



# HCBS Final Rule

## **HCBS Conference Receiving Final Approval and Heightened Scrutiny August 2016**



# Afternoon Topics of Discussion

- States' Approach to Assessing HCBS Compliance of Individual Settings
- State Validation Strategies
- Settings Remediation
- Heightened Scrutiny

# HCBS Setting Requirements

Is integrated in and supports access to the greater community

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Is selected by the individual from among setting options including non-disability specific settings

Ensures an individual's rights of privacy, respect, and freedom from coercion and restraint

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

***\*\*Additional Requirements for Provider-Controlled or Controlled Residential Settings\*\****

# Distinguishing between Settings under the HCBS Rule

## Settings that are not HCB

- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate care facility for individuals with I/DD (ICF/IID)
- Hospitals

## Settings presumed not to be HCB

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals receiving Medicaid HCBS.

## Settings that could meet the HCB rule with modifications

- Settings that require modifications at an organizational level, and/or modifications to the PCP of specific individuals receiving services within the setting.
- Settings that engage in remediation plans with the state, and complete all necessary actions no later than March 2019.

## Settings presumed to be HCB and meet the rule without any changes required

- Individually-owned homes
- Individualized supported employment
- Individualized community day activities

# Settings Assessment for HCBS Compliance: Scope

- States must identify all types of home and community based program settings in their state where HCBS are provided and where beneficiaries reside.
  - States should first list out all services provided under their various HCBS authorities.
  - Then, states should identify all settings in which each service(s) is/are provided.

# Settings Assessment for HCBS Compliance: Scope

- A state may presume a settings to be home and community-based because it is considered an individual's own home:
  - If a state is presuming other categories of settings to automatically comply with the rule, the state must outline how it came to do this determination and what it will do to monitor compliance of this category over time.
- Group Settings:
  - Any setting for which individuals are being grouped or clustered for the purpose of receiving HCBS must be assessed by the state for compliance with the HCBS rule.



# Review of HCBS Settings under Final Rule: Key Components

Assessment

Validation

Remediation

# Review of HCBS Settings Compliance: Initial Assessment

- Most states opted to perform an initial provider self-assessment
  - States that did not receive 100% participation of providers in self-assessment process must identify another way the assessment process was conducted on all settings including where a provider self-assessment was not conducted.
  - Providers responsible for more than one setting need to complete an assessment of each setting.
- States must provide a validity check for provider self-assessments including consideration of:
  - a beneficiary/guardian assessment or other method for collecting data on beneficiary experience
  - validation with case managers, licensing staff or others trained with the requirements of the settings rule.



# HCBS Residential Settings: Considerations

[Reference: CMS Exploratory Questions]

- *The setting was selected by the individual.*
- *The individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.*
- *The individual is employed or active in the community outside of the setting.*
- *The individual chooses when and with whom to eat or to eat alone.*
- *Individual choices are incorporated into the services and supports received.*
- *The individual chooses from whom they receive services and supports.*
- *The individual has access to make private telephone calls/text/email at the individual's preference and convenience.*

# HCBS Residential Settings: Considerations

[Reference: CMS Exploratory Questions]

- *Individuals are free from coercion.*
- *The setting does not isolate individuals from individuals not receiving Medicaid HCBS in the broader community.*
- *State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices.*
- *The setting is an environment that supports individual comfort, independence and preferences.*
- *The setting allows for unrestricted access to visitors.*
- *The physical environment meets the needs of those individuals who require supports.*
- *The individual's right to dignity and privacy is respected.*
- *Individuals who need assistance to dress are dressed in their own clothes appropriate to the time of day and individual preferences.*
- *Staff communicates with individuals in a dignified manner.*

# HCBS Non-Residential Settings: Considerations

[Reference: CMS Exploratory Questions]

- *Does the setting provide opportunities for regular, meaningful non-work activities in integrated community settings for the period of time desired by the individual?*
- *Does the setting afford 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, and who in the setting will facilitate and support access to these activities?*
- *Does the setting allow individuals the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting?*
- *Is the setting in the community/building located among other residential buildings, private businesses, or retail businesses that facilitate integration with the greater community?*

# HCBS Non-Residential Settings: Considerations (2)

[Reference: CMS Exploratory Questions]

- *Does the setting encourage visitors or other people from the greater community to be present, and is there evidence that visitors have been present at regular frequencies? For example, do visitors greet/acknowledge individuals receiving services with familiarity when they encounter them, are visiting hours unrestricted, or does the setting otherwise encourage interaction with the public (for example, as customers in a pre-vocational setting)?*
- *Do employment settings provide 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?*
- *In settings where money management is part of the service, does the setting facilitate the opportunity for individuals to have a checking or savings account or other means to have access to and control his/her funds?*
- *Does the setting provide individuals with contact information of, access to and training on the use of public transportation, such as buses, taxis, etc., and are these public transportation schedules and telephone numbers available in a convenient location?*



# HCBS Non-Residential Settings: Considerations (3)

[Reference: CMS Exploratory Questions]

- *Is the setting physically accessible, including access to bathrooms and break rooms, and are appliances, equipment, and tables/desks and chairs at a convenient height and location, with no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting? If obstructions are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstructions?*
- *Does the setting reflect individual needs and preferences and do its policies ensure the informed choice of the individual?*
- *Do 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?*
- *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 ?*
- *Is all information about individuals kept private?*

# HCBS Non-Residential Settings: Considerations (4)

[Reference: CMS Exploratory Questions]

- *Does the setting assure 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?*
- *Do setting requirements 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?*
- *Does the setting address use of restraints and/or restrictive interventions and document these interventions in the person-centered plan?*
- *Does the setting policy ensure 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 or are they restrictive to the rights of every individual receiving support within the setting?*
- *Does the setting offer a secure place for the individual to store personal belongings?*
- *Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?*



# HCBS Non-Residential Settings: Considerations (5)

[Reference: CMS Exploratory Questions]

- *Does the setting afford opportunities for individuals to choose with whom to do activities in the setting or outside the setting, or are individuals assigned only to be with a certain group of people?*
- *Does the setting allow for individuals to have a meal/ snacks at the time and place of their choosing?*
- *Do individuals' have access to food at any time consistent with individuals in similar and/or the same setting who are not receiving Medicaid-funded services and supports?*
- *Does the setting post or provide information on individual rights?*
- *Does the setting prohibit individuals from engaging in legal activities (e.g. voting when 18 or older, consuming alcohol when 21 or older) in a manner different from individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports?*

# HCBS Non-Residential Settings: Considerations (6)

[Reference: CMS Exploratory Questions]

- *Was the individual provided a choice regarding the services, provider and settings and the opportunity to visit/understand the options?*
- *Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?*
- *Does the setting ensure individuals are supported to make decisions and exercise autonomy to the greatest extent possible?*
- *Does the setting afford 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?*
- *Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?*

# Highlighting Effective Practices in Assessing Setting Compliance: State Examples

Effective Practice/Strategy	State Examples
<b>Provides clear, easy to understand listing of all HCBS settings</b>	Iowa Pennsylvania
<b>Developed unique comprehensive assessment tools based on type of setting and target respondent</b>	Delaware Maine South Carolina
<b>Clearly laid out the specific details of the state's approach to the assessment process (including sample sizes, non respondents, etc.)</b>	Kentucky Oregon
<b>Summarized assessment results in a digestible manner (based on the seven key requirements of the rule and corresponding sub-elements) so as to inform state's strategy on remediation.</b>	Iowa Michigan South Dakota

# Review of HCBS Settings Compliance: Validation

- The state must assure at least one validation strategy is used to confirm provider self-assessment results, and should also identify how the independence of assessments is ensured where an MCOs validates provider settings.
- Validation strategies re: levels of compliance within settings varies across states
  - Onsite visits, consumer feedback, external stakeholder engagement, state review of data from operational entities, like case management or regional boards/entities
- The more robust the validation processes (incorporating multiple strategies to a level of degree that is statistically significant), the more successful the state will be in helping settings assure compliance with the rule.

# Validation Strategies (examples)





# Highlighting Effective Practices in Validating Setting Compliance: State Examples

Effective Practice/Strategy	State Examples
<b>State outlines multiple validation strategies that addressed concerns and assured all settings were appropriately verified. Validation process included multiple perspectives, including consumers/beneficiaries, in the process.</b>	Tennessee
<b>State relied on existing state infrastructure, but laid out solid, comprehensive plan for training key professionals (case managers, auditing team) to assure implementation of the rule with fidelity.</b>	Delaware Tennessee
<b>State used effective independent vehicles for validating results.</b>	Michigan
<b>State clearly differentiated and explained any differences in the validation processes across systems.</b>	Indiana



# Settings Assessment for HCBS Compliance: Remediation

- Setting-Specific Remediation
  - Corrective Action Plans
  - Tiered Standards
- Statewide Training & TA is a strong option for states to consider.
  - State lays out clear plan within the STP of how it will strategically invest in the training and technical assistance needed to help address systems-wide remediation requirements of specific settings, as well as how it intends to build the capacity of providers to comply with the rule.

# Highlighting Effective Practices in HCBS Settings Remediation: State Examples

Effective Practice/Strategy	State Examples
<b>State simultaneously provided a comprehensive template for a corrective action or remediation plan to all providers as part of the self-assessment process.</b>	Tennessee
<b>State has outlined a process for following up with settings that require remediation to comply with the rule, including but not limited to the negotiation of individual corrective action plans with providers that address each area in which a setting is not currently in compliant with the rule.</b>	Indiana North Dakota Pennsylvania
<b>State has identified those settings that cannot or will not comply with the rule and thus will no longer be considered home and community-based after March 2019. State has also established an appropriate communication strategy for affected beneficiaries.</b>	Ohio North Carolina

# Implementation: Emerging Trends in STPs and Key Issues for Consideration

- **Residential Settings**

- States are asking, “How much integration is enough?”
  - Use the exploratory FAQs to help distinguish settings that are already compliant from settings that are not or that could be but require remediation.
- Intentional communities, farmsteads, and other large congregate residential settings that have the effects of isolation are presumed not to be home and community-based and must go through heightened scrutiny if a state feels the setting is home and community-based and does not have institutional characteristics.

# Implementation: Emerging Trends in STPs and Key Issues for Consideration

- **Non-Residential Settings**

- Large congregate, facility-based settings should be carefully reviewed to determine if they are in compliance and/or to identify remediation needed to comply with the rule.
- *Reverse Integration* by itself will not result in an appropriate level of compliance with the rule.
- States should review parameters around service definitions/policies/reimbursement rates as well, in order to promote options like greater use of innovative transportation and natural support strategies that facilitate individual community integration.

# Implementation:

## HCBS Compliance in both Residential & Non-Residential

- Individuals receiving HCBS must reside in settings that comply fully with the rule (regardless of whether those settings are being paid for using HCBS funds or not).
- Living in settings that do not comply with the rule could jeopardize an individual's ability to receive non-residential HCBS.

# Implementation: Tiered Standards

- States have flexibility to set different standards for existing and new settings.
- Existing settings must meet the minimum standards set forth in the HCBS rules but the state “may suspend admission to the setting or suspend new provider approval/authorizations for those settings”
  - State may set standards for “models of service that more fully meet the state’s standards” for HCBS and require all new service development to meet the higher standards
  - The tiered standards can extend beyond the transition plan timeframe to allow states to “close the front door” to settings/services that only meet the minimum standard.

[Reference: [CMS FAQs dated 6/26/2015](#); page 11, Answer to Question #16]



# STP Review: Key Questions

- *Did the state accurately and clearly lay out all of the settings in each HCBS authority where HCBS is delivered?*
- *Are there any categories of settings for which a state is presuming to automatically meet all of the requirements of the HCBS rule? Are there any categories of settings that the state is automatically determining will require remediation to comply with the rule? Any categories that automatically rise to the level of heightened scrutiny?*
- *How are specific categories of settings structured in the state? For example, are there any that are required to be co-located on the grounds of or near the grounds of an institutional setting?*

# STP Review: Key Questions

- ***Remediation Questions***

- *How does the state propose working with providers of settings that are not currently compliant with the rule but could be with appropriate remediation?*
- *Has the state proposed using tiered standards?*
- *What investments is the state making to provide technical support to help settings come into compliance?*

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TN

Implementing the  
**HCBS Settings Rule:**  
One State's Approach

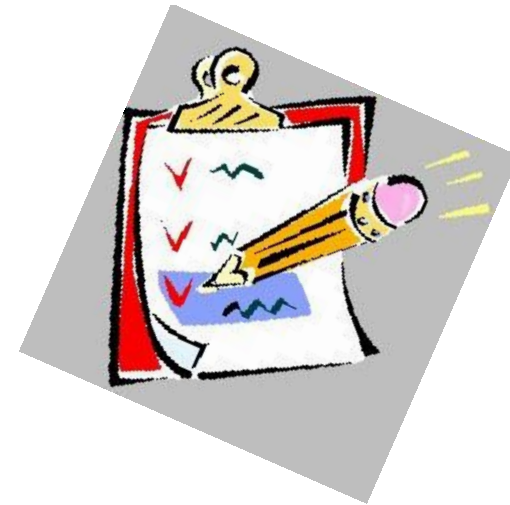
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# Context for the Discussion

- **Not** here to tell you “how to implement the rule”
  - No “one right way”
  - Every state must determine the approach that makes the most sense for *their* state and *their* HCBS system
- Goal is to provide tools and share experiences that may be helpful in formulating and implementing your state’s approach
- Goal is also to learn things from one another that will benefit *all of us* as we continue moving forward together

# Agenda

- Vision
- Approach
- How do we get there?
- Develop the process: *Educate and inform*
- Develop the process: *Plan to assess*
- Rolling it out: *Assess to plan*
- Discovery/Remediation
- When choice meets rule
- Heightened Scrutiny
- Ongoing Review and Monitoring



# Vision

- **Begin with the end in mind –**  
What's our vision for Tennessee?
- **At the end of the process –**
  - What do we want to be able to say?
  - How do we want to communicate the process and the results?
  - What do we want to achieve?

**Not just compliance, but**

***Better lives for the people we support***



# Approach

- Comprehensive statewide approach across Medicaid programs and authorities
  - 1115 MLTSS (**managed care**) program
  - 3 Section 1915(c) **fee-for-service** waivers
- Full compliance as soon as possible—*before* 2019
- Not just *what we think* but *what we know* (100% assessment and review/validation)
- Leverage contractor relationships (expand capacity)
- Minimize provider (and administrative) burden, where possible
- Leverage technology for data collection and analysis

# Approach

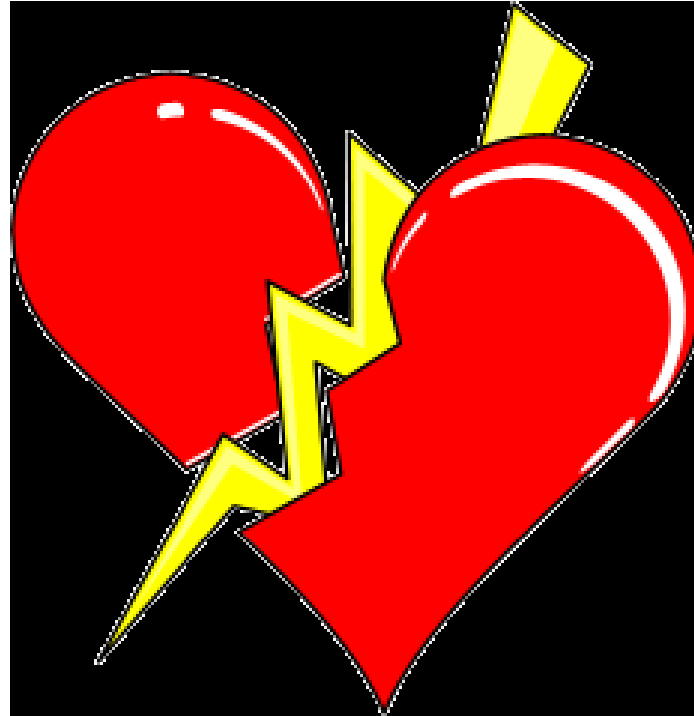
- Inform and engage stakeholders in meaningful ways
- Meet the *spirit and intent* of the regulation
- Leverage *the opportunity* to move the system forward and improve people's lives
- Embed in ongoing processes (not just “one and done,” but a continuous process)

# Develop the Process: *Educate and Inform*

- **Communicate with consumers, families, providers and advocates**
  - Open, posted introductory letter to the new rule
  - Educational materials (FAQs) and training
  - Disseminate through advocacy groups and providers
  - Consumer/family and advocate information sessions  
Opportunities to ask questions
  - Structure public input, but leave room for more...
  - Accommodations
  - Extension

# Now what?

And they loved it, right?



- *Continually adjust the plan as needed based on public comment.*

# Develop the Process: *Plan to assess*

- **Tennessee's Process:**
  - Self-assessments
    1. State
    2. Contractors
    3. Providers
  - Validation of contractor and provider self-assessments and transition plans
  - Individual Experience Assessments
  - Monitor implementation of transition plans
  - Monitor/assure ongoing compliance



# Develop the Process: *Plan to assess*

## State (Systemic) Self-assessment

- Identified components for assessment
  - Policy documents, statutes, contracts, etc.

## Contractor Self-assessment

- Managed Care System (1115 ) and 1915(c) FFS
  - Policies & Procedures
  - Provider Agreements
  - Provider Manual
  - Provider Credentialing Requirements
  - Staff Training Materials
  - Quality Monitoring materials and processes

# Develop the Process: *Plan to assess*

## Provider Self-assessment

- **We need data—how will we collect it?**
  - Provider self-assessments
  - Online survey tool (export to excel, slice & dice)
  - Create tool in fillable document that matches survey
    - Specific instructions
- **How do we get proof of compliance?**
  - Document review
  - On-site visits
- **How will know this is accurate?**
  - Require stakeholder involvement
  - *Ask the people receiving HCBS!*

# Develop the Process: *Plan to assess*

## Individual Experience Assessment (IEA)

- Developed from the CMS Exploratory Questions
- Administered by contracted case management entity
  - Independent Support Coordination agency
  - I/DD Dept. Case Manager
  - MCO Care Coordinator
- Phase I - individuals receiving residential and day services
- Phase II - embed in annual planning process for **all** persons receiving HCBS
- Data from IEA is cross-walked to the specific provider/setting in order to validate site-specific provider self-assessment results
- 100% remediation of any individual issue identified; thresholds established (by question) for additional remediation actions, e.g., potential changes in site-specific assessment, transition plan, policies, practices, etc.

# Rolling It Out: *Assess to plan (Site-specific)*

## Provide *extensive* training

- **Train providers**
  - Detailed walk through of each tool and expectations
    - Self-assessment form (literally, each question)
    - Accessing the survey
    - Validation form
    - Transition plan
  - Demonstration of the survey
  - Expectations for document submissions
  - Stakeholder involvement requirement
- **Train designated reviewers (contracted operating entities)**
- **Implement the provider self-assessment process**
- **Monitor submission progress**

# Rolling It Out: *Assess to plan (Site-specific)*

## Validation process

- **100% validation of self-assessment and transition plan required**
  - Leverage contracted entities for 100% review (versus smaller sampling approach)
  - Standardized template
- **TennCare validation**
  - Initial reviews from each designated reviewer prior to sending to provider
  - Sample review at the conclusion of the process
  - Complicated settings
  - Upon request
- **On-site visits**

# Discovery:

*What did we learn?*



# Site-Specific Assessment

# Discovery: Provider Self-Assessment Results

## Total Number of Provider Settings Assessed: 1247

- Total Residential Provider Settings: 704
- Total Non-Residential Settings: 541

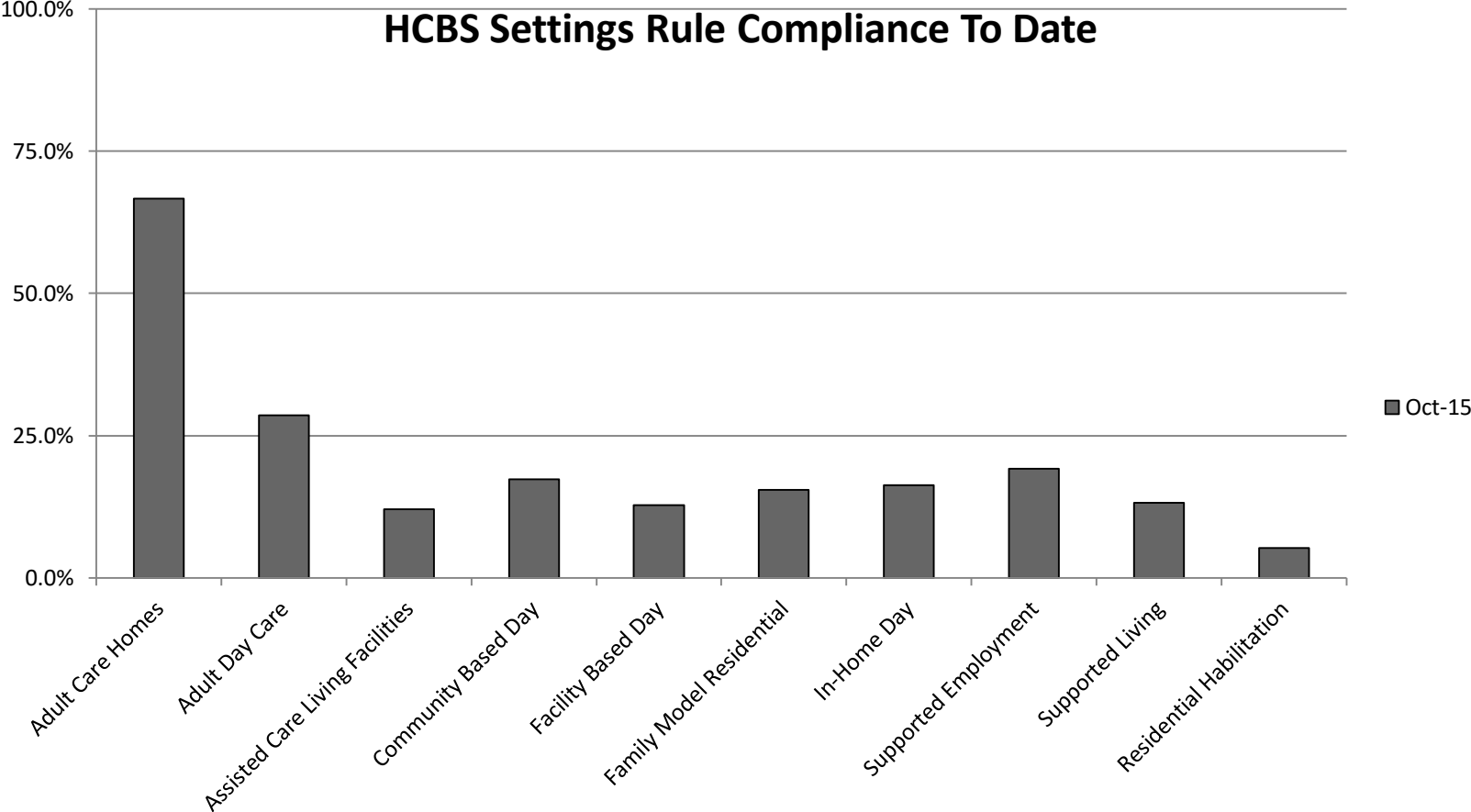
## Reported Compliance among Providers:

- Provider settings deemed 100% compliant with the HCBS Settings Rule - **14%**
- Provider settings who have identified at least one area that is currently out of compliance with the HCBS Settings Rule - **84%**
- Provider settings deemed non-compliant with HCBS Settings Rule and opting not to complete a provider level transition plan - **2%** (27 settings )

# Discovery: Provider Self-Assessment Results

## Where we started:

As of October 1, 2015



Whew...now what?

# Site Specific Remediation:

*What do we do about it?*

# Remediation: Transition Plans

## 1048 Transition Plans Received

Areas identified as non-compliant:

- Physical Location: 367 or 35%
- Community Integration: 694 or 66%
- Residential Rights (Residential Only): 408 or 39%
- Living Arrangement (Residential Only): 552 or 53%
- Policy Enforcement Strategy: 936 or 89%

# Remediation: Transition Plans

## Helping providers achieve compliance:

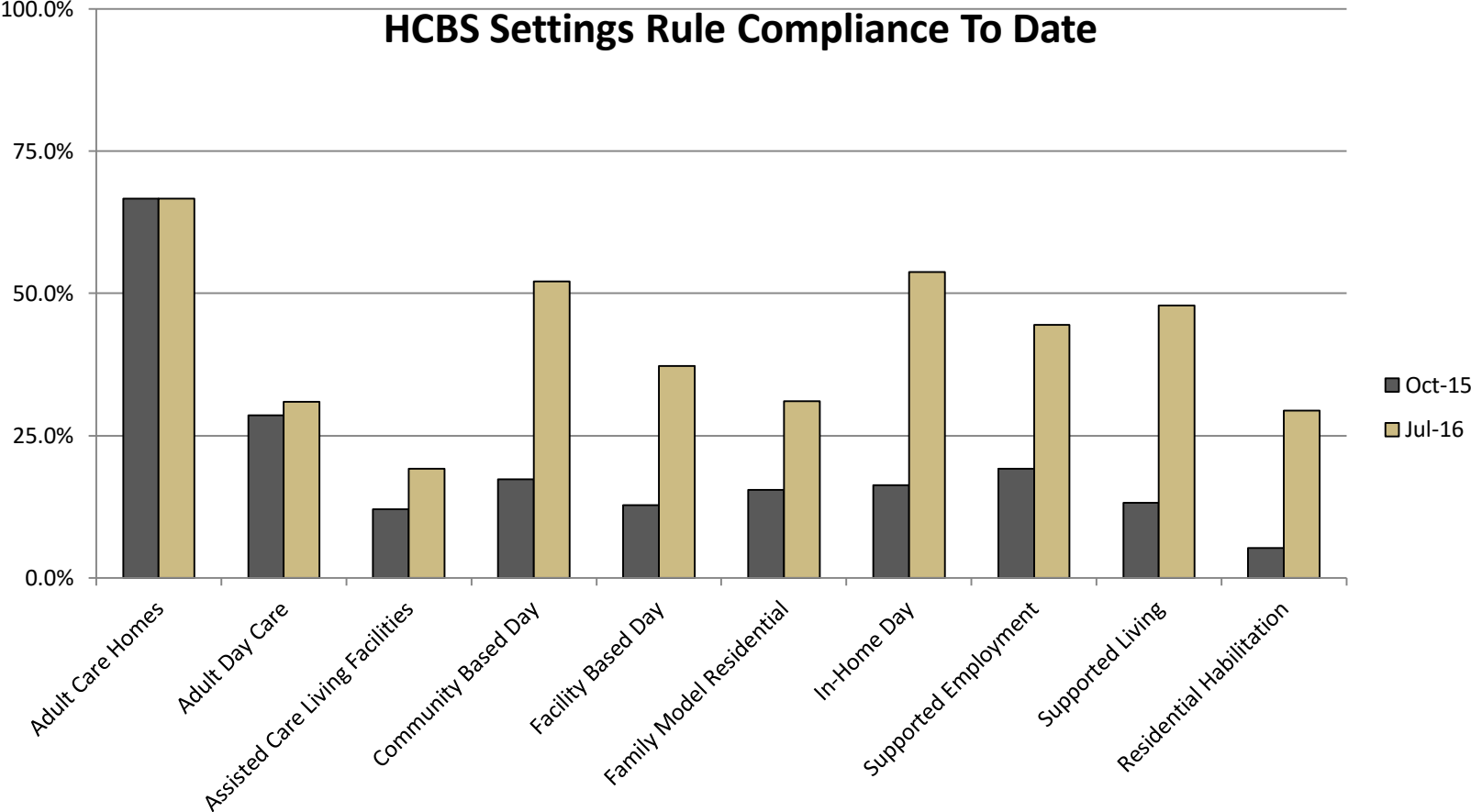
- Educating boards and families
- Technical assistance
- Focus groups
- Culture change (“transformation”) initiative



# Discovery: Provider Self-Assessment Results

Three quarters later:

As of July 1, 2016



# The elephant in the room:

*Not everyone wants to work or be integrated!*



- What to do when choice meets the rule

# When individual choice meets HCBS Rule:

- A person can decide if they want to work.
- A person can choose the degree of community integration/participation they want.
  - It must be *meaningful* choice.
  - It's easy to choose NOT to do something that's new and different and that you don't really understand.
  - We have to help people understand; provide opportunities.
- A person can choose the setting they want to live in... even institutional. But they can't choose a non-compliant setting and receive Medicaid HCBS funding.

# When individual choice meets HCBS Rule:

- A person can choose where they spend their day, including sheltered employment. Medicaid only pays for *pre-vocational* services in a sheltered setting.
- A person can choose to live in a home in close proximity to another home where people with disabilities live.
  - The setting will have to comport in order to receive HCBS funds...which means offering meaningful support and opportunities for inclusion.
  - Must demonstrate that people are working and participating in community to the extent *they* want AND provider is doing all they can to support that.
  - People who aren't are making those decisions in an informed and meaningful way and documented in the plan of care
  - And we NEVER give up...we keep trying. (Not one and done.)

# Working together: Tennessee's materials

- Available at <http://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services>
  - Updates
  - All posted versions of the Statewide Transition Plan with tracked changes to ease stakeholder review
  - Provider self-assessment tools and resources
  - Individual Experience Assessment
  - Heightened Scrutiny tools and resources
  - Training and education materials

# Interactive Dialogue: Knowledge Transfer

- *What is the status of your settings assessment and remediation efforts? How are you accomplishing this work? Do you feel there are any specific strategies/effective practices you've used during the settings assessment process that other states would benefit from hearing about in the STP? What obstacles have you faced in fully completing the settings assessment process, and how are you addressing these obstacles?*
- *What concerns do you have about accomplishing the milestones related to setting assessment, validation & remediation set forth in your plan by the end of the transition period? How are you tracking progress in milestone completion?*



# Settings Presumed NOT to be HCB

Prong I

Settings in a publicly or privately operated facility that provides inpatient institutional treatment.

Prong II

Settings in a building on the grounds of, or adjacent to, a public institution

Prong III

Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

# Settings with the Effect of Isolating Individuals

- CMS' *Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community* states that the following two characteristics alone might, but will not necessarily, have the effect of isolating individuals:
  - The setting is designed specifically for people with disabilities, or for people with a certain type of disability
  - Individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them.

# Settings with the Effect of Isolating Individuals (cont'd)

- Settings that 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/activities on-site such as 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
  - The setting uses/authorizes interventions/restrictions used in institutional settings or deemed unacceptable in Medicaid institutional settings (e.g. seclusion)

# Settings with the Effect of Isolating Individuals: Examples

Farmstead or disability-specific farming community

Gated/Secured “community” (intentional communities)

Residential Schools

Multiple settings co-located and operationally related

# Settings with the Effect of Isolating Individuals: Farmsteads or Disability Specific Farming Community

A farmstead or disability-specific farm community that has the following characteristics:

- Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals.
- Daily activities and non-home and community-based services, such as religious services, take place on-site so that an individual generally does not leave the farm
- People from the broader community may sometimes come on site, but people from the farm seldom go out into the community as part of daily life



# Settings with the Effect of Isolating Individuals: Gated/Secured Community (aka “Intentional Communities”)

A gated/secured “community” for individuals with disabilities that has the following characteristics:

- The community typically consists primarily of individuals with disabilities and the staff that work with them
- Locations provide residential, behavioral health, day services, social and recreational activities, and long term services and supports all within the gated community
- Individuals often do not leave the grounds of the gated community in order to access activities or services in the broader community

# Settings with the Effect of Isolating Individuals: Multiple Settings Co-Located and Operationally Related

**Multiple settings co-located and operationally related** (ie. operated and controlled by the same provider) which congregate a large number of people with disabilities together such that individuals' ability to interact with the broader community is limited

- Depending on the program design, examples may include:
  - Group homes on the grounds of a private ICF
  - Numerous residential settings co-located on a single site or in close proximity, such as multiple units on the same street



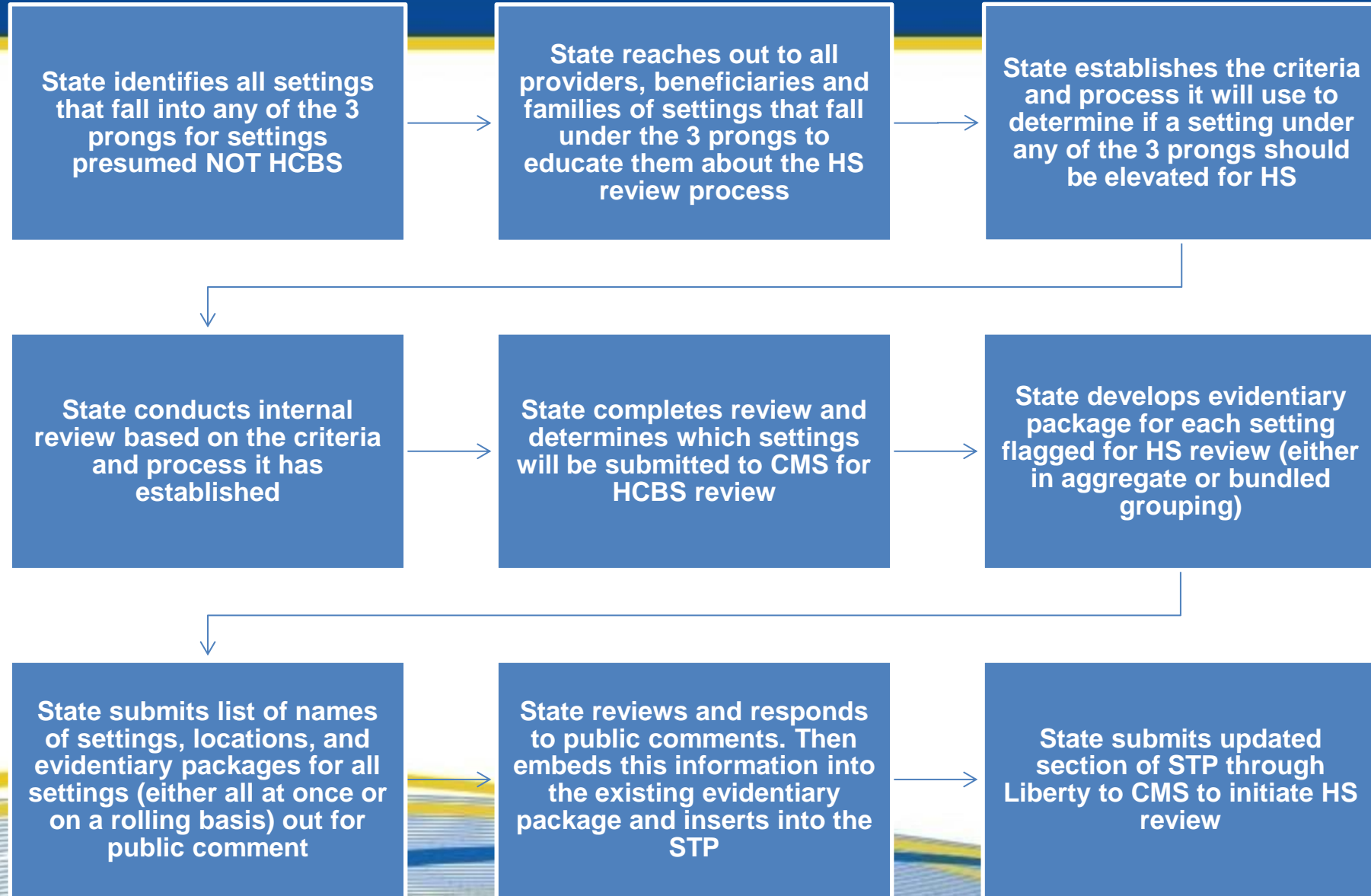
# Heightened Scrutiny: Requirements

- If a state identifies settings that are presumed to have the qualities of an institution, such as characteristics that isolate HCBS beneficiaries, the state is obligated to identify them in the Statewide Transition Plan
- The settings regulations require that, in order to overcome the presumption that a setting has the qualities of an institution, CMS must determine that the setting:
  - *Does have* the qualities of a home and community-based setting and
  - *Does not have* the qualities of an institution

# Heightened Scrutiny: When Should HS be Applied?

- Heightened Scrutiny should only be applied if and when a state believes that a setting that falls into one of the three prongs has overcome the presumption that a setting has institutional characteristics AND comports fully with the HCBS settings rule.
  - If a state does not feel that a setting has overcome the institutional presumption, it should not submit the setting to CMS for heightened scrutiny review.
  - If a state does not feel that the setting fully complies with the HCBS settings rule, then the state should first work with the provider to develop and begin implementation of a remediation plan that would bring the setting in full compliance with the rule before initiating HS review

# Heightened Scrutiny: *Suggested State Process*



# Heightened Scrutiny: Evidentiary Criteria

- Criteria CMS uses to review state requests for HS:
  - Whether all of the qualities of a home and community based setting outlined in the federal settings regulations are met
  - Whether the state can demonstrate that persons receiving services are not isolated from the greater community of persons not receiving HCBS
  - Whether CMS concludes there is strong evidence the setting does not meet the criteria for a setting that has the qualities of an institution

# Heightened Scrutiny: General Evidentiary Requirements

## Evidence Should Focus On:

- **Qualities of the setting and how it is integrated in and supports full access of individuals receiving HCBS into the greater community**
- **Strategies the setting has implemented to fully overcome institutional characteristics**
- **Information received about the setting during the public input process**

## Evidence Should NOT Focus On:

- **The aspects and/or severity of the disabilities of the individuals served in the setting**
- **Rationale for why existing institutional qualities or characteristics that isolate beneficiaries are justified**



# Heightened Scrutiny: Evidentiary Requirements (Prongs I & II)

- As part of the state's HS evidentiary package for settings under Prongs I or II, the state should include:
  - Information clarifying that there is a meaningful distinction between the facility and the community-based setting such that the latter is integrated in and supports full access of individuals receiving HCBS to the greater community
  - Services to the individual, and activities in which each individual participates, are engaged with the broader community
  - Examples of documentation that can be submitted as evidence for this prong can be found under [Question 4 in the June 2015 CMS FAQs](#)

# Heightened Scrutiny: Evidentiary Requirements (Prong III: Settings that Isolate)

- As part of the state's HS evidentiary package for any setting that isolates (Prong III), the state should provide evidence of the following qualities:
  - Setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities
  - Services to the individual, and activities in which each individual participates, are engaged with the broader community
  - Beneficiaries participate regularly in typical community life activities outside of the setting to the extent the individual desires those activities

# Heightened Scrutiny: Public Notice

- Public notice associated with settings for which the state is requesting HS should:
  - Be included in the Statewide Transition Plan or addressed in the waiver or state plan submission to CMS
  - List the affected settings by setting name and location and identify the number of individuals served in each setting
  - Be widely disseminated
  - Include the entire evidentiary package of information for each setting that the state is planning to submit to CMS



# Heightened Scrutiny: Public Notice (continued)

- Public notice associated with settings for which the state is requesting HS should (continued):
  - Include all justifications as to why the setting:
    - is home and community-based, and
    - does not have institutional characteristics
  - Provide sufficient detail such that the public has an opportunity to support or rebut the state's information
  - State that the public has an opportunity to comment on the state's evidence
- CMS expects that states will provide a summary of responses to those public comments in the Statewide Transition Plan

# HS Implementation:

## What additional information should states submit in the HS process?

**Examples of additional documentation that a state may wish to include in its evidentiary package for a setting under HS could include:**

- ✓ Observations from on-site review.
- ✓ Licensure requirements or other state regulations
- ✓ Residential housing or zoning requirements
- ✓ Proximity to/scope of interactions with community settings
- ✓ Provider qualifications for HCBS staff
- ✓ Service definitions that explicitly support setting requirements
- ✓ Evidence that setting complies with requirements of provider-owned or controlled settings
- ✓ Documentation in PCP that individual's preferences and interests are being met
- ✓ Evidence individual chose the setting among other options, including non-disability specific
- ✓ Details of proximity to public transport or other transportation strategies to facilitate integration

# HS Implementation: Site Visits

- To facilitate CMS review of the evidence presented for heightened scrutiny, a state should also submit a report of any on-site visit conducted by the state
- The purpose of the site visit is to observe the individual's life experience and the presence or absence of the qualities of home and community-based settings. The data submitted should support the presence of qualities that define home and community-based settings.

# HS Implementation: Beneficiary Experience

- Supplemental information attempting to capture beneficiary experience that could be a part of a HS evidentiary package may include:
  - consumer experience surveys that can be linked to the site for which evidence is being submitted
  - consumer experience participant interviews outside the presence of the provider conducted by an independent entity or state staff with demonstrated expertise and/or training working with the relevant population

# Potential Effective Practices in Assessing Setting Compliance under HS

Category	Recommended Strategies
<b>Establishes clear, easy-to-digest approach to HS setting identification, categorization, and information dissemination within the STP and to the public</b>	<b>Utilize an exhaustive set of strategies for identifying all settings in the state that currently fall into one or more of the prongs under “Settings Presumed NOT to be home and community-based”</b> <b>Clearly list within its STP either (a) the state’s initial estimate of settings that fall under the three prongs; and (b) the full list of settings being elevated to CMS for HS</b> <b>Include this initial list of settings the state has identified under HS in a public comment period and widely disseminate this list to stakeholders across the state for feedback</b>
<b>Lays out a multi-faceted process for implementing the state’s internal review process to determine whether to elevate any setting in the three prongs to HS review</b>	<b>May include comprehensive documentation, onsite review by state, capturing of beneficiary experience</b>

# Potential Effective Practices in Assessing Setting Compliance under HS (continued)

Category	Recommended Strategies
State provides an easily digestible, comprehensive evidentiary package for each setting submitted to CMS under HS review	Submit an outline of a suggested organized format to CMS STP review team and receive feedback in advance.
The state submits settings for HS review on a rolling basis to CMS	<p>Briefly summarizes within the STP an update of the progress made to date under HS by the state and the latest findings the state has made [Example: “The state has identified (number) of (type) settings to meet the requirements necessary to be submitted to CMS for review under HS, and have found the following settings as not meeting the evidentiary standard required to be submitted for additional review by CMS under HS.”]</p> <p>Adds the full name, location and evidentiary package of each setting being submitted for CMS review under HS to an easily identifiable location within the STP, waiver application or state plan application (ie. appendix, or easily identifiable section).</p>
	Submits and widely disseminates this entire update out for public comment, includes the summary of comments and the state’s responses within the formal submission to CMS



# Heightened Scrutiny:

## *CMS' Response on HS Determinations*

### When ALL Regulatory Requirements are Met

- Approval of a HS request pertains only to the individual setting or settings subject to the request
- Any material changes to the parameters approved through HS will require the state to update CMS and may result in a reevaluation of the setting
- The state must describe a monitoring process for ensuring that these settings and all settings continue to comply with setting requirements even after the transition period ends.

### When All Regulatory Requirements are NOT Met

- If the setting is included in the STP, the state has several options [**See Q10 in July 2015 FAQs**]
- If the setting is included in a new 1915(c) waiver, or new 1915(i) or (k) state plan benefit, or as part of new services added to an existing program, federal reimbursement for services in that setting may not be available unless or until the setting has achieved compliance with all requirements

# Heightened Scrutiny: Options for Settings that Don't Comply

- Provider can implement necessary remediation to comply by the end of the transition period
- Provider can furnish Medicaid services that do not require their provision in a home and community-based setting
- Engage in communications with impacted beneficiaries to determine alternative compliant settings



# Interactive Dialogue: Knowledge Transfer

- *How is your state planning to identify all settings that should be flagged as being presumed non-HCBS in each of the three HS prongs?*
- *What is the approach you as a state are contemplating to review each of these settings and determine whether or not you will submit them to CMS for HS review?*
- *What additional questions or concerns do you have about the evidentiary criteria or the packaging of information to CMS?*
- *How will you ensure that the public is fully engaged in the HS process? How will you factor the public comments you receive and feedback from external stakeholders on particular settings into your internal HS review process? How will you organize your summary of comments into themes and responses?*

# Resources

- **Main CMS HCBS Website:** <http://www.medicaid.gov/HCBS>
  - Final Rule & Sub-regulatory Guidance
  - A mailbox to ask additional questions
  - Exploratory Questions (for Residential & Nonresidential Settings)
- **CMS Training on HCBS – SOTA (State Operational Technical Assistance) Calls:**  
<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/hcbs-training.html>
- **Statewide Transition Plan Toolkit:**  
<https://www.medicaid.gov/.../statewide-transition-plan-toolkit.pdf>

# Resources

- **Exploratory Questions**
  - [Residential Settings](#)
  - [Non-Residential Settings](#)
- **FAQs**
  - [HCBS FAQs on Planned Construction and Person Centered Planning \(June 2016\)](#)
  - [HCBS FAQs on Heightened Scrutiny](#) dated 6/26/2015
  - [FAQs on Settings that Isolate](#)
  - [Incorporation of HS in the Standard Waiver Process](#)
- **ACL Plain-Spoken Briefs on HCBS Rule & Person Centered Planning:**  
<http://www.acl.gov/Programs/CPE/OPAD/HCBS.aspx>

# Resources: CMS HCBS STP Review Team Members

## Central Office Analysts

- ❖ Pat Helphenstine (Regions 1-5)  
[patricia.helphenstine1@cms.hhs.gov](mailto:patricia.helphenstine1@cms.hhs.gov)
- ❖ Michele MacKenzie (Regions 6-10)  
[michele.mackenzie@cms.hhs.gov](mailto:michele.mackenzie@cms.hhs.gov)

## Regional Office Analysts

- ❖ Michelle Beasley (Regions 1-5)  
[michelle.beasley@cms.hhs.gov](mailto:michelle.beasley@cms.hhs.gov)
- ❖ Susan Cummins (Regions 6-10)  
[susan.cummins@cms.hhs.gov](mailto:susan.cummins@cms.hhs.gov)

# Thank You

**CMS wants to acknowledge the partnership with the Administration for Community Living (ACL) in providing technical assistance on implementation strategies for the HCBS regulation.**

# **HCBS Final Rule**

**2016 HCBS Conference**

**Morning Intensive Session:  
Receiving STP Initial Approval**

# 2014 HCBS Final Rule

- Published January 2014 – Effective March 17, 2014
- Addressed HCBS requirements across:
  - 1915(c) waivers
  - 1915(i) state plan
  - 1915(k) Community First Choice
  - 1115 Demonstrations
  - 1915(b)(3) waiver services
- Requirements apply whether delivered under a fee for service or managed care delivery system
- States have until March 17, 2019 to achieve compliance with requirements for home and community-based settings in transition plans for existing programs.

# Key Themes of the Rule

- The regulation is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life
- There is no HHS initiative to shut down particular industries or provider types
- FFP is available for the duration of the transition period
- The rule provides support for states and stakeholders making transitions to more inclusive operations
- The rule is designed to enhance choice



# HCBS State Transition Plans:

## *Status of STP Reviews*

- One state (Tennessee) has received final approval from CMS.
- Four additional states have Initial Approval (KY, OH, DE, IA)
- The majority of STPs are scheduled to be updated and resubmitted to CMS through September 2016 for review to determine if initial and/or final approval can be made.
- Rolling out of additional technical assistance to support states
  - Individual calls
  - Small Group State TA
  - SOTA Calls
  - Effective Models of Key STP Components

# Home and Community-Based Setting Requirements

## **The Home and Community-Based setting:**

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services

# Home and Community-Based Setting Requirements

## The Home and Community-Based 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
  - Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources

# Home and Community-Based Setting Requirements

- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them

# Home and Community-Based Setting Requirements

## Provider Owned and Controlled Settings – Additional Requirements

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

# Home and Community-Based Setting Requirements

## Provider Owned and Controlled Settings – Additional Requirements

- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

# Home and Community-Based Setting Requirements

## Provider Owned and Controlled Settings – Additional Requirements

- Modifications of the additional requirements must be:
  - Supported by specific assessed need
  - Justified in the person-centered service plan
  - Documented in the person-centered service plan

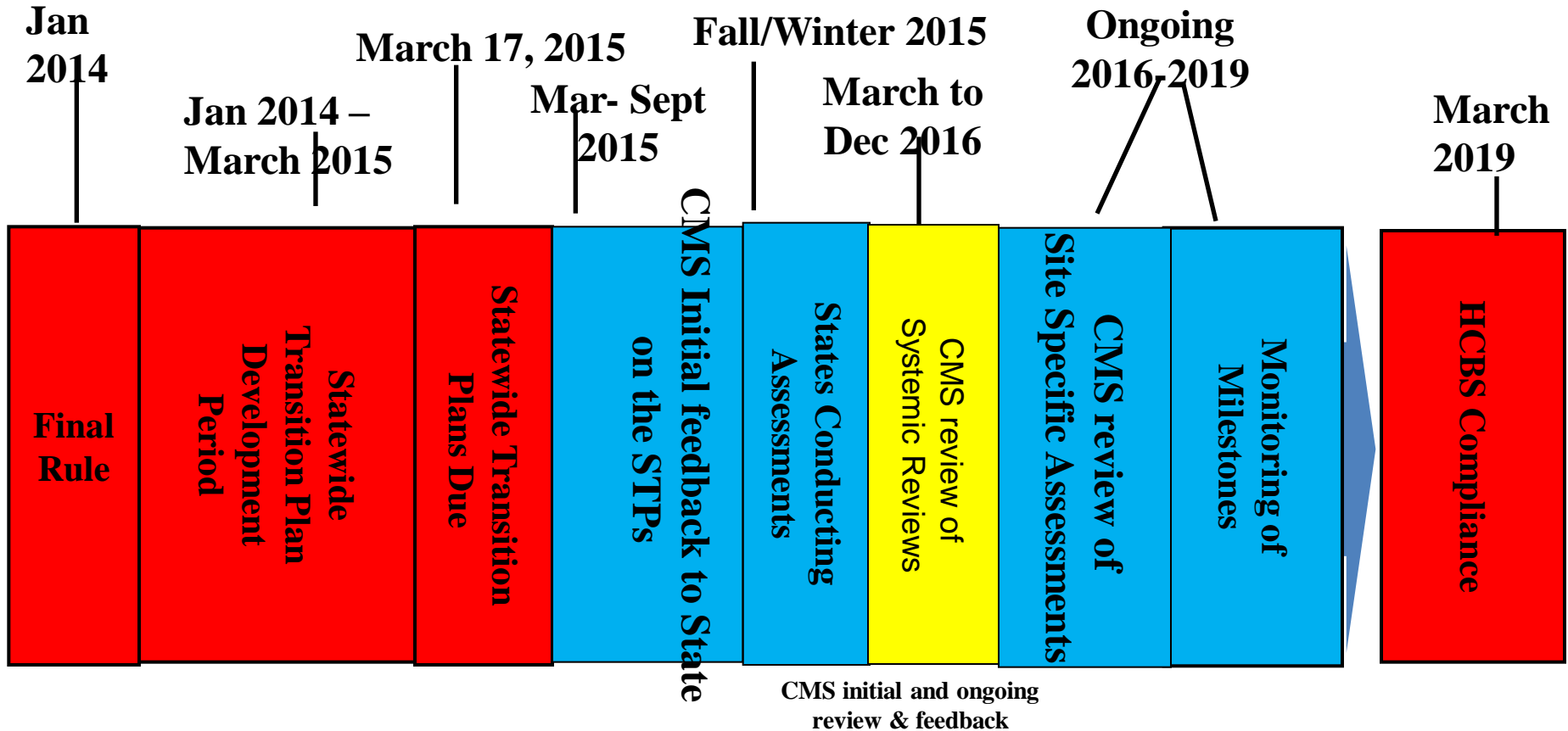


# Home and Community-Based Setting Requirements

## Provider Owned and Controlled Settings – Additional Requirements

- Documentation in the person-centered service plan of modifications of the additional requirements includes:
  - Specific individualized assessed need
  - Prior interventions and supports including less intrusive methods
  - Description of condition proportionate to assessed need
  - Ongoing data measuring effectiveness of modification
  - Established time limits for periodic review of modifications
  - Individual’s informed consent
  - Assurance that interventions and supports will not cause harm

# Looking Forward: HCBS Transition Plan Implementation Timeline



# ***Today's Morning Topics of Discussion***

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- Public Engagement
- Systemic Assessment & Remediation

# Public Engagement: *Requirements*

- *A state must provide at least a 30-day public notice and comment period regarding the transition plan(s) that the state intends to submit to CMS for review and consideration, as follows:*
  - *The public notice must be in electronic (e.g. state website) and non-electronic (e.g. newspaper, mailings, etc.) forms.*
  - *The state must:*
    - *provide two (2) statements of public notice and public input procedures.*
    - *ensure the full transition plan is available for public comment.*
    - *consider and modify the transition plan, as the state deems appropriate, to account for public comment.*
- *A state must submit to CMS, with the proposed transition plan:*
  - *Evidence of the public notice required.*
  - *A summary of the comments received during the public notice period, any modifications to the transition plan based upon those comments, and reasons why other comments were not adopted.*

[Citation: Page 85 of the [Federal HCBS Settings Rule](#)]

# Public Engagement: *Promising State Strategies*

Promising Practice	State Examples
Full Statewide Transition Plan (STP) must be made available to the stakeholders in electronic and non-electronic forms.	All States
Provides clear, easily digestible overview of the rule and context of the state's implementation process in the STP	Pennsylvania
Virtual and in-person orientation sessions and "town-hall" like meetings across state and stakeholders. Focus groups and feedback forums early on to help inform the design of the state's HCBS implementation strategy.	Ohio
Establishment of state working groups or committees that included balanced/equal representation of various stakeholders.	Delaware
List of all relevant services, settings, descriptions being captured in the HCBS implementation process.	North Dakota Iowa
Use of multi-media to broadcast and disseminate information about public comment process(es).	South Carolina
Provides clear, informative summary of public comments received, including state's responses for how it addressed each comment or category of comments.	Michigan

# Systemic Assessment & Remediation: *Overview*

- States are required to conduct a systemic assessment, which is the state's assessment of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings are in compliance.
- This process involves reviewing and assessing all relevant state standards to determine compliance with the federal home and community-based setting regulations.
- States must review state standards related to all setting types in which HCBS are provided.

# Systemic Assessment & Remediation: *Scope*

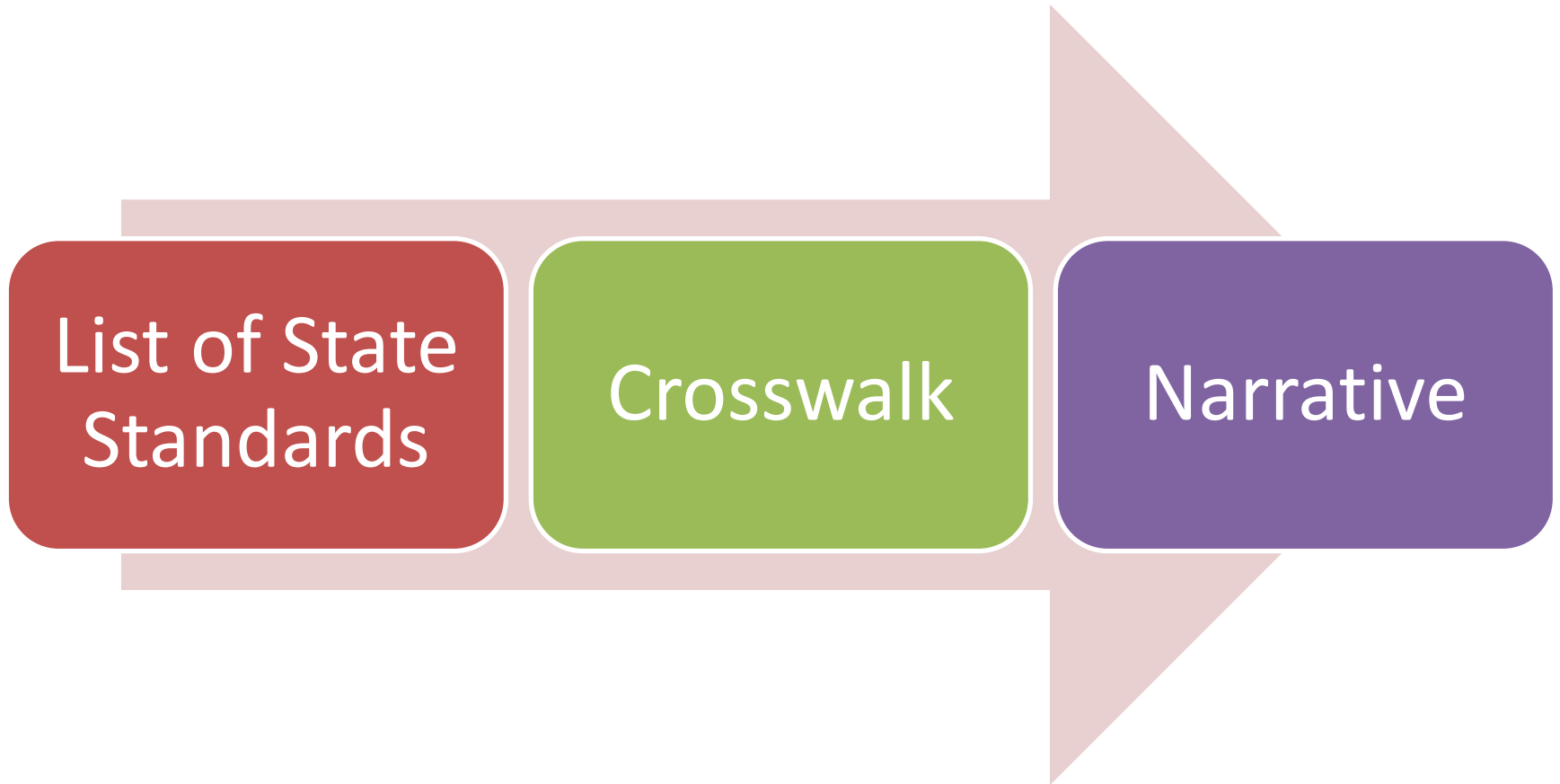
- **Examples of documents in which state standards are likely to be articulated include:**
  - Statutes
  - Licensing/certification regulations
  - Guidelines, policy and procedure manuals, and provider manuals
  - Provider training materials



# Systemic Assessment & Remediation: *Requirements*

- States must ensure that the language in their state standards is fully consistent with the requirements in the federal setting regulations:
  - 42 CFR 441.301(c)(4) for 1915(c) waivers
  - 42 CFR 441.710 (a)(1) for 1915(i) state plan programs
  - 42 CFR 441.530(a)(1) for 1915(k) state plan programs
- The federal regulations set the floor for requirements, but states may elect to raise the standard for what constitutes an acceptable home and community-based setting.
- States must assure that each element under the HCBS federal regulations is adequately addressed in every relevant state standard for which the specific federal requirement is applicable.

# Systemic Assessment: Overview



# Systemic Assessment & Remediation: Standards and Crosswalk

- **Clear listing of all relevant state standards** (including policies, regulations, statutes, procedures, etc) that were reviewed, to include full name, code/citation, and electronic link to each document in accessible format.
- **Detailed crosswalk**
  - Each specific setting criterion
  - Each related state standard identified by specific citation(s) and the type of setting it applies to, correlated with each relevant element of the federal rule
  - Analysis of whether the relevant state standards are compliant, partially compliant, in conflict with, or silent with respect to the federal regulation
  - Detailed description of action to be taken by the state to rectify any gaps or inconsistencies in state standards and the timeline for completing each action

# Systemic Assessment & Remediation: Narrative

- **Narrative providing additional context regarding:**
  - The process/approach the state took to complete the systemic assessment
  - How external stakeholders and the public were engaged in the process
  - What the state's systemic remediation strategy looks like and clear milestones for completion of what is required in terms of accomplishing the proposed strategy
  - How this work is being aligned with any other relevant state activities
  - Any additional pertinent information the state believes CMS should be aware of with respect to the state's systemic assessment and proposed remediation strategies.

# Implementation Considerations

- Make sure all relevant state standards are easily identifiable and easy to find online for the public and CMS.
- States should describe the process by which the systemic assessment was completed and validated.
- Systemic assessment must include a review of all relevant state standards.
  - This may require the engagement of state agencies/authorities outside of the state Medicaid agency's jurisdiction (housing, licensing, etc.)

# More Implementation Considerations

- State determination of level of compliance for existing state standards must include analysis/explanation in the STP.
- Silence does not equal compliance.
- Inconsistencies/areas of noncompliance in existing state policy cannot be addressed simply by changes to the waiver document alone.
- In terms of remediation, specific language should be used to address remediating inconsistencies between the federal HCBS rule and current state standards.

# Systemic Assessment: Key Questions

- Did the state include the **full names, codes/citations, and links** on all relevant policies and regulations?
- Did the state clearly lay out both the key elements of the HCBS rule for which each statute covers, and also the specific pieces that either **comply, partially comply, do not comply, or are silent**?
- Did the state complete **an in-depth analysis** of all policies, statutes, regulations, provider manuals, and service definitions to determine level of compliance, non-compliance, or silence in accordance with the new federal HCBS rule?



# Systemic Assessment: Remediation and Feedback

- Did the state include specific, **detailed actions for remediating** any areas in state policy/regulation that either partially comply, do not comply or are silent on the regulation and need to be updated? Are these **proposed actions sufficient** in order to bring the state's existing standards into compliance with the federal HCBS rule?
- Did the state include milestones with **specific timelines/dates** for completing each remediation action in the systemic assessment, and are these timelines reasonable for assuring full compliance within the transition period?
- What if any challenges did the state identify as **potential barriers** to their ability to complete the systemic remediation actions (i.e., state legislature session timeline, governor approval process, etc.), and what activities and milestones were identified to address the barriers?
- Did the state submit the **entire completed STP out for public comment**, and did they summarize the public comments they received related to the systemic review and include that summary within the STP?

# Highlighting Effective Practices in Systemic Assessment & Remediation: *State Examples*

Effective Practice/Strategy	State Examples
<b>Clear list of all relevant state standards reviewed in the systemic assessment, including titles, codes/citations, and links</b>	South Carolina, Vermont, or Iowa
<b>Detailed analysis/justification of state's determination of compliance</b>	Vermont
<b>Detailed remediation required, action steps and timeline</b>	Ohio- (Crosswalk with remediation required, action steps and timeline)  Connecticut- (Developed strong template language covering all aspects of the rule, to then be used uniformly to address key gaps/compliance issues across various state standards in remediation strategy)

## Interactive Dialogue: Q&A

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*What is on your mind regarding the topics covered today as they relate to your state's approach to HCBS implementation?*

# View From States on Systemic Assessment

- Welcome Staff from
  - Delaware
    - Lisa Zimmerman, Deputy Director
    - Kathleen Maloney, Sr. Policy AdvisorDivision of Medicaid and Medical Assistance
  - Kentucky
    - Lynne Flynn, Advocacy Liaison
    - Lori Gresham, RN, Program ManagerDepartment for Medicaid Services



*Division of Medicaid & Medical Assistance*

**DELAWARE'S  
HCBS TRANSITION PLAN INITIAL APPROVAL:  
A STUDY IN COLLABORATION AND  
COORDINATION  
HCBS CONFERENCE 2016  
WASHINGTON D.C.**

*Lisa Zimmerman, Deputy Director*

*Kathleen Mahoney, Senior Policy Administrator, Policy, Planning & Quality*

*Division of Medicaid and Medical Assistance*

*Delaware Health and Social Services*

# OVERVIEW

Delaware HCBS Environment

Background

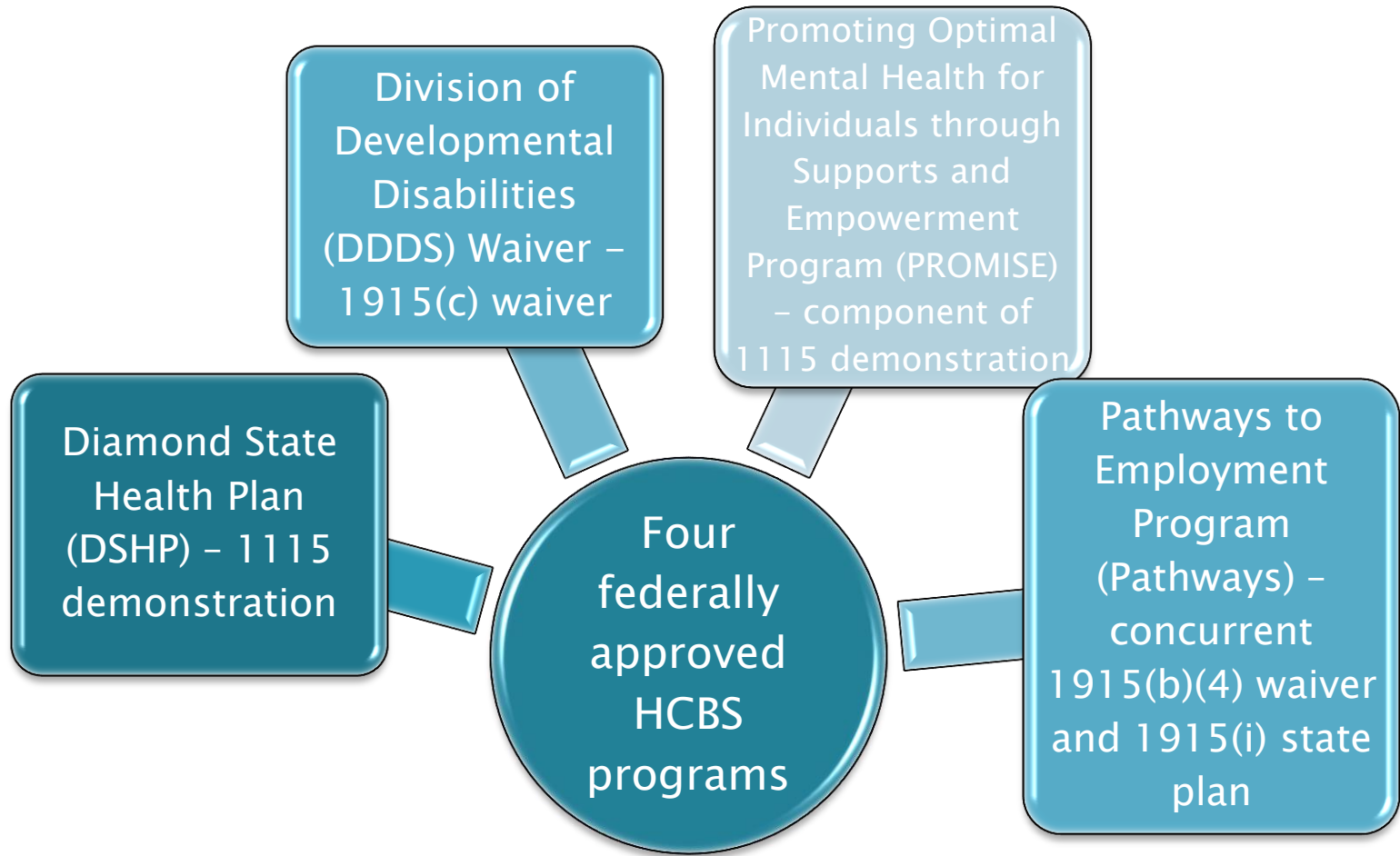
Keys to Success

Challenges

Unique Program Design Features

Looking Ahead

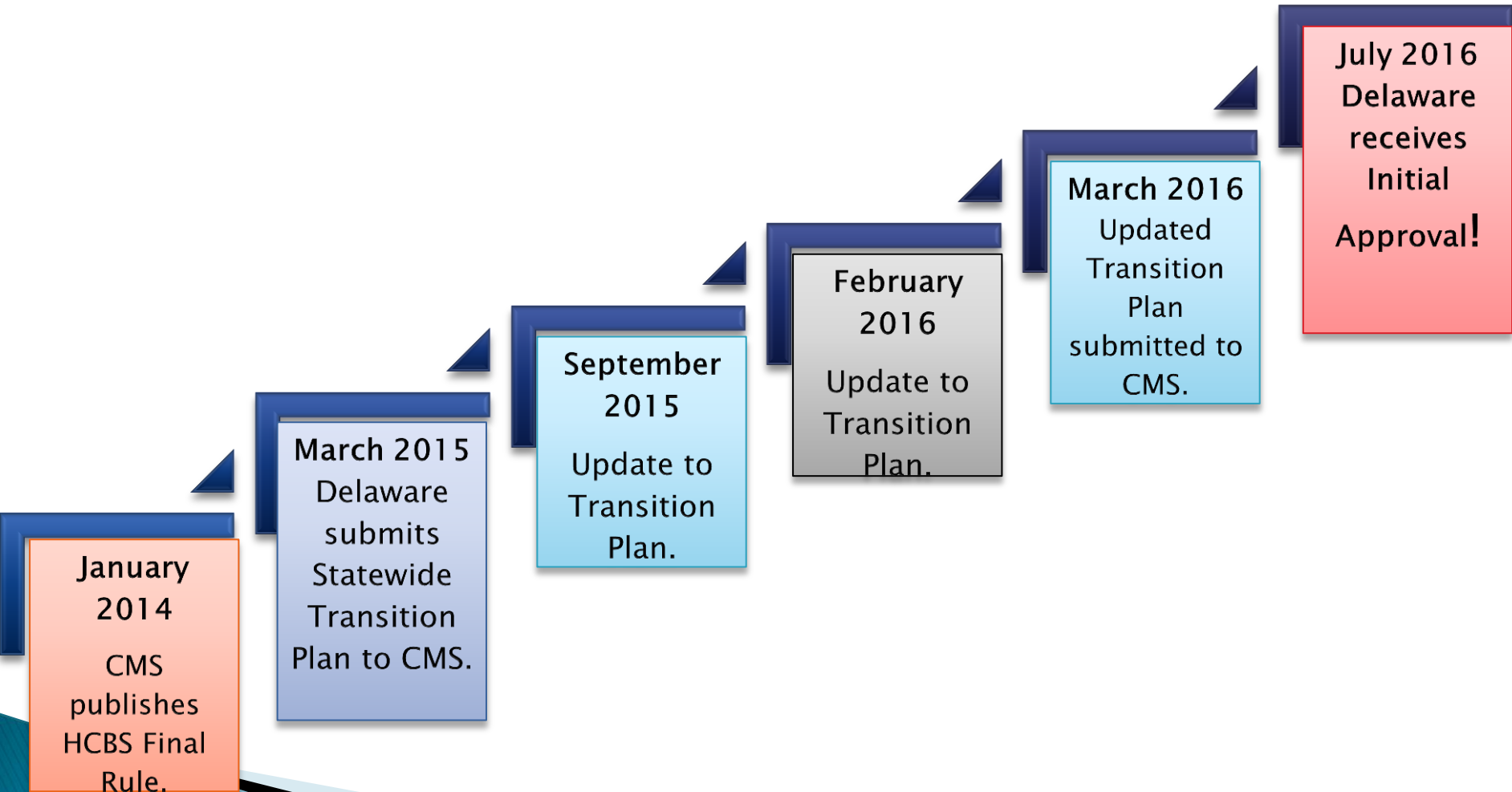
# Delaware HCBS Environment



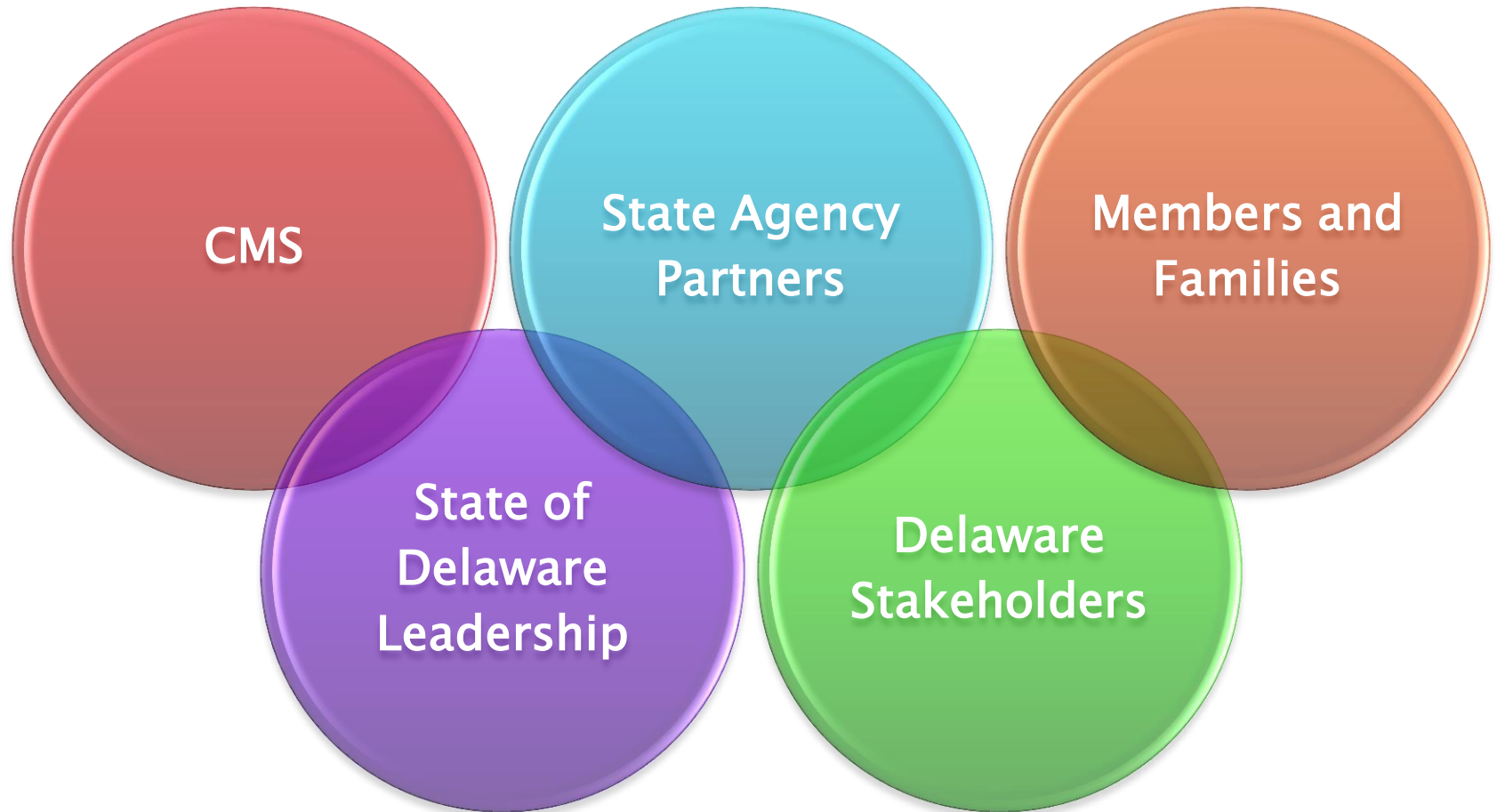
Approximately 4932 individuals served in the system



# Background: The Delaware Experience



# Keys to Success: Collaboration



# Keys to Success: Stakeholders Engagement

Stakeholder	Role
Governor's Office	Provides direction and leadership for transition activities.
Secretary's Office	Provides direction and leadership for transition activities.
Cross-Agency Oversight Committee	Oversees and monitors implementation of the Plan.
Governor's Commission on Community Based Alternatives for Individuals with Disabilities (CBAID)	Key stakeholder advisory group for feedback on implementation activities.
DMMA and Other State Staff	Implement transition activities.
HCBS Providers	Provide direct support to members, responsible for assessing their policies and settings to determine compliance with the HCBS final rule and making corresponding changes, responsible for assisting with any member transition.
Other Stakeholders (such as: advocates, provider associations, etc.)	Provide feedback and input on implementation activities.

# Keys to Success: Coordinating and Leveraging

## Assessments

- State systemic self-assessment of regulations and policies
- MCO self-assessment
- Provider settings

## Heightened Scrutiny

- Provider surveys
- Desk reviews
- Onsite visits

## Remediation Strategies

- Report of findings to providers
- MCO Compliance Plans
- Corrective Action Plans

## Monitoring ongoing compliance

- Formalizing process for compliance
- MCO Contract standards for compliance with final rule
- Developing monitoring and oversight process

# In Retrospect

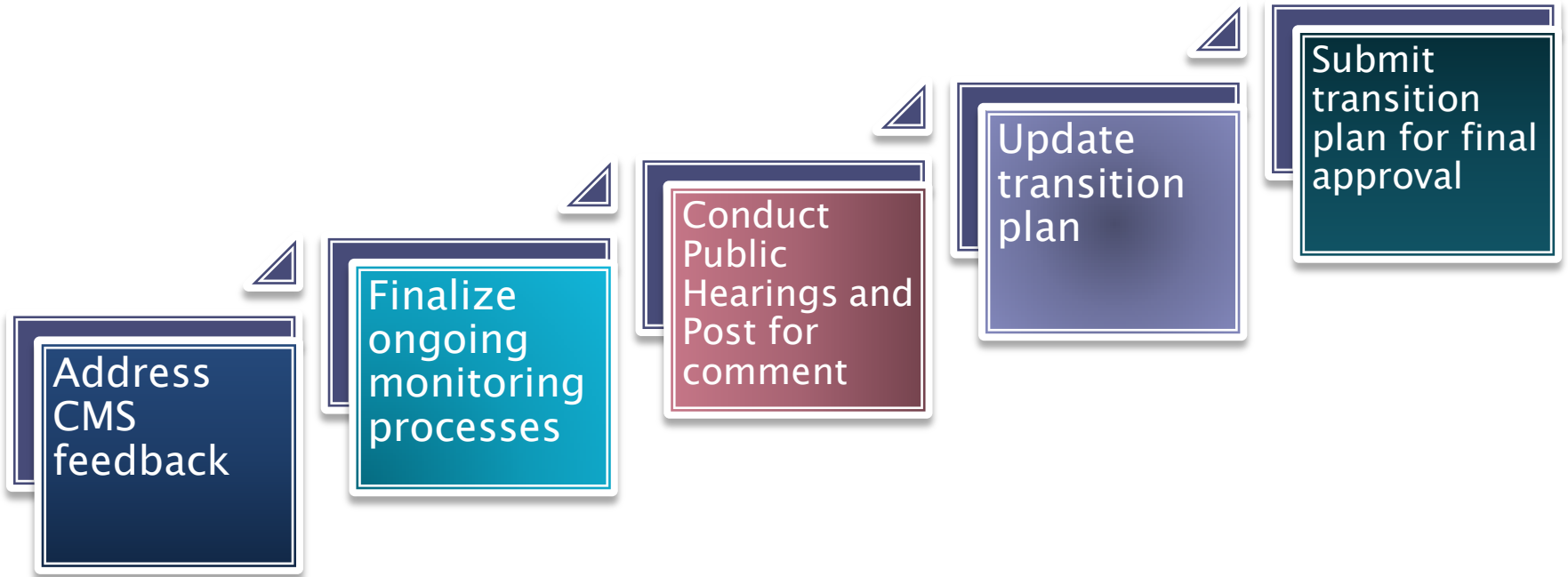
## Challenges

- Limited staff resources
- Stakeholder fear of losing important HCBS
- Misunderstanding of the purpose of the HCBS final rule

## Unique Design Features

- State agency team approach to developing surveys
- Use of nursing team for onsite reviews
- Role of advisory committees in implementation

# Looking Ahead: Steps toward Final Approval



# Thank You

- ▶ Contact information:
  - Lisa Zimmerman [lisa.zimmerman@state.de.us](mailto:lisa.zimmerman@state.de.us)
  - Kathleen Mahoney [kathleen.mahoney@state.de.us](mailto:kathleen.mahoney@state.de.us)
- ▶ Please visit the following sites for more information on Delaware's HCBS Final Activities and State Transition Plan:
  - [http://dhss.delaware.gov/dhss/dmma/hcbs\\_trans\\_plan.html](http://dhss.delaware.gov/dhss/dmma/hcbs_trans_plan.html)
  - Twitter
  - Facebook



*Division of Medicaid & Medical Assistance*



# KENTUCKY

Cabinet for Health and Family Services

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## HOME AND COMMUNITY BASED SERVICES (HCBS) CONFERENCE: PROCESS AND LESSONS LEARNED

PRESENTED BY:

LYNNE FLYNN, POLICY ADVISOR

&

LORI GRESHAM, R.N. PROGRAM MANAGER  
DEPARTMENT FOR MEDICAID SERVICES (DMS)



# Contents

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## **Background**

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# Kentucky's 1915(c) Waivers

## Overview

In conjunction with its sister state agencies, the Department for Medicaid Services operates six Home and Community Based Services (HCBS) waivers that serve a variety of populations in the Commonwealth. Three of the six waivers include residential services.

## KY 1915(c) Waivers

<b>Acquired Brain Injury (ABI)</b> <i>Includes residential</i>	Adults with an acquired brain injury who meet nursing facility level of care	<b>Michelle P. (MPW)</b>	Individuals with intellectual or developmental disabilities and meet ICF / IID level of care
<b>Acquired Brain Injury-Long Term Care (ABI-LTC)</b> <i>Includes residential</i>	Adults with an acquired brain injury who meet nursing facility level of care and need long term supports	<b>Model II (MIIW)</b>	Individuals who are ventilator-dependent and meet nursing facility level of care
<b>Home and Community Based (HCB)</b>	Individuals who are elderly or disabled who meet nursing facility level of care	<b>Supports for Community Living (SCL)</b> <i>Includes residential</i>	Individuals with intellectual or developmental disabilities who meet ICF / IID level of care

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# Process

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# Implementation Process

Kentucky began developing its process for implementing the HCBS Final Rules shortly after their publication in 2014. Since that time, the Commonwealth has completed its systemic assessment, and is nearly complete with its provider assessment.



# Internal Strategy

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Kentucky's internal HCBS Final Rules workgroup led the Commonwealth's efforts for implementing the new requirements and communicating with stakeholders.

## Workgroup



- Staff representing 3 agencies that play key roles in administering the HCBS waivers

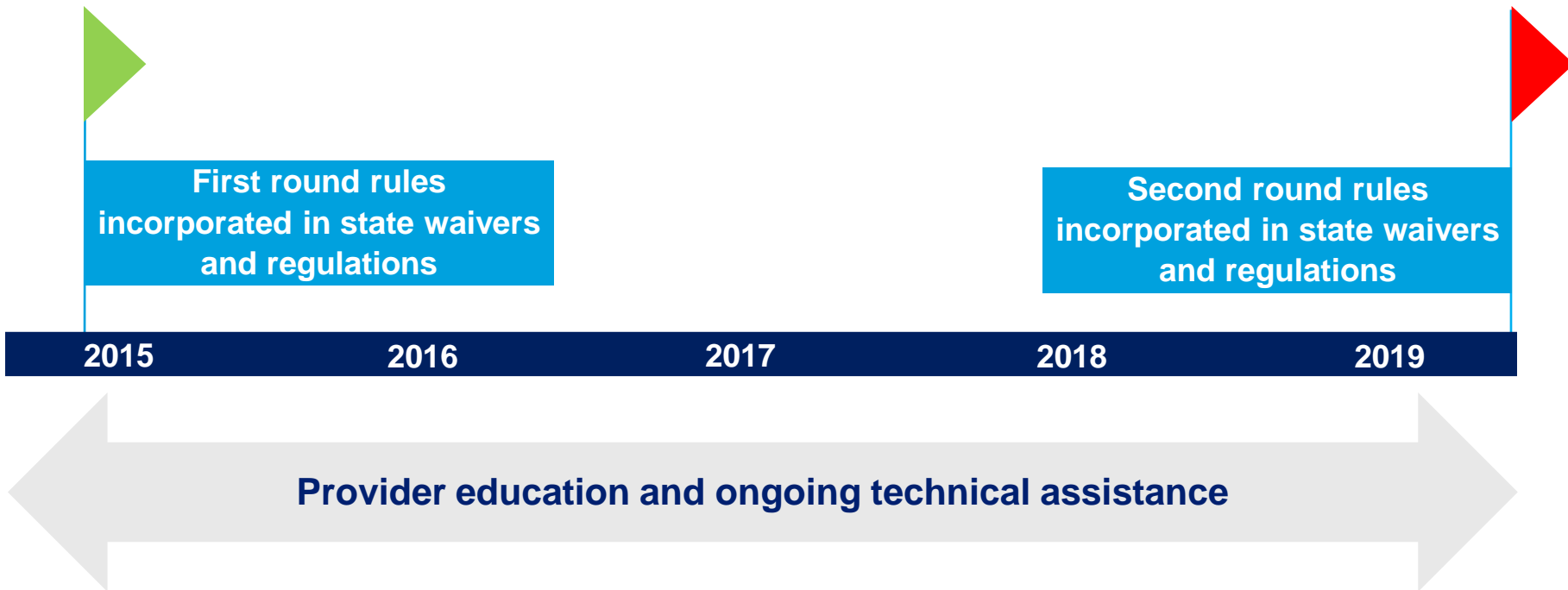
## Responsibilities



- ✓ Develop understanding of the HCBS Final Rules
- ✓ Create implementation plan and timeline
- ✓ Communicate and collaborate with stakeholders

# Systemic Assessment

Kentucky is remediating its setting-related state-level policies in two rounds based on the complexity of the HCBS Final Rules components.



# Systemic Assessment (continued)

The first round rules include the majority of the setting requirements, while the second round rules include those that are more complex, and therefore, more challenging to implement.

## First Round Rules

The individual:

- **Selects** both the setting (location) and provider from **options**
- Has rights of **privacy, dignity, and respect**, and freedom from coercion and restraint
- Has **autonomy and independence** in making life choices
- Is provided **choice regarding services and supports** and who provides them
- Has **privacy** in their living unit, including doors lockable by the individual, **choice** of roommates/housemates, and freedom to **furnish/decorate** their living unit
- Is able to have **visitors** of their choosing at any time
- Has full **physical accessibility** to the setting

## Second Round Rules

The setting:

- Is **integrated** in and supports full access of individuals to the **greater community**
- Does **not** include:
  - Nursing facility
  - Institution for mental diseases
  - Intermediate care facility for individuals with intellectual disabilities
  - Hospital
  - Other locations with institutional qualities

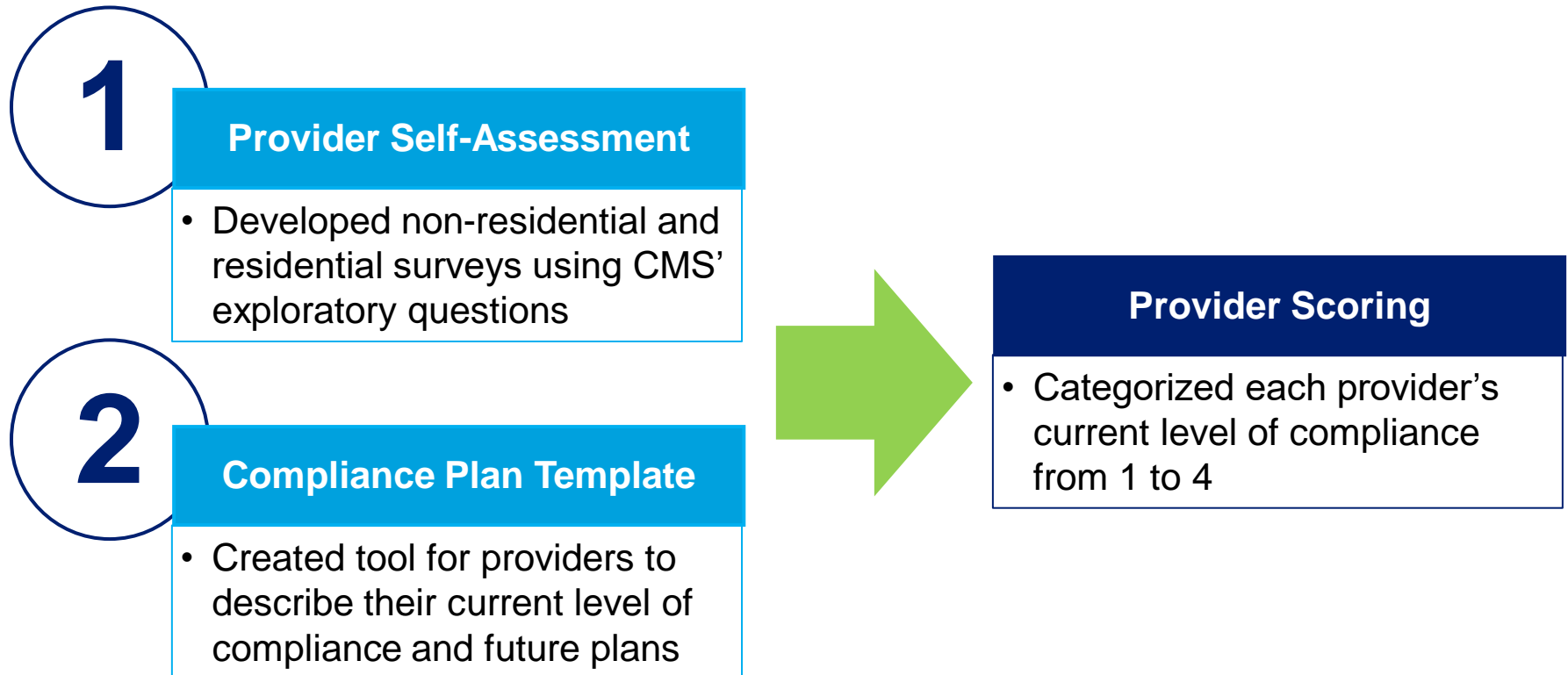
The individual:

- Has the same responsibilities and **protections from eviction** that other tenants in the State have through a **legally enforceable agreement**
- Has the **freedom** and support to **control their own schedule** and activities



# Provider Assessment

Assessment of waiver providers focused on their policies, setting location(s), and current practices.



**Kentucky's current focus is on heightened scrutiny and completing site visits of all settings potentially subject to heightened scrutiny.**

# Stakeholder Engagement

Since 2014, Kentucky has worked to involve stakeholders in the HCBS Final Rules implementation, and takes advantage of as many opportunities as possible to communicate progress and updates and to seek input from participants, families, advocates, and providers.

## Key Opportunities

- **Consumer Input Forums** (January – April, 2015)
- **Stakeholder Input Meetings and Webinars** (February 10 & 11, 2016)
- **Stakeholder Meetings and Webinars** (September 22 & 30, 2016)

## Ongoing Opportunities

- **Statewide Advisory Committees**
  - Commonwealth Council on Developmental Disabilities (CCDD)
  - Technical Advisory Committees (TACs)
  - HB 144 Commission
  - Advisory Council for Medical Assistance (MAC)
- **Work Groups**
- **Consumer Forums**
- **Advocacy and Provider Association Presentations**

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## **Lessons Learned**

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## Lessons Learned

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Since the publication of the HCBS Final Rules, Kentucky has identified lessons learned from various topics – ranging from stakeholder engagement to regulations.

**It's challenging to be one of the first states.**

**Leverage human resources – hire help if possible.**

**Stakeholder engagement is key.**

**Strike a balance between sharing information and creating undue concern.**

**Implementing the Federal requirements in state regulations can be challenging.**

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## **Next Steps**

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## Next Steps

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Kentucky's next steps are aligned with our goal of achieving final approval of our Statewide Transition Plan.

1

Address CMS feedback on implementation processes

2

Finalize heightened scrutiny submission process

3

Update Statewide Transition Plan, post for public comment, and submit to CMS

4

Provide technical assistance to providers

Monitoring

Stakeholder  
Communication  
& Engagement

**Lynne Flynn:** Lynne.Flynn@ky.gov

**Lori Gresham:** Lori.Kays@ky.gov

**Kentucky Statewide Transition Plan:**

<http://www.chfs.ky.gov/dms>

# Interactive Dialogue

- *How is your state assuring strong public engagement throughout the HCBS implementation process? Have you run into barriers with respect to getting the level of public engagement you desire?*
- *What is the status of your systemic assessment and remediation efforts? How are you accomplishing this work? Do you feel there are any specific strategies/effective practices you've used to complete the systemic assessment that you think other states would benefit from hearing about? What obstacles have you faced in fully completing the systemic assessment process, and how are you addressing these obstacles?*
- *How has your state laid out its milestones for HCBS implementation? How have you communicated these milestones and corresponding timelines to various stakeholders and partners? What concerns do you have about accomplishing the milestones set forth in your plan by the end of the transition period? How are you tracking progress in milestone completion?*



# Statewide Transition Plans – What Are We Seeing

- Several Initial STPs did not provide enough information to facilitate meaningful public input.
- Some states are very early in the process of conducting assessments of their current systems
  - Some states have not completed systemic assessments
  - Many states have not identified all of the specific policies, rules, licensure or certification process to be reviewed, the settings they apply to and/or the qualities of home and community-based settings that they address
  - Many states have not completely identified all of the standards that apply to specific settings to be included in the assessment, the number of such settings, or the number of individuals served
  - Some states have equated silence with compliance

# Resources

- HCBS Website – <http://www.medicaid.gov/hcbs>
  - Final HCBS regulation
  - Guidance
  - Fact Sheets
  - FAQ
  - Compliance Toolkit
  - State Transition Plan Information
- State Technical Assistance
- Mailbox to send questions: [hcbs@cms.hhs.gov](mailto:hcbs@cms.hhs.gov)