day public comment from June 14, 2022, to July 13, 2022. Materials for this public comment period will also be posted when completed.

Public Forums

On December 12, 2014, BMS hosted a public forum to invite the public to comment on the proposed transition plans. Meeting minutes were captured for the purpose of documenting public comment and have been included in the full list of comments received. Due to the public and open nature of the forum, BMS was unable to predict the level of attendee turnout. If the forum would result in a very large turnout of stakeholders, BMS offered a supplemental comment form to collect additional comments/feedback from attendees who may not have an opportunity to speak during the meeting. The meeting was advertised via many Listservs and contacts as soon as the venue was secured. All background/informational materials posted to the BMS website were also offered as hard copies at the public forum.

On June 22, 2016, BMS hosted a second public forum at the Bureau of Senior Services from 9 am to 12 pm and invited the general public to comment further on the Statewide Transition Plan. The format of this meeting replicated the public forum conducted in 2014, including documentation of public comments. A supplemental comment form **was** used after being modified with corrected dates.

BMS did not host a third or fourth public forum due to extremely low participation at the first two forums. Even without use of this milieu, BMS provided three separate forms of public comment for the 2018 comment solicitations. They were website, direct email, and written.

BMS did not host a fifth public forum due to the global pandemic, but notice was published on the BMS website, the BMS Facebook page, the BMS twitter feed and was sent to all waiver agencies and case managers were asked to share the information with members during their monthly calls.

BMS did not host a sixth public forum due to the global pandemic, but notice was published on the BMS website, the BMS Facebook page, the BMS twitter feed and was sent to all waiver agencies and case managers were asked to share the information with members during their monthly calls.

Summary of Public Comments

During the Public Comment period of November 26, 2014 to December 26, 2014, several comments from the general public, including from family members, providers and advocacy organizations, were submitted via email. In addition, feedback was provided during the public forum. The received feedback informed BMS that additional details around provider capacity and provider training were needed in the plan. In addition, considerations were submitted for BMS regarding communication and information dissemination to the public. If a comment received was not addressed in the Transition Plan, BMS incorporated the feedback in future related activities. The list of public comments received as well as how BMS has addressed comments is provided at the following link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/%21st-Iteration-Draft-.aspx>

An additional 30-day Public Comment period from June 13, 2016, to July 13, 2016, was conducted. Again, additional comments were received from the public via email and the public forum. If a comment received was not addressed in the Transition Plan, BMS incorporated the feedback in future related activities. The comments and responses are provided in the following link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/2nd-Iteration-Draft-Version-.aspx>

An additional 30-day Public Comment period from July 1, 2018, through July 31, 2018, was conducted. Again, additional comments were received from the public via website, email, and written comments. If a comment received was not addressed in the Transition Plan, BMS incorporated the feedback in future related activities.

The comments and responses are provided in the following link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/3rd-Iteration-Draft-Version-.aspx>

An additional 30-day Public Comment period from March 14, 2019, through April 14, 2019 was conducted. Again, additional comments were received from the public via website, email and written comments. If a comment received was not addressed in the Transition Plan, BMS incorporated the feedback in future related activities. The comments and responses are provided in the following link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/4th-Iteration-Draft-Version-.aspx>

An additional 30-day Public Comment period from March 1, 2021 through March 31, 2021 was conducted primarily due to the addition of Specialized Family Care providers who provide IDD Waiver services in their SFC home. Again, additional comments were received from the general public via website, email and written comments. If a comment received was not addressed in the Transition Plan, BMS incorporated the feedback in future related activities. The comments and responses are provided in the following link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/5th-Iteration-Draft-Version-.aspx>

An additional 30-day Public Comment period from **June 14, 2022, to July 13, 2022**, was conducted primarily to address the change from case managers reviewing settings to BMS or its designee reviewing these settings annually. The materials from this public comment period may be found in Appendices C, D and E.

INFORMATION ABOUT A SIXTH PUBLIC COMMENT PERIOD WILL BE ADDED AFTER THE COMMENT PERIOD HAS ENDED ON **July 13, 2022 prior** to submission to CMS. .

Ensuring Waiver Compliance with the Federal Rule

A regulatory analysis (**Appendix B**) of existing West Virginia Rules, Regulations and Policies was completed. Compliance with the Federal Rule was also assessed. **Appendix B** contains remedial actions necessary based on these analyses. During the regulatory analysis, BMS also identified settings or services that did not require transition.

This section provides details on those settings and services and is organized by sections under the regulatory requirements for home and community-based settings:

- CMS Descriptions for Institutional Settings and Qualities and Guidance on Settings that May Isolate Individuals
- Provider Controlled Setting Elements to Assess per New Federal Requirements
- Plan of Care Requirements for Modifications or Restrictions of a Participant's Rights; and
- Conflict of Interest Standards.

CMS Descriptions for Institutional Settings and Qualities and Guidance on Settings that May Isolate

Individuals

- The IDDW Out-of-Home Respite: Agency service clearly specifies that it is not available in medical hospitals, nursing homes, psychiatric hospitals or rehabilitative facilities located either within or outside of a medical hospital which is in full support of the characteristics outlined in rule.
- IDDW Family Person-centered Support and Participant Directed Goods and Services do not take place in settings that are owned or leased by the provider. All Family Person-Centered Support and Participant Directed goods and services are being provided in the person's private home or a public community location.
- IDDW Electronic Monitoring/Surveillance Systems and On-Site Response services are covered in the IDDW section of the Bureau for Medical Services manual (513.13) December 1, 2015. This section was included to remediate a finding of potential non-compliance in the November 14, 2014 Regulatory Review which found that these services may be delivered in settings that may or may not comply with the regulations. The December 2015 manual corrected the sites where this service may be provided, to assure compliance with HCBS.
- The Specialized Family Care (SFC) Policy does not conflict with the Integrated Settings Rule. The SFC homes were incorporated into Appendix N on Page 277, however, some IDDW services are providing in Specialized Family Care (SFC) Settings. These are foster homes for children and adults with disabilities. These homes fall under the umbrella of the WVDHHR Bureau for Children and Families (BCF) who have contracted out the administration of this program to the West Virginia University Center for Excellence in Disabilities (WVUCED). Although, these are private homes, the foster care providers who provide HCBS services in the IDDW work under contract with certified IDDW providers, thus these homes are provider-controlled setting. Not every SFC home provides HCBS services. The Specialized Family Care Program Policy manual was updated on September 1, 2021, to include specific references to the Integrated Settings Rule.

Section 3.2 of this manual states:

“In January 2014, the Centers for Medicare and Medicaid Services promulgated a final federal rule (2014 Home and Community Based Services Final Rule CMS-2249-F and CMS-2296-F) to ensure the individuals receiving long term services (HCBS) programs under 1915 c and 1915 i have full access to the greater community. All SFC providers must attest annually that the person in placement has opportunities to seek employment and work in competitive integrated settings and engage in community life, control personal finances and receive services in the community to the same degree as individuals not living in a SFC Home.”

Additionally, Section 3.3 states:

“The person in placement or their legal representative must sign a SFC Room and Board Agreement that is a legally enforceable agreement giving the person in placement, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. The unit or dwelling is a specific place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services...”

Annually the Family Based Care Specialist will conduct a review of the home specifically related to this federal rule. HCBS Surveys will be conducted initially when the home is under study and then annually during July and the results are reported to the WV Department of Health and Human Resources. Any

deficiencies must be reported to the Bureau for Medical Services immediately and remediated within 30 days. Failure to do so will result in ending any HBCS reimbursement to the foster family.

Prior to a new SFC home opening, the Family Based Care Specialist must conduct a review of the home specifically related to this federal rule. Any deficiencies must be corrected before any placements can occur.”

The current Specialized Family Care Policy Manual can be found at:

<https://dhhr.wv.gov/bcf/policy/Documents/SFC%20Policy%2003.15.2022%20Revised.pdf>

- Services offered in both the ADW and TBIW are offered only in non-institutional settings compliant with the regulation.
- Services in the ADW and TBI waivers are not currently delivered at a setting owned, leased, or operated by the provider. These services are delivered in the individual's private home or in the community. It was later discovered that 9 ADW members were receiving services in a home owned by their unpaid caregiver, so these settings were determined to be provider controlled and have been reviewed and remediation efforts are underway.

Provider Controlled Setting Elements to Assess per New Federal Requirements

IDDW settings

The State code for the IDDW provider's licensed behavioral health sites does not conflict with the Integrated Services Rule.

- The State code for the IDDW provider's licensed behavioral health residential sites provides clear guidance surrounding bedroom size, furnishings and quality and goes beyond what is typical for similar regulation found in other States.
- The State code for the IDDW also requires licensed behavioral health centers (including licensed residential settings) to be accessible and compliant with Title III of the Americans with Disabilities Act.
- Supported Employment Services within the IDDW "are services that enable individuals to engage in paid, competitive employment, in integrated community settings. The services are for individuals who have barriers to obtaining employment due to the nature and complexity of their disabilities. The services are designed to assist an individual for whom competitive employment at or above the minimum wage is unlikely without such support and services and need ongoing support based upon the member's level of need." This service is fully compliant with community integration standards outlined in the requirements. It is provided individually to members.
- The Specialized Family Care Homes that provider HCBS services to HCBS members were surveyed to determine if the homes are compliant with the Rule.

ADW settings

- All ADW members who resided with a paid unrelated caregiver were determined to be provider-controlled settings and were surveyed to determine if the setting was compliant with the Rule. There are 9 ADW members who reside in provider-controlled settings and these settings have been reviewed and remediation efforts are underway and are expected to be completed prior to March 2023. If remediation efforts are unsuccessful, then transition to an appropriate setting will occur or discharge from the program will occur.

TBIW settings

- All TBIW members were surveyed to determine if the member resided with a paid unrelated caregiver. No TBIW member resided with an unpaid care giver.

Plan of Care Requirements for Modifications or Restrictions of a Participant's Rights

- The IDDW system has a broad and very easy to understand member handbook that can be used to build upon West Virginia person-centered practices.
- The IDDW manual provides a broad list of rights granted to waiver participants. These address more general, program-wide protections rather than rights associated with or pertaining to any particular service.
- The TBIW manual provides a broad list of rights granted to waiver participants. These address more general, program-wide protections rather than rights associated with or pertaining to any particular service. Additionally, Chapter 512 of the Provider Manual indicates that goals and objectives are "focused on providing services that are person-centered, that promote choice, independence, participant-direction, respect, and dignity and community integration."
- For all three waiver programs, the role of the Human Rights Committee (HRC) provides a firm foundation to the overall protection of basic rights and any restrictions needed to ensure health and welfare.
- For IDDW, the Case Management service supports the requirements of the HCBS rule in principle. The definition specifies that along with the member, case management is "a life-long, person-centered, goal-oriented process for coordinating the supports (both natural and paid), range of services, instruction and assistance needed by persons with developmental disabilities...designed to ensure accessibility, accountability and continuity of support and services... also ensures that the maximum potential and productivity of a member is utilized in making meaningful choices with regard to their life and their inclusion in the community".
- For ADW, the Case Management service supports the requirements of the HCBS rule in principle. The definition specifies that "case management is a collaborative process that assesses, plans, implements, coordinates, monitors and evaluates the options and services required to meet the member's health and humans service needs."
- For TBIW, the Case Management service supports the requirements of the HCBS rule in principle. The definition specifies that "the case manager is responsible for follow-up with the person to ensure that services are being provided as described in the Service Plan...evaluate social, environmental, service risks and support needs of the person...that will assist the person to achieve optimum function..." and "assure that a person's legal and human rights are protected."

Conflict of Interest Standards

The ADW, IDDW and TBIW programs include guidance that prevents entities and/or individuals that have responsibility for service plan development from steering the provision of direct care waiver services to the agency that is responsible for service plan development. The current language for the TBIW, IDDW and ADW programs meets the requirements of CMS.

Phase II

Individuals and Family Members Survey

In addition to surveying providers of waiver services, BMS also surveyed all individuals receiving waiver services and their family members by sending a cover letter (**Appendix I**) and surveys (**Appendix J for ADW and TBIW and Appendix K for IDDW**). The survey for individuals in receipt of waiver services and their families was primarily conducted through a handout survey (with follow-up reminders). To develop the survey, BMS solicited input from State agency partners overseeing waiver service implementation. The survey collection was closed 12/31/2015. All members for all three waivers were contacted by mail and given the opportunity to complete the survey. Persons who did not respond were contacted again and requested to respond. A total of 1,251 persons responded (474 IDDW and 777 TBIW/ADW) for a response rate of approximately 13%. 34.5% of the IDD Waiver respondents were persons receiving services. 55% of the IDD Waiver respondents were family members or guardians of persons receiving services. 10.5% of the respondents were advocates for members. 10% of the respondents did not self-identify. The survey participation rates for the IDD Waiver members were also compiled based on setting categories. 57.1% lived in their family home, lived on their own or had their own apartment. 27.1% resided in an intensively supported setting. 10.3% resided in a group home setting.

"Day" setting data was also compiled. 27.1% Stated that they received IDDW Facility-Based Day Habilitation. 17.6% Stated that they received IDDW Supported Employment services in the community. 48.8 % did not receive IDDW Facility-Based Day Habilitation or IDDW Supported Employment services. Of the 48.8% not receiving day services, 9.8% Stated that they wished such services were available. IDDW Prevocational and IDDW Job Development are sub-sets of IDDW Facility Based Day Services but were not identified separately in the survey instrument (**Appendix K**).

General information acquired as the result of this survey was used as a part of the State Transition Plan described below.

Provider Assessment Survey

As part of this transition plan development process, all providers were required to complete a web-based provider assessment survey (**Appendices G and H**). The cover letter sent to providers soliciting the completion is found in **Appendix F**. The purpose of the survey was to identify potential sites or settings that risk being noncompliant with the final rule.

The survey was circulated from 4/1/2015 to 8/19/2015. New settings and/or providers were added to the initial list as they were created. This process is ongoing. As survey information is gathered, BMS reviews the submitted information as follows to identify the following key indicators of non-compliance and to prioritize settings reviews:

Key Indicator: Providers that self-identify as being in compliance, but Member responses indicate otherwise.

Key Indicator: Member responses indicate provider compliance, but Provider response indicates otherwise.

Key indicator: Provider responses that self-identify gross non-compliance among the five requirements of 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i). These providers are scored as 0, 3 or 4 on the assessment instrument. (Appendices K and N of State Transition Plan).

Key Indicator: Analysis of provider respondents to identify those with licensed (owned or leased settings) which did not respond as instructed.

Key Indicator: Any provider setting for which BMS has received a complaint alleging non-compliance. These Key Indicators translate into Scores based as follows:

Score of 1 No indication of an Institutional Setting AND

No indication of Isolating Effects AND

Score of less than 10% for Conditions that Restrict Choice or Rights (Compliance)

Score of 2 No indication of an Institutional Setting AND

Score of 1-49% for Isolating Effects AND

Score of 10-49% for conditions that Restrict Choice or Rights

Score of 3 No indication of an Institutional Setting AND

Score of 1-49% for Isolating Effects AND

Score of 50% or higher for conditions that Restrict Choice or Rights

Score of 4 Any indication of an institutional setting OR

Score of 50% or higher for Isolating Effects.

(Gross Non-Compliance)

Providers with identified Key Indicators are considered Priority I.

Providers without identified Key Indicators and scoring 1 or 2 on the self -assessment instrument are considered Priority II.

The relation of score to priority is as follows:

Score	0 (no answers)	Priority II
	1	Priority II

2	Priority II
3	Priority I
4	Priority I

No providers were found, based on the self - survey, to be totally compliant. Priority II (Score 1 or 2) providers had self-surveyed to indicate substantive compliance.

Phase III

State Transition Plan

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (2014 Home and Community Based Services Final Rule CMS-2249-F and CMS 2296-F) to ensure that individuals receiving long term services and supports (LTSS) through home and community based services (HCBS) programs under 1915(c) of the Social Security Act have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as individuals not receiving Medicaid HCBS. West Virginia developed a transition plan pursuant to 42 CFR 441.301(c)(6) that contains the actions the State will take to bring all West Virginia waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5).

West Virginia's approach to an environmental scan and subsequent transition plan is based on core values to help individuals to access care at the right time and right place and improve West Virginia's ability to work effectively within and across systems to ensure person-centered care. The transition plan includes action steps West Virginia intends to take over the course of the next five years across the three (3) waivers.

West Virginia Programs with Residential and Non-Residential Components

HCBS Waiver	Service Type	Original Approval Date	Effective Date	Expiration Date of Waiver
Aged and Disabled Waiver Program	<ul style="list-style-type: none"> • Case Management • Personal Assistant Services • Transportation 	07/01/1985	07/01/2015	6/30/2025
Intellectual/ Developmental Disabilities Waiver Program	• Case Management	07/01/1985	07/01/2015	6/30/2025
	• Behavior Support Professional			
	<ul style="list-style-type: none"> • Facility Based Day Habilitation • Person -Centered Support • Crisis Services • Supported Employment 			

	<ul style="list-style-type: none"> • Electronic Monitoring Surveillance System and On-Site Response • Skilled Nursing - Nursing Services by a Licensed Practical Nurse • Skilled Nursing - Nursing Services by a Registered Nurse • Pre-vocational Services • Job Development • Transportation • Out of Home Respite 			
Traumatic Brain Injury Waiver Program	<ul style="list-style-type: none"> • Case Management • Personal Attendant Services • Transportation 	12/23/2011	7/1/2015	6/30/2025

Action Items

In addition to identifying assessment activities and opportunities to solicit ongoing stakeholder input, BMS identified opportunities for remedial actions to bring the ADW, TBIW and IDDW in compliance with the final rule. The remedial actions included but were not limited to activities under the following compliance areas: Provider Remediation (including residential and Non-residential); Outreach and Education; Quality; and Policies and Procedures. When an action item was ongoing, the end date is so noted.

Assessment

Applicable Waiver		Compliance Area	Action Item	Start Date	End Date	Person Responsible
ADW, TBIW, IDDW		General	1. Conduct a review of West Virginia regulations and supporting documents across the 3 waiver programs with residential and non-residential settings. <u>Post Report on BMS website.</u>	10/20/14	11/25/14	Bureau for Medical Services
ADW, TBIW, IDDW		General	2. Develop and conduct a provider self-assessment survey across all three waivers; residential and non-residential via web and mail, mandatory for all providers to complete. Perform analyses of survey responses.	10/20/14	8/21/15	Bureau for Medical Services
ADW, TBIW, IDDW		General	3. Develop a survey for individuals and families to provide input on settings by type and location, residential and non-	10/20/14	12/30/15	Bureau for Medical Services

Applicable Waiver		Compliance Area	Action Item	Start Date	End Date	Person Responsible
			residential via web and mail. Perform analyses of survey responses.			
ADW, TBIW, IDWW		General	4. Prepare a list of settings that meet the residential and non-residential requirements, those that do not meet the residential and non-residential requirements, may meet the requirements with changes, and settings West Virginia chooses to submit under CMS heightened scrutiny. The list will be distributed to provider agencies and posted to the website.	10/24/14	6/1/18	Bureau for Medical Services
IDWW		General	5. Prepare a list of SFC Homes that met the Specialized Family Care provider owned or controlled residential requirements, those that do not meet the residential and non-residential requirements, may meet the requirements with changes, and settings West Virginia chooses to submit under CMS heightened scrutiny. The list will be distributed to provider agencies and posted to the website.	12/1/18	12/31/19	Bureau for Medical Services
ADW, TBIW, IDWW		General	6. Post findings from the review of Action Item 1 and aggregate survey results to the website	2/1/15	12/30/15	Bureau for Medical Services

Remedial Actions

Applicable Waiver	Compliance Area	Action Item	Start Date	End Date	Person Responsible
ADW, TBIW, IDWW	Provider Remediation - Residential	<ul style="list-style-type: none"> Incorporate the outcomes of the assessment of settings within existing licensure and certification processes to identify existing settings as well as potential new settings in development that may not 	1/2/16	1/30/17	Bureau for Medical Services with assistance from individual Waiver Quality Councils

		meet the requirements of the rule.			
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Provide training to licensure/certification staff, individuals and family members on new settings requirements. 	7/1/15	2/28/17	Bureau for Medical Services and the appropriate Waiver's Administrative Services Organization (ASO)
ADW, TBIW, IDWW	Provider Remediation	<ul style="list-style-type: none"> Strengthen enrollment and re-enrollment procedures to identify settings that may have indicators of non-compliance and require more thorough review. 	10/20/14	1/1/17	Bureau for Medical Services and the appropriate Waiver's Administrative Services Organization (ASO)
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Conduct a webinar series to highlight the settings requirements (residential, non-residential including principles of person-centered planning). Post webinar archives on BMS website. 	7/1/15	3/31/17	Bureau for Medical Services, appropriate Waiver QIA and ASO
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Provide strategic technical assistance by issuing fact sheets, FAQ's and responding to questions related to the implementation of the transition plan (action steps, timelines, and available technical assistance). 	7/1/15	1/31/17	Bureau for Medical Services, appropriate Waiver QIA and ASO
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Provide training to enrollment staff to heighten scrutiny of new providers/facilities. 	7/1/15	1/31/17	Bureau for Medical Services, appropriate Waiver ASO and Office of Health Facility and Licensure (OHFLAC), if applicable
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Develop and include ongoing provider training on rights, protections, person-centered thinking, and community inclusion. 	7/1/15	3/31/17	Bureau for Medical Services, appropriate Waiver QIA and ASO
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Provide training to quality improvement system on new settings outcomes measures. 	7/1/15	5/30/17	Bureau for Medical Services, appropriate Waiver QIA and ASO
ADW, TBIW, IDWW	Outreach and Education	<ul style="list-style-type: none"> Update applicable Member Handbooks to strengthen person centered HCBS requirements. 	7/1/15	3/31/17	Bureau for Medical Services, appropriate Waiver QIA and ASO
ADW, TBIW, IDWW	Quality	<ul style="list-style-type: none"> Quality Measures <ul style="list-style-type: none"> a. Develop or revise on-site monitoring 	7/1/15	12/30/16	Bureau for Medical Services, appropriate

		<p>tools to meet compliance (e.g. opportunities for “informed” choice, choice of roommate and setting, freedom from coercion).</p> <p>b. Include outcomes measures on settings within the current 1915c waiver quality improvement system.</p> <p>c. Build community character indicators within the 6 CMS Quality Assurances reviewed through the provider self-review process.</p>			Waiver QIA and ASO
ADW, TBIW, IDDW	Quality	<ul style="list-style-type: none"> Expand upon the QIA council to include responsibility to monitor data associated with meeting transition plan action items and outcomes data. Establish a baseline of outcomes data and measure throughout transition plan implementation. 	7/1/15	12/30/16	Bureau for Medical Services, appropriate Waiver QIA and ASO
ADW, TBIW, IDDW	Quality	<ul style="list-style-type: none"> Crosswalk quality assurance tools against settings characteristics and person-centered planning requirements to identify areas of potential enhancement to the quality improvement system. 	7/1/15	12/31/16	Bureau for Medical Services, appropriate Waiver QIA and ASO
IDDW	Policies and Procedures	<ul style="list-style-type: none"> Modify regulations to ensure community characteristics are reflected across IDDW waiver services with particular attention on ISS, group homes and specialized family care homes as well as facility-based day habilitation. 	7/1/15	5/1/18	Bureau for Medical Services, IDDW Waiver QIA and ASO
IDDW	Provider Remediation	<ul style="list-style-type: none"> Develop a transition plan approval process which requires the provider to submit progress reports on the implementation of the specific setting identified. 	7/1/15	4/3/16	Bureau for Medical Services, IDDW Waiver QIA and ASO
IDDW	Provider Remediation	<ul style="list-style-type: none"> Prepare a formal letter indicating the need for the provider to develop a transition plan for EACH setting. Include guidance and a template transition plan that requires action steps and timelines for compliance. 	7/1/15	4/3/16	Bureau for Medical Services, IDDW Waiver QIA and ASO

IDDW	Provider Remediation	<ul style="list-style-type: none"> Develop a plan to manage non-compliance with the transition plans submitted by providers (e.g. disenrollment, sanctions). Include a decision flow and timeline within the management plan. Connect the plan with the quality improvement system. Assist providers in either becoming compliant or being terminated as a provider of HCBS because they are unable to become compliant. 	7/1/15	3/1/17	Bureau for Medical Services, IDDW Waiver QIA and ASO
IDDW	Provider Remediation	<ul style="list-style-type: none"> Using lessons learned from the State's MFP program, develop a process for helping individuals to transition to new settings as appropriate. 	7/1/15	7/1/17	Bureau for Medical Services, IDDW Waiver QIA and ASO and WV MFP
IDDW	Provider Remediation	<ul style="list-style-type: none"> Building upon the MFP program, develop a housing strategic plan to address the potential need for transition to new housing as well as prepare the LTSS system for future need. 	7/1/15	3/1/17	Bureau for Medical Services, IDDW Waiver QIA and ASO and WV MFP
IDDW	Provider Remediation	<ul style="list-style-type: none"> Work with the stakeholder group to <ul style="list-style-type: none"> a) Identify challenges and potential solutions to support provider changes that may be necessary. b) Develop a toolkit for provider use that includes housing resources and person-centered planning strategies. 	7/1/15	1/1/16	Bureau for Medical Services, IDDW Waiver QIA and ASO and WV MFP
IDDW	Provider Remediation	<ul style="list-style-type: none"> Require provider owned or controlled residences to ensure residents' rights are protected by legally binding agreements (lease or other). 	7/1/15	7/1/18	Bureau for Medical Services, IDDW Waiver QIA and ASO and WV MFP
IDDW	Provider Remediation	<ul style="list-style-type: none"> Develop template leases, written agreements or addendums to support providers in documenting protections and appeals comparable to those provided under West Virginia landlord tenant law. Ensure that written language describes the required environment to comply such as locked doors and use of common areas. 	7/1/15	7/1/18	Bureau for Medical Services, IDDW Waiver QIA and ASO and WV MFP
IDDW	Provider Remediation-Non-Residential	<ul style="list-style-type: none"> Develop strategies for moving away from more congregate employment to naturally occurring learning 	7/1/15	3/31/17	Bureau for Medical Services, IDDWW QIA, ASO and WV

		environments and access to community activities and events. Build upon the supported employment model by including more person-centered and inclusionary supports including access to a variety of settings for participants to interact with non-disabled individuals (other than those individuals who are providing services to the participant) to the same extent that individuals employed in comparable positions would interact.			Employment First through WV Developmental Disabilities Council
IDDW	Provider Remediation	<ul style="list-style-type: none"> Develop a site visit and compliance protocol to validate provider assessments and remediate provider compliance issues. 	9/1/15	3/31/16	Bureau for Medical Services
IDDW	Provider Remediation	<ul style="list-style-type: none"> Conduct site visits and implement remedial actions. 	8/25/15	1/12/18	Bureau for Medical Services: ASO
IDDW	Provider Remediation	<ul style="list-style-type: none"> Develop a process for heightened scrutiny as part of the compliance protocol and using information gathered through validation and remedial action. 	12/1/15	9/1/16	Bureau for Medical Services
IDDW	Provider Remediation	<ul style="list-style-type: none"> Implement heightened scrutiny process including any necessary request for CMS review. 	6/1/17	9/1/17	Bureau for Medical Services
IDDW	Provider Remediation	<ul style="list-style-type: none"> Implement relocation process as needed. 	6/1/17	Ongoing	Bureau for Medical Services
IDDW	Provider Remediation	<ul style="list-style-type: none"> Revise SFC agreement to include reference to the Integrated Rule Setting 	1/1/2020	11/09/2020	Bureau for Children and Families/WVUCED
IDDW	Provider Remediation	<ul style="list-style-type: none"> Revise SFC Room and Board Agreement to include information regarding the member's eviction rights 	1/1/2020	9/10/2021	Bureau for Children and Families/WVUCED
IDDW	Provider Remediation	<ul style="list-style-type: none"> Revise SFC Policy Manual to include information regarding compliance with Integrated Rule Setting 	1/1/2020	3/12/2022	Bureau for Children and Families/WVUCED

Public Input, Stakeholder Engagement and Oversight

Applicable Waiver	Compliance Area	Action Item	Start Date	End Date	Person Responsible
ADW, TBIW, IDDW	Oversight	1. Convene a subcommittee across the WV Bureau for Medical Services to monitor the implementation of the transition plan.	10/20/14	9/1/16	Bureau for Medical Services
ADW, TBIW, IDDW	Oversight	2. Develop a communication strategy to manage the public input required by the rule as	10/20/14	Ongoing	Bureau for Medical Services

		well as ongoing communication on the implementation of the transition plan. Adapt the strategy to different audiences including State legislators.			
ADW, TBIW, IDDW	Stakeholder Engagement	3. Reach out to providers and provider associations to increase the understanding of the rule and maintain open lines of communication.	10/20/14	Ongoing	Bureau for Medical Services and other stakeholder associations
ADW, TBIW, IDDW	Stakeholder Engagement	4. Reach out to individuals, families and organizations representing these groups to increase the understanding of the rule and maintain open lines of communication.	10/20/14	Ongoing	Bureau for Medical Services
ADW, TBIW, IDDW	Stakeholder Engagement	5. Create a space on an existing State website to post materials related to settings and person-centered planning.	10/20/14	10/15/16	Bureau for Medical Services
ADW, TBIW, IDDW	Stakeholder Engagement	6. Develop and issue required public notices. Collect comments and summarize for incorporation in the transition plan and within communication tools (e.g. FAQs).	10/20/14	Ongoing	Bureau for Medical Services
ADW, TBIW, IDDW	Stakeholder Engagement	7. Convene a cross-disability workgroup to identify solutions for compliance that represents all stakeholders, including individuals, families, advocates and providers, among others	6/1/15	Ongoing	Bureau for Medical Services and other stakeholder associations
ADW, TBIW, IDDW	Stakeholder Engagement	8. Post updates to the Statewide transition plan at least annually seeking feedback on progress made and lessons learned.	9/1/15	Ongoing	Bureau for Medical Services
ADW,TBIW,IDDW	Stakeholder Engagement	9. Develop an external stakeholder process and innovation dissemination strategy using the existing quarterly provider update schedule as a starting point.	9/1/15	10/1/16	Bureau for Medical Services and other stakeholder associations
ADW,TBIW, IDDW	Oversight	10. Facilitate Quality Council monitoring of STP progress and identification of innovations for dissemination	1/1/16	Ongoing	Bureau for Medical Services and other stakeholder associations

Milestones for Implementation

Milestones for Implementation of the State Transition Plan with cross reference to Remedial Actions if warranted:
WV 01.0 Completion of Systemic Assessment: Conduct a review of West Virginia regulations and supporting documents across the 3 waiver programs with residential and non-residential settings. Post Report on BMS website.

WV 02.0 Complete modifying rules and regulations, including provider manuals, inspection manuals, procedures, laws, qualification criteria, etc. Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer employment and work in competitive integrated settings.

WV02.1 Strengthen enrollment and re-enrollment procedures to identify settings that may have indicators of non-compliance and require more thorough review.

WV02.2 IDWW - Building upon the MFP program, develop a housing strategic plan to address the potential need for transition to new housing as well as prepare the LTSS system for future need.

WV02.3 Update applicable Member Handbooks to strengthen person centered HCBS requirements.

WV02.4 Revise the service definition of Personal Attendant Services in the policy manual for the TBIW and Personal Assistance/Homemaker for the ADW to include language that supports the use of this service to promote individuals' integration in and access to the greater community.

WV02.5 IDWW - Develop template leases, written agreements or addendums to support providers in documenting protections and appeals comparable to those provided under West Virginia landlord tenant law. Ensure that written language describes the required environment to comply such as locked doors and use of common areas.

WV02.6 IDWW - Require provider owned or controlled residences to ensure residents rights are protected by legally binding agreements (lease or other) that provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. Modify 64CSR11 of the State Rules to include that integration for persons receiving HCBS is required to the same degree of access to the community as individuals not receiving Medicaid HCBS and opportunities to seek employment and work in competitive integrated settings for persons receiving HCBS is required to the same degree of access to the community as individuals not receiving Medicaid HCBS. See: <http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-11> for the complete document.

WV02.7 IDWW - Modify regulations to ensure community characteristics are reflected across IDWW waiver services with attention on ISS, group homes and specialized family care homes as well as facility-based day habilitation. Modify 64CSR11 of the State Rules to include that integration for persons receiving HCBS is required to the same degree of access to the community as individuals not receiving Medicaid HCBS and opportunities to seek employment and work in competitive integrated settings for persons receiving HCBS is required to the same degree of access to the community as individuals not receiving Medicaid HCBS. See: <http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-11> for the complete document.

WV03.0 Effective date of new rules and regulations: 50% complete.

WV04.0 Effective date of new rules and regulations: 100% complete.

WV05.0 Completion of site-specific assessment. Prepare a list of settings that meet the residential and nonresidential requirements, those that do not meet the residential and non-residential requirements, may meet the requirements with changes, and settings West Virginia chooses to submit 'under CMS heightened scrutiny. The list will be distributed to provider agencies and posted to the website and labeled 'Status Report'.

WV06.0 Incorporate results of settings analysis into final version of the **STP** and release for public comment. Incorporate the outcomes of the assessment of settings within existing licensure and certification processes to identify existing settings as well as potential new settings in development that may not meet the requirements of the rule.

WV06.1 Completion of site visits. Completion of Priority I and II site visits. Completion of Priority I site visits. Completion of Priority II site visits. Conduct site visits and implement remedial actions.

WV06.2 Incorporate results of settings analysis into final version of the STP and release for public comment.

WV07.0 Submit final STP to CMS

WV08.0 Completion of residential provider remediation: 25% There are 113 residential settings that fall under this rule. 17 were non-sample. (34%) Of 33 sampled settings, as of 3/10/18, all complied. As of 12/31/19 all 113 residential settings comply.

WV09.0 Completion of residential provider remediation: 50% There are 113 residential settings that fall under this rule. 17 were non-sample. (34%) Of 33 sampled settings, as of 3/10/18, all complied. As of 12/31/19 all 113 residential settings comply.

WV10.0 Completion of residential provider remediation: 75% There are 113 residential settings that fall under this rule. 17 were non-sample. (34%) Of 33 sampled settings, as of 3/10/18, all complied. As of 12/31/19 all 113 residential settings comply.

WV11.0 Completion of residential provider remediation: 100% There are 113 residential settings that fall under this rule. 17 were non-sample. (34%) Of 33 sampled settings, as of 3/10/18, all complied. As of 12/31/19 all 113 residential settings are compliance.

WV11.1 Develop a plan to manage non-compliance with the transition plans submitted by providers (e.g., disenrollment, sanctions). Include a decision flow and timeline within the management plan: Plan relates to the quality improvement system and contains provisions to assist providers in either becoming compliant or being terminated as a provider of HCBS because they are unable to become compliant.

WV11.2 Require provider owned or controlled residences to ensure residents rights are protected by legally binding agreements (lease or other). We neglected to include the lease/agreement issue in the SFC reviews. We remediated this by:

- A. Adding the question to the protocol as follows: Is the unit or dwelling a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. Yes, No Not Applicable. This has been changed in the Protocol.
- B. If any homes are not in compliance, a plan of compliance with a completion date will be required. It is expected that all homes will comply on this issue within 3 months.
- C. SFC homes were identified and added to the residential listings 12/1/18. All settings were independently assessed by 7/17/19 including the residency agreement. All settings were found in compliance as of 12/31/19.

WV12.0 Completion of nonresidential provider remediation: 25% All nonresidential settings passed as of 1/5/2018.

WV13.0 Completion of nonresidential provider remediation: 50% All nonresidential settings passed as of 1/5/2018.

WV14.0 Completion of nonresidential provider remediation: 75% All nonresidential settings passed as of 1/5/2018.

WV15.0 Completion of nonresidential provider remediation: 100% All nonresidential settings passed as of 1/5/2018.

WV16.0 Identification of settings that will not remain in the HCBS System. IDDW - Using lessons learned from the State's MFP program, develop a process for helping individuals to transition to new settings as appropriate.

WV16.1 Prepare a list of settings that meet the residential and non-residential requirements, those that do not meet the residential and non-residential requirements, may meet the requirements with changes, and settings West Virginia chooses to submit under CMS heightened scrutiny. The list is distributed to provider agencies and posted to the website.

WV17.0 Identification of settings that overcome the presumption and will be submitted for heightened scrutiny and notification to provider. Prepare a list of settings that meet the residential and non-residential requirements, those that do not meet the residential and non-residential requirements, may meet the requirements with changes, and settings West Virginia chooses to submit under CMS heightened scrutiny. The list is distributed to provider agencies and posted to the website.

WV18.0 Complete gathering information and evidence on settings requiring heightened scrutiny that it will present to CMS. Develop a process for heightened scrutiny as part of the compliance protocol

and using information gathered through validation and remedial action. IDDW — Implement heightened scrutiny process including any necessary request for CMS review.

WV19.0 Incorporate list of settings requiring heightened scrutiny and information and evidence referenced above into the final version of STP and release for public comment. There have been no settings identified as of 8/1/19.

WV20.0 Submit STP with Heightened Scrutiny information to CMS for review.

WV 21.0 Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that relocation or alternate funding sources need to be considered: 25% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

WV 22.0 Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that relocation or alternate funding sources need to be considered: 50% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance. Should this occur in the future, as a part of the review protocol addresses this, and the procedure will be followed as described.

WV 23.0 Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that relocation or alternate funding sources need to be considered: 75% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

WV 24.0 Complete notifying member, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that relocation or alternate funding sources need to be considered: 100% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

WV25.0 Complete beneficiary relocation or alternate funding across providers: 25% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

WV26.0 Complete beneficiary relocation or alternate funding across providers: 50% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

V27.0 Complete beneficiary relocation or alternate funding across providers: 75% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

WV28.0 Complete beneficiary relocation or alternate funding across providers: 100% There have been no provider settings identified as not in compliance and unable or unwilling to attain compliance.

Initial Provider/Setting Reviews

IDD Waiver: Information acquired as the result of the Member, Provider and Stakeholder surveys was used as a part of the site/setting review procedure). Actual site visits have revealed that some providers misidentified or failed to complete surveys on actual sites. When this was discovered, the database for sites was updated. How the agency responded to the survey was not altered.

BMS conducted initial on-site visits or reviews for all licensed Facility Based Day Habilitation settings. (Completion date 1/5/2018)

Site visits were conducted for all residential settings housing 4 or more individuals. (Completion date 1/12/2018)

Site visits were conducted for 50% of all 1-3 bed settings. All Priority I 1-3 bed settings were reviewed. A random sample of Priority II settings identified additional 1-3 bed settings with the sample

skewed to assure that all providers have at least one setting reviewed. It was recognized that the percentage of site visits conducted for Priority II settings exceeded the 50% target in order to assure that all providers had at least one setting review. (Completion date was 1/12/2018).

Follow up visits were conducted for all settings not found in compliance. The timelines were based on Plan of Compliance Dates.

Annual reviews (and follow-ups if necessary) will be conducted for **all** settings in subsequent years by the ASO. All settings will have had at least one review no later than December 31, 2018.

At the time of the Provider Survey BMS had implemented a 4-bed maximum ruling for licensed residential homes under the IDD Waiver. There were 11 homes which had been approved and licensed prior to this ruling. These homes were 'grandfathered' as they had more than the 4-bed maximum but were otherwise in compliance. They were reviewed in the same manner as the other homes. They were not required to decrease their bed capacity. The analyses can be viewed in the following link:
<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/default.aspx>

Upon completion of the initial setting reviews, the quality assessment review tool questions **were** compared with the setting characteristics and the Person-Centered Planning components to identify areas of the system in need of remediation. Using statistical analysis of both independent and dependent variables, and seeking a $p < .05$ level of significance, areas of Integration, Person Centered Services, Privacy and Choice were compared among the types of settings reviewed. Sub-areas of analysis to be queried were determined based on the recommendations of the Quality Improvement Advisory Council. The results of these analyses gave the stakeholders information on the areas and topics for retraining, increased monitoring and trends.

The first, second and third analyses are all located at:
<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/default.aspx> The third analysis also incorporates the information from Case Manager reviews to compare and contrast, (using statistical analysis of both independent and dependent variables and seeking a $p < .05$ level of significance) the areas of Integration, Person Centered Services, Privacy and Choice among the types of settings reviewed. These analyses provided additional assurance of member rights and compliance for settings reviewed by the case manager.

In December 2018, Specialized Family Care Homes were added to the list of residential providers. As of 7/31/19, 43% were found to comply. Reviews of these homes are/were conducted by the Family Based Care Specialists assigned to the home. The review tool for these provider-controlled sites is located in **Appendix M**. All of these homes were found to comply by 12/31/19.

In addition, Specialized Family Care Home provider who care for IDD Waiver members are required to "maintain the service standards for individuals residing in Specialized Family Care Homes by providing the individuals in placement the opportunities to live, work, and receive services in integrated, community settings as outlined in the Integrated Services Rule 42 CFR 441.301(c)(4)/441.71 (a)(1)/441.530 (a)(1)." This agreement is included in **Appendix M**. Specialized Family Care Home providers must also adhere to the Room and Board Policy and Discipline Policy for these homes. A Specialized Family Care Home Room and Board Agreement, signed by both the provider and member, must also be completed. These are included in **Appendix M**. West Virginia DHHR, Bureau for Medical Services attests that the experiences of any child receiving services in a Specialized Family Care Home will be the same as any child not receiving Medicaid HCBS. Please note that not all persons residing in Specialized Family Care homes are Waiver members.

Aged and Disabled Waiver: The survey conducted of all ADW Providers revealed that there were no residential settings owned or leased by Aged and Disabled Waiver providers, thus no further reviews were conducted during the initial assessment period. At a later date (March 2023), BMS discovered there were 9 ADW members who were residing in the home of their paid unrelated caregiver. These settings are provider controlled and further research and reviews were conducted by June 9, 2022. Some remediation must occur concerning these individuals not having leases or residency agreements, but remediation efforts are underway and expected to be completed prior to March 1, 2023.

Traumatic Brain Injury Waiver: The survey conducted of all TBIW Providers revealed that there were no residential settings owned or leased by Traumatic Brain Injury Waiver providers and that no members resided in the home of their paid unrelated caregiver, thus no further reviews were conducted during the initial assessment period.

Monitoring of Ongoing Compliance

All members and settings for all of the Waiver programs will be reviewed annually using the following protocols.

Member-Controlled Settings

Member-controlled settings are defined as home or apartments owned or leased by a HCBS member or by one of their family members. All member-controlled settings will be evaluated at least annually by BMS or its designee or the member's case manager to ascertain that the member continues to reside in a setting with the characteristics of a member-controlled setting and that the setting continues to meet the standards as described below:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)
2. The setting is selected by the individual from among setting options including non-disability specific settings. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)
3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)
4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/ 441.710(a)(1)(iv)/441.530(a)(1)(iv)
5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

Exploratory questions that may be asked to ascertain these standards can be found at the following link: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-non-residential.pdf>

Any member residing in a setting that does not meet these standards will be referred to their case management agency for remediation to attempt to attain compliance. If the setting cannot be remediated to meet the standard, then the member will be referred to transition to an approved setting. If this transition is not successful, then, as a last resort, the member will be discharged from the program.

Provider-Controlled Settings

Provider-controlled settings are settings where member resides with a paid unrelated caregiver or with an agency provider who provides HCBS services the majority of the day. Any day settings such as IDDW Facility-Based Day Habilitation sites or ADW Medical Adult Day Care are provider-controlled settings. All provider-controlled settings and members who receive services in these settings will be evaluated at least annually by BMS or its designee to ascertain that the setting continues to exhibit the characteristics of a provider-controlled setting and that the setting meets the standards as described below:

1. The setting was selected by the individual.
2. The individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.
3. The individual is employed or active in the community outside of the setting.
4. The individual has his/her own bedroom or shares a room with a roommate of choice.
5. The individual chooses and controls a schedule that meets his/her wishes in accordance with a person-centered plan.?
6. The individual controls his/her personal resources.
7. The individual chooses when and what to eat.
8. The individual chooses with whom to eat or to eat alone.
9. Individual choices are incorporated into the services and supports received.
10. The individual chooses from whom they receive services and supports.
11. The individual has access to make private telephone calls/text/email at the individual's preference and convenience.
12. Individuals are free from coercion.
13. The individual, or a person chosen by the individual, has an active role in the development and update of the individual's person-centered plan.
14. The setting does not isolate individuals from individuals not receiving Medicaid HCBS in the broader community.
15. State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices.
16. The setting is an environment that supports individual comfort, independence and preferences.
17. The individual has unrestricted access in the setting.

18. The physical environment meets the needs of those individuals who require supports.
19. Individuals have full access to the community.
20. The individual's right to dignity and privacy is respected.
21. Individuals who need assistance to dress are dressed in their own clothes appropriate to the time of day and individual preferences.
22. Staff communicates with individuals in a dignified manner.

Any provider-controlled setting that does not meet these standards will be referred to BMS or its designee for remediation to attempt to attain compliance. If the setting cannot be remediated to meet all of these standards, then the setting will be removed from approved provider listing and the member(s) will be referred to transition to an approved setting. If this transition is not successful, then, as a last resort, the member will be discharged from the program.

In addition, all waiver agencies will be contacted annually to verify the settings owned, leased or operated by the provider agency. It is the responsibility of the agency to notify BMS within 15 days of any change in status, i.e., sites are added or removed. BMS or its designee makes a site visit to each new site and conducts a review using the same review tool found in **Appendix L, Attachment 2** to ascertain that the site is in full compliance before any HCBS services are provided in that site.

Characteristics that are expected to be present in all providers owned or controlled home and community-based settings and associated traits that individuals in those settings might experience.

1. Modifications of the setting requirements for an individual are supported by an assessed need and justified in the person-centered plan.
2. Individuals have privacy in their sleeping space and toileting facility.
3. The individual has privacy in his/her living space.
4. The individuals have comfortable places for private visits with family and friends.
5. Individuals furnish and decorate their sleeping and/or living units in the way that suits them.
6. There is a legally enforceable agreement for the unit or dwelling where the individual resides.
7. Individuals are protected from eviction and afforded appeal rights in the same manner as all persons in the State who are not receiving Medicaid HCBS.

Exploratory questions that may be asked to ascertain these standards can be found at the following link: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-re-settings-characteristics.pdf>

Any new provider-controlled settings must be reviewed using the Non-residential Site Review found in **Appendix L** and found to meet all of the provider-controlled standards before the setting can be approved by BMS. No HCBS services may be provided until the setting is approved by BMS.

Heightened Scrutiny Overview

As the State reviewed each distinct setting/address, settings were sorted into one of five categories. These included:

- The setting meets the HCBS characteristics and is compliant.
- The setting does not currently meet HCBS characteristics but intends to become compliant.
- The setting cannot meet the HCBS characteristics.
- The setting is presumptively institutional and is determined incompatible with HCBS.
- Settings that are Intermediate Care Facilities for Individual with Intellectual Disabilities (ICFs/IID), Institutions for Mental Disease (IMD), Nursing Facility (NF) or Hospitals do not provide HCBS and were not subject to transition.

The State of West Virginia worked with Settings in Category 2 to monitor their plans to come into compliance. Repeat Annual Monitoring and Follow-Ups of settings that fall in Categories 1 and 2 assure continued compliance. If a setting is unable or unwilling to become compliant with remediation, as determined by on-site review of the setting, then the state will initiate the process for resolution of beneficiary concerns when in a setting that will not be compliant.

Settings deemed during the review process to be in Category 3 or 4 would be presumptively non-HCBS settings that isolate. They would fall into one of three categories:

- Settings that are located in a building that is also a publicly or privately-operated facility that provides inpatient institutional support treatment,
- Settings that are located in a building on the grounds of, or immediately adjacent to, a public institution, or
- Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS, including:
 - i. Where members have limited, if any, opportunities for interaction in and with the broader community, including with individuals not receiving Medicaid funded HCBS
 - ii. Where the setting restricts member choice to receive services or to engage in activities outside of the setting
 - iii. Where the setting is physically located separate and apart from the broader community and does not facilitate member opportunity to access the broader community and participate in community services, consistent with the member's person-centered service plan

Settings in any one of these three categories would be subject to the heightened scrutiny process. These are those settings that the state has determined are presumed institutional and that the state has determined have or will overcome the institutional presumption and comply with the settings criteria by the end of the transition period. In such cases, the setting would be submitted to CMS for a heightened scrutiny review. Evidence compiled by the State will accompany this submission. This evidence will include review documents, stakeholder interviews and comments and other evidence as necessary.

At present there are no such determined settings. West Virginia does not have any Waiver settings that are in a building that provides inpatient institutional treatment. West Virginia does not have any Waiver settings on the grounds of, or adjacent to, a public institution. All settings where Waiver services are provided have been evaluated through the Setting Review Process for each respective Waiver and all provide integration into the broader community. Data analysis from these evaluations can be viewed in the following link:

<https://dhhr.wv.gov/bms/Programs/WaiverPrograms/WVSWTP/Pages/default.aspx>

Settings that are in Category 5 are not included in the State Transition Plan.

Transition of Members Overview

Should a review determine that a setting does not meet the characteristics necessary for HCBS and remediation efforts are unsuccessful, the provider setting will be dis-enrolled from the Medicaid

program. Notification to the provider will be by certified mail as well as electronically. The provider is responsible for notification of members, with all correspondence or contacts copied to the Bureau for Medical Services.

BMS will also notify the individual members five working days after the provider notification, to assure that all stakeholders are notified of the dis-enrollment. This Information will include material on transition assistance and extensions and will be provided through 1) the specific time frame letter sent to each member by letter and 2) through the general informational meetings for members as noted below.

While the transitions of members to other providers or settings will begin as soon as the provider is notified, the provider will have 90 calendar days from the date of the notification to assist individuals to transition to other services and/or settings that do comply with the Rule. The Provider will have 10 calendar days from the date of its notification of disenrollment to notify all participants of the disenrollment and actions the provider will take to ensure person centered planning. BMS will be copied on all provider to member correspondence. The ASO will also notify the member within 10 calendar days of the date of notification.

Individuals may remain at the setting, but HCBS services may not be billed for that individual. Individual team meetings will be held and the individual and their legal representative (if applicable) will make the final choice of available settings/sites. Provider disenrollment will occur at the end of the 45 days or when all members are successfully transitioned.

Within 30 working days of the date of the notification, the provider will submit to BMS an Agency Transition Plan. This plan will list 1) setting location which is non-compliant; 2) the member(s) by name and Medicaid Number; 3) the service(s) provided to each listed member; 4) the date for the Critical Juncture transition meeting for each listed member; 5) The result of the meeting including setting/location of services that do comply with the rule; 6) The date of the change of provider/setting. The provider will submit updates to the Agency's Transition plan weekly to BMS, completing items 4-6 as these events occur. This plan update will be provided to BMS until all member transitions are complete.

BMS shall be copied on all correspondence with members and/or families.

The provider will hold a general informational meeting for all members, legal representatives, and other interested parties. BMS will attend this meeting to answer any questions. Members will also be encouraged to call BMS should they have any questions with BMS contact information made available to all affected members at Critical Juncture meetings and on the BMS website.

Should an individual member request assistance beyond that given by the provider, BMS will assist the member in the timely transition to another provider and/or setting. Requests should be made through phone, email or letter. In isolated instances, BMS may extend the 60-day transition period for an individual member to assure that there is no interruption of services to the individual member. It is anticipated that approximately 10% of members in an affected setting would have need of some mode of direct intervention from BMS.

This procedure would also apply to a provider which concurs with the setting review that the site is not HCBS compliant.

Thus far, no sites have been disenrolled from any of the Waiver programs and no members have been transitioned to other providers or discharged from the program.

Building Capacity for Increased Non-Disability Specific Setting Access

West Virginia Waiver participants have the choice of where they would like to receive services, and that choice includes private residences and non-disability specific settings. West Virginia's service delivery system has been impacted heavily by the Hartley and Medley Consent Decrees which evolved over many years to become one that optimizes the ability of individuals to receive HCBS and remain in the community to the fullest extent possible. People who had resided, sometimes for decades, in large, congregate, state-run facilities were placed in smaller "group homes" located in communities. These community placements were viewed as more normal, and hence more beneficial, than the segregated, walled compounds which typified the institutions of the 19th and 20th centuries. The concept of individuals with disabilities as contributing members of society at-large replaced the philosophy of protectionism and isolation, which governed public policy and practice for over a century. We have made great strides in expanding the availability of non-disability specific service options. The provision of services for HCBS participants is based on the person-centered planning process, where individuals make informed choices about the type of care they receive, the providers from whom they receive care and the setting in which that care is provided.

Services were enhanced as we:

- a. Increased waiver slots for all eligible populations.
- b. Implementing a comprehensive monitoring system (described in Appendix M) of all settings falling under the State Transition Plan. This includes the identification of areas of non-compliance such as the use of age-inappropriate items and the practice of reverse integration (bringing the community into the setting but not taking the members into the community). When a provider/setting is found out of compliance, the area must be corrected. It must be re-evaluated and deemed compliant by BMS or its designee.
- c. Ensuring that the monitoring system includes the evaluation of integration components such as choice of physician, cases manager and other services.
- d. Working with WVADE (West Virginia Association for Disability Employment) and Employment agencies to ensure that all individuals have access to the most integrated competitive employment possible.
- e. Take Me Home is a program through WV BMS which identifies qualifying residents of long-term care facilities who wish to return to their own homes and apartments in the community and provides them the supports and services they need to do so. The Bureau developed a booklet distributed to members who may be interested in this option. <https://dhhr.wv.gov/bms/Programs/Takemehome/Pages/Eligibility-and-Services.aspx>

Non-disability setting options are expanded and include any community environment that is chosen by the member for services. Member choice is the primary criteria. The State of West Virginia encourages providers to develop additional settings, both residential and non-residential, as member needs indicate. Initial Setting Reviews and follow ups were completed 1/12/18 and all revisits conducted after that time are by the ASO, using the same review tool found in **Appendix L**.

The State of West Virginia will expand the identification of non-disability setting options through a review of existing best practices in current provider settings. A webinar will be developed and posted on the DHHR website to assist providers, members and other stakeholders in the identification and development of non-disability setting options.

Non-disability setting options are expanded and include any community environment that is chosen by the member for services. Member choice is the primary criteria. The State of West Virginia encourages providers to develop additional settings, both residential and non-residential, as providers indicate.

Summary

This is a summary of the process West Virginia is using to assess, validate and monitor all types of settings that were assessed for the HCB Settings criteria.

ADW and TBIW Settings: No settings were identified as being owned or leased by ADW or TBIW Agency providers, however, each agency will be asked during their annual recertification process to attest that they do not own or lease any settings. If an agency decides to buy or lease a site to provide residential services to any HCBS members, the agency must inform BMS within 15 days and the site will be reviewed using the protocol in **Appendix M** to make sure the site meets all the requirements of the Integrated Settings Rule prior to any members receiving services at the site. If the site does not meet the requirements, then remediation must occur, and the site re-checked prior to any members receiving services at the site. If an Agency provider does own or lease a setting to an HCBS member in the future, the site must be reviewed and approved by BMS or its designee using the review tool for Non-Residential Site Reviews located in **Appendix L** and the home must be in full compliance before any HCBS services may be provided on that site. Future monitoring and compliance will be conducted annually by BMS using the standards for provider-controlled settings.

Approximately 10 ADW members were found to be living with unrelated paid caregivers which are classified as provider-controlled settings. A review of each of these homes indicated that some remediation is needed to bring these settings into compliance by March 2023. Most notably is that several of the members did not have leases.

IDDW Settings:

Specialized Family Care: A reviewer conducted site visits and completed reviews for all Specialized Family Care Homes. All homes were not initially in compliance, but it appeared that the review tool was being interpreted incorrectly. After remediations trainings of the staff conducting the review, all settings were found to comply in December 2019. Annually the settings will be formally reviewed by the Specialized Family Care Staff to make sure the settings are still in compliance using the standards for provider-controlled settings. Any deficiencies will be reported to BMS and remediated. If remediation efforts are unsuccessful, then the transition process will begin to transition the member to another approved setting or discharge them from the IDDW program.

IDDW Residential Settings: A reviewer conducted site visits for each IDD agency that owns or leases settings where waiver residential services are provided. The waiver agency received a separate report stating the site complied with this rule or to what degree it was not in compliance. There was one report for each site detailing why the setting was not in compliance with this Rule. The waiver agency was required to submit a Plan of compliance for each site not in compliance within 30 days of receipt of the report. The Plan detailed the agency's plan to come into compliance. BMS or Kepro reviewed each plan and either accepted it or returned it to the agency for further remediation. The flow chart below exemplifies this process. When a Plan of compliance was accepted, the agency received a letter stating such and was told to expect a return visit to review the agency's compliance at a future unannounced date.

Initially settings that were owned or leased by the member were determined to be Member Controlled but upon further information received from CMS, it became clear that these settings are Provider Controlled settings due to the IDDW Agency providing services 24 hours per day, thus these settings will be reviewed annually using the standards for provider-controlled settings and remediated if necessary. If remediation is unsuccessful, then the site will be disenrolled from the IDDW program and the members will be transitioned to approved settings or discharged from the programs if the member does not wish to transfer to an approved setting.

As of February 28, 2019, all sites owned or leased by providers were found to comply with the Integrated Settings Rule. Annually, beginning in July 2021 BMS or its designee will review each site to make sure the site

is still in compliance. As part of the monitoring of ongoing compliance, all sites that are considered provider-controlled will be evaluated annually by BMS or its designee.

The initial round of reviews yielded the following data.

(No Settings were identified for Heightened Scrutiny)

Provider Self-Assessment Results -2015

Setting Type	Total	Compliant*	Non-Compliant
Facility Based Day Habilitation	51	0	51
Supported Employment *	13	0	13
Participant Centered Support ISS (serving 1-3 people)	54	0	54
Participant Centered Support — Group Home (serving 4 or more people)	18	0	18

TOTAL 136

*No providers were found, based on the self-assessment survey, to be totally compliant. (Appendix M, page 138)

Desk Review Results - 2016 (Appendix M Page 131)

Setting Type(no settings were initially compliant)

	Priority I	Priority
Facility Based Day Habilitation*	10	41
Supported Employment *	1	12
Participant Centered Support - ISS (serving 1-3 people)	9	45
Participant Centered Support * Group Home (serving 4 or more people)	3	6

TOTALS 121/115

*All Facility Based Day Habilitation settings, Supported Employment settings and Group Homes serving 4 or more people received an initial on-site review. See Page 131 and 132 for Priority determining criteria.

Initial On-Site Results 2016-2017

<u>Setting Type</u>	<u>Compliant</u>	<u>Non-Compliant</u>	<u>Closed***</u>
Facility Based Day Habilitation	0	55	6
Supported Employment* - no SE in licensed settings			
Participant Centered - ISS (serving 1-3 people)	1	33	3
Participant Centered Support Group Home (serving 4 or more people)	0	14	0
TOTAL* *	1	102	9

*Page 5 of CMS Informational Bulletin September 16, 2011 regarding employment and employment related services **States that** "Waiver funding is not available for the provision of vocational services delivered in facility based or sheltered work settings." Supported Employment is not provided in settings licensed or leased by a provider or where members are grouped together to receive supported employment services.

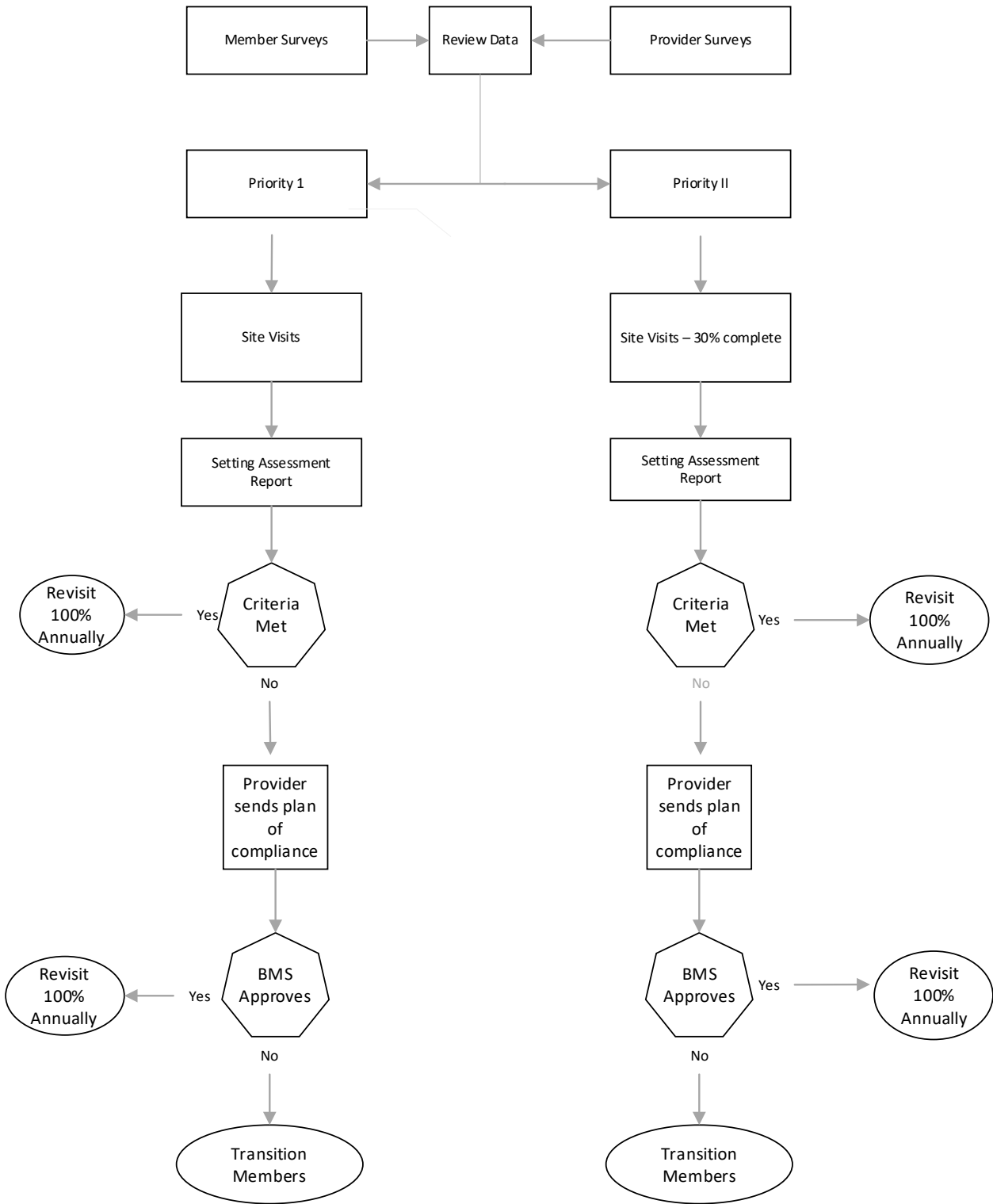
**Providers incorrectly identified themselves in the provider survey. For example, some incorrectly identified settings as owned or leased by the provider when an on-site revealed this was not the case. Some listed a setting that was actually an office for case managers only.

***Reasons for closure were not directly related to the Integrated Services Rule.

Follow Up On-Site Results 2016 -2018

<u>Setting Type</u>	<u>Compliant</u>	<u>Non-Compliant</u>	<u>Closed***</u>
Facility Based Day Habilitation	55	0	0
Supported Employment* - no SE in licensed settings			
Participant Centered - ISS (serving 1-3 people)	33	0	0
Participant Centered Support	14	0	0

Exhibit 2



Appendix A: Recommendations from the HCBS Regulatory Review

11/24/14

A complete copy of this report with appendices may be found at:

<http://www.dhhr.wv.gov/bms/Programs/Documents/WV%20Regulatory%20Review%20Report%20Final%20%2811-25-14%29.pdf>

Introduction

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (CMS-2249-F and CMS 2296-F) to ensure that individuals receiving long term services and supports (LTSS) through home and community based services (HCBS) programs under 1915(c) and 1915(i) have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as individuals not receiving Medicaid HCBS.

West Virginia contracted with The Lewin Group to guide development of a transition plan pursuant to 42 CFR 441.301(c)(6) that contains the actions the State will take to bring all West Virginia waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5). West Virginia intends to work with the various providers, participants, guardians, and other stakeholders engaged in HCBS to implement this proposed transition plan.

This report documents one component of the methodology and approach used to develop the transition plan, to conduct a regulatory review of the HCBS system. This report covers the methodology and the findings from the regulatory review process.

Regulatory Review Methodology and Source Documents

The development of a matrix of West Virginia waivers and supporting documentation provided a systematic method to assess areas of compliance and non-compliance with the new rule. The Lewin Group developed the matrix through a series of steps.

Step 1: Framing of Key Elements to Assess Compliance and Non-Compliance

Lewin completed a comprehensive review of the new federal regulations and all supporting guidance released by CMS as contained in the Settings Requirements Compliance Toolkit¹. Based on this review, the "[Summary of Regulatory Requirements for Home and Community Based Settings](#)" guided our analysis.

Step 2: Comprehensive Inventory of Waiver Services and Provider Types Across All Populations

We conducted a basic review of waiver applications and amendments for all three of West Virginia's waivers (see **Appendix B**) and created an inventory of relevant services and provider types for inclusion in the analysis. The three waivers and proposed services/setting types to include in our analysis are listed in the table below.

HCBS Waiver	Services/Setting Type	Original Approval Date	Effective Date	Expiration Date
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¹ <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

Aged and Disabled Waiver Program (ADW)	<ul style="list-style-type: none"> • Case Management • Personal Assistance/Homemaker Service 	07/01/1985	07/01/2010	06/30/2015
Intellectual/Developmental Disabilities Waiver (IDDW)	<ul style="list-style-type: none"> • Facility Based Day Habilitation • Participant -Centered Support • Respite • Case Management • Supported Employment • Electronic Monitoring/Surveillance System and On-Site Response • Skilled Nursing - Nursing Services by a Licensed Practical Nurse 	07/01/1985	07/01/2010	06/30/2015
Traumatic Brain Injury Waiver Services (TBIW)	<ul style="list-style-type: none"> • Case Management • Personal Attendant Services 	12/23/2011	02/01/2012	01/31/2015

Step 3: Creation of a Qualitative Data Set

Using the inventory, Lewin created a comprehensive qualitative data set that captured all relevant language from waiver applications, State regulatory documents, surveys and checklists on compliance and quality, and provider trainings. The data was cleaned for consistency and accuracy. The Lewin Group conducted a review across waivers globally, as well as settings/services that may be impacted by the rule across the categories listed in the table below.

Types of source documents	Relevant categories by source
<ul style="list-style-type: none"> • Waiver applications • Authorizing Legislation • State Rules and Operations • Provider training and manuals • Member handbooks • Setting-specific survey and certification review criteria 	<ul style="list-style-type: none"> • Definitions of services and settings • Certification and licensing (as applicable) • Participant rights • Participant choice of provider • Care planning processes including conflict of interest provisions • Enrollment procedures • Environmental standards • Restrictive interventions • Staff training • Support coordination/case management • (Others as appropriate)

Step 4: Analysis of Source Language Against Federal Regulatory Requirements

Using the “[Summary of Regulatory Requirements for Home and Community Based Settings](#)” as a guide, Lewin then synthesized the qualitative data for each setting and compiled areas of compliance and non-compliance. Settings that may potentially isolate individuals and support coordination activities considered in potential violation of the new federal rules are included within the list of recommendations for potential change. In addition to the data set, Lewin drew upon interviews of key West Virginia staff, as well as years of Lewin experience in the LTSS field, to identify strengths and areas for potential growth for the State for inclusion within the report and transition plan.

Results and Recommendations

The Lewin Group presents recommendations across all waivers (Aged and Disabled Waiver Program, Intellectual/Developmental Disabilities and Traumatic Brain Injury Waiver Programs included in the review and when specific to a particular waiver,

references are made. The information is organized by sections under the regulatory requirements for home and community-based settings:

- CMS Descriptions for Institutional Settings and Qualities and Guidance on Settings that May Isolate Individuals
- Provider Controlled Setting Elements to Assess per New Federal Requirements
- Plan of Care Requirements for Modifications or Restrictions of a Participant’s Rights; and
- Conflict of Interest Standards.

CMS Descriptions for Institutional Settings and Qualities and Guidance on Settings that May Isolate Individuals

Lewin reviewed the waiver source documents against CMS guidance and descriptions for institutional settings and qualities. Settings under this category are not home and community-based and include: a nursing facility; an institution for mental diseases; an intermediate care facility for individuals with intellectual disabilities; a hospital; or any other locations that have qualities of an institutional setting, as determined by the Secretary. Those settings that are presumed to have qualities of an institution include:

- Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment,
- Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS also provided guidance on settings that may isolate individuals and Lewin applied this guidance during our review of the source documents. Settings with the following two characteristics may, but will not necessarily, meet CMS criteria for having the effect of isolating individuals: the setting is designed specifically for people with disabilities, and often even for people with a certain type of disability; and the individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them. Settings that may isolate individuals receiving HCBS from the broader community may have any of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

Lewin’s findings from the analysis are provided below.

Positive Findings/Areas of Compliance

- The following IDDW services are compliant with, or not subject to, the regulation as it relates to settings within the IDDW: Case Management and Patient-Centered Support. Case Management and Patient Centered Support are provided in community settings which are not owned or leased by the provider.
- Additionally, the Respite Agency service clearly specifies that it is not available in medical hospitals, nursing homes, psychiatric hospitals or rehabilitative facilities located either within or outside of a medical hospital which is in full support of the characteristics outlined in rule. Respite: Agency is time limited and may not exceed limited to 30 days per year.

Recommendations / Areas of Potential Non-Compliance

The following settings with the IDDW are meant to deliver and/or support community integration to waiver participants, although one or more items found in the language for each may need to be revised and updated to specifically comply with the CMS regulations.

- **Facility Based Day Habilitation-** The facility-based nature of the service implies that participating individuals are isolated from the community. Additionally, the documents reviewed do not show that this service provides for meaningful community integration.
- **Supported employment-** The documents reviewed say the supported employment must be offered in “an integrated community work setting,” however there is no specification as to what the State does and does not classify as such a setting. Specific clarifying language surrounding this may be helpful.
- **Skilled Nursing (Nursing Services by a Licensed Practical Nurse)** – In addition to private homes, this service is allowable in licensed group home, any ISS (Intensively Supported Setting), a licensed day program facility, and/or crisis sites. While the service and its related document do not appear to isolate the individual, the setting in which the service takes place may not comply with the regulations.
- **Electronic Monitoring/Surveillance System and On-Site Response-** This service is allowable in licensed group home, any ISS, a licensed day program facility, and/or crisis sites.” While the service and its related document do not appear to isolate the individual, the setting in which the service takes place may not comply with the regulations.

Services offered in both the ADW and TBIW appear to be offered in non-institutional settings compliant with the regulation.

The exact setting(s) of services across the three waivers cannot be fully known without a provider survey. Lewin recommends that the State use results from the upcoming provider survey to determine compliance with the regulation.

Provider Controlled Setting Elements to Assess per New Federal Requirements

Under the new HCBS rule, particular elements of provider-controlled settings will be assessed. Lewin reviewed the State’s source documents and applied the CMS guidance on provider-controlled settings. This guidance includes that the participant receiving services shall have the following rights and freedoms:

- Settings that are integrated within the community
- A choice in where to live with as much independence as possible
- Exercise informed choice
- A setting that ensures the one’s rights and protections; and
- A setting that optimizes personal autonomy.

Lewin’s findings from the analysis are provided below.

Positive Findings/Areas of Compliance

- The State code for the IDDW provides clear guidance surrounding bedroom size, furnishings and quality and goes beyond what is typical for similar regulation found in other States.
- The State code for the IDDW also requires licensed behavioral health centers to be accessible and compliant with Title III of the Americans with Disabilities Act.
- Supported Employment Services within the IDDW “are services that enable individuals to engage in paid, competitive employment, in integrated community settings. The services are for individuals who have barriers to obtaining employment due to the nature and complexity of their disabilities. The services are designed to assist individuals for whom competitive employment at or above the minimum wage is unlikely without such support and services and need ongoing support based upon the member’s level of need.” This service is fully compliant with community integration standards outlined in the requirements.

Recommendations / Areas of Potential Non-Compliance

- For the IDDW, the behavioral health center regulation makes no reference to a limit on the number of beds in any given location. This could mean that subject settings could have more bedrooms than allowed by the CMS regulations and thus be considered as institutional settings. To amend this, the State could implement a cap on bedrooms per location in the regulations.
- Chapter 513 of the Provider Manual defines an ISS as a “residential home setting that is not licensed by the Office of Health Facility and Licensure with one to 3 adults living in the home. The member’s name is either on the lease or the member pays rent. No biological, adoptive or other family members reside in the home setting with the member.” To comply fully with characteristics outlined for provider-controlled settings, it may be beneficial to modify the definition of ISS to require a lease or written agreement with tenant/landlord protection to document protections that address eviction processes and appeals similar to those provided under West Virginia Tenancy law.
- Given that the Utilization Management Contractor (UMC) is responsible for provider education, it may be beneficial to request that the ASO include the characteristics of community as well as steps to reach compliance within training content.
- The State code for the IDDW nor any other document reviewed mentions that participants living in licensed behavioral health centers have access to the following elements required in the HCBS regulation:
 - Entrance doors lockable by the individual, with only appropriate staff having keys to doors- not addressed in waiver documents. The State may need to add language addressing keys and locks to the behavioral health center regulation.
 - Roommate choice- not addressed in waiver documents. The State may need to add language addressing roommate choice to the behavioral health center regulation.
 - Freedom to furnish or decorate sleeping or living units-pg. 18 of the latest behavioral licensure regulation States: “6.6.e. Furnishings shall be homelike and personalized.” It may benefit the State to add language giving discretion on furnishing to the participant.
 - Access to visitors- The regulation calls for 24/7 access to visitors. The State may need to add language addressing visitors to the behavioral health center regulation.
 - Access to food- The regulation calls for 24/7 access to food. The behavioral licensure regulation says 6.6.n. Food services, when provided, shall: 6.6.n.1. Meet or exceed national nutritional standards; 6.6.n.2. Be planned with regularly documented assistance of a dietitian; and 6.6.n.3. Provide well-balanced meals and snacks (pg. 19). It does not guarantee around the clock access to food.
 - Control over schedules and activities- The service definition of facility-based day habilitation does not appear to grant participants control over schedules and activities (e.g. “carry out assigned duties”, “attendance to work activity”). The other service offerings do not appear to be relevant to this section of the regulation.

Plan of Care Requirements for Modifications or Restrictions of a Participant’s Rights

Under the new federal regulations, CMS provides guidance on plan of care requirements for modifications or restrictions of an individual’s rights. For Lewin’s analysis of the source documents, we applied the CMS guidance to our review. The guidance notes if a right or freedom is modified or restricted, the following requirements must be documented in the person-centered service plan:

- A specific assessed need which requires a modification or restriction of a specific right or freedom.
- Positive interventions and supports used prior to any modifications to the person-centered service plan.
- Less intrusive methods of meeting the need that were tried but did not work.
- A clear description of the modification or restriction that is directly proportionate to the specific assessed need.
- Regular collection and review of data to measure ongoing effectiveness of restricted right.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

Any modification or restriction of the participant’s rights and freedoms must be supported by a specific assessed need and be approved by the participant or a legally authorized representative, who has the authority to restrict the specific right.

Lewin's findings from the analysis are provided below.

Positive Findings/Areas of Compliance

- The ADW has participant-directed goods and services that align with CMS HCBS guidelines and address person centered requirements.
- The IDWW system has a broad and very easy to understand member handbook that can be used to build upon West Virginia person-centered practices.
- The IDWW manual provides a broad list of rights granted to waiver participants. These address more general, program-wide protections rather than rights associated with or pertaining to any particular service.
- The TBIW manual provides a broad list of rights granted to waiver participants. These address more general, program-wide protections rather than rights associated with or pertaining to any particular service. Additionally, Chapter 512 of the Provider Manual indicates that goals and objectives are “focused on providing services that are person-centered, that promote choice, independence, participant-direction, respect, and dignity and community integration.”
- For all three waiver programs, the role of the Human Rights Committee (HRC) appears to provide a firm foundation to the overall protection of basic rights and any restrictions needed to ensure health and welfare.
- The Case Management service supports the requirements of the HCBS rule in principle given that the definition specifies that along with the member, case management is “a life-long, person-centered, goal-oriented process for coordinating the supports (both natural and paid), range of services, instruction and assistance needed by persons with developmental disabilities...designed to ensure accessibility, accountability and continuity of support and services.... also ensures that the maximum potential and productivity of a member is utilized in making meaningful choices with regard to their life and their inclusion in the community”.

Recommendations / Areas of Potential Non-Compliance

- Consider shifting from “member” and “participant” over to “person”. “Person (or people) who receives services” or “person who uses services” is most acceptable. These kinds of language changes will move West Virginia toward person-centered thinking and full person-centered planning. Additionally, consider changing “direct care worker” to “direct support professional”. There is significant advocacy and structured processes nationally to professionalize the direct service workforce.
- Throughout each waiver person-centered planning policy and practices, consider changing the word “goal” to “outcomes” or adding the word “outcomes” to the description. The HCBS rule uses the language of “goals and outcomes”. To further advance the culture change toward person-centered thinking, training providers on the meaning of “outcomes” will prove critical.
- For all three waivers, consider shifting from a starting point on “needs” (which focuses on what is “wrong” or seen as “problematic”) to what matters TO the person – wishes, desires and interests; then move onto needs. Additionally, consider changing language that requires attendance of key staff to requiring contributions even if key staff are unable to be present or not present at the request of the individual.
- The ADW program indicates that “the primary purpose of the meeting is to evaluate health and safety. All identified concerns with member health and safety must be addressed and reported using the IMS, and as appropriate, referred to Adult Protective Services”. Recommend that the language be revised to ensure that the meeting ensures that services and supports continue to meet the person’s needs AND review any concerns for health or safety. Further, recommend expanding the description of concerns to include risk in levels such as the health and safety concern is worrisome to the team but generally okay with the person; very worrisome and requires some kind of response plan that everyone can agree upon, etc.
- For the IDWW, interdisciplinary teams (IDTs) are historically different than a person-centered planning team and routinely come from a medical model approach, not a person-centered and person-directed approach. The current IDT process does not fully meet the HCBS regulations on person-centered planning. For example, the HCBS rule requires that the planning process is clear that the person can request an update and revision at any time, the plan must reflect risk factors and measures in place to minimize them, and the plan must address when a member does not want a “required” IDT participant. To more fully address the requirement that person-centered planning “includes strategies

for solving conflict or disagreement within the process”, West Virginia could add language in policy and operations such as;

Service coordinators must work with the person who receives services and their legal/non-legal representatives and/or family members to choose a time and location that is convenient to them. Case Management agencies must support service coordinators to facilitate and/or participate in person centered planning meetings that are not held during the traditional working hours of 8 am to 5 pm, Monday through Friday. The person who receives services and/or their legal/non-legal representative may indicate they do not wish to “attend” their person-centered planning meeting in person; and/or they may also indicate that they do not wish for someone else to attend in person. As the person in charge of the meeting process, it is the decision of the person who uses services regarding who actually attends the planning meeting. Should the person request that one of the “required” team members not be in attendance, the Service Coordinator is required to:

1) Find out from the person receiving services why they have requested the individual not attend; and see if any mutually agreeable resolution regarding their attendance can be reached;
2) If a mutually agreeable resolution cannot be reached in time for the person-centered planning meeting, the Service Coordinator is required to gather information ahead of time so that the individual being requested to not attend can still contribute necessary information. 3) Document as part of the planning process who the person did not wish to have in attendance and why; what steps were taken to resolve any existing conflict and what steps will be taken going forward to address the situation.

- Cultural considerations should also be included in all three waiver person-centered planning processes. For example, West Virginia could add to policy the following.

The entire planning meeting process must take into consideration the culture of the person receiving services and their legal/non-legal representatives. Cultural considerations could include:

Accessibility for people with disabilities and others with limited English proficiency, Time and location of meeting, Methods by which others are invited to the meeting, Clothing worn to the meeting, Language used during the meeting, Refreshments served during the meeting, Process for the meeting and Roles of each person in the meeting.

- Based on the reviewed documents, West Virginia’s ADW lacks surveys and/or quality documents that address the rights of individuals. Updating the ADW Participant Experience Survey is one potential way to address this area of non-compliance.
- The participant rights language within the IDWW may not provide depth as required by the HCBS regulation. Specifically, there is no language that includes the rights of participants within each service to ensure full community integration across the waiver. For example, Chapter 513 specifies the member’s right to have a choice of provider, address dissatisfaction, and to be free from abuse, neglect and financial exploitation. They also have a right to choose who attends their IDT meeting, but the “outcomes-oriented” right to receive services in a community integrated setting, to visit and choose setting options, to control personal resources and furnish and decorate living space, to name a few, is not evident and therefore not likely consistently applied across provider-controlled settings.
- The IDWW Member handbook specifies that regardless of Service Delivery Model, members are assigned a Case Manager /Service Coordinator. Chapter 513 of the provider manual implies that the member can choose the Case Manager/ service coordinator. Some clarity in the Member handbook may be helpful.
- The provided quality and review tools are similarly broad for the IDWW and only collect high-level data surrounding participant rights. With these tools, there is no way to fully and adequately measure whether participants are able to meaningfully act upon their rights. The State may need to update their participant rights section of the provider manual to reflect this, as well as update the IPP components to ensure rights are adequately conveyed and implemented.
- Based on the reviewed documents, West Virginia’s TBIW lacks comprehensive quality and/or review tools that address the rights of individuals. A participant and/or provider survey(s) is one potential way to address this area of non-compliance. A crosswalk between the provider review tool and person-centered planning requirements outlined in rule may be beneficial to identifying areas to strengthen. Similarly, working with UMC to modify, as appropriate, the self-review tool to collect outcomes associated with rights may prove useful to providing an overall picture of the quality of services.
- While the Human Rights Committee role is critical to ensuring protection, it may benefit West Virginia to strengthen provider training and quality provisions to clearly specify the characteristics outlined within the HCBS rule for inclusion

in a person-centered plan (e.g. clearly articulating the assessed need which requires a modification or restriction, the interventions used prior to the modification or restriction, a clear description of the modification or restriction as proportionate with the need, and periodic review and collection of data to monitor).

- Consider updating the member handbooks for the ADW and TBIW programs to match new CMS person centered requirements.

Conflict of Interest Standards

Under the new HCBS rule, the conflict-of-interest standards apply to all individuals and entities, public or private. Lewin reviewed the West Virginia source documents applying the CMS guidance that at a minimum, the agents must not be any of the following:

- Related by blood or marriage to the individual, or to any paid caregiver of the individual.
- Financially responsible for the individual.
- Empowered to make financial or health-related decisions on behalf of the individual.
- Have a financial relationship, compensation, and ownership or investment interest² in any entity that is paid to provide care for the individual.

Conflict of interest standards must be defined in a manner that ensures the independence of individual and agency agents who conduct (whether as a service or an administrative activity) the independent evaluation of eligibility for State plan HCBS, who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan.

Lewin's findings from the analysis are provided below.

Positive Findings/Areas of Compliance

- The ADW and TBIW program includes guidance that prevents entities and/or individuals that have responsibility for service plan development from providing other direct waiver services to the participant.

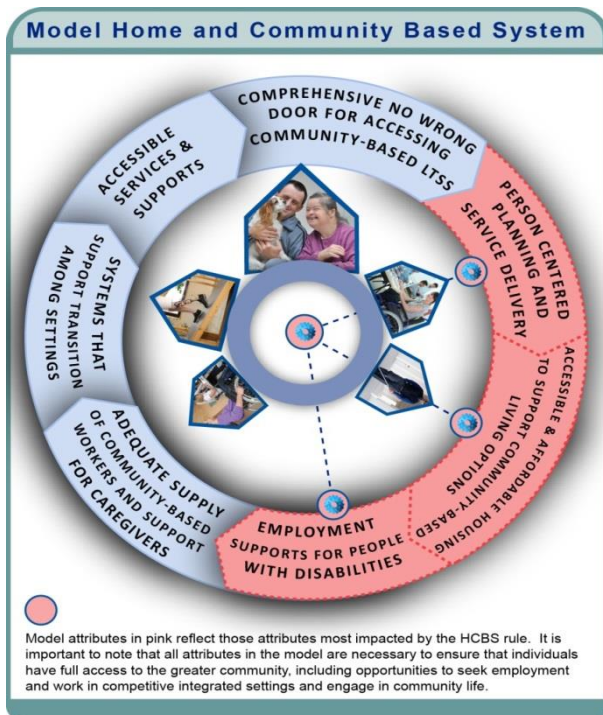
Recommendations / Areas of Potential Non-Compliance

- The IDWW manual does not appear to include language that explicitly prohibits conflict of interest and/or provides guidance on "firewalls" and other conflict mitigation techniques for providers offering both case management and direct services. To comply with CMS regulation, the State may wish to adopt language found in the TBIW and/or ADW programs to include conflict of interest guidance for IDWW providers.
- Chapter 501 of the Provider Manual indicates that an agency may provide both Case Management (CM) and Personal Assistance/Homemaker Services for members of the ADW program. There are requirements around the need for the provider to have a separate certification and provider number and separate staffing. Additionally, it is Stated that "Conflicts of interest and self-referral are prohibited." The provider must have written policies and procedures that protect the rights of members to request a transfer to a different agency, address dissatisfaction, and maintain confidentiality to name a few. The ADW program monitors conflict of interest by monitoring providers initially and on an ongoing basis in the Continuing Certification process. There is separation of agency types: Case Management and PA/Homemaker. Case Management agencies are certified and monitored separately, and PA/Homemaker agencies are monitored separately. The ADW Monitoring tool could be strengthened to monitor conflict of interest more closely. The CM Monitoring tool does not appear to include a review of conflict of interest. The same may be true for the TBIW as well given that the TBIW does allow case management and direct services as long as similar provisions are in place.

The current language for the TBIW and ADW programs appears to meet the requirements of CMS but could be strengthened, while there is no indication of conflict-of-interest prevention or mitigation in any IDWW document. The State should consider amending the provider manual and other appropriate policies and/or guidelines to strengthen conflict of interest standards.

² As defined in § 411.354 found at <https://www.kirschenbaumesq.com/article/pdf/001838-42-cfr-411354-financial-relationship-compensation-and-ownership-or-investment-interest.pdf>

Conclusion



The passage of the final HCBS rule adds value to the regulatory nature of

HCBS by establishing characteristics of residential and non-residential settings and further promoting opportunities for individuals to have access to the benefits of community living available to all U.S. citizens. The changes to the HCBS regulation essentially establish an outcomes-oriented foundation to Medicaid funded HCBS and further solidifies the individual as the center of the system in a position of choice and control. The new rule supports and builds upon the longstanding CMS vision to “create a sustainable, person-driven long-term support system in which people with disabilities and chronic conditions have choice, control and access to a full array of quality services that assure optimal outcomes, such as independence, health and quality of life”. West Virginia can use the new rule as another tool in the toolbox (along with other federal opportunities such as the Administration for Community Living No Wrong Door Planning Grants and existing Money Follows the Person Demonstrations) to meet State desired goals for Medicaid HCBS. A model home and community-based system is driven by a state’s vision and infrastructure and developed through strong stakeholder involvement. The final HCBS rule has direct impact on person-centered planning, housing and employment and associated State infrastructure. This regulatory review provides a foundation to changes that will strengthen the home and community-based service delivery system. Blended with the provider survey process, a component of the State’s environmental scan, West Virginia will have a solid plan to transform the delivery system to fully include all individuals regardless of need, within their communities in a meaningful way.

Appendix B: Crosswalk for the Systemic Assessment of Existing Code and Regulations Relevant to the West Virginia HCBS State Transition Plan

The following West Virginia Code, Rules, Regulations and Policies were reviewed in the completion of this document:

- Chapter 501(Aged and Disabled Waiver) Bureau for Medical Services Manual, <http://www.dhhr.wv.gov/bms/Pages/Chapter-501-Aged-and-Disabled-Waiver.aspx>

- Chapter 512 (Traumatic Brain Injury Waiver) Bureau for Medical Services Manual
<http://www.dhhr.wv.gov/bms/Pages/Chapter-512-Traumatic-Brain-Injury-Waiver.aspx>
- Chapter 513 (Individuals with Developmental Disabilities Waiver) Bureau for Medical Services Medicaid Manual,
<http://www.dhhr.wv.gov/bms/Pages/Chapter-513-Intellectual-and-Developmental-Disabilities-Waiver-%28IDDW%29.aspx>
- Code of State Rules 64 CSR 11, Behavioral Health Centers, <http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-11>. This includes to IDD Waiver Programs.
- Code of State Rules 64 CSR 74, Behavioral Health Consumer Rights. This includes the rights of “...individuals with mental illness, developmental disabilities or substance abuse.” (Section 2.4),
<http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-74> This includes IDD Waiver Programs.
- Code of State Rules 76 CSR 3, West Virginia State Plan for Aging. This includes individual rights for the ADW members.
<http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=76-03>
- DHHR Room and Board Policy for Individuals with Developmental Disabilities.
<http://www.dhhr.wv.gov/bcf/Documents/RBC%20Request%20to%20Provide%20Policy> and Appendix O.
- Code of State Rules 37 CSR 1 Real Property <http://www.legis.State.wv.us/WVCODE/ChapterEntire.cfm?chap=37&art=1>
- Note: - 64 CSR 74 does not have an enforcement section.
- Chapter 501(Aged and Disabled Waiver) and Chapter 512 (Traumatic Brain Injury Waiver) do not have provisions for services to be provided in provider owned or leased settings.
<http://www.dhhr.wv.gov/bcf/Documents/RBC%20Request%20to%20Provide%20Policy.pdf>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
<p>The setting is integrated in, and supports full access of, individual receiving Medicaid HCBS to the greater community...to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c) (4)(i)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), TBIW (Chapter 512 Traumatic Brain Injury Waiver) Bureau for Medical Services Manual [compliant]) and IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant]) require person-centered plans.</p> <p>In addition, IDDW providers are licensed as Behavioral Health Centers, under 64CSR11 of the State Rules [silent], but integration is not specifically required to the same degree of access to the community as</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals have access to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. These characteristics include but are not limited to Facility Based Day Habilitation, Supported Employment, Skilled Nursing, and Electronic Monitoring (Appendix M, Attachments 1 and 2). (1/1/2019)</p> <p>The Protocol (Appendix M) will be modified to specifically include Skilled Nursing and</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>individuals not receiving Medicaid HCBS.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>Electronic Monitoring in integrated settings. (9/30/2018)</p> <p>Implement the HCBS setting evaluation tools designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that are integrated. (6/1/2016)</p> <p>Include in IDD Waiver policy that settings owned or leased by the provider shall be integrated to the same degree of access to the community as individuals not receiving Medicaid HCBS. (1/1/2019)</p>	
<p>The setting is integrated in, and ... [includes] opportunities to seek employment and work in competitive integrated settings ... to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c) (4)(i)</p>	<p>The Bureau for Medical Services waiver manual for the IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant]), requires person-centered plans to include and support opportunities for competitive community employment and that individuals with developmental disabilities are presumed capable of community employment.</p> <p>In addition, IDDW providers are licensed as Behavioral Health Centers, under 64CSR11 of the State Rules [silent], but integration, and employment opportunities are not specifically required to the same degree of access to the</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals have access to opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS.</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer employment and work in competitive integrated settings. (6/1/2016)</p> <p>Include in IDD Waiver policy that individuals in all settings</p>	<p>5/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>community as individuals not receiving Medicaid HCBS.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the right to integration and employment opportunities to the same degree of access as individuals not receiving Medicaid HCBS. (1/1/2019)</p>	
<p>The setting...includes opportunities to engage in community life to the same degree of access as individuals not receiving Medicaid HCBS.</p> <p>42 CFR 441.301(c) (4)(i)</p>	<p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>Revise the service definition of Personal Attendant Services in the policy manual for the TBIW and Personal Assistance/Homemaker for the ADW to include language that supports the use of this service to promote individuals' integration in and access to the greater community. (3/1/2018)</p> <p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals have access to opportunities to engage in community life the same degree of access as individuals not receiving Medicaid HCBS. These characteristics include but are not limited to Facility Based Day Habilitation, Supported Employment, Skilled Nursing, and Electronic Monitoring (Appendix M, Attachments 1 and 2). (1/1/2019)</p> <p>The Protocol (Appendix M) will be modified to specifically include Skilled Nursing and Electronic Monitoring in</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
		<p>integrated settings. (9/30/2018)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer individuals access to opportunities to engage in community life the same degree of access as individuals not receiving Medicaid HCBS. (9/30/2018)</p> <p>Include in IDD Waiver policy that individuals in all settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the right to engage in community life to the same degree of access as individuals not receiving Medicaid HCBS. (1/1/2019)</p>	
<p>The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.</p> <p>42 CFR 441.301(c) (4)(i)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), TBIW (Chapter 512 Traumatic Brain Injury Waiver, Bureau for Medical Services Manual [compliant]) and IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant]) require members' opportunities to control personal resources.</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals have access to opportunities to control personal resources to the same degree as individuals not receiving Medicaid HCBS. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are</p>	<p>6/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>IDDW Waiver providers are licensed as Behavioral Health Centers, under 64CSR11 of the State Rules [silent], but opportunities to control personal resources are not specifically required to the same degree of access to the community as individuals not receiving Medicaid HCBS (64CSR11.5.4.e-h).</p> <p>The West Virginia Department of Health and Human Resources Room and Board Policy for Individuals with Developmental Disabilities, revised March 1, 2015 [compliant] requires that individuals have the opportunity to manage their own finances.</p>	<p>provided in settings that offer individuals access to opportunities to control personal resources to the same degree of as individuals not receiving Medicaid HCBS. (6/1/2019)</p> <p>Include in IDD Waiver policy that individuals in all settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the right to services in settings that include opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS. (1/1/2019)</p>	
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR 441.301(c) (4)(ii)</p>	<p>IDDW providers are licensed as Behavioral Health Centers, under 64CSR11 of the State Rules [non-compliant], and the individual's needs and preferences are an integral part of the treatment plan (64CSR11.7.3. a) Setting options are not required to be documented in the person-centered service plan/treatment plan. Resources and a budget, including residential provisions are included in the Treatment plans.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals have the choice of setting(s) and select a setting from among options including non-disability specific settings, including residential settings, based on resources available. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that individuals have chosen, including residential settings,</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
		<p>and that the options are documented. (6/1/2016)</p> <p>Modify 64CSR11 of the State Rule to include that setting options discussed are included in the individual treatment plan. Clarify that ‘treatment plan’ as used in 64CSR11 and ‘person-centered plan’ are synonymous terms. (9/30/2018)</p>	
<p>An individual’s essential personal rights of privacy, dignity, respect, and freedom from coercion and restraint are protected. 42 CFR 441.301(c)(4)(iii)</p>	<p>Annual review of the rights of individuals is required for all providers of HCBS and is provided to all individuals receiving HCBS. The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), TBIW (Chapter 512 Traumatic Brain Injury Waiver) Bureau for Medical Services Manual [compliant]) and IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant] require this.</p> <p>Review and assurance of rights of individuals through the treatment planning/person-centered planning process is ensured in §64CSR11, sections 7.3 and .8.1. a.9 of the State code [compliant]. Seclusion of persons with developmental disabilities is prohibited in West Virginia by the IDDW (Chapter 513 Individuals with Developmental Disabilities</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals’ rights of privacy, dignity, respect, freedom from coercion and freedom from restraint are protected. Assure that the IDDW system has a broad and very easy to understand member handbook that can be used to build upon West Virginia person-centered practices. (1/1/2019)</p> <p>Assure that the IDDW manual provides a broad list of rights granted to waiver participants. (12/1/2015)</p> <p>Assure that the TBIW manual provides a broad list of rights granted to waiver participants. (12/1/2015)</p> <p>For all three waiver programs, the role of the Human Rights Committee (HRC) provides a firm foundation to the overall protection of basic rights and</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>Waiver Bureau for Medical Services Medicaid [compliant].</p> <p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), TBIW (Chapter 512 Traumatic Brain Injury Waiver, Bureau for Medical Services Manual [compliant]) and IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant]) were approved 12/1/15 (AD and IDDW) and 10/1/15 (TBI). Recommendations from Appendix A, Recommendations from the HCBS Regulatory Review, page 22, were incorporated into these Manuals.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>any restrictions needed to ensure health and welfare. (12/1/2015)</p> <p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that program/treatment plans include identification of any specific need which requires limitation of a member's individual rights or freedoms and assures that rights restrictions are as minimal as possible. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings where individuals' rights of privacy, dignity, respect, freedom from coercion and freedom from restraint are protected. (6/1/2016)</p>	
<p>The setting optimizes, but does not regiment individual initiative, autonomy, and independence in making life choices. This includes, but not limited to, daily activities, physical environment, and with whom to interact. Individual choice regarding services and supports, and who provides them, is facilitated. 42 CFR 441.301(c)(4)(iv)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), TBIW (Chapter 512 Traumatic Brain Injury Waiver [compliant]) Bureau for Medical Services Manual) and IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals' autonomy and choice are supported. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>[compliant]) require person-centered plans.</p> <p>IDDW providers are licensed as Behavioral Health Centers, under 64CSR11 of the State Rules, but individual choice is not specifically addressed in the Rule. Individuals have the right to treatment and services that support his/her liberty (64CSR11.8.1. a.1 [compliant]).</p>	<p>provided in settings where individuals' autonomy and choice are supported. (6/1/2016)</p>	
<p>In provider owned or leased residential settings, the unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. 42 CFR 441.301(c) (4)(vi)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]) and TBIW (Chapter 512 Traumatic Brain Injury Waiver) Bureau for Medical Services Manual [compliant]) do not provide for services in provider owned or leased settings.</p> <p>37CSR1, Landlord Tenant Relationships, of the WV State Rules [silent] does not require that persons with disabilities have the same responsibilities and protections as individuals not receiving Medicaid HCBS.</p> <p>Neither the IDDW manual (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual[silent]) nor the State Rule governing licensed residential settings for persons with disabilities, 64CSR11 [silent], specify that individuals residing in provider owned or leased settings must have a lease or legally enforceable</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and requires that individuals in residential settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS. This includes leases or residency agreements including protections like those in the landlord tenant law. (12/31/19)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings where individuals in residential settings have individual leases when these settings are owned or leased by the provider. (6/1/2016)</p> <p>Include in IDD Waiver policy that individuals in residential settings owned or leased by the provider have the same</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>agreement protecting his/her rights.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>rights and responsibilities as individuals not receiving Medicaid HCBS, including leases or residency agreements including protections like those in the landlord tenant law. (1/1/2019)</p>	
<p>In provider owned or leased residential settings, each individual has privacy in their sleeping/living unit: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors, including bath and bedroom keys. 42 CFR 441.301(c) (4)(vi)(B)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]) and TBIW (Chapter 512 Traumatic Brain Injury Waiver) Bureau for Medical Services Manual [compliant]) do not provide services in provider owned or leased settings.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p> <p>Neither the IDDW waiver manual IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [non-compliant]) nor the State Rule governing licensed residential settings for persons with disabilities (64CSR11 [non-compliant]) specify that individuals residing in provider owned or leased settings must have privacy, including lockable sleeping/bathroom units.</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided including the requirements specific to provider owned or leased settings and requires that individuals have privacy in their sleeping/living units, including lockable bathrooms and bedrooms. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer individuals have privacy in their sleeping/living units, including lockable bathrooms and bedrooms when those units are owned or leased by the provider. (6/1/2016)</p> <p>Modify 64CSR11 of the State Rules to include that individuals have privacy in their sleeping/living units, including lockable bathrooms and bedrooms when those units are licensed and that only appropriate staff will have access to keys. (9/30/2018)</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
<p>In provider owned or leased residential settings: Individuals sharing units have a choice of roommates in that setting. 42 CFR 441.301(c)(4)(vi)(B)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), and TBIW (Chapter 512 Traumatic Brain Injury Waiver [compliant]) do not provide services in provider owned or leased settings.</p> <p>Neither the IDDW manual (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual[silent]) nor the State Rules governing licensed residential settings for persons with disabilities (64CSR11 [silent]) specify that individuals residing in provider owned or leased settings must have choice of roommates.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>Implement new HCBS Services Administration rule that describes the characteristics required of all settings in which HCBS is provided and requires including the requirements specific to provider owned or leased settings. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer individuals their choice of roommates when those units are owned or leased by the provider. (6/1/2016)</p> <p>Include in IDD Waiver policy that individuals in residential settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the right to choose roommates. (6/1/2016)</p>	<p>1/1/2019</p>
<p>In provider owned or leased residential settings: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. 42 CFR 441.301(c)(4)(vi)(B)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]), and TBIW (Chapter 512 Traumatic Brain Injury Waiver Bureau for Medical Services Manual [compliant]) do not provide services in provider owned or leased settings.</p> <p>Neither the IDDW manual (Chapter 513 Individuals with</p>	<p>Implement new HCBS Services Administration rule that describes the characteristics required of all settings in which HCBS is provided, including that the individuals residing in provider owned or leased settings must have the freedom to furnish and decorate sleeping and living units subject to the limitations of the lease. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [silent]) nor the State Rules governing licensed residential settings for persons with disabilities (64CSR11 [silent]) specify that individuals residing in provider owned or leased settings must have the freedom to furnish and decorate sleeping and living units subject to the limitations of the lease.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS that individuals residing in provider owned or leased settings must have the freedom to furnish and decorate sleeping and living units subject to the limitations of the lease. (6/1/2016)</p> <p>Include in IDD Waiver policy that individuals in residential settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the freedom to furnish and decorate sleeping and living units subject to the limitations of the lease. (1/1/2019)</p>	
<p>In provider owned or leased settings, individuals have the freedom and support to control their own schedules and activities and have access to food at any time. 42 CFR 441.301(c) (4)(vi)(C)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [silent]) and TBIW (Chapter 512 Traumatic Brain Injury Waiver Bureau for Medical Services Manual [silent]) do not provide services in provider owned or leased settings.</p> <p>Neither the IDDW manual (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [silent]) nor the State Rule governing licensed settings for persons with disabilities (64CSR11 [silent]) specify that individuals receiving services in provider owned or leased</p>	<p>Implement new HCBS Services Administration rule that describes the characteristics required of all settings in which HCBS is provided, including the requirements specific to provider owned or leased settings. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer individuals have the freedom to control their activities, schedules, and access to food, when those settings are owned or leased by the provider. (6/1/2016)</p> <p>Include in IDD Waiver policy that individuals in residential</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>settings must have access to food at any time.</p> <p>Both the IDDW manual (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant]) and the State Rule governing licensed settings for persons with disabilities (64CSR11) [compliant] specify that individuals participate in their individual treatment plan/service plan, which includes schedules and activities and rights restrictions, if any.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the freedom and support to control their own schedules and activities, and have access to food at any time, unless otherwise indicated in the person-centered support plan. (1/1/2019)</p>	
<p>In provider owned or operated settings, individuals are able to have visitors of their choosing at any time. 42 CFR 441.301(c)(4)(vi)(D)</p>	<p>The Bureau for Medical Services waiver manuals for ADW (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [compliant]) and TBIW (Chapter 512 Traumatic Brain Injury Waiver Bureau for Medical Services Manual [compliant]) do not provide services in provider owned or leased settings.</p> <p>Neither the IDDW manual (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [silent]) nor the State Rule governing licensed residential settings for persons with disabilities (64CSR11 [non-compliant]) specify that individuals receiving services in</p>	<p>Implement new HCBS Services Administration rule that describes the characteristics required of all settings in which HCBS is provided, including the requirements specific to provider owned or operated settings. This includes that the individuals have visitors of their choosing at any time. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that offer individuals the right to have visitors of their choosing at any time when those settings are owned or leased by the provider. (6/1/2016)</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>provider owned or leased settings must be able to have visitors at any time.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>Include in IDD Waiver policy that individuals in residential settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving Medicaid HCBS, including the right to have visitors at any time. (1/1/2019)</p> <p>Modify 64CSR11 of the State Rules to include that the individuals receiving IDD services have the right to have visitors of their choosing at any time when the individual receives services in a setting owned or leased by the provider. (9/30/2018)</p>	
<p>In Provider owned or operated settings, the setting is physically accessible to individuals. 42 CFR 441.301(c)(4)(vi)(E)</p>	<p>The Bureau for Medical Services waiver manual for IDDW (Chapter 513 Individuals with Developmental Disabilities Waiver Bureau for Medical Services Medicaid Manual [compliant]) requires person-centered plans to address physical accessibility.</p> <p>However, Aged and Disabled and TBIW Waivers (Chapter 501 Aged and Disabled Waiver Bureau for Medical Services Manual [silent]) and (Chapter 512 Traumatic Brain Injury Waiver) Bureau for Medical Services Manual [silent]) do not provide services in provider owned or leased settings.</p> <p>IDDW Waiver providers are licensed as Behavioral Health Centers, under 64CSR11 of the State Code, and physical accessibility is required under 64CSR11.6.1.g which requires</p>	<p>Implement new HCBS and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS is provided, including the requirements specific to provider owned or operated settings. (1/1/2019)</p> <p>Implement the HCBS setting evaluation tool designed to conduct setting reviews of providers of HCBS, including prompts for ensuring HCBS are provided in settings that are accessible to the individual. (6/1/2016)</p> <p>Include in IDD Waiver policy that individuals in residential settings owned or leased by the provider have the same rights and responsibilities as individuals not receiving</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
	<p>compliance with Title III of the Americans with Disabilities Act.</p> <p>Specialized Family Care Homes are a part of the IDD Waiver program.</p>	<p>Medicaid HCBS, including accessibility. (1/1/2019)</p>	
<p>Locations that have qualities of institutional settings, shall not provide HCBS. Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution.</p>	<p>There are no State rules or standards that address this issue. West Virginia does not have institutions for persons with developmental disabilities. There are none; therefore, State rules do not address this. [compliant]</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS is provided and recognizes the individual’s opportunity to choose among services/settings that address assessed needs in the least restrictive manner, promote autonomy and full access to the community, and minimize dependency on paid supports. (1/1/2019)</p> <p>Include in the ADW, TBIW and IDDW policy manuals that HCBS services may not be provided in any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution. (1/1/2019)</p> <p>Complete the implementation of the HCBS setting evaluation tool (Appendix M Attachment 1) designed to conduct setting reviews of providers of HCBS, ensuring that there are no HCBS provided in institutional settings. (1/1/2017)</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
<p>Home and community-based settings do not include the following: a nursing facility; institution for mental diseases; an intermediate care facility for individuals with intellectual disabilities; a hospital.</p>	<p>64CSR11 of the State Rule for Behavioral Health Centers specifies in Section 3.7 [compliant] that the listed entities may not be defined as Behavioral Health Centers.</p>	<p>Implement new Home and Community-Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided and recognizes the individual’s opportunity to choose among services/settings that address assessed needs in the least restrictive manner, promote autonomy and full access to the community, and minimize dependency on paid supports. (1/1/2019)</p> <p>Include in the ADW, TBIW and IDDW policy manuals that HCBS services cannot be provided in nursing facilities, institutions for mental diseases, an intermediate care facility for individuals with intellectual disabilities or a hospital. (1/1/2017)</p>	<p>1/1/2019</p>
<p>Any modification of additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:</p> <p>1): Identify a specific and individualized assessed need.</p> <p>(2): Document the positive interventions and supports used prior to any modifications</p>	<p>64CSR11 of the State Rule for Behavioral Health Centers specifies in Section 7.2 through 7.6 [silent] that the treatment plan/person centered service plan assess needs and base the plan on those needs.</p> <p>64CSR11 of the State Rule for Behavioral Health Centers specifies in Section 7.4 [compliant] that informed consent be obtained and recorded in the treatment plan/person centered service plan.</p>	<p>Implement the new Home and Community Based Services Administration rule that describes the characteristics required of all settings in which HCBS are provided including the components of the person-centered service plan. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans include the identification of specific and individuals assessed needs. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document the positive interventions and supports</p>	<p>1/1/2019</p>

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
<p>to the person-centered service plan.</p> <p>(3): Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>(4): Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5): Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6): Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. (7): Include the informed consent of the individual. (8): Include an assurance that interventions and supports will cause no harm to the individual.</p>		<p>used prior to any modifications to the person-centered service plan. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document that less intrusive methods of meeting the need have been tried but did not work. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document a clear description of condition(s) that is directly proportionate to the specific assessed need(s). (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document that there must be regular collection and review of data to measure the ongoing effectiveness of the interventions. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document the time limits for periodic reviews to determine if the modifications/interventions are still necessary or may be terminated. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document the informed consent of the individual for treatment, interventions, and modifications. (1/1/2019)</p> <p>Include in IDD Waiver policy that person centered service plans document an assurance</p>	

Federal Regulation	Areas of Compliance in State Standards	Remediation Required	Completion Date
		that interventions and supports will cause no harm to the individual. (1/1/2019)	

Appendix C:

Sixth Public Notice for Transition Plan

The WVDHHR Bureau for Medical Services has posted the sixth iteration of the WV State-wide Transition Plan for the Aged and Disabled, the Intellectual and Developmental Disability and the Traumatic Brain Injury Waiver Programs at: <https://dhhr.wv.gov/bms/Public%20Notices/Pages/The-Bureau-for-Medical-Services-is-now-accepting-public-comments-on-the-6th-Iteration-of-the-West-Virginia-Statewide-Trans.aspx> for a 30 day public comment period ending July 13, 2021 at 5 pm. Comments may be made through the website or by mailing them to WVDHHR BMS HCBS Unit, 350 Capitol Street, Room 251, Charleston, WV 25301 or by email to: BMS.Comments@wv.gov. If you do not have access to the internet, need an accessible format or a paper copy of the document, please call 304-352-4255.

The above public notice as also posted on the WVDHHR BMS website, the WVDHHR FaceBook page and the WVDHHR Twitter feed and a copy of the notice was sent to all waiver agencies and case managers were asked to share the information with members during their monthly calls.

Appendix D:

Sixth Public Notice Dissemination

An announcement about the public notice was sent to the following distribution lists (Copies of the actual email distribution lists are on file at BMS):

- All IDDW Providers
- All TBIW providers
- All ADW Providers
- All Quality Improvement Advisory Councils
- IDDW Specialized Family Care / West Virginia UCEDD
- WV Developmental Disabilities Council
- Olmstead Council stakeholders

- Disability Rights of West Virginia (formerly West Virginia Advocates (email and posted on their Facebook)

A copy of the announcement is below:

The WVDHHR Bureau for Medical Services has posted the sixth iteration of the WV State-wide Transition Plan for the Aged and Disabled, the Intellectual and Developmental Disability and the Traumatic Brain Injury Waiver Programs at: <https://dhhr.wv.gov/bms/Public%20Notices/Pages/The-Bureau-for-Medical-Services-is-now-accepting-public-comments-on-the-6th-Iteration-of-the-West-Virginia-Statewide-Trans.aspx> for a 30 day public comment period from March 18, 2022 ending April 17, 2022 at 5 pm. Comments may be made through the website or by mailing them to WVDHHR BMS HCBS Unit, 350 Capitol Street, Room 251, Charleston, WV 25301 or by email to: BMS.Comments@wv.gov. If you do not have access to the internet, need an accessible format or a paper copy of the document, please call 304-352-4255.

Appendix E: Sixth Public Comment Period Comments

When the public comment period has ended on July , 2022 and the comments have been considered, the comments and responses will be posted in this section.

Appendix F: Cover Letter for Provider Surveys (ADW, TBIW, IDDW)

In January 2014, the Centers for Medicare and Medicaid Services (CMS) issued the Medicaid Home and Community-Based Services (HCBS) settings final rule (CMS-2249-P2). The final rule establishes requirements for home and community-based services provided under section 1915(c) of Medicaid HCBS waivers. The intent of the rule is to “ensure that individuals receiving services and supports through Medicaid’s HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.” The rule encourages service providers to focus on outcomes and community inclusion. Within the next five years, the new regulation seeks to ensure all settings are:

“Integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

West Virginia Department of Health and Human Resources has developed a self-assessment tool to identify the settings in which HCBS is currently offered and to determine next steps for compliance with the new Federal regulation. Although some settings may already offer services that promote community inclusion, other settings may need to make changes to allow full community inclusion. This assessment will help the State identify specific settings that require additional support to promote inclusion. It will not be used to penalize settings that are not yet in compliance.

Service providers play an integral role in the State Medicaid system to ensure individuals receive the necessary services and supports. By completing this assessment, you will assist the State in gathering information on the HCBS settings covered under the [Name] Waiver. This information, along with additional data sources, such as provider applications and licensure reviews, will be used by the State to develop a transition plan for areas not in compliance with the final rule that must be submitted to CMS.

Thank you in advance for your time for completing this assessment.

Please contact [name] at [email address] or [phone number] if you have any questions.

Appendix G: Provider Survey Questions for ADW/TBIW

Home and Community Based Settings: A Self-Assessment Tool for TBIW/ADW Providers

In January 2014, the Centers for Medicare and Medicaid Services (CMS) issued the Medicaid Home and Community-Based Services (HCBS) settings final rule (CMS-2249-P2). The final rule establishes requirements for home and community based services provided under section 1915(c) of Medicaid HCBS waivers. The intent of the rule is to “ensure that individuals receiving services and supports through Medicaid’s HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.” The rule encourages service providers to focus on outcomes and community inclusion. Within the next five years, the new regulation seeks to ensure all settings are:

“Integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

West Virginia Department of Health and Human Resources has developed a self-assessment tool to identify the settings in which HCBS is currently offered and to determine next steps for compliance with the new Federal regulation. Although some settings may already offer services that promote community inclusion, other settings may need to make changes to allow full community inclusion. This assessment will help the State identify specific settings that require additional support to promote inclusion. It will not be used to penalize settings that are not yet in compliance.

Service providers play an integral role in the State Medicaid system to ensure individuals receive the necessary services and supports. By completing this assessment, you will assist the State in gathering information on the HCBS settings covered under the Traumatic Brain Injury Waiver/Aged and Disabled Waiver. This information, along with additional data sources, such as provider applications and licensure reviews, will be used by the State to develop a transition plan for areas not in compliance with the final rule that must be submitted to CMS.

Compliance with assessment completion

Failure to complete the assessment may result in corrective action consistent with the terms of the provider agreement and may jeopardize your standing as an approved (TBIW, ADW, IDDW) Waiver Provider.

Timeline

The assessment(s) for each type and address must be completed by <insert date>.

Assessment Instructions

Providers should complete this assessment for each setting type and address by re-entering the assessment link. The assessment will take you approximately 15 to 30 minutes to complete.

Thank you for taking the time to complete the West Virginia Provider Self-Assessment on the new Federal Home and Community Based Settings Regulations.

Demographic Questions:

1. What is your organization/agency name?

--

2. Who should we contact for more information?

Name	E-mail
Title	Phone Number

3. What is your address (*street and zip code*)?

Street address	Zip Code
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4. How many individuals receive services under the Traumatic Brain Injury Waiver/Aged and Disabled Waiver within this setting?

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Residential settings:

5. Do any of the following characteristics apply to your location? (circle Yes or No)

Location is on the property of an institution	Yes	No
Location is adjacent to an institution	Yes	No
Location is a Personal Care Home	Yes	No
Location is a Skilled Nursing Facility	Yes	No
Location is an Assisted Living Facility	Yes	No
Other congregate setting Please specify:	Yes	No

If you circled “Yes” to any of these settings, please complete the rest of this survey for your location.

6. Is this location designed or reserved specifically for waiver participants?

- Yes
- No
- Not Applicable

7. At this residential setting location, can individuals leave the home for less than 4 hours a day?

- Yes
- No

- Not Applicable
8. Do most activities occur between only persons receiving TBIW/ADW Waiver services and paid staff?
- Yes
- No
- Not Applicable
9. Are there any of the following rules or restrictions for individuals you serve in this setting? (Check all that apply)
- Rules that inhibit freedom of movement outside of the setting
- Rules or restrictions on scheduling that prevents transportation to desired community activities
- Rules or restrictions on access to family, friends and community functions
- Rules that require group activity instead of individualized choices
- Not Applicable
10. Do individuals at this setting have full access to ALL areas (other than rooms of other residents) of the setting?
- Yes
- No
- Not Applicable
11. Do individuals have full access to food not limited to scheduled meal or snack times?
- Yes
- No
- Not Applicable
12. Do individuals have a choice whether must they share a home?
- Yes
- No
- Not Applicable
13. Do individuals have a choice of roommates/housemates in shared residences?
- Yes
- No
- Not Applicable
14. Do individuals have a legally enforceable agreement or residency agreement that provides protections that address eviction processes and appeals?
- Yes
- No
- Not Applicable
15. Do individuals have any of the following: (Check all that apply)
- Their own checking accounts
- Access to their own funds when they choose
- Receive assistance to manage finances
- None
16. Do the setting options include the opportunity for the individual to choose to combine more than one service delivery setting or type of HCBS in any given day/week (e.g. combine competitive employment with community habilitation)?
- Yes
- No
- Not Applicable
17. Is all information about individuals kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for any services, medications, restricted diet, etc., in a general open area?
- Yes
- No
- Not Applicable
18. Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- Yes

- No
 - Not Applicable
19. Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?
- Yes
 - No
 - Not Applicable
20. Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?
- Yes
 - No
 - Not Applicable
21. Do you have additional comments about the services/settings provided at this location?
-

Thank you for taking the time to complete this assessment! Please watch for updates to West Virginia’s compliance to the rule requirements by visiting our webpage at <http://www.dhhr.wv.gov/bms/hcbs/Pages/default.aspx>.

Appendix H: Provider Survey Questions for IDDW

Home and Community Based Settings: A Self-Assessment Tool for IDDW Providers

In January 2014, the Centers for Medicare and Medicaid Services (CMS) issued the Medicaid Home and Community-Based Services (HCBS) settings final rule (CMS-2249-P2). The final rule establishes requirements for home and community based services provided under section 1915(c) of Medicaid HCBS waivers. The intent of the rule is to “ensure that individuals receiving services and supports through Medicaid’s HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.” The rule encourages service providers to focus on outcomes and community inclusion. Within the next five years, the new regulation seeks to ensure all settings are:

“Integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

West Virginia Department of Health and Human Resources (DHHR) has developed a self-assessment tool to identify the settings in which HCBS are currently offered and to determine next steps for compliance with the new Federal regulation. Although some settings may already offer services that promote community inclusion, other settings may need to make changes to allow full community inclusion. This assessment will help the State identify specific settings that require additional support to promote inclusion. It will not be used to penalize settings that are not yet in compliance.

Service providers play an integral role in the State Medicaid system to ensure individuals receive the necessary services and supports. By completing this assessment, you will assist the State in gathering information on the HCBS settings covered under the Intellectual/ Developmental Disability (I/DD) waiver program. This information, along with additional data sources, such as provider applications and licensure reviews, will be used by the State to develop a transition plan for areas not in compliance with the final rule that must be submitted to CMS.

Compliance with assessment completion

Failure to complete the assessment may result in corrective action consistent with the terms of the provider agreement and may jeopardize your standing as an approved IDDW Waiver Provider.

Timeline

The assessment(s) for each type and address must be completed by <insert date>.

Assessment Instructions

The assessment is applicable to both residential (Intensively Supported Setting (ISS), group homes, specialized family care homes) and non-residential (facility-based day habilitation, supported employment) settings. Providers should complete this assessment for each setting type and address by re-entering the assessment link.

The assessment will take you approximately 15 to 30 minutes to complete. Thank you for taking the time to complete the West Virginia Provider Self-Assessment on the new Federal Home and Community Based Services Regulations.

Demographic Questions:

22. What is your organization/agency name?

23. Who should we contact for more information?

Name	E-mail
Title	Phone Number

24. What is the address (*street and zip code*) for the setting you will be describing in this assessment?

Street address	Zip Code
----------------	----------

25. How many individuals receive services under the IDDW waiver within this home/workplace?

26. What best describes this residential/non-residential setting?

- Facility based day habilitation
- Supported employment
- Participant Centered Support – ISS (serving 1-3 people)
- Participant Centered Support – Group homes (serving 4 or more people)
- Participant Centered Support – Specialized family care homes

<based on the answer to #4, the next page will either go to the residential or non-residential questions>

Residential settings:

1. Do any of the following characteristics apply to this specific setting? (Check all that apply)

- Location is on the property of an institution
- Location is adjacent to an institution
- Location is in a Commercial property area with large vehicle/truck traffic and/or few other businesses in which to mingle or shop
- Location is not within one block of residential homes owned by members of the general public
- Location is more than a ½ mile from other homes and businesses that can be frequented by participants
- Location is intermixed in a neighborhood with other homes and businesses within a 1/2 mile
- Setting has frequent visitors from the general public

2. At this residential setting location, can individuals leave the home for less than 4 hours a day?
 - Yes
 - No
 - Not Applicable
3. Is this location designed or reserved specifically for waiver participants?
 - Yes
 - No
 - Not Applicable
4. Do most activities occur between only persons with disabilities and paid staff?
 - Yes
 - No
 - Not Applicable
5. Do individuals have any of the following: (Check all that apply)
 - Their own checking accounts
 - Access to their own funds when they choose
 - Receive assistance to manage finances
 - None
6. Do you have any of the following rules or restrictions for individuals you serve in this setting? (Check all that apply)
 - Rules that inhibit freedom of movement outside of the setting
 - Rules or restrictions on scheduling that prevents transportation to desired community activities
 - Rules or restrictions on access to family, friends and community functions
 - Rules that require group activity instead of individualized choices
7. Do individuals at this setting have full access to ALL areas (other than rooms of other residents) of the setting?
 - Yes
 - No
 - Not Applicable
8. Do individuals have full access to food not limited to scheduled meal or snack times?
 - Yes
 - No
 - Not Applicable
9. Do individuals have a choice whether must they share a home?
 - Yes
 - No
 - Not Applicable
10. Do individuals have a choice of roommates/housemates in shared residences?
 - Yes
 - No
 - Not Applicable
11. Do individuals have a legally enforceable agreement or residency agreement that provides protections that address eviction processes and appeals?
 - Yes
 - No
 - Not Applicable
12. Do the setting options include the opportunity for the individual to choose to combine more than one service delivery setting or type of HCBS in any given day/week (e.g. combine competitive employment with community habilitation)?
 - Yes
 - No
 - Not Applicable

13. Is all information about individuals kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for any services, medications, restricted diet, etc., in a general open area?
- Yes
 - No
 - Not Applicable
14. Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- Yes
 - No
 - Not Applicable
15. Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?
- Yes
 - No
 - Not Applicable
16. Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?
- Yes
 - No
 - Not Applicable
17. Do you have additional comments about the services/settings provided at this location?

Thank you for taking the time to complete this assessment! Please watch for updates to West Virginia's compliance to the rule requirements by visiting our webpage at <http://www.dhhr.wv.gov/bms/hcbs/Pages/default.aspx>.

Non-residential settings:

1. Do any of the following characteristics apply to this specific setting? (Check all that apply)
- Location is on the property of an institution
 - Location is adjacent to an institution
 - Location is in a Commercial property area with large vehicle/truck traffic and/or few other businesses in which to mingle or shop
 - Location is more than a ½ mile from other homes and businesses that can be frequented by participants
 - Location is intermixed in a neighborhood with other businesses within a 1/2 mile
 - Setting has frequent visitors from the general public
2. Do individuals in this setting work full time or part time?
- Full time (30 or more hours per week)
 - Part time (Less than 30 hours per week)
 - Other (please specify)
3. Do individuals in this setting work in an integrated, competitive employment environment and engage in activities with the general community?
- Yes
 - No
 - Not Applicable
4. Do individuals in this setting earn sub-minimum wage or work for free?

- Yes
 - No
 - Not Applicable
5. Which of the following do you offer individuals you serve at this setting: (Check all that apply)?
- Individualized support based on need
 - Opportunities for community relationships or natural supports
 - Interaction with community members
 - Access to age-appropriate activities and community resources
 - The ability to choose/refuse services based on individual choice
 - None
6. Do you offer opportunities for individuals to engage in activities with non-disabled community members (other than paid staff)?
- Yes
 - No
 - Not Applicable
7. Do you offer individualized support enabling individuals to choose activities of his/her own interests within a group or individually that does not restrict or limit engagement in community activities that align with interests?
- Yes
 - No
 - Not Applicable
8. Which of the following do you offer to individuals you serve through this setting: (Check all that apply)?
- Opportunities for individuals to volunteer
 - Receive support to find competitive employment
 - Training (i.e. job coaching)
 - Postsecondary education
9. Do the setting options include the opportunity for the individual to choose to combine more than one service delivery setting or type of HCBS in any given day/week (e.g. combine competitive employment with community habilitation)?
- Yes
 - No
 - Not Applicable
10. Is all information about individuals kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for any services, medications, restricted diet, etc., in a general open area?
- Yes
 - No
 - Not Applicable
11. Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- Yes
 - No
 - Not Applicable
12. Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?
- Yes
 - No
 - Not Applicable
13. Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?
- Yes

- No
- Not Applicable

14. Do you have any additional comments about your setting location?

Thank you for taking the time to complete this assessment! Please watch for updates to West Virginia’s compliance to the rule requirements by visiting our webpage at <http://www.dhhr.wv.gov/bms/hcbs/Pages/default.aspx>.

Appendix I: Cover Letter for Individuals and Family Members Survey (ADW, TBIW, IDDW)

The federal agency that oversees Medicaid programs, Centers for Medicare & Medicaid Services (CMS), has recently given guidance to States on how home and community-based services (HCBS) are offered at different settings. There is guidance on how HCBS are provided in a home setting and also how HCBS are provided at a work setting.

West Virginia Department of Health and Human Service (DHHS) Bureau for Medical Services (BMS) is the State agency in West Virginia that oversees Medicaid programs in the State. Some Medicaid programs offer HCBS to people who apply and are found eligible for the services. The new federal guidance on HCBS applies to the Medicaid programs that BMS oversees.

To learn more about people’s experiences, BMS has developed a survey for people receiving services, their family members and advocates. The survey includes questions about how you receive HCBS in home settings and also work settings (if you work).

BMS would like to hear from you and asks that you complete the survey. The information collected in this survey will be used to help West Virginia make sure all home and work settings follow the federal guidance.

Each person only needs to fill out the survey once. Once you finish completing the survey, please mail the survey to:

Brendan Flinn

3130 Fairview Park Drive, Suite 500

Falls Church, VA 22042

Please contact Barbara Kinder at Barbara.A.Kinder@wv.gov or 304-558-1700 if you have any questions.

Appendix J: Individuals and Family Members Survey Questions for ADW/TBIW

Home and Community Based Settings A Self-Assessment Tool for Individuals, Families, Guardians, and Advocates

In January 2014, the Centers for Medicare and Medicaid Services (CMS) released requirements for home and community-based settings for services funded by Medicaid within the home and workplace.

Characteristics of Home and Community
<ul style="list-style-type: none">• Part of the community (e.g. within a neighborhood next to persons without disabilities)• Active in the community with consistent interaction with persons without disabilities• Choice of roommate or private room• Landlord-tenant protections• Physical accessibility• Unrestricted access to home and lockable doors• Choice of roommates• Freedom to furnish and decorate• Control over schedule• Access to private calls, e-mail and text• Control over personal resources• Access to food anytime• Visitors anytime

The West Virginia Department of Health and Human Resources (DHHR) Bureau for Medical Services has developed a simple self-assessment tool for individuals, families, guardians and advocates to complete alerting DHHR to potential home and settings that may need attention in order to meet the CMS requirements. **Assessment Questions:**

1. I am a:
 - person who receives Medicaid funded home and community-based services
 - family member of a person who receives Medicaid funded home and community-based services
 - friend of a person who receives Medicaid funded home and community-based services
 - guardian of a person who receives Medicaid funded home and community-based services
 - advocate representing persons receiving Medicaid funded home and community-based services
2. I (or the person I know) receive Traumatic Brain Injury (TBIW) Waiver/ADW services in the following setting(s):
 - My own home
 - A family member's home
 - A friend's home
 - Other(describe): _____

Please take a moment to respond to the following questions about the characteristics of your (or the person you know) current home or workplace.

3. Is your home in the community among other private residences or retail businesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
4. Did you or your guardian have a say in where you were going to live?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
5. If you have roommates or housemates who are not family members, did you or your guardian choose your roommates or housemates?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
6. Do you have full access to the following areas in your home? (Check all that apply)	<input type="checkbox"/> Kitchen <input type="checkbox"/> Dining room <input type="checkbox"/> Laundry room <input type="checkbox"/> Living room <input type="checkbox"/> Basement <input type="checkbox"/> None of the above
7. When you want or need to eat, are you able to access food?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
8. Do you have privacy in your home (e.g. can talk on the phone when you want, visit with who you want)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
9. I interact with my neighbors...	<input type="checkbox"/> Multiple times per week <input type="checkbox"/> Once a week <input type="checkbox"/> A few times a month <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input type="checkbox"/> I don't have neighbors
10. Are you aware of or do you have access to, materials to become aware of activities occurring outside of the home?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
11. Do you receive information (by mail or word of mouth) about activities going on in your community?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
12. Do you have a choice of activities to participate in in the community? This includes the ability to shop, attend religious services, schedule appointments, and/or have lunch with family and friends in the community.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
13. Do you choose where you go during the week. (e.g. grocery shopping, church, visit family/friends)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
14. Do you have friends and relationships with persons other than paid staff or family?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable

15. Do you volunteer, have a paid job or participate in a day habilitation program in the community?"	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
16. Do you work or volunteer at a job that employs people with and without disabilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
17. Do you like where you volunteer or work?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
18. Do staff talk to you in the way you prefer (such as without nicknames or talking about you in front of others)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
19. Are you able to access more than one service in any given day/week?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
20. Do staff members respect your privacy?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
21. Is there a safe place for you to store your personal items?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
22. Are you able to access all areas of the setting, without locked doors, fences or other barriers?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
23. Are you able to change or update your service preferences at will?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
24. Does the setting provide you information on how to request changes or additions to your services?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
25. Do you or your guardian decide how to spend your money?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable

26. If you do not decide how to spend your money, why? (e.g., you have a social security payee or a power of attorney). If you answered "no" to any of the questions above, please write the name and address of your provider in the space(s) below.

Provider Name	Provider Address

27. Do you have any additional comments about your services or settings that you want to share?

--

28. Your response is anonymous. If you would like us to know who you are, please insert your contact information below.

Name:

E-mail:

Thank you for taking the time to complete this assessment! Please watch for updates to West Virginia's compliance to the rule requirements by visiting our webpage at <http://www.dhhr.wv.gov/bms/hcbs/Pages/default.aspx>.

Appendix K: Individuals and Family Members Survey Questions for IDDW

Home and Community Based Settings A Self-Assessment Tool for Individuals, Families, Guardians, and Advocates

In January 2014, the Centers for Medicare and Medicaid Services (CMS) released requirements for home and community-based settings for services funded by Medicaid within the home and workplace.

Characteristics of the home	Characteristics of the workplace
<ul style="list-style-type: none"> • Part of the community (e.g. within a neighborhood next to persons without disabilities) • Active in the community with consistent interaction with persons without disabilities • Choice of roommate or private room • Landlord-tenant protections • Physical accessibility • Unrestricted access to home and lockable doors • Choice of roommates • Freedom to furnish and decorate • Control over schedule • Access to private calls, e-mail and text • Control over personal resources • Access to food anytime • Visitors anytime 	<ul style="list-style-type: none"> • Part of the community (e.g. work next to business or persons without disabilities) • Active in the community with consistent interaction with persons without disabilities • Make money by accessing and seeking employment • Receive support to find competitive employment and training • Access to age-appropriate activities and community resources • Opportunities for community relationships and interaction with community member • Ability to choose or refuse activities based on choice • Engagement in community activities that align with interests • Opportunities to volunteer

The West Virginia Department of Health and Human Resources (DHHR) Bureau for Medical Services has developed a simple self-assessment tool for individuals, families, guardians and advocates to complete alerting DHHR to potential home and workplace settings that may need attention in order to meet the CMS requirements.

Assessment Questions:

29. I am a:

- person who receives Medicaid funded home and community-based services
- family member of a person who receives Medicaid funded home and community-based services
- friend of a person who receives Medicaid funded home and community-based services
- guardian of a person who receives Medicaid funded home and community-based services
- advocate representing persons receiving Medicaid funded home and community-based services

30. I (or the person I know) receive Medicaid funded home and community-based services in the following home setting(s) (Check all that apply):

- Group home with 3-8 roommates/housemates
- Group home with greater than 9 roommates/housemates
- Intensively Supported Setting (ISS)
- Specialized family care home
- Not applicable – I receive services within my family’s home, live on my own, or have my own apartment.

31. I (or the person I know) receive Medicaid funded home and community-based services in the following workplace setting(s) (Check all that apply):

- Facility based day habilitation program within a “workshop” setting
- Facility based day habilitation program not in a “workshop” setting
- Community-based day habilitation program
- Supported employment within the community
- Not applicable – I do not receive or need employment or day support through Medicaid.
- Not applicable – I do not receive employment or day support through Medicaid, but wish it was available.

Please take a moment to respond to the following questions about the characteristics of your (or the person you know) current home or workplace.

32. Is your home in the community among other private residences or retail businesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
33. Is your workplace in the community among other private residences or retail businesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
34. Do you work or volunteer at a job that employs people with and without disabilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
35. Did you or your guardian have a say in where you were going to live?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
36. If you have roommates or housemates who are not family members, did you or your guardian choose your roommates or housemates?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable

37. I interact with my neighbors...	<input type="checkbox"/> Multiple times per week <input type="checkbox"/> Once a week <input type="checkbox"/> A few times a month <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input type="checkbox"/> I don't have neighbors
38. Do you have friends and relationships with persons other than paid staff or family?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
39. Are you aware of or do you have access to, materials to become aware of activities occurring outside of the home or workplace setting?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
40. Do you have a choice of activities to participate in in the community? This includes the ability to shop, attend religious services, schedule appointments, and/or have lunch with family and friends in the community.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
41. Do you have full access to the following areas in your home? (Check all that apply)	<input type="checkbox"/> Kitchen <input type="checkbox"/> Dining room <input type="checkbox"/> Laundry room <input type="checkbox"/> Living room <input type="checkbox"/> Basement <input type="checkbox"/> None of the above
42. When you want or need to eat, are you able to access food?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
43. "Do you volunteer, have a paid job or participate in a day habilitation program in the community?"	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
44. Did you choose where you go during the weekday (e.g. workshop, job in the community, volunteer position)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
45. Are you happy with how much money you make at your job?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
46. How do you feel about how many hours you work in a week?	<input type="checkbox"/> I like the number of hours I work <input type="checkbox"/> I don't work enough. <input type="checkbox"/> I work too much. <input type="checkbox"/> I don't really care.
47. Do you have privacy in your home (e.g. can talk on the phone when you want, meet with who you want to meet with)?	<input type="checkbox"/> Yes <input type="checkbox"/> No

	<input type="checkbox"/> Not applicable
48. Do staff address you in the way you prefer (such as without nicknames or talking about you in front of others)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
49. Are you able to access more than one service in any given day/week?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
50. Do staff members respect your privacy?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
51. Is there a safe place for you to store your personal items?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
52. Are you able to access all areas of the setting, without locked doors, fences or other barriers?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
53. Are you able to change or update your service preferences at will?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
54. Does the setting provide you information on how to request changes or additions to your services?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
55. Do you or your guardian decide how to spend your money?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable

56. If you do not decide how to spend your money, why? (e.g., you have a social security payee or a power of attorney).

If you answered “no” to any of the questions on pgs. 2-3, please note the name and address of the provider setting you are referring to in the space(s) below:

Provider Name	Provider Address

57. Do you have any additional comments about your services or settings that you want to share?

58. Your response is anonymous. If you would like us to know who you are, please insert your contact information below.

ame:

E-mail:

Thank you for taking the time to complete this survey! Please watch for updates to West Virginia's compliance to the rule requirements by visiting our webpage at <http://www.dhhr.wv.gov/bms/hcbs/Pages/default.aspx>.

Appendix L: Protocol for Initial Review of West Virginia Home and Community Settings

Section 1. *Purpose:* The purpose of this protocol is to manage provider identification and compliance with setting requirements in accordance with the Home and Community Based Services settings rule 42 *CFR* 441.301(c)(4)(i-v)/441.710(a)(1)(i-v)/441.530(a)(1)(i-v)

The actions in Sections 4 through 9 are repeated as necessary to assure that all applicable HCBS settings remain in compliance with the Integrated Services Rule.

Note: Specialized Family Care homes were added to the database in December 2018. The procedure for review of these homes is included in Section 8.

Section 2. Member and Provider data analysis

Analysis of the data collected from the 2015 Member and Provider surveys was completed to identify the following key indicators of non-compliance and to prioritize settings reviews:

Key Indicator: Providers that self-identify as being in compliance, but Member responses indicate otherwise.

Key Indicator: Member responses indicate provider compliance, but Provider response indicates otherwise.

Key Indicator: Provider responses that self-identify gross non-compliance among the five requirements of 42 *CFR* 441.301(c)(4)(i-v)/441.710(a)(1)(i-v)/441.530(a)(1)(i-v). These

providers are scored as 0, 3 or 4 on the assessment instrument. (Appendices K and N of State Transition Plan).

Key Indicator: Analysis of provider respondents to identify those with licensed (owned or leased settings) which did not respond as instructed.

Key Indicator: Any provider setting for which BMS has received a complaint alleging non-compliance.

These Key Indicators translate into Scores based as follows:

- Score of 1 No indication of an Institutional Setting AND
No indication of Isolating Effects AND
Score of less than 10% for Conditions that Restrict Choice or Rights (Compliance)
- Score of 2 No indication of an Institutional Setting AND
Score of 1-49% for Isolating Effects AND
Score of 10-49% for conditions that Restrict Choice or Rights
- Score of 3 No indication of an Institutional Setting AND
Score of 1-49% for Isolating Effects AND
Score of 50% or higher for conditions that Restrict Choice or Rights
- Score of 4 Any indication of an institutional setting AND
Score of 50% or higher for Isolating Effects
(Gross Non-Compliance)

Providers with identified Key Indicators are considered Priority I.

Providers without identified Key Indicators and scoring 1 or 2 on the self -assessment instrument are considered Priority II.

The relation of score to priority is as follows:

Score	0 (no answers)	Priority I
	1	Priority II
	2	Priority II
	3	Priority I
	4	Priority I

No providers were found, based on the self - survey, to be totally compliant. Priority II (Score 1 or 2) providers had self-surveyed to indicate substantive compliance.

Section 3. *Validation Process for Provider Responses and Key Indicators*

All providers not initially responding to the surveys were notified by email, phone and letter that the lack of response signifies that they are not in compliance and are under intense BMS scrutiny.

Direct communication with each non-respondent provider ascertained if the provider wished to come into compliance. All providers ultimately expressed the intention to come into compliance and completed the survey.

Section 4. *Setting/Site visits and Revisits*

Site visits were conducted to validate provider responses using the following criteria (Priority I): (completion date 1/12/2018)

Providers who did not self-identify, but member responses indicate non-compliance.

Providers who did not respond but should have responded.

Providers who self-identify non-compliance.

Site visits were conducted for **all** Facility Based Day Habilitation and Supported Employment settings. (Completion date 1/5/2018)

Site visits were conducted for **all** residential settings housing 4 or more individuals. (Completion date 1/12/2018)

Site visits were conducted for 50% of all 1-3 bed settings. All Priority I 1-3 bed settings were reviewed. A random sample of Priority II settings identified additional 1-3 bed settings with the sample skewed to assure that all providers have at least one setting reviewed. It was recognized that the percentage of site visits conducted for Priority II settings exceeded the 50% target in order to assure that all providers had at least one setting review. (Completion date was 1/12/2018).

Follow up visits were conducted for all settings not found in compliance. The timelines were based on Plan of Compliance Dates.

Annual reviews (and follow-ups if necessary) will be conducted for all settings in subsequent years.

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 L

Section 5. Setting/Site Visits Procedure

Initial provider contacts are announced. Multiple sites owned or leased by one provider may or may not be reviewed sequentially.

Follow up and annual setting visits will be unannounced. When conducted by KEPRO, 48-hour notice shall be given. KEPRO reviews will include a verification of all settings, and census and services provided for each under the State Transition Plan.

Portions of the review process may be conducted off the setting grounds. (For example: Policy review at the provider main office).

Reviewer should be familiar with Attachment 6, Guidance for Reviewers, prior to entrance. Reviewer conducts entrance meeting, introduces self and purpose of the setting review. Reviewer acquires a list of all persons receiving Waiver services at the setting and the total number of persons being served or living at the setting. Type(s) of transportation used and available to members is also obtained. Types of services, including but not limited to Facility Based Day Habilitation, Supported Employment, Skilled Nursing services and Electronic Monitoring, will be identified.

Reviewer completes the Setting Assessment instrument (Non-Residential Site Review -Attachment 1, Residential Site Review – Attachment 2 and Site Review/Records – Attachment 3 as applicable) for each setting.

Observations include meals when possible.

Reviewer obtains verification documentation for non-compliance issues as found. This documentation may include photographs, copies of documents (including copies of policy or procedures), interview responses and/or observations made by the reviewer.

Reviewer interviews up to 20% of individuals and/or guardians. Interviews may be by phone.

Reviewer reviews charts of individuals, as well as others as necessary.

Reviewer should note NA for ‘not applicable’ if the question or

prompt doesn't apply to the setting.

At the conclusion of the setting review, the reviewer will meet briefly with setting personnel designated by the provider. Reviewer will provide a brief synopsis of the review findings and inform the provider that there will be a written review report (SAVE, Attachment 4/KEPRO Provider Review Tool) given to the provider. The provider will be informed that additional off-site record review (Attachment 3) and/or interviews may also be referenced in the reports. Providers will also be informed that any non-compliance found will require a plan to bring the setting into compliance. The timeline for the receipt of the SAVE report should not exceed 30 days from the date of the exit. This will depend on the receipt of additional off-site record reviews and interviews that need to be completed before the report is finalized.

Section 6. Plan of Compliance

Each setting review will result in a Setting Assessment Visit and Evaluation report (SAVE, Attachment 4/KEPRO Provider Review Tool). This report will specify each assessment criterion not met.

Each setting review will result in a Plan of Compliance report (Attachment 5). This form will be completed by the provider and will include the Action Steps for each criterion cited in the setting review and a date for completion.

BMS or KEPRO will review and approve or disapprove the Plan of Compliance submitted for each setting where deficiencies are found.

Should BMS not approve the Plan of Compliance, the provider will be notified that the provider has signified that it has no approved plan to come into compliance. BMS will work with the provider to assure transition plans to other facilities or settings for members currently served by that provider and the Disenrollment of the Provider's setting from the program.

Should BMS approve the Plan of Compliance and completion dates, BMS or KEPRO will conduct a return setting visit, after the completion date designated by the provider. The purpose of this visit is to determine that non-compliant findings have been corrected.

This process will be repeated annually.

Section 7. Review of Assessment Results and Follow Up

As each report is finalized and a Plan of Compliance approved, the findings of non-compliance will be entered in a database for each provider and each finding. At the conclusion of the first cycle of reviews, this information was analyzed to identify trends,

needs for provider training, and statistical probability for each finding across all providers, by type of provider and by region/county.

This analysis will be repeated annually or more frequently as needed. When issues or needs for training are identified, these will be addressed by BMS.

The report will include the names and number of settings compliant with the HCBS settings criteria; the names and number of settings that are moving towards compliance (have deficiencies but there is a plan of compliance); the names and number of settings that cannot/will not comply with the HCBS settings criteria; the names and number of settings that are presumptively institutional in nature. This information will be disseminated as described in Section 11.

Section 8. Specialized Family Care Homes

Specialized Family Care Homes were added to the database in December 2018. Initial reviews are conducted by the Family Based Care Specialist. The Initial Setting Reviews for these homes were completed 7/17/19. The Family Based Care Specialist will work with homes that were not totally compliant, following the format for other settings. There will be a Statement of Deficiencies developed by BMS and given to the provider. There will be a Plan of Compliance completed and submitted to BMS, with follow up reviews as necessary. Each home will be reviewed at least annually.

NOTE: We neglected to include the lease/agreement issue in the SFC reviews. We remediated this by:

- A. Adding this question to the protocol as follows: Is the unit or dwelling a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. Yes, No Not Applicable.
- B. The SFC Family Based Care Specialist visits each home monthly.
- C. If any homes are found not to comply, a plan of compliance with a completion date of 3 months or less will be required. All Specialized Family Care Homes were found to be in compliance on 12/31/19.

Section 9. Heightened Scrutiny if Necessary

There may be times that a provider meets the criteria of a “Presumptively non-HCBS setting” and is presumed to have the qualities of an institution. This could occur even when the BMS review has found otherwise. BMS will submit evidence to CMS regarding this provider if the state determines, through its assessments, that the setting does have qualities that are home and community-based in nature and does not have the qualities of an institution. This evidence will include State and other stakeholder evidence.

BMS will cooperate with CMS as CMS determines whether the setting is a non-HCBS Setting. BMS will act on the CMS determination.

At present, there are no settings meeting these criteria.

Section 10. *Transition of Members to Integrated Settings*

There may be times that a provider cannot comply or refuses to come into compliance with the Home and Community Based Services Rule. This provider/setting is then deemed a non-HCBS setting and BMS will begin the Relocation of Beneficiaries process found in this section. In the event that a provider cannot comply or refuses to come into compliance with the Home and Community Based Services Rule, the provider will be informed that the setting found non-compliant will be dis-enrolled from the Medicaid program.

1. This notification will be by certified mail as well as electronically.
2. The Provider will have 10 calendar days from the date of its notification of disenrollment to notify all member participants of the disenrollment and actions the provider will take to ensure person centered planning. Within 30 working days of the date of the notification, the provider will submit to BMS an Agency Transition Plan. This plan will list 1) setting location which is non-compliant; 2) the member(s) by name and Medicaid Number; 3) the service(s) provided to each listed member; 4) the date for the Critical Juncture transition meeting for each listed member; 5) The result of the meeting including setting/location of services that do comply with the rule; 6) The date of the change of provider/setting.
3. BMS will be copied on all provider to member correspondence.
4. KEPRO will notify the affected members as well.
5. The provider will have 90 calendar days from the date of the notification to transition individuals to other services and/or settings that do comply with the Rule.
6. Individual face to face team meetings for transition will be held and the individual and their legal representative (if applicable) will make the final choice from available settings that comply with the rule. This team should include all the participants of the member's team, including the member, family members, legal representatives, advocates, representatives of all agencies serving the member or which may begin serving the member, the case manager, plus any other persons the member wishes to attend.
7. Provider disenrollment will occur at the end of the 90 days or when all members are successfully transitioned.

8. For each member, all IPP services delivered by the dis-enrolled provider/setting to the member must be replaced services from an enrolled provider/setting to ensure continuity of care.
9. In no instance will there be a disruption of services to the individual member. Person centered planning by the individual's team meeting must ensure that transition is to services that comply with the rule.

AGENCY TRANSITION PLAN: Public notification

The provider agency in conjunction with BMS must hold a general informational meeting for all members, legal representatives and other interested parties. BMS will attend this meeting to answer any questions. Members will also be encouraged to call BMS should they have any questions. Requests should be made through phone, email or letter with BMS contact information made available to all affected members at Critical Juncture meetings and on the BMS website.

AGENCY TRANSITION PLAN: BMS monitoring reports

The provider will submit updates to the Agency's Transition plan weekly to BMS, completing items 4-6 of item 3 above as these events occur. The plan update will be provided to BMS until all member transitions are complete.

Should an individual member request assistance beyond that given by the provider, BMS will assist the member in the timely transition to another provider and/or setting. In isolated instances, BMS may extend the 90-day transition period for an individual member due to imminent harm concerns.

STATE MONITORING AFTER TRANSITION:

Monitoring of members in the new settings will be monitored by BMS or its designee and the member's case manager.

1. Within the first 3 business days after the transition, the case manager will do a physical face to face visit to the new setting, using either the Member Controlled Setting Assessment or the Provider Controlled Setting Assessment as guidance depending on which type of setting the member is now residing in.
2. A second face to face physical visit will be conducted within 30 days of the first visit by the Case Manager.
3. A third face to face physical visit will be conducted within 60 days of the second visit by the Case Manager.

4. Subsequently Case Managers will resume the normal 30-day residential reviews and/or the 60-day non-residential reviews.
5. If it appears that the setting does not meet either the Case Manager should notify BMS or its designee so that remediation efforts can begin or discharge from the program.

PROVIDER DUE PROCESS:

In the event that the provider disputes the BMS finding that the provider setting(s) is not HCBS Rule compliant, the provider is instructed to follow the same procedure as that for disputation of any statement of deficiencies. This information would be included with the statement of deficiencies sent to the provider with the notice of non-compliance.

Section 11. *Ongoing Monitoring*

Settings that are owned, operated or leased by Waiver providers are reviewed on-site annually, following the protocol and assessment instruments outlined above. All settings are reviewed yearly. Follow up visits will be conducted at all settings not found to be in full compliance after remediation efforts have been completed. If unable to complete remediation to bring the setting into compliance, then discharge procedures will commence.

In addition, The West Virginia Office of Health Facility Licensure and Certification conducts provider reviews, including site visits for all licensed sites. These occur at least every two years and may occur more frequently if problems are found which result in a license for a lesser period.

Specialized Family Care Homes are reviewed through the Center for Excellence in Disabilities' Family Based Care Specialists and BMS or its designee. Data is provided to BMS for analysis. CED conducts follow up reviews. BMS or its designee conduct reviews annually with the member or their legal representative. These reviews are conducted annually and are viewed as a quality check to verify the information reported by The Center for Excellence in Disabilities' Family Based Care Specialists.

Section 11. *Ongoing Reports*

Setting review updates, identifying best practices, systemic problems, number of reviews completed and numbers of reviews to be completed will be reported to:

Providers during quarterly provider meetings

QA/QI councils during quarterly meetings

Protocol: Attachment 1 (form condensed for inclusion in this report)

HCBS
Non-Residential Site Review
West Virginia Bureau for Medical Services

This assessment identifies characteristics that are expected to be present in all home and community-based settings and associated traits that individuals in those settings might experience.

Provider _____ Site _____

Address _____

Date reviewed _____ Time _____

Reviewer _____

Number of individuals receiving services at this site. _____

Number of individuals receiving services under the IDDW waiver at this site.
_____ (obtain list of members)

Type of setting:

Facility based Day Habilitation _____

Job Development _____

Pre-Vocational _____

Is licensed posted at the site? Y N

Observations during site visit: _____ duration _____

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

A. The setting provides opportunities for regular meaningful non-work activities in integrated community settings for the period of time desired by individuals. Guidance:

Activities that are busy work such as putting buttons in a box, emptying and refilling the box are not acceptable.

Y N Comments:

B. The setting affords opportunities for individual schedules that focus on the needs and desires of an individual and offer an opportunity for individual growth.

Y N Comments

D. The setting affords opportunities for individuals to have knowledge of or access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting.

Y N Comments:

1C1. Who in the setting facilitates and supports access to these activities?

D. The setting allows individuals the freedom to move about inside and outside of the setting (as opposed to one restricted room or area within the setting). Y N Comments:

E. Individuals receive HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS. Y N Comments:

F. The setting is in a community/building located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices (to facilitate integration with the greater community). Y N Comments:

G. The setting encourages visitors or other people from the greater community (aside from paid staff) to be present. There is evidence that visitors have been present at regular frequencies. (For example, customers in a pre-vocational setting). Guidance: visitors greet/acknowledge individuals receiving services with familiarity when they encounter them; visiting hours are unrestricted; the setting otherwise encourages interaction with the public).

Y N Comments:

H. The employment setting provides individuals with the opportunity to participate in negotiating his/her work schedule, break/lunch times and leave and medical benefits with his/her employer to the same extent as individuals not receiving Medicaid funded HCBS. Y N Comments:

I. In settings where money management is part of the service, the setting facilitates the opportunity for individuals to have a checking or savings account or other means to have access to and control his/her funds. Guidance: individuals are not required to sign over his/her paychecks to the provider.

Y N Comments:

J. The setting provides individuals with contact information, access to and training on the use of public transportation, such as buses, taxis, etc., and these public transportation schedules and telephone numbers are available in a convenient location.

Y N Comments:

K. Alternatively, where public transportation is limited, the setting provides information about resources for individuals to access the broader community, including accessible transportation for individuals who use wheelchairs.

Y N Comments:

L. The setting assures that tasks and activities are comparable to tasks and activities for people of similar ages who do not receive HCB services. Y N Comments:

M. The setting is physically accessible, including access to bathrooms and break rooms, and appliances, equipment, and tables/desks and chairs are at a convenient height and location, with no obstructions such as steps, lips in a doorway, narrow hallways, etc., that may limit individuals' mobility in the setting.

Y N Comments:

N. If obstructions are present, there are environmental adaptations such as a stair lift or elevator to ameliorate the obstructions. Y N Comments:

2. The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

A. The setting reflects individual needs and preferences. Y N Comments:

B. The setting options offered include non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA. Y N Comments: (list non-disability-specific setting options offered)

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. All information about individuals is kept private.

Guidance: Do paid staff/providers follow confidentiality policy/practices? Does staff within the setting ensure that, for example, there are no posted schedules of individuals for PT, OT, medications, restricted diet, etc., in a commons or general open area?

Y N Comments:

B. Staff interact and communicate with individuals respectfully and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities.

Y N Comments:

C. Staff do not talk to other staff about an individual(s) in the presence of other persons or in the presence of the individual as if s/he were not present. Y N Comments:

D. The setting supports individuals who need assistance with their personal appearance to appear as they desire, and personal assistance is provided in private, as appropriate. Y N Comments:

E. The setting offers a secure place for the individual to store personal belongings.

Y N Comments:

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. There are no gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting.

Y N Comments: (note any restricted areas).

B. The setting affords a variety of meaningful non-work activities that are responsive to the goals, interests and needs of individuals.

Guidance: Does the physical environment support a variety of individual goals and needs (for example, does the setting provide indoor and outdoor gathering spaces; does the setting provide for larger group activities as well as solitary activities; does the setting provide for stimulating as well as calming activities?)

Y N Comments:

C. The setting affords opportunities for individuals to choose with whom to do activities in the setting or outside the setting,

Guidance: Are individuals assigned only to be with a certain group of people?

Y N Comments:

D. The setting allows for individuals to have a meal/ snacks at the time and place of their choosing. Y N Comments:

D.i The setting affords individuals full access to a dining area with comfortable seating. Y N Comments:

D.ii The setting affords individuals the opportunity to converse with others during break and mealtimes. Y N Comments:

D.iii The setting affords dignity to the diners (for example, individuals are treated age-appropriately and not required to wear bibs). Y N Comments:

D.iv The setting provides for an alternative meal and/or private dining area if requested by an individual. Y N Comments:

D.v The individuals have access to food at any time consistent with individuals in similar and/or in the same setting who are not receiving Medicaid-funded services and supports. Y N Comments:

E. The setting posts or provides information on individual rights. Y N Comments:

F. The setting affords the opportunity for tasks and activities matched to individuals' skills, abilities and desires. Y N Comments:

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. The setting posts or provides information to individuals about how to make a request for additional HCBS, or changes to their current HCBS. Y N Comments:

B. Setting staff are knowledgeable about the capabilities, interests, preference and needs of individuals. Y N Comments:

Record Reviews during site visit or off site:

Procedure: Review Policies and Procedures of setting for the following:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

A. The setting's policy/procedures assure that tasks and activities are comparable to tasks and activities for people of similar ages who do not receive HCB services. Y N Comments: (cite policy or procedure number)

2. The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

A. The setting policies and procedures ensure the informed choice of the individual. Y N
Comments: (cite policy or procedure number)

B. As reflected in policy, the setting options offered include non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA. Y N Comments: (cite policy or procedure number)

C. As reflected in policy, the setting options include the opportunity for individuals to choose to combine more than one service delivery setting or type of HCBS in any given day/week (for example, combine competitive employment with community habilitation). Y N Comments: (cite policy or procedure number)

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. As reflected in policy, all information about individuals is kept private. Y N Comments: (cite policy or procedure number)

B. Policies/Procedures for the setting provide assurance that staff interact and communicate with individuals respectfully and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities. Y N Comments: (cite policy or procedure number)

C. Policies/Procedures for the setting assure that staff do not talk to other staff about an individual(s) in the presence of other persons or in the presence of the individual as if s/he were not present. Y N Comments: (cite policy or procedure number)

D. The setting policy requires that the individual and/or representative grant informed consent prior to the use of restraints and/or restrictive interventions and that there is documentation of these interventions in the person-centered plan. Y N Comments: (cite policy or procedure number)

E. The setting policy ensures that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting. Y N Comments:

E.i The setting's policy ensures that each individual's supports and plans are not restrictive to the rights of every individual receiving support within the setting. Y N Comments: (cite policy or procedure number)

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/ 441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. The setting policy/procedure does not prohibit individuals from engaging in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner different from individuals in a similar and/or the same setting who are not receiving Medicaid funded services and supports. Y N Comments: (cite policy or procedure number)

B. The setting policy/procedure affords an individual opportunity for tasks and activities matched to the individual's skills, abilities and desires. Y N Comments: (cite policy or procedure number)

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. The setting policy/procedure assures individual choice regarding the services, provider and settings and the opportunity to visit/understand the options. Y N Comments: (cite policy or procedure number)

B. The setting policy/procedure affords individuals the opportunity to regularly and periodically update or change their preferences. Y N Comments: (cite policy or procedure number)

C. The setting policy/procedure ensures individuals are supported to make decisions and exercise autonomy to the greatest extent possible. Y N Comments: (cite policy or procedure number)

D. The setting policy ensures the individual is supported in developing plans to support her/his needs and preferences.
Y N Comments: (cite policy or procedure number)

Interview Questions, on or off site

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. If you needed help, with getting dressed or bathing for instance, what would you do?
Guidance: Does the setting support individuals who need assistance with their personal appearance to appear as they desire, and is personal assistance, provided in private, as appropriate?
Comments:

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical

environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. Do you have chances to do other things while here?

Guidance: Does the setting provide opportunities for regular meaningful non-work activities in integrated community settings for the period of time desired by the individual?

Y N Comments:

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. Were you provided a choice regarding the services, provider and settings before you came here? Y N

A.i Did you have the opportunity to visit/understand these choices/options? Y N

A.ii Can you change your mind about these choices? Y N

A.iii How do you do that? Comments:

Guidance: Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?

B. Do you decide what you do here? Y N

B.i Does anyone help? Y N Comment: _____ (who)

C. Do you know how to make a request for additional help or services, or change the services you have right now? Y N Comments:

Protocol: Attachment 2 (form condensed for inclusion in this report)

HCBS Residential Site Review West Virginia Bureau for Medical Services

This assessment identifies characteristics that are expected to be present in all home and community-based settings and associated traits that individuals in those settings might experience.

Provider: Site:

Address: Date reviewed Time

Reviewer:

Number of individuals receiving services at this site.

Number of individuals receiving HCBS waiver services at this site.

(Obtain list of individuals)

Do individuals have individual Leases? Y N

Guidance: obtain copies of all

Type of setting (IDDW only):

Person-Centered Support – ISS (serving 1-3 people) _____

Person-Centered Support – Group homes (serving 4 or more people) _____

Is the License posted/available? Y N

Observations during site visit:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

A. Individuals are not isolated from individuals not receiving Medicaid HCBS in the broader community. Y N Comments:

B. Individuals receiving HCBS do not live/receive services in a different area of the setting separate from individuals not receiving Medicaid HCBS. Y N Comments:

C. The setting is in the community among other private residences and retail businesses. Y N Comments: Guidance: see CMS: Settings that Have the Effect of Isolating...” page 3

D. The community traffic pattern is consistent around the setting. For example, individuals do not cross the street when passing to avoid the setting. Y N Comments:

E. Individuals on the street greet/acknowledge individuals receiving services when they encounter them. Y N Comments:

F. Visitors are present. Y N Comments:

G. Visiting hours are posted. Y N Comments:

H. Bus and other public transportation schedules and telephone numbers are posted in a convenient location. Y N Comments:

I. The individuals have access to materials to become aware of activities occurring outside of the setting. Y N Comments:

J. The setting affords the individual with the opportunity to participate in meaningful non-work activities in integrated community settings in a manner consistent with the individual’s needs and preferences. Y N Comments:

2. *The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)*

A. The setting is an environment that supports individual comfort, independence and preferences. Y N
Comments:

B. Individuals have full access to facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas. Y N Comments:

C. Informal (written and oral) communication is conducted in a language that the individual understands. Y N
Comments:

D. Assistance is provided in private, as appropriate, when needed. Y N Comments:

E. The individual has unrestricted access in the setting. Y N Comments:

E.i Gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting are not in evidence. Y N Comments:

E.ii Individuals receiving Medicaid Home and Community-Based services are facilitated in accessing amenities such as a pool or gym used by others on-site. Y N Comments:

E.iii The setting is physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting. Guidance: if these are present, there are environmental adaptations such as a stair lift or elevator to ameliorate the obstruction. Y N
Comments:

F. The physical environment meets the needs of those individuals who require supports. Y N Comments:

F.i For those individuals who need supports to move about the setting as they choose, supports are provided such as grab bars, seats in the bathroom, ramps for wheelchairs, viable exits for emergencies, etc. Y N
Comments:

F.ii Appliances are accessible to individuals. For Example, the washer/dryers are front loading for individuals in wheelchairs. Y N Comments:

F.iii Tables and chairs are at a convenient height and location so that individuals can access and use the furniture comfortably. Y N Comments:

G. Individuals have full access to the community. Y N Comments:

G.i Individuals come and go at will. Y N Comments:

G.ii Individuals move about inside and outside the setting as opposed to all sitting by the front door or other area. Y N Comments:

G.iii Individuals in the setting have access to public transportation. Y N Comments:

G.iv There are bus stops nearby or are taxis available in the area. Y N Comments:

G.v An accessible van is available to transport individuals to appointments, shopping, etc. Y N
Comments:

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. The individual has access to make private telephone calls/text/email at the individual's preference and convenience. Y N Comments:

A. i Individuals have a private cell phone, computer or other personal communication device or have access to a telephone or other technology device to use for personal communication in private at any time. Y N Comments:

A.ii The telephone or other technology device is in a location that has space around it to ensure privacy. Y N Comments:

A.iii Individuals' rooms have a telephone jack, WI-FI or ETHERNET jack. Y N Comments:

B. Individuals are free from coercion. Y N Comments:

B.i Information about filing a complaint is posted in an obvious location and in an understandable format. Y N Comments:

B.ii The individuals in the setting have different haircut/hairstyles and hair color. Y N Comments:

C. The individual's right to dignity and privacy is respected. Y N Comments:

C.i Health information about individuals is kept private. Y N Comments:

C.ii Schedules of individuals for PT, OT, medications, restricted diet, etc., are not posted in a general open area for all to view. Y N Comments:

C.iii Individuals who need assistance with grooming are groomed as they desire. Y N Comments:

C.iv Individuals' nails are trimmed and clean. Y N Comments:

D. Individuals who need assistance to dress are dressed in their own clothes appropriate to the time of day and individual preferences. Y N Comments:

D.i Individuals do not wear bathrobes all day long. Y N Comments:

D.ii Individuals are wearing clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences. Y N Comments:

E. Staff communicates with individuals in a dignified manner. Y N Comments:

E.i Individuals greet and chat with staff. Y N Comments:

E.ii Staff converse with individuals in the setting while providing assistance and during the regular course of daily activities. Y N Comments:

E.iii Staff do not talk to other staff about an individual(s) as if the individual was not present or within earshot of other persons living in the setting. Y N Comments:

E.iv Staff address individuals in the manner in which the person would like to be addressed as opposed to routinely addressing individuals as 'hon' or 'sweetie'. Y N Comments:

F. Individuals have privacy in their sleeping space and toileting facility. Y N Comments:

F.i The furniture is arranged as individuals prefer and does the arrangement assure privacy and comfort. Y N Comments:

F.ii The individual can close and lock his/her bedroom door. Y N Comments:

F.iii The individual can close and lock the bathroom door. Y N Comments:

F.iv Staff or other residents always knock and receive permission prior to entering a bedroom or bathroom. Y N Comments:

G. The individual has privacy in his/her living space. Y N Comments:

G.i Cameras are present in the setting, in individual personal living spaces. Y N Comments:

G.ii In individual personal living space, the furniture is arranged as individuals prefer to assure privacy and comfort. Y N Comments:

G.iii Staff or other residents always knock and receive permission prior to entering an individual's personal living space. Y N Comments:

G.iv Staff only use a key to enter a personal living area or privacy space under limited circumstances agreed upon with the individual. Y N Comments:

H. The individuals have comfortable places for private visits with family and friends. Y N Comments:

H.i The furniture is arranged to support small group conversations. Y N Comments:

I. Individuals furnish and decorate their sleeping and/or living units in the way that suits them. Y N Comments:

I.i The individuals' personal items, such as pictures, books, and memorabilia are present and arranged as the individual desires. Y N Comments:

I.ii The furniture, linens, and other household items reflect the individuals' personal choices. Y N Comments:

I.iii Individuals' living areas reflect their interests and hobbies. Y N Comments:

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/ 441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. Individuals have his/her own bedroom or share a room with a roommate of choice. Y N Comments:

B. Married couples share or not share a room by choice. Y N Comments:

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. Individuals are not required to adhere to a set schedule for waking, bathing, eating and exercising activities. Y N Comments:

B. Individuals have access to such things as a television, radio, and leisure activities that interest him/her, and s/he can schedule such activities at his/her convenience. Y N Comments:

C. Individuals choose when and what to eat. Y N Comments:

D. Snacks are accessible and available anytime. Y N Comments:

E. The dining area affords dignity to the diners and individuals are not required to wear bibs or use disposable cutlery, plates and cups. Y N Comments:

F. The individual chooses with whom to eat or to eat alone. Y N Comments:

F.i Individuals are not required to sit at an assigned seat in a dining area. Y N Comments:

F.ii Individuals converse with others during mealtimes. Y N Comments:

F.iii If an individual desires to eat privately, s/he can do so. Y N Comments:

F.iv Staff ask the individual about her/his needs and preferences. Y N Comments:

F.v Requests for services and supports are accommodated as opposed to ignored or denied. Y N Comments:

F.vi Individual choice is facilitated in a manner that leaves the individual feeling empowered to make decisions. Y N Comments:

G. The individual chooses from whom they receive services and supports. Y N Comments:

Record Reviews during site visit or off site:

Procedure: Review Policies and Procedures of setting for the following:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

A. The record/log confirms that the individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services. Y N Comments:

A.i Individuals regularly access the community. Y N Comments:

A.ii The individuals shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as each individual chooses and as determined by the treatment team. Y N Comments:

A.iii Individuals may come and go at any time as determined by the treatment team. Y N Comments:

B. The setting's policy/procedure ensures that each individual is employed or active in the community outside of the setting as determined by the treatment team. Y N Comments:

Guidance: This includes volunteer services. Obtain copies of all current Individual Service Plans.

B.i Individuals work in integrated community settings. Y N Comments:

B.ii If individuals would like to work, there is activity that ensures the option is pursued. Y N Comments:

B.iii Individuals participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by each individual. Y N Comments:

C. The setting's policy/procedure ensures that each individual controls his/her personal resources. Y N Comments:

C.i Each individual has a checking or savings account or other means to control his/her funds. Y N Comments:

C.ii Each individual has access to his/her funds. Y N Comments:

C.iii The individual is not required to sign over his/her paychecks to the provider. Y N Comments:

D. The setting policies and procedures assure that visitors are not restricted to specified visiting hours. Y N Comments:

E. There is evidence of the training of individuals in the use of Public Transportation. Y N Comments:

F. If Public Transportation is limited, the policies and procedures of the setting assure that other resources are provided for the individual to access the broader community. Y N Comments:

G. State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices. Y N Comments:

G.i Do State regulations prohibit individuals' access to food at any time? Y N Comments:

G.ii Do State laws require restrictions such as posted visiting hours or schedules? Y N Comments:

G.iii Are individuals prohibited from engaging in legal activities? Y N Comments:

Interview Questions, on or off site

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings,

engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

Guidance: Interview at least 2 members residing in the setting, or his/her guardian.

A. Do you have a job? Y N Where? _____

A.i If, no, what do you do during the day? Comment:

A.ii Who works at your job with you? Comment:

Guidance: Is the job setting integrated?

B. Would you like to work? Y N Comments:

B. i If yes, is anyone helping you to find a job? Y N Comments:

Guidance: is there activity that ensures the option is pursued

C. Do you go out of your home? Y N Comments:

C.i How often?

C.ii Where do you go?

C.iii Do you get to choose where and when you go? Y N

Guidance: does the individual participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual.

D. Tell me about how you handle your money. Comment:

Guidance: the individual controls his/her personal resources

E. Do you know about activities occurring outside your home? Y N Comments:

E.i How do you find out about these activities? Comment:

E. ii Do you go shopping, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, when you want to do so? Y N Comments:

F. Can you leave and come back any time you want? Y N Comments:

G. Tell me about your usual day. What happens?

Comments:

Guidance: Does the individual talk about activities occurring outside of the setting?

H. Do you have a checking or savings account? Y N Comments:

H.i How do you get access to your money? Comment:

H.ii Do you have to sign over your paycheck to _____? (the provider) Y N Comments:

2. *The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)*

A. Did you get to choose this setting/house to live in? Y N Comments:

A.i Tell me about that. (Ask this for both yes and no responses)

Comments:

A.ii Did you choose your roommate? Y N Comments:

A.iii Where would you like to live? Comments:

3. *The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)*

A. If you needed help, with getting dressed or bathing for instance, what would you do? Comment:

Guidelines: Does the setting support individuals who need assistance with their personal appearance to appear as they desire, and is personal assistance, provided in private, as appropriate?

4. *The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/ 441.710(a)(1)(iv)/441.530(a)(1)(iv)*

A. Can you have visitors any time you want to? Y N Comments:

B. Is there a special place you have to meet when someone visits you? Y N Comments:
Where:

C. Does anyone train you or show you how to ride a bus or taxi? Y N Comments:

5. *The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)*

A. Were you provided a choice regarding the services, provider and settings before you came here? Y N
Comments:

B. Did you have the opportunity to visit/understand these choices/options? Y N Comments:

C. Can you change your mind about these choices? Y N Comments:

D. How do you do that?

Guidance: (Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?)

E. Do you decide what you do here? Y N Comments:

F. Does anyone help? Y N Comments: _____ (who)

G. Do you know how to make a request for additional help or services, or change the services you have right now? Y N Comments:

Protocol: Attachment 3 (form condensed for inclusion in this report)

HCBS Non-Residential Site Review of Records West Virginia Bureau for Medical Services

This assessment identifies characteristics that are expected to be present in all home and community-based settings and associated traits that individuals in those settings might experience.

Provider Site(s)

Address

Date reviewed Time

Reviewer

Number of individuals receiving services at this site.

Number of individuals receiving services under the IDDW waiver at this site. (Obtain list of members)

Type of setting(s):

Facility Based Day Habilitation____

Supported Employment____

Job Development____

Pre-Vocational____

Record Reviews during site visit or off site:

Procedure: Review Policies and Procedures of setting for the following:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

NRA. The setting's policy/procedures assure that tasks and activities are comparable to tasks and activities for people of similar ages who do not receive HCB services. Y N Comments: (cite policy or procedure number)

RA. The record/log confirms that the individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services. Y N Comments:

RA.i Individuals regularly access the community. Y N Comments:

RA.ii The individuals shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as each individual chooses and as determined by the treatment team. Y N Comments:

RA.iii Individuals may come and go at any time as determined by the treatment team. Y N Comments:

B. The setting's policy/procedure ensures that each individual is employed or active in the community outside of the setting as determined by the treatment team. Y N Comments: Guidance: This includes volunteer services. Obtain copies of all current Individual Service Plans.

B.i Individuals work in integrated community settings. Y N Comments:

B.ii If individuals would like to work, there is activity that ensures the option is pursued. Y N Comments:

B.iii Individuals participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by each individual. Y N Comments:

C. The setting's policy/procedure ensures that each individual controls his/her personal resources. Y N Comments:

C.i Each individual has a checking or savings account or other means to control his/her funds. Y N Comments:

C.ii Each individual has access to his/her funds. Y N Comments:

C.iii The individual is not required to sign over his/her paychecks to the provider. Y N Comments:

D. The setting policies and procedures assure that visitors are not restricted to specified visiting hours. Y N Comments:

E. There is evidence of the training of individuals in the use of Public Transportation. Y N Comments:

F. If Public Transportation is limited, the policies and procedures of the setting assure that other resources are provided for the individual to access the broader community. Y N
Comments:

G. State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices. Y N Comments:

G.i Do State regulations prohibit individuals' access to food at any time? Y N
Comments:

G.ii Do State laws require restrictions such as posted visiting hours or schedules? Y N
Comments:

G.iii Are individuals prohibited from engaging in legal activities? Y N Comments:

2. The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

A. The setting policies and procedures ensure the informed choice of the individual. Y N
Comments: (cite policy or procedure number)

B. As reflected in policy, the setting options offered include non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA. Y N Comments: (cite policy or procedure number)

C. As reflected in policy, the setting options include the opportunity for individuals to choose to combine more than one service delivery setting or type of HCBS in any given day/week (for example, combine competitive employment with community habilitation). Y N Comments: (cite policy or procedure number)

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. As reflected in policy, all information about individuals is kept private. Y N Comments: (cite policy or procedure number)

B. Policies/Procedures for the setting provide assurance that staff interact and communicate with individuals respectfully and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities. Y N Comments: (cite policy or procedure number)

C. Policies/Procedures for the setting assure that staff do not talk to other staff about an individual(s) in the presence of other persons or in the presence of the individual as if s/he were not present. Y N Comments:(cite policy or procedure number)

D. The setting policy requires that the individual and/or representative grant informed consent prior to the use of restraints and/or restrictive interventions and that there is documentation of these interventions in the person-centered plan. Y N Comments: (cite policy or procedure number)

E. The setting policy ensures that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting. Y N Comments:

E.i The setting's policy ensures that each individual's supports and plans are not restrictive to the rights of every individual receiving support within the setting. Y N Comments: (cite policy or procedure number)

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. The setting policy/procedure does not prohibit individuals from engaging in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner different from individuals in a similar and/or the same setting who are not receiving Medicaid funded services and supports. Y N Comments: (cite policy or procedure number)

B. The setting policy/procedure affords an individual opportunity for tasks and activities matched to the individual's skills, abilities and desires. Y N Comments: (cite policy or procedure number)

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. The setting policy/procedure assures individual choice regarding the services, provider and settings and the opportunity to visit/understand the options. Y N Comments:(cite policy or procedure number)

B. The setting policy/procedure affords individuals the opportunity to regularly and periodically update or change their preferences. Y N Comments: (cite policy or procedure number)

C. The setting policy/procedure ensures individuals are supported to make decisions and exercise autonomy to the greatest extent possible. Y N Comments: (cite policy or procedure number)

D. The setting policy ensures the individual is supported in developing plans to support her/his needs and preferences. Y N Comments: (cite policy or procedure number)

Protocol: Attachment 4 (form condensed for inclusion in this report) SAMPLE

HCBS Setting Assessment Visit and Evaluation (SAVE)

West Virginia Bureau for Medical Services

(Each citation for items out of compliance is listed separately on this form with the specific findings for that citation listed as well. These reports differ for each provider setting and are designed to be a more easily read report, although the information contained is the same as the Plan of Correction form.)

An example follows:

Setting Reviewed: XYG group home, 123 Main Street, Centerburg, WV

This setting provides ___ Person Centered Support _____ services at this address.

Date: 9/1/15

Reviewer: RLB

Number of individuals receiving services at this site. 3

Number of individuals receiving services under the IDDW waiver at this site. 3

The facility was not in compliance with *42CFR441.301(c)(4)(i)/ 441.710(a)(1)(i)/ and 441.530(a)(1)(i)*

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

Bus and other public transportation schedules and telephone numbers are not posted in a convenient location. (O1H)

As observed, there were no bus or public transportation information available to members. Interview with the group home manager confirmed that a bus runs directly in front of the house, but the members do not ride it since the home has a van. A van was observed in the parking area.

There is no evidence of the training of individuals in the use of Public Transportation.
(R1E)

Review of the records confirmed that no member was receiving training on how to utilize public transportation.

If Public Transportation is limited, the policies and procedures of the setting assure that other resources are provided for the individual to access the broader community. (R1F)

While the provider has vans available for transportation, the practice is that members use the vans *instead of* public transportation when public transportation is available and not limited.

The facility was not in compliance with 42 CFR 441.301(c)(4)(iii)/
441.710(a)(1)(iii)/441.530(a)(1)(iii)

The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

Members do not hold leases to their homes, when such homes are owned, leased or operated by the provider. (R3A)

Interview with the executive director confirmed that members living at the Bay Road residence did not hold a lease or leases for their home.

Protocol: Attachment 5 (form condensed for inclusion in this report)

HCBS Setting Assessment Plan of Compliance West Virginia Bureau for Medical Services

I/DD Waiver Setting Assessment Visit and Evaluation

Plan of Compliance

Waiver Provider:

Total Number of Persons Served:

of Waiver Members Served:

Address:

Date(s) of Review:

Submit POC to KEPRO:

Person(s) Completing this POC:

Date POC is Submitted:

This Plan of Compliance is designed to contain your response to items found to be out of compliance during your setting's Waiver State Transition Plan Review. A completed Plan of Correction will be due within 30 calendar days of receipt of this Report and letter from BMS. The Plan of Compliance must be submitted on

this form electronically. Any corrections/additions requested should be communicated via this POC form as well. BMS will review your comments and notify you of your status as approved or disapproved.

Plan of Compliance must include:

1. How will the deficient practice **for the participants cited in the review** be corrected?
2. What **system** will be put into place to prevent recurrence of the deficient practice?
3. How will the provider **monitor to assure future compliance**, and **who** will be responsible for the monitoring?
4. What is the **date** by which the Plan of Compliance will be implemented?

Protocol: Attachment 6

State Transition Plan Guidance for Reviewers

**September 1, 2016
West Virginia DHHR
Bureau for Medical Services
Home and Community Based Waiver**

Introduction:

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (CMS-2249-F and CMS 2296-F) to ensure that members receiving long term services and supports (LTSS) through home and community based services (HCBS) programs under 1915(c) and 1915(j) have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as members not receiving Medicaid HCBS.

The State of West Virginia has developed Plan to transition settings providing HCBS to meet the mandates of this rule (State Transition Plan). The plan includes setting visits conducted by BMS to assess the level of setting compliance with the new rule and identify deficient practices or areas. These findings are shared with the provider. The provider will develop a plan to remedy the deficient practices. BMS will revisit the providers to assure continued compliance.

Task 1 – Preparation for Review

Notify provider via email prior to the review.
Arrange travel, reservations, car, etc.
Gather forms and any other info on setting.
Review (with team if applicable)

Task 2 – Setting Entrance Meeting

Identify self
Explain purpose of review and procedures.
Identify contact person for setting/provider.
Ask for policies
Get copies of current IPPs (may be emailed to office)

Sample?

List of all Waiver members served at the setting.

Type(s) of transportation

Leases

OHFLAC License

Tasks 3, 4 and 5 may be done in any order. Tasks 3 and 5 may be done away from the setting as needed.

Task 3 – Records

When there is more than one setting for a given provider, only one policies and procedures review need be completed. A separate form is provided to the reviewer for this purpose.

In the case of a single provider setting, the Policy and Procedure review is incorporated into the review instrument.

Task 4 - Member Setting Observations

Using the review instrument applicable to the setting, the reviewer is tasked with determining if the necessary relationship between the member's needs and preferences, and what staff know and do with members in both formal and informal situations, is maintained.

Conduct an inspection tour of the facility's environment and observed staff interaction with members.

As a result of any observation, the reviewer should be able to determine whether:

- a) Competent interaction occurs between staff and the member(s).
- b) Members are given the opportunity to exercise choice and function with as much self-determination and independence as possible; and
- c) Staff provides the needed supports and interventions to increase skills or prevent loss of functioning.

Some items to note may include:

How many staff and members are present?

How are members dressed?

Are members involved or just sitting around without any activity?

Are activities and décor age appropriate?

Are there any odors or excessive noise?

Are assistive devices used appropriately?

DO NOT:

- Conduct a detailed review of member's records at the setting; or
- Request facility staff to keep people in the setting and/or away from scheduled activities.

B - Reviewer Conduct

Always respect the members. The setting is his/her/their home or work setting. Respect members' home(s) and their privacy. As a courtesy, always request permission before entering a bedroom. Do not observe activities in which members are undressed unless that observation is essential to your assessment of facility compliance and the information cannot be obtained from other reliable sources. Most information about routine hygiene activities during which members are undressed can be obtained through interview of members or staff. As a general policy, it is preferable to ask permission to make these types of observations from the member, or from the staff person who is present if the member cannot communicate. A member's request not to be observed while undressed should be honored, when possible. These observations, when necessary, should be conducted in private, with as little of the

body exposed as possible, and with a staff person present. Consent from staff or guardians are not required in order to access information or make observations.

For members who are working in competitive employment sites, ask the member's permission to visit that site. If the member is unable to communicate, discuss with the staff the advisability of visiting the competitive site. The intent is that the member is not identified as different from other workers at the site. If the member works in a restaurant, for example, you may be able to visit as a "customer" to observe the work environment. If an interview with a job supervisor or support person is indicated, attempt to conduct this interview in a private or inconspicuous area. Upon arrival, introduce yourself to the member and to the staff and explain the purpose of your visit.

C - Observation Procedure

1 - General Impressions

Initially the reviewer should note the general impressions of the area. Note things such as:

How many staff and members are present?

How are members present?

Are members involved or just sitting around without any activity?

Are activities and décor age appropriate?

Are there any odors or excessive noise?

Are assistive devices used appropriately?

2 - Specific Activities and Interactions

After noting the general setting, the reviewer should begin to focus on the specific activities and interactions. For example:

Is there evidence that members regularly interact with non-disabled persons in the larger community? How is this documented?

Are members involved and participating in the activity? Are the activities active or passive? Does the activity appear to have a purpose? Is staff able to explain how the activity is promoting greater independence for each of the members present?

Are there supplies and materials used to assist the members? Do members use them? Do they get them independently? Do they seem appropriate for the task or activity? Do they seem appropriate for the members? What interaction is occurring between staff and members? Do the interactions give evidence of respect, dignity? Does staff recognize efforts made by the members and provide positive reinforcement?

Is the number of staff present sufficient for the number of members based on the member needs and the type of activity?

Are members encouraged to make their own choices and decisions? Are they encouraged to complete tasks with as much independence as possible? Is staff doing the activity for the person, or is the person encouraged to do things for him or herself?

Are any maladaptive behaviors exhibited? How does staff respond?

Are any members ignored or isolated from the activity? If so, what is the reason or justification for this?

What is the appearance of the members? Is each member dressed neatly? Does the person appear clean and is his/her hair combed?

- Does the member exhibit any apparent physical or medical needs? Is the member over or under weight, edentulous, continent? Does the member have contractures, vision, or hearing impairments?

- What adaptive devices/assistive devices are used? Does the member use a hearing aid, glasses, plate guard, etc.? Does the device(s) appear to be used correctly?

- How does the member move about in the environment? Does the member use a walker, ambulate, move his own wheelchair, etc.?

- How does the person communicate? Does the person talk, use sign or a communication board, make facial expressions or behavioral responses? Do others appear to understand the person's communications?

What is the person's level of social skill or behavior toward others? What types of interactions occur and with whom? Does the member exhibit any maladaptive behaviors?

- What is the member's observed skills relative to the activity or task observed? For example, if observed during dining, does the member eat without assistance? What utensils are used?
- Are applicable skills developed or encouraged during the activity, such as passing food, pace of eating, social conversations? Is the member receiving any special diet?
- What level of assistance does staff provide? What types of assistance are used - verbal prompts, gestures, hand over hand?
- Are there any member needs that are not being addressed? Is staff aware of the observed needs? Is there a reason it is not being addressed?

4 - Areas for Further Observation

If the reviewer noted that the member uses sign language for communication, does all staff working with the member understand and use sign with him/her? Or if a member is observed to have good gross motor skills, do staff feed the person or perform other tasks for him/her that your observation indicates the person could possibly do independently? Focus interviews and record review based on concerns, issues, inconsistencies and needs noted from these observation(s). Don't be afraid to ask 'WHY?'

D - Documentation

Document your information on the Site Review Form

VIII - Task 4 - Interviews with Members and/or Family/Advocate /Direct Care Staff

A - Purpose

Interviews are conducted for two purposes: to determine how the member perceives the services delivered by the facility, and to clarify or confirm information gathered during observation and record review.

B - Interview Procedure

When determining which persons to interview, use the following hierarchy of sources, to the maximum extent possible:

- Member
- Families, legal guardian, or advocate
- Direct care staff
- Managers, administrators, or department heads

Determine from your observations and from the staff how the member communicates with others. Select those members who will be able to communicate at least some basic information. If members with meeting this criterion

are not available, follow the hierarchy. Do not exclude from interviews members who use alternate means of communication, such as communication boards, sign language, and gestures. Members can communicate in some manner. Only after interviews have been attempted with members, and if the reviewer requires additional corroboration for gathered information, should interviews with family members, guardians, or staff be used to corroborate reviewer findings.

The questions and communication method will vary from person to person. For members who use a specialized communication method, attempt to begin the interview on a one-to-one basis. If you find you are unable to communicate with the member, ask someone familiar with the person to assist you (e.g., a family member or a staff person.) For this member, pay close attention to how the staff communicates with him or her. If the person uses sign language or a communication board, does staff understand and interact with the member using the same method? If the person uses gestures, does staff take time to determine his or her needs?

Family members, guardians or advocates may be interviewed at the facility, at a location convenient to both the reviewer and the interviewee, or by telephone. All interviews should be conducted in private locations and scheduled at mutually agreed upon times in order to minimize disruptions to member, family, or staff activities.

C - Content of In-depth Interviews

See the Review form for interview questions. Questions are relevant to whoever is being interviewed (member, family member, advocate, or staff person.) Modify the wording of the questions based on the person being interviewed (member, family member, or staff) and on the communication skills of that member. For example, you may discover that the person responds better to questions that can be answered “yes” or “no” than to open-ended questions. Be sensitive to signs that the member is tiring or becoming uncomfortable and either end the interview or continue it at a later time if this occurs. It is not necessary to ask every question in the guide but do try to ask at least one question from each topic.

Protocol: Attachment 7

HCBS ADW Annual Continuing Certification West Virginia Bureau for Medical Services

To continue to be certified as an ADW provider, the provider must meet and maintain the following requirements:

1. A business license issued by the State of West Virginia.
2. A federal tax identification number.
3. A list of the Board of Directors (if applicable)
4. Conflict Free Case Management attestation signed by the agency director.
5. A competency-based curriculum for required training areas for personal attendant staff.
6. A Quality Management Plan for the agency.
7. Written policies and procedures for processing complaints and grievances from staff or members.
8. Written policies and procedures for the use of personally and agency owned electronic devices.
9. Written policies and procedures for people to transfer.
10. Written policies and procedures for the discontinuation of a member's services.
11. Written policies and procedures to avoid conflict of interest (if agency is providing both CM and PA services) and when an exception has been made.
12. An Agency Emergency Plan (for members receiving ADW services and office operations).
13. All providers are required to have and implement policies and procedures for members with limited English proficiency or accessible formats that are culturally and linguistically appropriate, to ensure meaningful access to services.
14. Computers for staff with HIPAA secure emails, UMC web portal software, internet access, and current (within last five years) software for spreadsheets.

15. Written policies and procedures for use of WV CARES legislation and legislative rules for the hiring and maintenance of employees. Meet American with Disabilities Act requirements for physical accessibility.
16. Maintain a primary telephone that is listed under the name and local address of the business.
17. At a minimum, must have an email address and access to a computer, fax, scanner, and internet.
18. Have an administrative file for each incident. Incident reports must be printed, reviewed, and signed by the Director.
19. Have policies and procedures for Incident Management that are compliant with ADW policy.
20. Does the agency own or lease a residential setting where AD Waiver Case Management or Personal Attendance services are provided? If yes, document the type of residential setting (single dwelling, apartment building, etc.), the physical address and the Kepro ID number of the member(s) residing in each setting.
21. Protocol: Attachment 8

HCBS ADW Initial Certification

West Virginia Bureau for Medical Services

WEST VIRGINIA MEDICAID AGED AND DISABLE WAIVER INTITAL CERTIFICATION MONITORING TOOL

To be certified as an ADW provider, applicants must meet and maintain the following requirements:

Mark each section Yes or No

1. A business license issues by the State of West Virginia.
 - a. Must be physically located in WV.
 - b. Photographic or onsite observation of physical site is required.
 - c. Cannot be in or part of a private residence.
 - d. P.O. Box or Commercial Mailbox will not suffice.
 - e. Cannot service more than 8 contiguous counties as designated in the application.
 - f. Must be open to the public at least 40 hours per week.
 - g. Must be readily identifiable to the public.
 - h. Must contain space for securely maintaining program and personnel records (Refer to Chapters 100 and 300 for more information on maintenance of records).
 - i. Office space that allows for confidentiality of the member.
 - j. Maintain a 24-hour contact method.
 - k. Agencies applying to become an ADW provider cannot obtain certification for the sole purpose of serving Veteran Administration (VA) clients only. What services does the agency intend to provide? (Cannot be for VA services only) BMS is not responsible for certifying VA agencies or their workers.
2. Recent audit indicating six months of payroll dollars available in the budget of the agency.
3. Recent business plan.
 - a. What services the agency intends to provide.
 - b. A mission statement.
 - c. Anticipated revenue.
 - d. Anticipated expense for things such as rent, utilities, payroll, benefits, etc.
4. A federal tax identification number (FEIN).
5. A competency-based curriculum for required training areas for personal attendant staff.
 - a. Include list of training topics with a breakdown of subjects included, who is the trainer and what qualifies person to be a trainer (American Heart Association, Agency RN, etc., length of time of training, and how competence is proven (quiz, demonstration) and what is done to ensure competency if person fails quiz or demonstration.
6. An organizational chart.
7. A list of the Board of Directors (if applicable).

8. A Quality Management Plan for the agency.
 - a. Does the agency have a plan on how to address problems?
 - b. Does the agency have a plan on how to remediate problems?
 - c. Does the agency have a plan on how to trend findings?
 - d. Does the agency have a plan on how to address system issues?
9. Written policies and procedures for processing complaints and grievances, from staff or members.
 - a. Addresses the process for submitting a claim.
 - b. Provides steps for remediation of the complaint including who will be involved in the process.
 - c. Steps include the process for notifying the member of the findings and recommendations.
 - d. Provides steps for advancing the complaint if the member or staff does not feel the complaint has been resolved.
 - e. Ensures that a member or agency staff are not discharged, discriminated, or retaliated against in any way if they have been a complainant, on whose behalf a complaint has been submitted or who has participated in an investigation process that involves an ADW provider.
 - f. Ensures that members, staff, and family members are free from retaliation or adverse consequences because they reported incidents or allegations of Abuse or Neglect or Exploitation or any other staff misconduct.
10. Written policies and procedures for people to transfer.
11. Written policies and procedures for the discontinuation of a member's services.
12. Provider must comply with the Centers for Medicare and Medicaid Services (CMS) Settings Rule.
 - a. Does the agency own or lease a residential setting where AD Waiver Case Management or Personal Attendant Services are provided? If yes, document the type of residential setting (single dwelling, apartment building, etc.), the physical address and the KEPRO ID number of the member(s) residing in each setting.
13. Have written policy regarding member's right to request their records.
14. Conflict Free Case Management Attestation signed by the agency director.
 - a. Individuals or entities providing Case Management Services (the who develop a person-centered Service Plan) cannot be:
 - i. Related by blood or marriage to the individual or a paid caregiver.
 - ii. Financially responsible for the individual.
 - iii. Empowered to make health-related decisions.
 - iv. Individuals who would benefit financially from service provision.
 - v. Providers of State Plan HCBS.
15. Conflict Free Case Management Policies and procedures for agencies who provide both CM and PA services, to include but not limited to:
 - a. The agency has administrative separation of supervision of case management and HCB services.
 - b. The attached organizational chart shows two separate supervisors, one for case management and one for HCB services.
 - c. Case management members are offered choice for HCB services between and among available service providers.
 - d. Case management members are not limited to HCB services provided only by the agency.
 - e. Case management members are given choice of case managers within the agency.
 - f. Disputes between case management and HCB services units are resolved.
 - g. Members are free to choose or deny HCB services without influence from the internal agency case manager and HCB service staff.
 - h. Members choose how, when, and where to receive their approved HCB services.
 - i. Members are free to communicate grievances regarding case management or HCB services delivered by the agency.

- j. The grievance and complaint procedure is clear and understood by members and legal representatives.
 - k. Grievances and complaints are resolved in a timely manner
16. Written policies and procedures to avoid conflict of interest (if agency is providing both case management and personal attendant services) and when an exception has been made, must include at a minimum:
 - a. Education of case managers on general conflict of interest and professional ethics with verification.
 - b. Annual signed Conflict of Interest Statements for all case managers and the agency director.
 - c. Process for investigating reports on conflict-of-interest complaints.
 - d. Process for reporting to BMS.
 - e. Process for complaints to professional licensing boards for ethics violations.
 - f. Include a basic description of the duties of the CM supervisors and the PA supervisors.
 - g. Explain how members are given a choice of CM.
 - h. Explain how member is given a choice of PA or other natural supports or services offered in the community.
 - i. Explain how the agency ensures that the CM is free from influence of direct-service providers regarding member service plans.
 17. An Agency Emergency Plan (for people receiving ADW services and office operations). This plan must include:
 - a. Office Emergency Back-up Plan ensuring office staffing and facilities are in place during emergencies such as floods, fires, etc. However, the new temporary facilities must meet all requirements. The provider must notify the OA within 48 hours.
 - b. Providers must inform people receiving ADW services of their Emergency Back-up Plan.
 - c. Change in agency location due to emergencies such as flood or fire for over 30 days requires a site review by the OA.
 18. The provider must accept referral in the UMC's web portal within five business days or forfeit the referral.
 - a. Evidence of member acceptance within five days at the six-month review of initial certification (after members are referred).
 19. All providers are required to have or implement policies and procedures for people with limited English proficiency or accessible format needs that are culturally and linguistically appropriate to ensure meaningful access to services. May use informal supports, community resources and local school interpreters, etc.
 20. Computers for staff with HIPAA secure emails, UMC web portal software, internet access, and current (within last five years) software for spreadsheets.
 - a. Evidence of plans for equipment capable of utilizing computer systems and secure emails system.
 - b. Maintain an agency secure HIPAA compliant e-mail address for communications with others inside your agency.
 21. Hires and retains a qualified workforce. A list of all agency staff, which includes their qualifications.
 - a. Understand need for initial and continuing verification of professional staff qualifications per ADW policy. Copy of licenser for every year employed by the agency.
 - b. If CM agency, job descriptions of case managers. Outline responsibility of case manager's actions when member is not responding to a home visit or call.
 - c. If PA agency, job descriptions of Personal Attendance. Should include the prohibition of personal attendances to subcontract their work responsibilities to another person.
 - d. Outline responsibility of agency personal attendance staff actions when the member is not home or does not respond to calls and the personal attendance has arrived to provide scheduled services.
 - e. If PA agency, job description of RNs.
 - f. Descriptions of paraprofessional and professional staff who do not fall under mentioned job classifications (office manager, scheduler, etc.)
 22. Written policies and procedures for use of WV CARES legislation and legislative rules in the hiring and maintenance of employees.

- a. At a minimum, entire section about WV CARES from ADW policy should be copied and pasted in company's HR policy.
 - b. Suggest to provider to consult with attorney to write policies regarding process when exiting employee is deemed ineligible to work or has had a report in rap-back from WV CARES.
 - c. Prospective employees should be given disclaimer to sign that they understand that if they are deemed ineligible for employment by WV CARES at any time, the employer can terminate their employment.
 - d. Current employees should understand that, if at any time, they are charged with a crime that they are to report that immediately to their agency supervisor and then the policy should state what the employer plans to do with that employee during the time while awaiting disposition o the charge.
 - e. Company should speak to whether they plan to use the Supervision Exemption form that allows them to put a provisional employee in someone's home unsupervised while awaiting eligibility determination.
 - f. If not, all employees are to be screened through WV CARES process, policy should explain which employees will be screened and which will not. Those that will not be screened must be outside of the WV CARES definition of "direct access personnel".
23. Participant in all BMS mandatory training sessions.
24. Does the agency have a practice of using a noncompete clause upon hiring?
- a. Does the agency utilize personnel attendant agreements that would limit a member's choice of providers?
 - b. Request a copy of the agency employee restrictions that interfere with CMS' member "right to choose".
 - c. Evidence of a signed noncompete clause in personnel records?
25. Meet American with Disabilities Act (ADA) requirements for physical accessibility. These include but are not limited to:
- a. Maintain an unobstructed pedestrian passage in hallways, offices, lobbies, bathrooms, entrance and exits.
 - b. The entrance and exit have accessible curbs, sidewalks, or ramps.
 - c. The restrooms have grab bars for convenience.
 - d. A telephone is accessible.
 - e. Drinking fountains and water are made available as needed.
26. Maintain a primary telephone that is listed under the name and local address of the business.
Note: exclusive use of a page, answering service, a telephone line shared with another business or individual, facsimile machine, cell phone, or answering machine does not constitute a primary business telephone.
27. At a minimum, must have an email address and access to a computer, fax, scanner, and internet.
28. Utilize any database system, software, etc. compatible with, approved by or mandated by BMS. Familiar with applicable policies, laws, websites, and user manuals to be compliant with ADW policy.
- a. Chapters 100, 200, 300, 400, 501, 600, 800 A and 800 B.
 - b. All local, state and federal wage and hour employment laws and regulations including but not limited to the WV Wage and Hour Act, Fair Labor Standards Act and IRS laws and regulations.
 - c. Chapter 16, Article 49 and all of its subsections regarding WV CARES.
 - d. Both legislative rules regarding WV CARES.
 - e. AD Waiver Care Connection Web User Manual
 - f. WV IMS Web User Manual
 - g. BMS website for policy and forms
 - h. Bureau of Senior Services' website for Continuing Certification

- i. Ensures that services are delivered, and documentation meet regulatory and professional standards before the claim is submitted. The agency plan for quality assurance check prior to claims submission and review of documentation.
29. Any authentication method for electronic and stamped signatures must meet the following basic requirements:
- a. Unique to the person
 - b. Capable of verification
 - c. Under the sole control of the person
 - d. Linked to the data in such a manner that if the data is changed, the signature is invalidated.
30. Have an administrative file for each incident. Incident reports must be printed, reviewed, and signed by the Director. Have policies and procedures for Incident Management that are compliant with ADW policy.
- a. Written policies and procedures for contemporaneous or supporting documentation and reporting of incidents if or when a member presents an unsafe work environment for personal attendants.
 - b. Written policies and procedures to ensure that court-appointed guardians are informed of reported incidents as soon as possible after agency learns of incident and in all cases 72 hours of agency learning of an incident.
 - c. Ensure that members, staff, and family members are free from retaliation or adverse consequences because they reported incidents or allegations of Abuse, Neglect or Exploitation or other staff misconduct.

Protocol: Attachment 9

HCBS TBIW Initial and Recertification Assessment West Virginia Bureau for Medical Services

TBIW Initial and Recertification Tool

Part I. Demographic Information

Check all that apply:

Personal Attendant Services

Case Management

Non-Medical Transportation

Personal Emergency Response System

Check:

Initial Certification

Continuing Certification

New Location

Temporary Facilities due to Emergency

Legal Name of Agency

NPI #

Doing Business As

Administrator or Directors Name, Title and Phone Number

Local Contact Name, Title and Phone Number

Street Address

Mailing Address

City

Zip Code

Phone

Fax

E-mail address

List the counties in which you provide services.

One office can serve no more than eight contiguous counties

Please document hours of operation

Do you own or lease a residential setting where you are providing TBI Waiver Personal Attendant or Case Management services?

If yes, name of the residential setting and physical address

Part 2. In addition to completing the Provider Agency Certification Application, the agency must comply with the following policy:

PROVIDER REQUIRMENTS

Provider Certification Requirements are outlined in Chapter 512 – Traumatic Brain Injury Waiver (TBIW) located online at https://dhhr/wv.gov/bms/Provider/Documents/Manual/Chapter_512_Traumatic_Brain_Injury_Waiver

CERTIFICATION

All providers must agree to abide by applicable federal and state laws, policy manuals, policy changes, and other documents that govern this program. Providers must also agree to subject themselves, their staff, and any and all records pertaining to program participant services to any audit, desk review, or other service evaluation that ensures compliance with billing regulations and program goals.

TBIW provider agencies must be certified by the UMC-Kepro, A Certification Application must be completed and submitted to the UMC annually. To be certified as a TBIW Case Manager and Personal Attendant Services agencies, applicants must meet and maintain the requirements of Chapter 512.

Effective with 4.1.21 Policy

Appendix M: West Virginia Specialized Family Care Forms



West Virginia Department of Health and Human Resources Specialized Family Care Agreement

This Agreement is entered into on the _____ day of _____, _____ by the Specialized Family Care Program at the WVU Center for Excellence in Disabilities as the agent for the West Virginia Department of Health and Human Resources, Bureau of Children and Families and _____, the Specialized Family Care Provider.

As the Specialized Family Care Provider, I agree to and understand the following requirements of the Specialized Family Care Provider:

1. To ***maintain the service standards*** for individuals residing in Specialized Family Care Homes by providing the individuals in placement the opportunities to live, work, and receive services in integrated, community settings ***as outlined in the Integrated Services Rule 42 CFR 441.301 (c)(4) (i-vi)/441.71 (a)(1)/441.530 (a)(1)***.
2. To ***maintain the health, safety, and sanitation standards*** for Specialized Family Care Homes as established by the West Virginia Department of Health and Human Resources (DHHR) and the Specialized Family Care Program.
3. To ***communicate honestly with the Family Based Care Specialist and other professionals*** involved in providing services for those placed in my home, or who I provide respite care to in the home of another.
 - a. To ***immediately report*** to the Family Based Care Specialist any serious illness, accident, or hospitalization involving the person in placement, any household member's contact with the criminal justice system to include police contact, arrests, convictions or plea bargains entered into, or other problems within the family (i.e. change in medical status, use of alcohol or illicit drugs, marital discord, or any other problem that has the potential to negatively impact the environment or care of the person in placement).
 - b. To ***immediately report*** to the Family Based Care Specialist any need to have person(s) in placement transferred to another home or to be cared for in my own home by another person. This requires the prior approval of the Family Based Care Specialist and includes emergency circumstances.
 - c. To ***promptly report, within 24 hours***, to the Family Based Care Specialist any major changes in the household, including but not limited to: change of address, telephone number, income, members in the home, employment, routine commitments outside the home, changes in facilities for those placed in my/our home, significant changes in the behavior of those placed in my home, any serious or contagious illness in my family.
 - d. To discuss with the Family Based Care Specialist any ***complaints or suggestions regarding the Person-in-Placement or the Program***. To refer complaints of relatives or friends of the Person-in-Placement to the Family Based Care Specialist, if they are not able to be handled personally.
 - e. To seek approval from the DHHR or other guardian to take those placed in my home on any ***overnight trips in West Virginia or on any trips out of state***.
 - f. To seek the approval of the Family Based Care Specialist prior to accepting ***payment for care from relatives and/or friends*** of person(s) in placement, as these payments may be prohibited by program rules and regulations.

4. To **participate in the development of any person-centered planning** (i.e. IEP, IPP, MDT) and further agree to carry out the expectations/goals assigned to me, as the SFC Provider.
 - a. To involve the Family Based Care Specialist in decisions affecting the Person-in-Placement. The Family Based Care Specialist will then assess whether additional professionals should be involved.
 - b. To cooperate in obtaining community services for those placed in my home.
 - c. To permit the Family Based Care Specialist and other professionals to make home visits to meet with the SFC provider, household members, and/or the person(s) in placement. To allow for full safety inspections by the Family Based Care Specialist, if requested.

5. To **provide adequate and appropriate care** to person(s) in placement.
 - a. To comply with the DHHR's **Discipline Policy** (attached), which has been discussed with me.
 - b. To provide person(s) in placement **with housing and utilities such as required for heat and water, food, general hygiene items, appropriate bedroom furnishings (bed, dresser and closet), and space for personal belongings.**
 - c. To include person(s) in placement in **family activities and other social and community activities.**
 - d. To allow **relatives and friends to visit person(s) in placement** in my home during reasonable visiting hours (9 a.m. to 10 p.m.) or, if necessary, by prior arrangements involving the Family Based Care Specialist.
 - e. To **respect the religious interests**, or lack thereof, of the person(s) in placement.
 - f. To **maintain an operating telephone** that the person in placement has access to and may use in private.
 - g. To ensure all children eligible for the entitlement of public education are enrolled and accessing this service.

6. To **provide for the medical care** of the person(s) in placement and ensure the involvement of the guardian or health care surrogate, if one is appointed, in any medical matters relating to the person in placement.
 - a. To give **prescription medicine** to person(s) in placement only as prescribed by a licensed physician. Medications for the Person-in-Placement must be kept in an area away from other medications and must be in clearly marked containers, depicting content and dosages.
 - b. To have **consent for any surgery, anesthesia, or other medical procedure** for person(s) in placement given only by the person's Medical Power of Attorney, Health Care Surrogate, or Legal Guardian. I understand that making medical decisions on behalf of any adult persons in placement in my care is in violation of W. Va. State Code.
 - c. To **adhere to medical protocols and guidance**, as directed, to safeguard the spread of illness when any member of the household has a serious or contagious illness.
 - d. To assure that **children in placement, as well as my own minor children who have contact with the person(s) in placement, receive all necessary comprehensive health screens as required by Early and Periodic Screening Diagnosis and Treatment (EPSDT) Program.** To maintain records of such screening and to ensure all necessary follow-up medical, dental, optical or psychological treatment as prescribed by the screening provider are completed.
 - e. To abide by the **rules and regulations related to use of the Medicaid and/or Medicare** card(s) for the Person-in-Placement.

7. To **keep records** as required by the Family Based Care Specialist. To participate in and keep records of training as required for Certification and as determined necessary to provide for those in placement in my home.

8. To **provide transportation**, including appointments and medically necessary transportation, that meets safety requirements established by the State of West Virginia.

9. To **protect the confidentiality** of person(s) in placement, as specified in the confidentiality policy, which has been provided to me.

- a. To secure **documented approval from the DHHR for any children in the custody of the Department** before the release of any information or picture(s).
- b. To secure **documented approval from the guardian or Interdisciplinary Team** members of adult person(s) in placement before any information or picture is released to the public. **This policy applies to use of information and pictures on internet sites, such as Facebook.**

I further understand there is no guarantee that placement or assignment to respite care will occur or be ongoing and that agencies mandated by law to protect the welfare of children and adults have the right to remove person(s) in placement. Reasons for removing a person from my home or care may include, but are not limited to:

- 1) A request by the Person-in-Placement's guardian;
- 2) ~~Abuse or neglect is reasonably suspected;~~
- 3) Changes in family situation occur which are likely to result in abuse or neglect;
- 4) Any household member fails to fulfill any condition of this agreement;
- 5) The Interdisciplinary Team or mandated agency recommends another type of residential setting for those placed; or
- 6) Home environment or care is not conducive to the best interest or welfare of person(s) in placement and corrective action cannot be achieved.

I agree to use any respite time available to me as a period of rest and will not engage in alternative employment activities or provide respite services for another individual during any respite time afforded me. I agree to provide the Family Based Care Specialist and Service Coordinator with a sixty (60) day notice of intent to discontinue program participation or decision to discontinue care for individuals placed in my care.

This contract will terminate on _____ or sooner, if requested by the Specialized Family Care Provider or by the West Virginia Department of Health and Human Resources in the case of noncompliance with this agreement.

I have fully read and accept the provisions of this Agreement.

Specialized Family Care Provider (Print) Date

Specialized Family Care Provider's Signature

ADDENDUM TO THE FOSTER PARENT AGREEMENT

DISCIPLINE POLICY

1. I/We understand the West Virginia Department of Health and Human Resources discipline policy which states; "punishments, including any type of physical hitting or any type of physical punishment inflicted in any manner upon the body; or punishment which subjects the child to verbal abuse, ridicule, intimidation or humiliation is strictly forbidden."
2. I/We understand that non-compliance issues including, but not limited to, physical punishment of any kind, threats of removal from the home, humiliating words or acts, screaming at a child in anger, verbal abuse, derogatory remarks about a child or his biological family, keeping a child out-of-school, denying meals or food, closing or locking a child in a closet, shed, room, inside or outside the home, denying a child mail/ phone calls - visits with the family, and fondling or any form of sexual abuse are also not acceptable.
3. I/We understand that the Department has the obligation to investigate any allegation of physical or emotional abuse or non-compliance issue and agree to cooperate with the Department during such investigation.
4. I/We agree to adhere to the above discipline policy and understand that failure to do so could result in the removal of the child(ren) and closure of my/our home.

Foster Mother

Date

Foster Father

Date

Social Worker

Date

Foster Parent Provider file - legal block - original
Foster Parent(s)

**West Virginia Department of Health and Human Resources
Room and Board Policy for Individuals with Developmental Disabilities**

**Original Effective Date: April 1, 2002
Revision Effective Date: January 1, 2007
Revision Effective Date: January 1, 2009
Revision Effective Date: March 1, 2015
Revision Effective Date: October 1, 2019
Revision Effective Date: January 1, 2022**

RE: Room and Board Rate for Specialized Family Care Homes and Non-ICF/IDD group homes serving individuals with developmental disabilities.

Background

Historically, the Medley Management Team has set the room and board rate for Specialized Family Care Homes and non-ICF/IID group homes which include 1,2 and 3 intensive support settings (ISS) which are owned and/or leased by the Service Provider. This rate is the amount a Service Provider or a Specialized Family Care Provider can charge a resident for the cost of room and board. Prior to an adjustment in 2001, the rate for Specialized Family Care Home had not been

adjusted since 1989 and the rate for non-ICF/IID group homes since 1996. The Medley Management Team formed a committee of Department staff, providers and advocates to review these rates. The committee met several times and developed recommendations that were adopted by the Medley Management Team in November 2001. The Medley Management Team reviewed the policy in December 2008 and recommended a \$1 a day increase which was implemented in January 2009. The Medley Management Team again reviewed the policy and rate at its January 2015 meeting and recommended a \$1.50 a day increase which

was implemented at that time. The committee utilized information from the Consumer Price Index and the annual inflation increase from the standard monthly SSI payment. The SSI monthly rate in 1989 was \$368.00, in 1996 it was \$603.00. The standard monthly SSI rate in 2009 was \$674.00. The SSI rate for 2015 was \$733.00. Effective January 2019, the SSI monthly rate for 2019 was \$771.00. Effective January 2021, the SSI monthly rate was \$794.00

It has been determined that the use of consumer's benefits and entitlements for

the residential care of individuals with ID/DD residing in Specialized Family Care Homes or non-ICF/IID group homes and IDWW ISS settings shall be standardized at

\$18.75 a day effective January 1, 2022. This is an increase from the previous rate of \$18.25 a day for Specialized Family Care and non-ICF/IID group homes/ISS.

The personal allowance will be the difference of the monthly residential care charge of \$581.25 per a 31-day month and the recipient's monthly entitlement.

It

is recommended that the IDT team develop a budget for the individual's personal allowance.

Definition

Room and Board Services: Room and Board is defined as the provision of food and

shelter (does not include food preparation or feeding the individual) including supplies, housekeeping duties lavatory supplies (i.e., hand soap, towels, toilet paper); maintenance and operation of home and grounds, including all utility costs. Incontinence laundry is not included in Room and Board.

Discussion

In keeping with the principle of normalization, individuals should be given the opportunity to learn to manage their own finances. Certainly, for many this will be a difficult goal to reach. Nonetheless, all people can take part in determining the use of their personal finances to some degree. The means of carrying this out

should be individually tailored for each consumer. Weekly allotments may prove

best for many individuals. The method for distributing such allowances should be

established in the IPP.

The following list represents appropriate expenditure items for an individual's monthly allowance:

- Modest savings (no more than 1/2 of the monthly allowance amount per month and not to exceed \$2,000 total: the team should be aware that savings \$2,000 and over could have a direct impact on benefits).
- Deposits into WVABLE Accounts: A Tax-Free savings plan for

disability related expenses. Save and invest without losing federal needs-based benefits. <https://wvable.com/>

- **Special purchases (those articles where the expenses exceed normal economical costs for such items: (i.e., the individual wishes to buy a \$200.00 jacket).
 - **Personal care items (i.e. individual preferred soap, shampoo, cologne, deodorant, etc.)**
 - **Entertainment (i.e., movies, concerts, gym membership, radio, television,) Note: Such expenditures are primarily for the individual consumer. If others in the household benefit the consumer shall only pay his or her pro-rated share of the cost.**
 - **Gifts (i.e., special occasion, Birthdays, Holidays)****
- **Other personal items and services (i.e. watch, jewelry, make-up, tobacco products, haircuts, manicures).**

For tangible items receipts should be kept for bookkeeping purposes. For some other items (i.e. popcorn at the movies) it would be impractical to always get a receipt. When care providers help manage their allowance, a monthly listing of the items should be documented.

Personal allowance funds shall not be used for basic living expenses. (i.e. regular meals, household paper supplies, and other general household expenses).

Social Security Administration rules shall be followed regarding use and accounting of benefits and actions of representative payees.

The Room and Board Rate will be reviewed every two years and economic standards such as the Consumer Price Index will be considered when adjusting the rate.

Specialized Family Care Room and Board Agreement

This is a binding agreement between the SFC Home Provider and the Person Accepting Placement in the SFC Provider's home. It is intended to promote an understanding between the two by clarifying the expectations and responsibilities of the Specialized Family Care Provider and the Person Accepting Placement in the SFC Home.

The SFC Home is located at:

Address	City	State	Zip
---------	------	-------	-----

SFC Provider:

Person Accepting Placement:

Length of Agreement: Month – to – Month

*The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenant have under the landlord/tenant law of the state, county, city or other designated entity.

Either party may cancel or change terms of this agreement upon thirty (30) days WRITTEN notice. The notice period may be lengthened or shortened by mutual WRITTEN agreement, but no less than 7 days.

Room and Board Payments:

The current Room and Board amount as established by the Medley Management Team and is subject to change as determined by the Medley Management Team and under the authorization of the WV Department of Health and Human Resources. As of October 1, 2019 the established Room and Board rate is \$18.25 per day and is due and payable on the first (1st) day of the following month and covers the provision of food and shelter including housekeeping supplies, general hygiene supplies, maintenance and operation of the home and grounds, including home utility costs. Not included is cable in the Person in Placement's bedroom, specialty items such as a specific name shampoo, colognes, etc. that may be desired by the person in placement, also incontinence laundry and associated costs. Costs that are directly

related to and for the benefit of the Person in Placement are the responsibility of the Person In Placement. There is no security deposit required, but a PIP may be asked to pay for damages they cause to the home or the provider's personal property.

Privacy:

The SFC Home Provider will respect the Person In Placement's privacy and enter their bedroom only for the following reasons: (a) in case of an emergency; (b) to make necessary repairs, improvements or decorations; (c) to provide necessary and agreed upon services; (d) only when the person in placement has given their permission.

Conditions that could initiate an eviction and the process to terminate an agreement and the process to appeal:

Reasons for eviction from SFC Home Provider perspective: Aggressive behaviors resulting in physical injury to the provider or others in the home, excessive intentional property damage, medical needs of the person in placement become more than the SFC Home Provider can provide care for, the health of the SFC Home Provider and/or their spouse becomes so compromised that they can no longer provide the care or supervision for the Person in Placement.

Reasons for terminating a Room and Board Agreement from the Person in Placements perspective: PIP chooses to live somewhere else for any reason, this requires a 30 day written notice.

Other reasons a Room and Board Agreement may need to be terminated: The SFC Home is no longer meeting the SFC certification requirements and refuses to meet Plan of Correction requirements and the determination is made to rescind the home providers certification and close the home. Home Provider would follow the existing grievance policy with Specialized Family Care Program.

Process to Appeal: An appeal for eviction may be filed with the WV Department of Health and Human Resources Bureau of Children and Families explaining the reasoning and providing any documentation or testimony as evidence. An appeal may also be filed for termination of a Room and Board Agreement with the WV Department of Health and Human Resources Bureau of Children and Families listing points of grievance.

Furnishings / Decorations provided by SFC Home Provider:

Please list all items in the room being provided by the SFC Home Provider:

Personal Items and Furnishings brought to home by Person in Placement
(other than clothes, shoes, hygiene items such as brush, comb, etc.)

This Room and Board Agreement is entered into on this _____ day of
_____, 20____

SFC Home Provider (Print)

Person in Placement (Print)

SFC Home Provider Signature

Person in Placement Signature
Or Legal Representative

Revised 09.2021

SFC I/DD Waiver
Residential Site Review
West Virginia Bureau for Medical Services

This assessment identifies characteristics that are expected to be present in all home and community-based settings and associated traits that individuals in those settings might experience.

Provider:

Address:

Date reviewed

Reviewer:

Number of individuals receiving services at this site. _____

Number of individuals receiving services under the IDD waiver at this site.

Names:

Type of setting:

Specialized Family Care Home (foster home)

Home is certified through Specialized Family Care Program Y N

Individuals in placement, if adults, pay a room and board rate established by the state which is currently \$17.50 a day, for children the state provides a foster care stipend of \$600 per month.

The dwelling is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity. Y N

Observations during site visit:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

A. Individuals are not isolated from individuals not receiving Medicaid HCBS in the broader community.

Y / N Comments:

B. Individuals receiving HCBS do not live/receive services in a different area of the home separate from other residents not receiving Medicaid HCBS.

Y / N Comments:

C. The setting is in the community among other private residences and/or retail businesses.

Y / N Comments:

D. Individuals on the street greet/acknowledge individuals when they encounter them.

Y / N Comments:

E. Visitors are encouraged / welcomed into home. Have you ever observed visitors in the home?

Y / N Comments:

F. Bus and other public transportation schedules and telephone numbers are available or posted in a convenient location.

Y / N Comments:

G. The individuals have access to materials to become aware of activities occurring in the community.

Y / N Comments:

H. The home affords the individual with the opportunity to participate in meaningful non-work activities in integrated community settings in a manner consistent with the individual's needs and preferences.

Y / N Comments:

2. The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

A. The home is an environment that supports individual comfort, independence and preferences.

Y / N Comments:

B. Individuals have full access to facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas.

Y / N Comments:

C. Informal (written and oral) communication is conducted in a language that the individual understands.

Y / N Comments:

D. Assistance is provided in private, as appropriate, and when needed.

Y / N Comments:

E. The individual has unrestricted access in the home.

Y / N Comments:

E. i Gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting are not in evidence.

Y / N Comments:

E.ii Individuals are assisted in accessing amenities such as a pool or gym used by others in the home.

Y / N Comments:

E.iii The home is physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting. Guidance: if these are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstruction.

Y / N Comments:

F. The physical environment meets the needs of those individuals who require supports.

Y / N Comments:

F.i For those individuals who need supports to move about the setting as they choose, supports are provided such as grab bars, seats in the bathroom, ramps for wheelchairs, viable exits for emergencies, etc.

Y / N Comments:

F.ii Appliances are accessible to individuals. For Example, the washer/dryers are front loading for individuals in wheelchairs.

Y / N Comments:

F.iii Tables and chairs are at a convenient height and location so that individuals can access and use the furniture comfortably.

Y / N Comments:

G. Individuals have full access to the community.

Y / N Comments:

G.i Individuals come and go at will.

Y / N Comments:

G.ii Individuals move about inside and outside the home as opposed to all sitting by the front door or in another area.

Y / N Comments:

G.iii Individuals have access to public transportation.

Y / N Comments:

G.iv There are bus stops nearby or there are taxis available in the area.

Y / N Comments:

G.v An accessible van and or other vehicle is available to transport individuals to appointments, shopping, etc.

Y / N Comments:

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. The individual has access to make private telephone calls/text/email at the individual's preference and convenience.

Y / N Comments:

A. i Individuals have a private cell phone, computer or other personal communication device or have access to a telephone or other technology device to use for personal communication in private at any time.

Y / N Comments:

A.ii Individuals' room has a telephone jack, WI-FI or ETHERNET jack.

Y / N Comments:

B. Individuals are free from coercion. Restraint is prohibited. See Specialized Family Care Procedural Manual page 4-46

Y / N Comments:

B.i Information about filing a complaint is discussed with individual in placement and they are asked to tell their Family Based Care Specialist, Guardian, Health Care Surrogate and/or their case manager if there are any problems or concerns.

Y / N Comments:

B.ii The individuals in the home have individualized haircut/hairstyles and hair color.

Y / N Comments:

C. The individual's right to dignity and privacy is respected.

Y / N Comments:

C.i Health information about individuals is kept private.

Y / N Comments:

C.ii Schedules/appointments of individuals for PT, OT, medications, restricted diet, etc., are not posted in a general open area for all to view.

Y / N Comments:

Ciii Individuals who need assistance with grooming are groomed as they desire.

Y / N Comments:

C.iv Individuals' nails are trimmed and clean.

Y / N Comments:

D. Individuals who need assistance to dress are dressed in their own clothes, appropriate to the time of day and individual preferences.

Y / N Comments:

D.i Individuals are wearing clothes that fit, are clean, and are appropriate for the activity, weather, and preferences

Y / N Comments:

E. SFC home provider communicates with individuals in a dignified and respectful manner.

Y / N Comments:

E.i Individuals greet and chat with visitors and other residents of the home.

Y / N Comments:

E.ii SFC home provider converse with individuals in the home while providing assistance and during the regular course of daily activities.

Y / N Comments:

E.iii SFC home provider does not talk to others about an individual(s) as if the individual was not present or within earshot of other persons living in the setting.

Y / N Comments:

E.iv SFC home provider address individuals in the manner in which the person would like to be addressed as opposed to routinely addressing individuals as 'hon' or 'sweetie'.

Y / N Comments:

F. Individuals have privacy in their bedroom and bathroom facilities.

Y / N Comments:

F.i The individual can close and lock his/her bedroom door.

Y / N Comments:

F.ii The individual can close and lock the bathroom door.

Y / N Comments:

F.iii The home provider or other residents always knock and receive permission prior to entering a bedroom or bathroom.

Y Comments: observed

G. The individual has privacy in his/her living space.

Y / N Comments:

G.i Cameras are present in the home, in individual personal living spaces.

Y / N Comments:

H. The individuals have comfortable places for private visits with family and friends.

Y / N Comments:

I. Individuals furnish and decorate their bedrooms in the way that suits them.

Y / N Comments:

I.i The individuals' personal items, such as pictures, books, and memorabilia are present and arranged as the individual desires.

Y / N Comments:

I.ii The furniture, linens, and other household items reflect the individuals' personal choices.

Y / N Comments:

I.iii Individuals' living areas reflect their interests and hobbies.

Y / N Comments:

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/ 441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. Individuals have his/her own bedroom or share a room with a roommate of choice. Y / N Comments:

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. Individuals are not required to adhere to a set schedule for waking, bathing, eating, exercising, activities. (Most IPP's establish a schedule)

Y / N Comments:

B. Individuals have access to such things as a television, radio, and leisure activities that interest him/her, and he/she can participate in such activities at his/her convenience. Y / N Comments:

C. Individuals may choose when and what to eat. This is a home where family style meals are offered, but an individual may elect to not eat it and have soup or a sandwich etc. at another time. Y / N Comments:

D. Snacks are accessible and available.

Y / N Comments:

F. The individual chooses with whom to eat or to eat alone.

Y / N Comments:

F.i Individuals are not required to sit at an assigned seat.

Y / N Comments:

F.ii Individuals converse with others during mealtimes.

Y / N Comments:

F.iv The SFC home provider asks the individual about her/his needs and preferences. Y / N Comments:

F.v Requests for assistance and supports are accommodated as opposed to ignored or denied. Y / N Comments:

F.vi Individual choice is facilitated in a manner that leaves the individual feeling empowered to make decisions. Y / N Comments:

G. The individual chooses from whom they receive assistance and support.

Y / N Comments:

Procedure: Review Policies and Procedures of SFC homes for the following:

1.The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

A. The home provider confirms that the individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.

Y / N Comments:

A.i Individuals regularly access the community.

Y / N Comments:

A.ii The individuals shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as each individual chooses and as determined by the treatment team.

Y / N Comments:

A.iii Individuals may come and go at any time as determined by the treatment team.

Y / N Comments:

B. The SFC Program's policy/procedure ensures that each individual is employed or active in the community outside of the setting as determined by the treatment team.

Y / N Comments:

Guidance: This includes volunteer services.

B.i Individuals work in integrated community settings.

Y / N Comments:

B.ii If individuals would like to work, this is pursued by the individual's treatment team and the individual.

Y / N Comments:

B.iii Individuals participate in meaningful non-work activities in integrated community settings as desired by each individual.

Y / N Comments:

C. The individual and their treatment team ensures that each individual controls his/her personal resources to the extent possible.

Y / N Comments:

C.i Each individual has a representative payee who oversees the individuals checking and/or savings account assisting the individual in managing his/her funds.

Y / N Comments:

C.ii The individual is not required to sign over his/her paychecks to the provider.

Y / N Comments:

D. The SFC Program policies and procedures assure that visitors are welcome during normal waking hours.

Y / N Comments:

E. The SFC home provider is required to have a vehicle and to be able to provide transportation for individuals in their home to work, appointments, recreational activities, etc.

Y / N Comments:

G. State laws, regulations, licensing requirements, or protocols or practices do not limit individuals' choices.

Y / N Comments:

G.i Do State regulations prohibit individuals' access to food at any time?

Y / N Comments:

G.ii Do State laws require restrictions such as posted visiting hours or schedules?

Y / N Comments:

G.iii Are individuals prohibited from engaging in legal activities?

Y / N Comments:

Interview Questions, on or off site. May be asked in any order.

General : Tell me about your day. What do you do here?

Do you like it here?

If you could change one thing about here, what would it be?

Do you have any questions for me?

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)

Guidance: Interview at least 2 members residing in the setting, or his/her guardian, if possible.

A. Do you have a job?

Y / N Where? _____

A.i If, no, what do you do during the day? Comment:

A.ii Who works at your job with you? Comment:

Guidance: Is the job setting integrated?

B. Would you like to work?

Y / N

B. i If yes, is anyone helping you to find a job?

Y / N Comment:

Guidance: is there activity that ensures the option is pursued

C. Do you go out of your home?

Y / N

C.i How often?

C.ii Where do you go?

C.iii Do you get to choose where and when you go?

Y / N Comments:

Guidance: does the individual participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual.

D. Tell me about how you handle your money. Comment:

Guidance: the individual controls his/her personal resources

E. Do you know about activities occurring outside your home? Y N

E.i How do you find out about these activities? Comment:

E. ii Do you go shopping, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, when you want to do so? Y / N Comments:

F. Can you leave and come back any time you want?

Y / N Comment:

G. Tell me about your usual day. What happens?

Comments:

Guidance: Does the individual talk about activities occurring outside of the setting?

H. Do you have a checking or savings account?

Y / N

H.i How do you get access to your money? Comment:

H.ii Do you have to sign over your paycheck to _____?(the provider)

Y / N

2. The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)

A. Did you get to choose this setting/house to live in?

Y / N

A.i Tell me about that. (ask this for both yes and no responses)

Comments:

A.ii Did you choose your roommate?

Y / N / NA Comments:

A.iii Where would you like to live?

Comments:

3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/441.710(a)(1)(iii)/441.530(a)(1)(iii)

A. If you needed help, with getting dressed or bathing for instance, what would you do?

Comment:

Guidelines: Does the setting support individuals who need assistance with their personal appearance to appear as they desire, and is personal assistance, provided in private, as appropriate?

4. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)

A. Can you have visitors any time you want to?

Y / N

B. Is there a special place you have to meet when someone visits you?

Y / N Where:

C. Does anyone train you or show you how to ride a bus or taxi? Y / N

5. The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)

A. Were you provided a choice regarding the services, provider and settings before you came here?

Y / N

B. Did you have the opportunity to visit/understand these choices/options?
Y / N

C. Can you change your mind about these choices?
Y / N

D. How do you do that?
Y / N

Guidance: (Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?)

E. Do you decide what you do here?
Y / N

F. Does anyone help?
Y / N Comment: _____ (who)

G. Do you know how to make a request for additional help or services, or change the services you have right now?
Y / N
Comments:

Appendix O: Sample Lease for other HCBS Settings

SAMPLE LEASE

THIS LEASE, Made and entered into on the ___ day of _____, by and between _____, hereinafter referred to as the “LESSOR” and _____, hereinafter referred to as the “LESSEE”

THE LESSOR agrees to rent to Lessee and Lessee agrees to rent from the Lessor the property as described below in accordance with the following terms:

1. Description of leased premises:
 - a.
2. Term:
 - a. The term of this Lease begins and ends as in Section 11.
3. Rent:
 - a. The Lessee agrees to pay the Lessor as rent for the leased premises the sum of _____ per month.
 - b. Due Date: The sum of _____ will be taken out of each of the Lessee’s account by the 20th day of each calendar month.
 - c. If the Lessor terminates the lease prior to the end of the term, through no fault of Lessee, the Lessee does not owe any rent.
 - d. If Lessee terminates the lease prior to the end of the term, through no fault of Lessor, the Lessee owes the balance of the rent due.
4. Utilities:
 - a. The electricity, water, and cable/phone/internet will remain in the name of the Lessor. All utilities will be split equally between the Lessor and each Lessee. Each agrees to pay for ¼ of the electricity, water, and cable/phone/internet.
 - b. Lessee agrees not to waste utilities and further agrees not to use these utilities for any improper or unauthorized purpose.
5. Use of Home:
 - a. The Lessor agrees to maintain the home in compliance with applicable residential landlord tenant laws regarding Lessee’s use of the home as a personal residence.
 - b. Lessee agrees to comply with applicable federal, state and local laws as rules regarding the use of the home as a personal residence.
 - c. Lessee agrees to use the premises only for lawful and moral residential purposes are not permitted to use the home for any unlawful purpose.

- d. Lessee agrees not to create or allow any nuisance to exist on the premises. Lessee further agrees to stop any nuisance that may arise promptly if Lessee is responsible for the nuisance. Lessee agrees that there be no cost to use for stopping any nuisance Lessee has created.
 - e. Lessee agrees to share the home with other individuals, each of whom must have an executed version of this lease.
6. Maintenance:
- a. The Lessees agree to maintain the home in good condition and repair by:
 - 1. Properly using the electrical and plumbing systems and appliances, including routine maintenance.
 - 2. Maintaining the home and surrounding grounds in a clean, presentable and safe condition, including yard and landscaping care.
 - 3. Keeping any sidewalks and driveways free and clean of obstructions. The Lessor will take care of snow removal and mowing the grass as appropriate to the situation.
 - 4. Maintaining all smoke detectors and other safety devices in the home in good working order. Notifying us in a timely manner if smoke detectors or other safety devices need repaired.
 - 5. Disposing of trash at reasonable and regular intervals.
7. Obligations:
- a. Lessee obligations including all elements of Paragraph 5 and:
 - 1. Not keeping a pet, under any circumstances.
 - 2. Not making modifications to the facility without prior written consent.
 - 3. Not intentionally or negligently destroying or damaging the home, including appliances, electrical and plumbing systems.
 - 4. Giving us prompt written notice, in writing, and within five (5) days of any electric or water shut offs.
 - 5. Purchasing, at lessees' sole discretion, insurance coverage for lessees' personal belongings located at the home. Our insurance will not cover personal items at the home, and we cannot accept responsibility for these items.
 - 6. Not unreasonably interfering with the rights of any other residents in the home.
 - 7. Not subleasing the home to anyone else without prior written consent from us.
 - 8. Not restricting us from access to the facility. The lessor retains the right to enter the home at any time.
 - 9. Pay for any damage lessees caused to the home.
 - b. Lessors' obligations include:
 - 1. Assure the maintenance of the structural components of the home, including electrical and plumbing systems in good repair in accordance with the applicable residential landlord-tenant laws.
 - 2. Provide on-site residential support serviced to lessees in the home.
8. Interest in the Premises:
- a. The Lessees agree to share this home. If one lessee moves out, the Lessor will find a potential replacement for the vacant bedroom

- b. The Lessee, subject to remaining Lessee's approval, may share all the common spaces of the home, including, but not limited to, the living room, dining room, kitchen, bathrooms, breezeway, porches, laundry room, and yard equally with all other residents.
 - c. The Lessee shall be able to lock his/her bedroom(s) and bathroom.
9. Property Improvements:
- a. The Lessee may, at Lessee's own cost and expense, make non-structural changes and improvements to the premises during the term of this lease if Lessees obtain the Lessor's prior written consent.
 - b. If we request it, at the expiration or sooner termination of this lease, lessees agree to return the premises to us in the same condition as existed on the date the premises were originally made available to Lessee.
 - c. All improvements, including fixtures the Lessees made to the premises during the term of this lease, shall remain a part of the premises and become the sold property of the Lessor.
10. Termination:
- a. If any of these occur, the Lessor may terminate the lease. We must give Lessee written notice of termination at least thirty (30) days prior to the date this lease will terminate, and Lessee must move out:
 - 1. Lessees' serious or repeated violations of the terms of this lease.
 - 2. Lessees' violation of federal, state or local law that imposes obligations on the tenants in connection with Lessee's occupancy of the home.
 - 3. Lessee's criminal activity.
 - 4. Other good causes such as disturbing the neighbors, destroying property or having living or housekeeping habits that damage the home.
 - b. This lease will terminate automatically at the end of the month for a lessee if his or her death occurs.
 - c. This lease will terminate at the date we agree to when we agree to terminate the lease by a signed written document.
11. Term: This lease will begin on the date first above written and continue for one year. The Lease will automatically renew at the end of each lease year unless terminated or amended by written agreement of the parties.
12. Amendment: This lease may be amended by written agreement of the parties.
13. Surrender of the home:
- a. If the lease is terminated for any reason as described in Paragraph 10, Lessee must move out and give the home back to the Lessor.
 - b. When any Lessee moves out, that Lessee must remove all personal belongings.
14. Notice: Any notice required under this lease must be made in writing.
- a. Notice to Lessees must be delivered personally, by mail or by email, at the home or other address Lessee provided us for this purpose. Any email notification will follow the requirements of state and federal privacy and confidentiality laws and rules.
 - b. Notice to us must be delivered personally, by mail, or email to the same address where Lessees' rent is to be paid (Paragraph 3.c.) or any other address we provide to Lessee for this purpose.
15. Peaceable Enjoyment: The Lessor agrees that, with Lessee, paying the rent and observing and keeping the agreements of this lease, the Lessee shall lawfully, peaceably and quietly hold and occupy the home during the agreed to term or any renewal without any hindrance or molestation by the Lessor or anyone claiming to be the Lessor.
16. Governing Law: This Lease is governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have executed this lease as of the date set forth above.

Representative:

Lessee: _____

Lessee:

Lessee:
