DEPARTMENT OF HUMAN SERVICES
Office of Long-Term Living

Office of Long-Term Living
CommCare Waiver Transition Plan
December 20, 2014

PURPOSE

In January 2014, the Center for Medicaid and Medicare Services (CMS) issued a new rule that states must follow to review and evaluate current Home and Community-Based Service (HCBS) settings, including residential and nonresidential settings, and to demonstrate how their HCBS programs comply with the new federal HCBS rule. The new CMS rule went into effect on March 17, 2014.

According to CMS, the final rule was issued in order to ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate to enhance the quality of HCBS and provide protections to participants. All waivers that fall under the Office of Long-Term Living (OLTL) are 1915(c) waivers and are, therefore, governed by the new rule.

CMS' definition of HCBS settings has evolved over the past five years, based on experience throughout the country and extensive public feedback about the best way to differentiate between institutional and home and community-based settings.

CMS is moving away from defining home and community-based settings by "what they are not," and toward defining them by the nature and quality of participants' experiences. The home and community-based setting provisions in this final rule establish a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics.

This transition plan outlines the requirements of the new CMS rule and the steps that OLTL will take to come into compliance with it.

ALL Settings
The CMS rule contains the following requirements for all HCBS settings:

- It must be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community - to the same degree of access as individuals not receiving Medicaid HCBS.
- It 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 is provided. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- It ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- It optimizes but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- It facilitates individual choice regarding services and supports, and who provides them.

Provider-Owned or Controlled Residential Setting

In a provider-owned or controlled residential setting, in addition to the above qualities, the following additional conditions must be met:

- The unit or dwelling is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

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

Any modification of the above requirements must be supported by a specific assessed need and justified in the person-centered service plan.

Prohibited Settings
There are some settings that CMS has deemed to never be an acceptable place to provide HCBS service. Home and community-based settings do not include the following:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital providing long-term care services; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

Presumed Ineligible Settings
Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

In the case of Presumed Ineligible Settings, CMS has made the following statement:

‘‘Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the state or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.’’

OLTL’s Transition Plan
The purpose of the Office of Long-Term Living’s Transition Plan is to ensure that individuals receiving HCBS waiver services are integrated in and have access to supports in the community, including opportunities to seek employment, work in competitive integrated settings, engage in community life, and control personal resources. The Plan outlines four phases of activity:

1.) Identification of tasks that need to be accomplished

2.) Assessment of the settings in which HCBS waiver services are provided. Settings are expected to fall within four categories:
    a. Those presumed to be fully compliant with HCBS characteristics
    b. Those that may be compliant, or could be compliant with changes
    c. Those presume non-HCBS but evidence may be presented to CMS for heightened scrutiny
    d. Those that do not comply with HCBS characteristics
3.) Development of remediation strategies for those settings that are not in compliance, and
4.) Outline a public input process that will be used throughout the phases.

States have five years to come into compliance with the new HCBS rule. This plan is not, however, a onetime and done activity. OLTL will change its own processes and protocols based on the rule's requirements, will at regular intervals consistently monitor providers through a variety of mechanisms and will include stakeholder input throughout these ongoing activities. Any changes to the Transition Plan will be put out for public input and a variety of input venues will be used to ensure that participants, providers, advocates and the general public have an opportunity to express their views.

What follows is an overview of OLTL's Transition Plan for the CommCare Waiver.

The CommCare Waiver serves individuals over the age of 21 who are nursing facility clinically eligible, have a traumatic brain injury and are financially eligible for MA waiver services.

The following services are available through the CommCare Waiver:

- Adult Daily Living
- Therapeutic and Counseling Services
- Personal Emergency Response System (PERS)
- Service Coordination
- Accessibility Adaptations, Equipment, Technology and Medical Supplies
- Supported Employment
- Respite
- Community Transition Services
- Non-Medical Transportation
- Home Health
- Residential Habilitation

- Personal Assistance Services
- Community Integration
- Financial Management Services

OLTL also plans to thoroughly review each setting in which Adult Daily Living and Residential Habilitation services are provided and to review each provider-owned settings in which waiver services are provided to ensure compliance with the CMS Rule.

Section 1: Identification – The Office of Long-Term Living (OLTL) will use its transition plan as a way to determine its compliance with CMS' rule on HCBS. Pennsylvania will determine the current level of what state actions are needed for compliance. This will include a review of current licensing requirements, policies, regulations, rules, standards and statutes.					
#	Action Item	Description	Start Date	Target End Date	Deliverable
1	Submit Waiver Renewal	OLTL will submit waiver renewal	Sep-14	Mar-15	Waiver submitted to CMS
2	Obtain Providers By Setting	OLTL will obtain providers by setting	Sep-14	Dec-14	Report of Providers by setting
3	Review of Policy Documents, Regulations, and provider requirements	OLTL will identify Pennsylvania regulations, Waiver service definitions, policies and provider standards to identify changes needed to comply with the HCBS rules. This will include review of enrollment requirements and processes, licensure regulations, programmatic regulations and other policy documents.	Sep-14	Dec-14	Report of Policies, provider standards and waiver service definitions that need to be revised/updated to comply with the HCBS rule
4	Identify Key Stakeholders		September 2014	Dec-14	List of key stakeholders

Section 2: Assessment - OLTL's assessment activities will include a review of policy documents and provider enrollment documents, a review of licensing requirements, development and implementation of a provider self-assessment and development and implementation of a participant monitoring tool. Data from these activities will be assessed and provider settings will be place into three categories: (1) Setting is fully compliant; (2) Setting is presumed non-compliant but evidence may be presented for heightened scrutiny review; and (3) Setting does not comply. These categories will inform the order in which OLTL will perform on-site visits, starting with settings that do not comply and ending with settings that the assessments indicate are fully compliant. These activities will give OLTL a provider and participant perspective on settings, which will be followed by official OLTL on-site monitoring's to validate compliance status.

#	Action Item	Description	Start Date	Target End Date	Deliverable
Internal Assessment (Regulations, Policies, Procedures)					
1	Review of Policy Documents, Waiver service definitions and Provider Enrollment Requirements	OLTL will identify Pennsylvania regulations, Waiver service definitions, policies and provider standards to identify changes needed to comply with the HCBS rules. This will include review of enrollment requirements and processes, licensure regulations, programmatic regulations and other policy documents.	Sep-14	Dec-14	Report of Policies, provider standards and waiver service definitions that need to be revised/updated to comply with the HCBS rule
2	Evaluate licensed settings	OLTL will work with the Bureau of Human Services Licensing (BHSL) and the Department of Aging (PDA) to identify settings that are licensed by each entity to determine compliance with the HCBS rule	Sep-14	Complete	

3	Review of Licensing requirements	OLTL will collaborate with the Bureau of Human Services Licensing (BHSL) and the Department of Aging (PDA) to identify any necessary changes to policies or other licensing requirements in order to comply with the HCBS rule.	Sep-14	Dec-14	List of identified changes that need to be made
4	Identify IT changes that are necessary for data collection on compliance with the HCBS rule	Temporary electronic tools will be used until permanent IT systems changes can be made and implemented.	Nov-14	Dec-14	identified IT changes
Provider Assessment					
1	Geographic Information System (GIS) Evaluation of HCBS Provider Locations and Participant Addresses	OLTL will use GIS to analyze locations of provider sites and member addresses to identify potential areas with high concentrations of HCBS providers and participants.	Sep-14	Dec-14	Report of HCBS Providers that share an address with Unallowable settings
2	Develop Provider Assessment Tool	OLTL will develop an electronic Provider Self-Assessment tool to assist in identify those settings that do not meet the regulations set forth in the HCBS final rule. Results of the Self-Assessment tool will assist OLTL when conducting onsite provider monitorings.	Sep-14	Dec-14	Electronic Provider Self-Assessment tool.

3	Complete/Collect Provider Self-Assessment	OLTL administers Self-Assessment tool to capture needed elements to ensure compliance with the HCBS rule.	Dec-14	Feb-15	Distribution of the Provider Self- Assessment and collection of results
4	Analyze Data	OLTL will compile and analyze data from the Provider Self-Assessments and the Participant Monitoring tool as they potentially conform to HCBS characteristics and their ability to comply in the future. Settings will be classified into the following categories: (1) Yes. Setting is fully compliant; (2) Not Yet. Setting is presumed non-compliant but evidence may be presented for heightened scrutiny review; and (3) No. Setting does not comply. Please see attached Settings Analysis.	Feb-15	Mar-15	Categorization of Compliance
5	Determine Need For On-Site Assessment Based On Findings Of Self-Assessment	Based on the Category in which a provider falls, OLTL's Bureau of Quality and Provider Management will prioritize a schedule for on-site compliance monitoring visits. Those reported as #2 and #3 above will receive on-site visits in the first 6 months of this transition plan. All other settings will be visited by March, 2017.	Mar-15	Mar-15	Schedule of On-site visits
6	Identify Access issues	OLTL will identify where there may be access issues based on the categorization of compliance	Feb-15	Mar-15	Identified areas with access issues

7	Perform On-Site Visit	Those reported as #2 and #3 above will receive on-site visits in the first 6 months of this transition plan. All other settings will be visited by March, 2017.	Feb-15	Mar-15	
8	Report Results	OLTL will share the results of assessment activities with the public through its website, advisory group meetings and other venues.	Mar-15	Mar-15	Report of Results
9	Develop Participant Monitoring Tool	OLTL will develop a Participant Monitoring Tool to be used by service coordinators during face-to-face visits that incorporates questions designed to receive participant feedback on the settings in which they receive services.	Aug-14	Dec-14	Draft Participant Monitoring Tool
10	Test and Refine the Participant Monitoring Tool	OLTL pilots the tool to ensure it adequately captures needed elements and is easily and accurately completed by service coordinators.	Jan-15	Mar-15	Finalized Participant Monitoring Tool
11	Statewide Rollout of the Participant Monitoring Tool	All service coordinators are trained in the use of the Participant Monitoring Tool and statewide use of the tool begins.	Apr-15	Apr-15	Statewide Rollout
Modification Of Provider Enrollment Process					
1	Determine changes needed to integrate assessment findings	OLTL will evaluate current enrollment application forms to determine any necessary changes to comport with the HCBS rule.	Sep-14	Nov-14	Provider Standards for enrollment and continued participation

2	Modification Of Surveys & Enrollment Processes	OLTL will update current provider enrollment forms, applications and checklist, to incorporate the HCBS rules into existing procedures.	Nov-14	Apr-14	Updated Enrollment application and forms
3	Communicate Changes	OLTL will send providers necessary forms verifying compliance with the HCBS rule.	Dec-14	May-14	Standard letter along with updated materials for providers
4	Provide Training	OLTL will provide a webinar training on the new Provider Enrollment procedures.	Dec-14	Jun-14	Training

Section 3: Remediation Strategies - OLTL's overall strategy will rely heavily on its existing HCBS quality assurance processes to ensure provider compliance with the HCBS rule. This will include provider identification of remediation strategies for each identified issue, and ongoing review of remediation status and compliance. The OLTL may also prescribe certain requirements to become compliant. Pennsylvania will also provide guidance and technical assistance to providers to assist in the assessment and remediation process. Providers that fail to remediate noncompliant settings in a timely manner may be subject to sanctions ranging from probation to disenrollment.

#	Action Item	Description	Start Date	Target End Date	Deliverable
1	Changes to Regulations, Waiver service definitions Policies and Provider Standards	OLTL will revise Pennsylvania regulations, Waiver service definition, policies and provider standards to assure compliance with the HCBS rules.	Dec-14	Dec-16	Updated Policies, waiver service definitions and provider standards

2	Develop provider base	For those areas where access issues have been identified, OLTL will develop a strategy to expand the provider base	Mar-15	Mar-17	Strategy for developing an enhanced provider base
3	Changes to Licensing requirements	OLTL will collaborate with the Bureau of Human Services Licensing (BHSL) and the Department of Aging (PDA) to revise policies and other licensing requirements to assure compliance with the HCBS rule.	Dec-14	Dec-16	Updated policies and any updated regulatory packages
4	Develop IT requirements and initiate necessary changes	Develop and implement the necessary IT changes to perform data analysis, and compliance auditing.	Dec-14	Dec-15	IT Requirements
5	Onsite Assessments	All providers will be monitored using the updated QMET on-site monitoring tool. Schedule will be based on categorization developed in the assessment phase. (See above)	Mar-15	Mar-17	on-site monitoring's
6	Issue Statement of Findings to providers on the results of the Onsite Assessments	If non-compliant in any of the areas under the HCBS rule, issue a statement of findings to providers listing infractions and immediate need for the provider to develop a Corrective Action Plan (CAP).	Mar-15	Mar-17	Compilation of the Statement of Findings issued to providers

7	Provider Specific Remediation	Incorporation of the existing QMET CAP process. Provider remediation activities are documented in CAPs which will be requested from providers by the QMETs to correct non-compliance issues. Through this process, if a QMET discovers a provider does not meet one or more of the qualifications, the provider will develop a CAP. The CAP will provide detail about the steps to be taken to remediate issues and the expected timelines for compliance. The provider needs to demonstrate through the CAP that it can meet the regulations and waiver provider qualifications and develop a process on how to continue compliance in the future.	Mar-15	Mar-17	CAP for providers who are not in compliance
8	Report Results	OLTL will share the results of those providers that will require a CAP to come into compliance with any part of the HCBS rule.	Mar-15	Mar-17	Report of Providers with a CAP
9	Follow-up to the Onsite Compliance Reviews	The QMET will verify the approved CAP action steps are in place according to the timeframe as written in the CAP. If the CAP is insufficient, OLTL will work with the provider to develop an appropriate CAP. If the provider is unable or unwilling to develop a CAP which addresses and remediates each of the findings, OLTL will take action against the provider up to and including disenrollment.	Mar-15	Mar-17	

10	Provider Sanctions and Termination of Enrollment with OLTL Waivers	Incorporate requirements of the new HCBS rule into existing process for provider sanctions, including disenrollment from OLTL waivers.	Mar-15	Mar-17	Updated Provider Termination and sanction process
11	Notify Participants and service coordinators	OLTL will notify participants of all findings and compliance actions that are being taken.	Mar-15	Mar-17	Notification to participants in the form of a letter.
12	Transition Participants to Compliant Settings	If applicable, Service Coordinators will work with participants to offer choice of another qualified waiver provider to receive services, and facilitate a safe transition to the new provider. Service coordinators will be responsible to ensure the participant is aware of any appeal rights and process	Mar-15	Mar-18	
13	Ongoing Compliance	OLTL will utilize the participant monitoring to measure ongoing compliance with the HCBS rule. The participant monitoring tool will be used bi-annually to assess participant's overall satisfaction with services and settings. OLTL will utilize the established Quality Improvement Structure to conduct ongoing provider compliance with the HCBS final rule.	Mar-15	Ongoing	

Section 4: Outreach & Engagement - OLTL proposes to collect public comments on the transition plan through a dedicated email address for submission of written comments and through taking public comments in-person at a series of stakeholder forums conducted throughout the state. In addition to posting the transition plan and related materials on the OLTL website, stakeholders were contacted directly and provided with transition plan documents and information on the stakeholder forums					
#	Action Item	Description	Start Date	Target End Date	Deliverable
1	Develop Communication Materials	Create Transition Plan Website, link to register, public comment mailbox, information handouts, public communication brief	Nov-14	Nov-14	Public Notice Document
2	Public Notice & Comment	Official notification through PA Bulletin beginning the public comment period on waiver amendments/revisions and published draft transition plan including: submission, consolidation, documentation, and review of public comments	Nov-14	Dec-14	Public Comment Period
3	Stakeholder Communication & Meetings	Official notifications through statewide bulletins, departmental websites, stakeholder meetings, webinars, and other public forms informing of setting requirements and statewide transition planning activities on the CMS Final Ruling	TBD	TBD	Summary document of public input
4	Transition Plan Revision	Incorporation of stakeholder comment and feedback on Pennsylvania's Statewide Transition Plan, submission of final plan to CMS, and publication of approved plan	TBD	TBD	

5	Provider & Stakeholder Training	On-going engagement highlighting updates and revisions to Pennsylvania's regulations, policies, and procedures; training on compliance to the HCBS Final Rule and transitioning activities for service coordinators, providers, and staff	TBD	TBD	
6	Ongoing Stakeholder Engagement	Continued engagement with stakeholder community on regulations and department updates, sustaining an inclusive, person-centric focus that is transparent to individuals and the community while providing accountability to all parties involved	Dec-14	Mar-17	Report findings
7	Mechanism for reporting non-compliance by family members or participants.	Participants will be given the OLTL helpline if they have questions or need additional information regarding a provider's status or a possible transition. Participants will receive this information from their service coordinator in the packet of informational materials developed by OLTL.	Mar-15	Mar-15	