

Appendix N—Public Comments from September 13, 2016 to October 31, 2016

Overview: This document serves as a summary of comments that the State has received - including participants, advocacy organizations, legal entities, and provider networks - regarding the Maryland's HCBS State Transition Plan (STP). The updated draft transition plan was posted on September 13, 2016, with a comment period lasting through October 31, 2016. Any other questions or comments that go into more detail about the process will serve to guide the State as we implement each remediation strategy.

Initial Assessment Strategies and Findings

<u>Public Input/Comments</u>	<u>State Response</u>
The Department should not use NCI data as a baseline assessment for measuring compliance & to clarify how it intends to use the data.	DHMH should not solely rely on NCI data. Instead, any assessment to measure compliance should include interviews with individuals with disabilities (including as interviewers). We will not use NCI data to measure anything. NCI Data is included for information purposes only. The Department is using other methods to measure compliance. No changes were made to the STP based on this feedback.
Specific NCI data should be removed from the updated Statewide Transition Plan.	

Initial Self-Assessment Surveys for Residential Services

<u>Public Input/Comments</u>	<u>State Response</u>
The Department should disclose that it receives guidance from CMS, Hilltop, and Stakeholders when establishing criteria for engaging in site specific assessments.	The Department posted the guidance and you can find the link by clicking the following link: https://mmcp.health.maryland.gov/waiverprograms/Pages/Community-Settings-Final-Rule.aspx
DDA site-specific assessment results should be shared with providers as soon as possible in order to help them come into full compliance by addressing deficiencies.	The Department made changes to the timeline based on this feedback.

Assessments of Regulations

<u>Public Input/Comments</u>	<u>State Response</u>
DHMH/DDA should include any proposed programmatic changes that will be included in the legislation and regulations in the STP so Medicaid recipients, their families and providers can begin to make changes before Jan 2018. (Jan 2018 date is not sufficient for them to implement changes before Mar 2019).	The Department made changes to the timeline based on this feedback.
The STP should include future educational efforts geared towards informing individuals of their rights under the new regulations.	The Department listed education efforts and changed policy, provided more community outreach, and made changes to the STP based on that feedback.
When the Department reviews current regulations, it must ensure that the new rule requirements are expressly written into new regulations.	We agree. The Department made the changes to the State Transition Plan and expressly wrote the Federal rule into the new regulations.

Assessments of Waiver Application

<u>Public Input/Comments</u>	<u>State Response</u>
The Department should include in the STP an update to the Community Pathways waiver to include an emphasis on the Employment First initiative.	The Department included in the STP an update to the Community Pathways waiver to include an emphasis on the Employment First Initiative for both individuals in provider-based services and those individuals who self-direct their services.

Preliminary Findings Related to DDA Service Delivery System

<u>Public Input/Comments</u>	<u>State Response</u>
Further review is needed to ensure that restrictive and isolating measures are held to standards beyond documentation & that participants truly have access to the greater community without restrictions.	No changes were made to the STP based on this feedback.
Update the supported employment data in the chart on page 26 to reflect data from 2016 instead of October 2015.	We agree. The information was updated and can be found by clicking the following link: https://mmcp.dhmh.maryland.gov/waiverprograms/Pages/Community-Settings-Final-Rule.aspx?RootFolder=%2Fwaiverprograms%2FFinal%20Rule%20Plans%20and%20Procedures%2FWorkgroups&FolderCTID=0x012000AD9EE8594158544A90A6F0C05321B82A&View=%7BA0117EF4-1CD0-4504-9444-4C5D80C4EC4F%7

Preliminary Findings Related to DDA Service Delivery System--DDA Transition Advisory

<u>Public Input/Comments</u>	<u>State Response</u>
<p>The role and purpose of the Transition Teams needs to be clarified.</p> <p>The description given for the DDA Transition Advisory Team does not describe the actual process as it has occurred. The group has not been provided with the opportunity to function in an advisory capacity. Please revise the description to reflect actual activities of the group and engage the group in a true advisory role moving forward.</p> <p>The Department should assign a more robust role to the Transition Advisory Group.</p>	<p>The Department took the feedback in consideration and we are in the process of improving the transition advisory teams.</p>
<p>The STP should consider how stakeholders outside the Transition Teams can provide feedback on the process.</p>	<p>We agree. The Department scheduled stakeholder meetings until the end of the year and updated the STP.</p>
<p>The description of the DDA Quality Advisory Council (QAC) is not reflective of the current process. To function as intended, council members must have active/meaningful roles in development of policies and meetings must go beyond presentations by DDA. The same goes for the State's Transition Plan.</p>	<p>The Department took the feedback in consideration and we are in the process of improving the transition advisory teams.</p>

Tiered Standards

<u>Public Input/Comments</u>	<u>State Response</u>
Higher standards should not be developed until providers have a chance to fully transition to the standards established by the Final Rule.	Tiered standards are not intended as a punitive measure against providers but rather as an opportunity to move services in Maryland further. No changes were made in the STP based on this feedback.
DDA should continue to move towards the tiered standard goals by enhancing services, providing opportunities, and considering policies and practices that offer incentives to providers for moving Maryland forward.	

Heightened Scrutiny

<u>Public Input/Comments</u>	<u>State Response</u>
In regards to isolation, the Department is assuming that all providers know where other provider homes are located.	This comment is a result of a misunderstanding. The Department is looking at multiple sites that the provider has in proximity to each other and not looking at where different providers are in relation to each other if they do not have a business relationship. The Department is only looking at proximity of providers to each other for information and planning purposes. No changes were made in the STP based on this feedback.
The Department should consider heightened scrutiny when licensed residential sites are in close proximity and are owned or operated by the same provider.	We agree. The Department has placed these providers on the Heightened Scrutiny list and is looking further into the identified issues by conducting two rounds of site visits.
DHMH/Medicaid/DDA should set forth clearly defined guidelines describing non-residential settings that isolate and the State of Maryland should include examples of residential settings that isolate.	The Hilltop Institute presented "red flag" questions to the TAT in a previous meeting after the STP request for public comment was sent out. The information was emailed to TAT members on January 13, 2017 CMS guidance has been sufficient for determining what sites isolate and providers are given this information and directed to CMS guidance.
The STP should provide a clear definition of how the State is defining "floor," or minimum standard of compliance which will be used in the State's heightened scrutiny process.	

Heightened Scrutiny

<u>Public Input/Comments</u>	<u>State Response</u>
The STP should provide a more exhaustive list and clearer proposal for settings that do not comply with the rule.	The Hilltop Institute presented "red flag" questions to the TAT in a previous meeting after the STP request for public comment was sent out. The information was emailed to TAT members on January 13, 2017. The Department has compiled a preliminary list of settings that may not comply based on the provider self-assessment and other information. The Department is working with providers that may have compliance issues as well as working on finalizing the list of providers that may need heightened scrutiny. The Department is working on the exhaustive list and in the process of providing attention to providers that need it the most. The Department will provide the updated list once it is complete.
The distinction between presumed institutional and having qualities of an institution need to be clarified. Also, site-specific criteria as well as standardized strategies for managing visits should be reflected in the plan.	An operational protocol is being developed to let providers know what to expect. The rule distinguishes between presumed institutional and having qualities of an institution in two different sections of the rule This is clarified in CMS guidance and we have been doing site visits to settings having qualities of an institution. The STP was updated to clarify this.
The time frame for Heightened Scrutiny should be adjusted to no later than June 2017 to allow time for providers to develop and implement corrective action plans in time for March 2019 and in the alternative, to allow individuals time to relocate.	The Department has altered the timeline to reflect the necessary changes as they occur. The Department provided information of corrective action plans and new provider training in the STP.

Provider Self-Assessments

<u>Public Input/Comments</u>	<u>State Response</u>
The STP should set realistic timelines for compliance with more readily obtainable requirements so that individuals do not have to wait four years to realize any benefits of the new regulations.	The Department is encouraging and assisting providers to take steps now to ensure compliance with the Final Rule. Proposed state regulations require new providers to be in compliance by January 1, 2018. The STP was updated to reflect this.
The Transition Plan needs to more clearly define the tools the Department intends to use to conduct initial settings assessments and ongoing compliance monitoring, as well the purpose of each tool.	The initial assessments of the providers were completed in 2015 and 2016, including a provider self-assessment which can be found by clicking here and a systemic assessment. The tools and the results of those have been made public. The Department is conducting initial site visits and piloting tools to use during these visits. When the Department finalizes the documents, it will be shared. The STP was updated to reflect this.

Participant Assessments

<u>Public Input/Comments</u>	<u>State Response</u>
<p>The Department should develop a new survey to monitor ongoing compliance and individual experiences.</p> <p>There should be further discussion and input from stakeholders, including providers, on the appropriateness of using the CSQ as an ongoing monitoring tool.</p>	<p>CSQs have been approved by CMS and included a stakeholder process. PCPs are used for documentation of individual outcomes but do not contain data in a form that can be analyzed. No changes were made to the STP based on this feedback.</p>
<p>The CSQ should be discontinued and not use as an ongoing monitoring tool.</p>	
<p>The person-centered-plan (PCP) should be used as the monitoring tool and not the CSQ because it assures that the participant and the people important to them are the sources of information.</p>	
<p>The Department should create a system-wide process for collecting data to ensure compliance and community integration.</p>	<p>In concert with developing a tool based on the PCP, the Department should develop a means of tracking compliance and community integration across the system. Agreed, doing so with PCP and CSQ.</p>

Validation of Findings and Settings Inventory--On Site Assessments

<u>Public Input/Comments</u>	<u>State Response</u>
<p>The Transition Plan needs to clarify the role and purpose of site visits.</p>	<p>The Department will clarify who is doing the site assessments, the timeline for the assessments and the tool they are using to conduct the assessments during stakeholder meetings. Site visits have started for Assisted Living Facilities and Medical Day Care Centers. The STP is updated to reflect this.</p>
<p>Results of the site visits should be shared with providers no later than August 1, 2017 to give providers sufficient time to make any changes.</p>	<p>The Department has made changes to timelines. Site visits have started for Assisted Living Facilities and Medical Day Care Centers. The results will not be completed by August 2017. No changes were made to the STP based on this feedback.</p>

Other Matters

<u>Public Input/Comments</u>	<u>State Response</u>
TBI being addressed in a different Transition Team should be clarified so that others understand that.	TBI is welcome at both stakeholder meetings. TBI Providers are licensed by DDA and often also provide DDA services. This program follows the DDA process. No changes were made to the STP based on this feedback.
The language that is used within the document is very technical and may not be understandable to people with disabilities themselves, as well as being incomprehensible to anyone who is not directly associated with the disability field. It needs to be understandable to those it will affect.	We agree. The Department will also ensure that the STP is understandable to people with disabilities. The Department will ensure individuals with disabilities receiving training on their rights under the Final Rule. Changes were made to simplify the STP.
This document is way too long and its length may discourage people from reading it.	The Department divided up the STP so individuals are able to search for relevant portions easier.
DHMH should consider including more steps and strategies for changes needed in practice. The STP should include documentation of efforts such as the Employment First policy and practices in the STP that has already taken place and planned going forward.	The STP includes information on steps the Department has already taken and what they still need to do. The STP was changed to reflect this.
The services within the state plan must be flexible and person centered. The state plan overall must emphasize the ability of people with disabilities to be able to live however they choose.	The state plan emphasizes the ability of people with disabilities to be able to live however and wherever they choose <u>in a setting that meets the Final Rule. No changes were made to the STP based on this feedback.</u>

Lease or Other Legally Enforceable Agreement

<u>Public Input/Comments</u>	<u>State Response</u>
The Department should resume the stakeholder input process regarding the development of a model lease or legal residential agreement that provides protection to waiver participants.	Providers may propose their own model lease. No changes made to the STP.
The Department needs to create a model lease or legal residential agreement that provides protection to waiver participants.	

Provider Transition Symposium

<u>Public Input/Comments</u>	<u>State Response</u>
One Provider Transition Symposium is not enough to support providers to create change. There should be ongoing assistance and additional symposiums.	Providers need support and technical assistance to meet the Final Rule. The Department is offering additional symposium, technical support, as well as provider-to-provider mentoring opportunities, to enable Maryland's providers to go beyond compliance. No changes made to the STP.
A provider symposium for supporting provider transformation should be planned and DHMH/DDA should provide a web page link associated with the symposium.	

Provider Enrollment and Provider Training

<u>Public Input/Comments</u>	<u>State Response</u>
Funding should be provided for training for DDA providers and staff in order to come into full compliance.	We agree. No changes made to the STP.
Funding should be provided for provider technical assistance and training.	We agree. No changes made to the STP.
Staff of DDA and OHCQ should receive training in risk vs. opportunity in DD supports.	No changes made to the STP.
Maryland's STP should include a timeframe for training Coordinators of Community Services on person-centered planning and create opportunities for Medicaid recipients, their families and providers to learn more about the practice of conflict-free person-centered planning and how Maryland intends to implement it.	The Department is providing PCP training to Coordinators of Community Services. No changes made to the STP.
Training and technical assistance should be provided for both DDA providers and their staff.	We agree. No changes made to the STP.

Comprehensive Settings Results Reports

<u>Public Input/Comments</u>	<u>State Response</u>
The Department should direct residential providers that the qualities of community integration are an essential focus of compliance, not just the size and setting of residential services.	We agree. The Department has expressed that the size of the setting is not a determinative factor if the provider otherwise qualifies. No changes made to the STP.
The Department needs to review portions of the Plan where stakeholders disagree on current compliance.	The Department provides opportunities during monthly stakeholder meetings. No changes made to the STP.
The STP needs to include the creation of grievance processes for individuals who dispute a decision regarding setting compliance.	The Department will provide guidance and opportunity. No changes made to STP.
The Department needs to explore strategies for making choice of setting options a reality for individuals.	The Department ensures individuals have a choice of settings <u>across all settings compliant with the Final Rule. No changes made to STP.</u>
The Department should end the use of campus-type settings and related settings that isolate people.	The Department is providing opportunities for individuals in these settings to explore different settings and provide support to individuals as they transition to more community integrated settings.
The Department Should Ensure In-Home Services Support Access to the Community.	We agree. There should be access but it is not a residential or facility-based service. This is not a Medicaid funded program and is not subject to the rule. No changes made to STP.

Participant Transitions

<u>Public Input/Comments</u>	<u>State Response</u>
<p>A standard must be developed that will ensure relocations are achieved through a process that protects the individual's rights and guards against traumatic situations. As a result, notice should be given no later than 6 months prior to relocation.</p>	<p>The Department made changes to its timeline based on this feedback.</p>
<p>Expand the timeline for completion to include specific timelines for the multiple phases of participant transition.</p>	
<p>Providers and participants should be given as much time as necessary to make the necessary changes.</p>	
<p>The Department should reconsider the Community First Choice and Home and Community Based Options Waiver definition of community setting, its impact on the waiver and DDA providers under the HCBS rule and its plan for transitioning individuals out of non-compliant provider institutions by the deadline (The Department should harmonize the definition of institution.)</p>	<p>We agree the Department must be consistent with its definition of institution. The Department and its programs are in the process of revising the definition of institution. No changes were made to the STP at this times</p>

Participant Transitions

<u>Public Input/Comments</u>	<u>State Response</u>
<p>DDA should aggressively move to end Sheltered Workshops and Segregated Day Habilitation Services by transitioning people to community-based supported employment and meaningful community activities, with employment being the first and preferred option.</p>	<p>We agree that the Department should ensure individuals have opportunities and exposure to employment as the first option of service. Recommend a plan to reduce reliance on Day Habilitation. Day Habilitation is an option if the setting meets the rules and supports community inclusion.</p>
<p>If a provider does not comply by July 2018, a participant should start to consider alternative settings.</p>	<p>The Department made changes to timeline based on this feedback.</p>

Ongoing Compliance and Monitoring

<u>Public Input/Comments</u>	<u>State Response</u>
<p>The STP should include technical assistance and training to ensure compliance with the Person Centered Planning requirements in state and federal law.</p>	<p>The Department is providing PCP training to Coordinators of Community Services. No changes made to the STP.</p>
<p>The STP needs to more clearly define the tools the Department intends to use to conduct initial settings assessments and ongoing compliance monitoring, as well the purpose of each tool.</p>	<p>The Department will clarify who is doing the site assessments, the timeline for the assessments and the tool they are using to conduct the assessments. During monthly stakeholder meetings. Site visits for Medical Day Care Centers and Assisted Living Facilities have started. No changes made to the STP.</p>

Provider Transition Plans

<u>Public Input/Comments</u>	<u>State Response</u>
<p>All providers should have until January 2019 to comply with the Final Rule unless they can demonstrate that compliance is imminent and will be achieved by March 2019.</p>	<p>The Department made changes to timelines based on this feedback.</p>
<p>Provider-to-provider mentoring should be provided.</p>	<p>The Department is offering additional symposium, technical support, as well as provider-to-provider mentoring opportunities, to enable Maryland's providers to go beyond compliance. These are documented in the STP.</p>

Provider Sanctions and Disenrollment

<u>Public Input/Comments</u>	<u>State Response</u>
Adjust the timeline for completion to reflect any notices of disenrollment will be issued by September 2018 to ensure adequate time for the relocation process.	The Department made changes to timeline based on this feedback.

Risk Management

<u>Public Input/Comments</u>	<u>State Response</u>
DDA should set guidelines to allow participants and providers to determine levels of risk.	No changes made to the STP.
The participant's team and their person-centered plan should drive the level of risk deemed appropriate to meet the standards of the final rule.	