

Summary of Public Comments and Department Responses

COMMENTS REGARDING MULTIPLE OFFICES			
Section or Page of STP	Comment	Were Changes Made To The STP In Response To The Comment	Department Response
Background (Page 3)	One commenter recommended adding a glossary of terms and acronyms here or in an introduction. This addition would be particularly helpful for participants and families. There should be one comprehensive landing page for PA’s STP and HCBS rule related information. The initial plan should be posted on this page and/or a link should be included to DHS’ “HCBS Stakeholder Waiver and Planning” webpage as mentioned at the bottom of page 3.	No	All acronyms were spelled out before being abbreviated, as required in all publications. DHS would need further clarification on information to include in a glossary of terms. DHS will review the website to determine changes that can be made to make it more user friendly.
Public Comments (pg.4)	Two commenters recommend that the plan include a specific and ongoing public information campaign. The commenters urge DHS to offer in-person and virtual learning sessions, focused on the Final Rule. The commenters recommend that DHS use available funds from the American Rescue Plan Act to help fully implement, and educate stakeholders about, the Final Rule.	No	ODP has focused on implementing and measuring compliance with the HCBS Rule through Everyday Lives recommendations and waiver and regulatory requirements. ODP will continue to promote all of the system’s goals.

State Assurances (Page 4)	One commenter recommended that a HCBS STP chart with milestones and a timeline of PA's initial STP. The chart should be updated and included, linked here and/or added as an appendix. Having a timeline chart that reflects completed and anticipated milestones for completing remediation, heightened scrutiny, communications with beneficiaries, ongoing monitoring of compliance and other standards is important in monitoring progress and setting expectations.	No	The updated Final Statewide Transition Plan is an updated comprehensive plan which includes all updated timelines for compliance.
General	One commenter recommends that the Department continue to move more people with disabilities of all ages out of nursing homes and other institutional care.	No	<p>The Department is implementing multiple initiatives to move more people with disabilities of all ages out of nursing homes and other institutional care.</p> <p>ODP reserves space in the Consolidated Waiver to serve individuals who transfer out of Intermediate Care Facilities, Residential Treatment Facilities, prison, state hospitals, and medical hospitals. This ensures that people who choose to move from institutional settings to community settings do not have to be on a waiting list to receive waiver services to support them in community settings.</p>
General	One commenter stated that some program locations that are considered to be community placements are not physically accessible, which has led to prolonged hospitalizations. That is a violation of this rule and the Americans with Disabilities Act at a minimum.	No	<p>The Department encourages the commenter to report the program locations referenced to the program office that funds the individuals receiving services in the location.</p> <p>ODP's regulations require homes that are subject to licensing requirements, including all community homes and life sharing homes, to be physically accessible to the</p>

			individuals who live in these homes. This requirement is verified through licensing inspections.
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COMMENTS REGARDING ODP’S APPROACH			
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Public Comment (pg.4)	<p>Five commenters provided recommendations regarding individual rights. To make sure everyone is aware of their rights under the HCBS Settings Final Rule, it is recommended that ALL HCBS settings be required to post a list of the HCBS “Rights and Responsibilities,” as well as a plain language summary of the HCBS Settings Final Rule in a minimum of one place at the location that is easily accessible to setting participants.</p> <p>Commenters also recommended that this information be given directly to individuals with disabilities or their representatives in a manner that is accessible to them. “Accessible” includes both plain language and “easy read.”</p>	No	<p>Providers are required per §6100.185 to inform and explain individual rights to each individual, and persons designated by the individual, upon entry into the program and annually thereafter and keep a signed statement acknowledging receipt of the information on individual rights. Further, providers are required per §6100.50 to communicate with each individual in a language and means of communication understood by the individual or person designated by the individual.</p> <p>Compliance with these requirements was validated during licensing inspections and Heightened Scrutiny reviews. A question has also been added to the Quality Assessment and Improvement (QA&I) process to ensure that unlicensed direct service providers have a signed statement acknowledging the individual’s receipt of information on individual rights.</p>
Public Comment (pg.4)	One commenter recommended that ODP improve the accessibility of public comment periods for families and people with IDD. While the public comment	No	ODP held multiple public comment sessions during each step outlined in the Statewide Transition Plan (development of regulations, changes to waivers, provider self-assessments, etc.). This included sessions for self-

	<p>process fulfills legal requirements, the process and format are not accessible for families and people with IDD.</p>		<p>advocates where families were also welcome to attend. ODP actively partnered with the University Center for Excellence in Developmental Disabilities (UCEDD) to hold sessions for self-advocates and families.</p>
<p>Self-Assessments for Provider Owned or Operated Settings (pgs.5-7)</p>	<p>Multiple viewpoints were expressed regarding the use of provider self-assessments. Two commenters expressed concerns with the process while one commenter expressed support. Concerns were expressed regarding the completion of the self-assessments. One commenter stated that assessments should be done by a group that does not include the provider but does include self-advocates. The results of the assessments should be communicated clearly to all, and any issues should be addressed promptly by ODP.</p> <p>Another commenter stated that ODP should not have relied upon self-assessments as the initial step in the compliance assessment process because providers are naturally inclined to assess themselves more favorable than would a neutral third party.</p>	<p>No</p>	<p>ODP checked to make sure that what providers reported was accurate through licensing inspections completed by ODP and Heightened Scrutiny On-site Reviews completed by ODP staff and Temple’s Institute on Disabilities. The results of the licensing inspections for Fiscal Year 2020-2021 were communicated in the Home and Community-Based Settings Rule Assessments report. The results of the Heightened Scrutiny On-site Reviews will be published for public comment in November 2022. The results outline how all issues identified were addressed.</p> <p>Compliance with regulatory and waiver requirements will be validated in the future through licensing inspections and the QA&I process.</p>
<p>Heightened Scrutiny On-Site Reviews (pgs.8-10)</p>	<p>One commenter provided recommendations on the Heightened Scrutiny On-Site Review process. This commenter requests that DHS make all Corrective Action Plans (CAPs) publicly available so that stakeholders can assess</p>	<p>No</p>	<p>The Department will comply with guidance from the Centers for Medicare and Medicaid Services (CMS) regarding public input. The information released for each service location that will be submitted to CMS for Heightened Scrutiny will include justifications as to why the Department believes the service location is home and</p>

	<p>the plans and better understand the ways in which settings will address their compliance issues.</p> <p>The commenter urges ODP to include as much information as possible in these notices so that stakeholders are able to fully understand why specific settings were identified for heightened scrutiny and the reasoning behind CMS’s ultimate determination for each setting.</p>		<p>community-based and not institutional. While CAPs will not be released for public comment, sufficient detail will be provided such that the public has an opportunity to support or rebut the Department’s information.</p>
General	<p>One commenter recommends that ODP increase options for different forms of community living. ODP must ensure the STP does not stifle innovative ideas for housing options that are of interest to people with IDD.</p>	No	<p>ODP’s waiver services support individuals to live in any type of integrated community housing they choose. Services such as In-Home and Community Support, Companion, Supported Living, and Housing Transition and Tenancy Sustaining Services support people who choose to live in private homes that they own, rent, or lease as well as private homes owned, rented or leased by relatives (with the exception of Supported Living and Housing Transition and Tenancy Sustaining Services). Residential Habilitation supports individuals to live in provider owned, rented or leased homes that are integrated in the community. Life Sharing supports individuals to live and share their life with a host family, including host families that are related to them.</p>
General	<p>Two commenters would like ODP to require documentation that options for residential living or community-based activities in non-disability specific locations, with needed services and supports, are offered to all participants.</p>	No	<p>Supports Coordinators through ODP’s waivers are required per 6100.225(c) to maintain a record for each individual that includes evidence of the individual’s choice of provider and service location. The QA&I process for Supports Coordination Organizations determines the following:</p>

			<ul style="list-style-type: none"> • If the Supports Coordinator included evidence that each individual in the sample was provided with information about getting support for community activities of the individual’s choice based on a review of service notes, Individual Monitoring Tools, and the Individual Support Plan (ISP); and • If the Supports Coordinator offered choice of providers and choice of services to the individual/family at the annual ISP meeting based on a review of the ISP Signature Page or service notes. <p>Providers that render ODP waiver services are required per §6100.261 to provide each individual receiving services with the assistance necessary to access the community in accordance with the ISP. The QA&I process determines if documentation (service notes, progress notes, activity schedules) indicate that the individual is offered opportunities and support to participate in integrated community activities consistent with the individual’s preferences, choices, and interests.</p>
<p>General</p>	<p>Two commenters expressed concern about the location/setting of services being the sole determinant of compliance. The experience and services provided to the individual, not the location, should be the primary gauge of quality.</p>	<p>No</p>	<p>The location/setting of services is not the only determinant of compliance with the HCBS Rule. The HCBS Rule requires specific locations to have Heightened Scrutiny reviews to ensure that they can overcome the presumption that they are institutional based on the location where services are provided.</p> <p>As outlined in the Statewide Transition Plan, ODP interviews individuals about their experiences and reviews service notes, progress notes, and provider policies and procedures as part of licensing inspection, the QA&I</p>

			process and the Heightened Scrutiny reviews to determine whether providers are compliant with the HCBS Rule.
General	One commenter believes there is a risk that there could be settings that ODP failed to identify, and that will be able to continue that do not fully comply with the final rule.	No	ODP ensured that HCBS Rule requirements were incorporated into licensing and programmatic regulations. As a result, all settings that receive waiver funding will be reviewed for compliance through licensing inspections and/or the QA&I process.
General	<p>One commenter wants to ensure that ODP has ways to make sure that all places where people get HCBS are still following the rule. How will ODP make sure that people receiving HCBS services have a way to speak up if the place is not following the rule?</p> <p>People getting services in places determined to not be following the rules for community settings must be told that place is not following the rules by March 17, 2023. People who live there have the right to be told. People need this information so they can make a choice.</p>	No	<p>Part 4 of the Statewide Transition Plan outlines that ODP will ensure that providers maintain compliance with the HCBS Rule through licensing inspections and the QA&I process.</p> <p>Part 5 of the Statewide Transition Plan outlines how people can report concerns when providers are not following the rules.</p> <p>Part 3 of the Statewide Transition Plan outlines how ODP will communicate with people in settings that cannot or will not come into compliance with the rules.</p>
Notification to affected individuals (pg.29)	Four commenters recommend ODP develop a detailed remediation process for providers who are out of compliance – one with clearer, more specific time frames as to when actions and/or consequences will occur. In ODP’s approach to people in settings that will not or cannot comply with the new final rule, there are no notification deadlines	No	No timeframes were included because ODP will use the amount of time necessary to ensure that there will be no disruption of services to the individual during the transition period from a provider who cannot or will not come into compliance with the HCBS Rule to a provider that is compliant with the HCBS Rule. The timeframe to achieve this will be different for each individual depending on factors such as the availability of providers in the area

	for the service recipients. The commenters recommend a minimum of 30 days' notice to service recipients in a setting that is at risk of closing for non-compliance.		and the individual's choice of willing and qualified provider.
Affected individuals (pgs.28-29)	One commenter expressed concerns about provider requirements when individuals cannot find an alternative service provider. The 6100 regulations provide a process for written notice when a program is closing. The commenter recommends that ODP follow the provisions contained within §6100.304 to provide adequate notice to participants in non-compliant settings and follow applicable regulatory sections in transitioning individuals to new settings.	No	CMS requires ODP to ensure that there will be no disruption of services to the individual during the transition period from a provider who cannot or will not come into compliance with the HCBS Rule to a provider that is compliant with the HCBS Rule. When ODP determines that a provider cannot or will not come into compliance with the HCBS Rule, this action will be considered a sanction taken by ODP as outlined in §6100.741.
Incorporation of HCBS Settings Requirements in Regulation and Waivers (pg.30)	One commenter pointed out the importance of focusing on supporting the transition of individuals to home and community-based services. Group homes, often mini-institutions, must not be the first or only choice provided. Remember that living occurs 24 hours a day. People must not be slotted into activities and events only during the traditional day but supported in the way that works for them.	No	Supports Coordinators through ODP's waivers are required per 6100.225(c) to maintain a record for each individual that includes evidence of the individual's choice of provider and service location. This includes choice of where a person wants to live. ODP's waiver services support individuals to live in any type of integrated community housing they choose.
Incorporation of HCBS Settings Requirements in Regulation and Waivers (pg.30)	Multiple commenters expressed differing ideas regarding community activity requirements that are part of ODP's Community Participation Support/Day Habilitation service in the waivers. Two	No	The Community Participation Support/Day Habilitation service included in ODP's waivers requires providers to offer opportunities and support for community inclusion and building interest in and developing skills for competitive integrated employment. In alignment with

	<p>commenters wanted to remind providers that if a person chooses to be in the community 50% or even 75% of their day, this choice must be honored. Four commenters were concerned that the requirements prevent people from choosing to receive services in a facility.</p>		<p>§6100.182 (g), each individual has the right to control their own schedule and activities. As such, providers that offer facility-based Community Participation Support services are required to support individuals in facility-based activities when the individual chooses these activities instead of community activities.</p> <p>The amount of time that each individual spends in the community as part of Community Participation Support should be based on the individual’s choices. When an individual spent 75% or more of their service time participating in activities in a facility, a variance form was required to be completed. The purpose of the variance form was to assist ISP teams in having conversations to ensure that the Community Participation Support provider was offering each individual opportunities to participate in community activities consistent with their preferences, choices, and interests and exploring new opportunities based on the individual’s experiences. The requirement to complete a variance has been suspended due to the COVID pandemic.</p>
<p>Incorporation of HCBS Settings Requirements in Regulation and Waivers (pg.30)</p>	<p>Multiple viewpoints were expressed regarding the number of people that can receive Community Participation Support at a service location.</p> <p>Two commenters recommended that ODP change the culture by raising the bar or expectation for providers to reopen by establishing newer, smaller, more inclusive locations which align with the standard imposed on new provider locations serving 25 or fewer individuals.</p>	<p>No</p>	<p>Rates have been developed for Community Participation Support providers to render nursing to individuals who require that level of support.</p> <p>It is a regulatory requirement per §6100.444(c) that new Community Participation Support service locations opened after January 1, 2020, may not provide service to more than 25 individuals in the service location at any one time. This limit does not apply to service locations operating prior to January 1, 2020. Providers have continued to open new service locations in compliance with this requirement to give individuals choice of service provider.</p>

	<p>One commenter expressed concerns that their Community Participation Support program will no longer provide services to individuals who require a nurse to accompany them to the program. The commenter said this creates a discriminatory situation. Requirements in the statewide transition plan have limited the number of individuals who can attend this program, creating a waitlist. The new rule restricting new day programs to serve no more than 25 people at one time is restricting individuals.</p>		<p>Providers have not indicated to ODP that this requirement has impacted their ability to serve individuals. By alternating schedules and by providing community integration activities in small groups for part of the day, a service location may serve a total of 100 individuals, with only 25 individuals present in the service location at any one time.</p>
<p>Incorporation of HCBS Settings Requirements in Regulation and Waivers (pg.30)</p>	<p>One commenter expressed concern that Community Participation Support requirements limit their family member’s ability to spend time with friends. This is because only one group of people is allowed at a community venue at a time. The commenter recommends ODP change the STP to allow for multiple groups to be in public venues.</p>	<p>No</p>	<p>There is no limitation on the number of people who can receive Community Participation Support in a community location at the same time. Providers may only bill community procedure codes and rates for Community Participation Support services when 3 or fewer people are receiving services at a community location at the same time. Providers may bill facility rates when more than 3 people are receiving services at a community location at the same time.</p> <p>As outlined in ODP’s waivers, the purpose of Community Participation Support services is to support each individual to develop and sustain a range of valued social roles and relationships, build natural relationships, and experience meaningful community participation and inclusion. To achieve this, individuals need more individualized support than can be provided in large groups.</p>

Incorporation of HCBS Settings Requirements in Regulation and Waivers (pg.30)	One commenter would like to see greater incentives and promotion of both employment in general and community employment (i.e., away from sheltered workshops and 14(c) settings).	No	ODP is actively exploring ways to further incentivize and promote competitive integrated employment.
Ongoing Monitoring (pg.31)	Five commenters recommend that meaningful ongoing compliance monitoring should include a comparison of data and findings collected through QA&I (Quality Assurance and Improvement) with data collected through IM4Q (Independent Monitoring for Quality) interviews. Interviews completed through these processes must include people with lived experience.	No	ODP will explore the implementation of this recommendation.
Ongoing Monitoring (pg.31)	One commenter expressed concerns about ODP's plans to monitor ongoing compliance by relying on the licensing and QA&I processes. Waiver recipients regularly call the commenter's intake line to describe events that represent clear violations of the 6100 regulations. Many of them have already reported these issues to ODP, and ODP has failed to act. This suggests that ODP cannot rely on enforcement of the 6100 regulations alone to ensure Final Rule compliance, unless it is prepared to significantly increase its staffing levels so that it is better able to look into issues as they arise.	Yes	<p>ODP will follow up with the commenter regarding these allegations. ODP has confidence in the QA&I and licensing processes to identify and remedy concerns.</p> <p>The QA&I process includes participant interviews and onsite visits. Information about participant interviews conducted as part of the QA&I process was added to the Statewide Transition Plan.</p>

	<p>The commenter also expressed concerns about the accuracy of the compliance data collected during the QA&I process. Because this is a paper review, it cannot capture an individual waiver recipient’s actual experiences; it merely reflects what SCs and providers have written down about these experiences. The commenter recommends that ODP incorporate interviews with waiver recipients into this process.</p>		
<p>New Providers/Service Locations (pg.32)</p>	<p>Multiple viewpoints were expressed regarding where residential services can be rendered. Two commenters recommend that no waiver funds be allowed to fund disability-specific campus settings. The commenters recommend that no HCBS funding go towards the building of new segregated institutions; such funding would be impermissible under state regulation and this HBCS Settings Final Rule.</p> <p>One commenter recommends that ODP allow people with disabilities to live in congregate community settings similar to seniors or 55 and over communities.</p> <p>One commenter recommended that multiple residential homes be allowed within a small area.</p>	<p>No</p>	<p>ODP’s waivers and regulations at §6100.445(a) require new residential and Community Participation Support service locations not be in a location that is adjacent to, attached to, or located in the same building as any of the following:</p> <ul style="list-style-type: none"> • Hospital (medical or psychiatric) • Skilled Nursing Facility (55 Pa. Code Chapters 201 through 211). • Licensed public or private ICF/ID (55 Pa. Code Chapter 6600) or ICF/ORC. • Licensed Child Residential Services (55 Pa. Code Chapter 3800). • Licensed Community Residential Rehabilitation Services for the Mentally Ill (CRRS) (55 Pa. Code Chapter 5310). • Licensed Personal Care Homes (55 Pa. Code Chapter 2600). • Licensed Assisted Living Residences (55 pa. Code Chapter 2800). • Unlicensed or Licensed Family Living Homes (55 Pa. Code Chapter 6500).

			<ul style="list-style-type: none"> • Unlicensed or Licensed Community Homes for Individuals with an Intellectual Disability or Autism (55 Pa. Code Chapter 6400). • Licensed Adult Training Facilities (55 Pa. Code Chapter 2380). • Licensed Vocational Facilities (55 Pa. Code Chapter 2390). • Licensed Older Adult Daily Living Centers (6 Pa. Code Chapter 11) <p>ODP’s waivers also require all residential settings to be integrated and dispersed in the community in noncontiguous locations and may not be located on campus settings.</p> <p>Individuals may receive non-residential services such as In-Home and Community Support and Companion in a private home in a 55 and over community that is not subject to licensure and was not purchased for, developed for, or promoted as serving people with an intellectual disability or autism in a manner that isolates or segregates people.</p>
<p>ODP Approach (pg.37)</p>	<p>One commenter believes that the suggested reporting mechanism for complaints is inadequate. It should not be the responsibility solely of the Supports Coordinator to be the initial point of contact for concerns about their provider and the Final Rule. There should be at the very least a complementary process for the Administrative Entity and perhaps another avenue, such as the ODP</p>	<p>No</p>	<p>Part 5 of the Statewide Transition Plan outlines how anyone receiving services through ODP can contact the provider, Supports Coordinator, or ODP Customer Service Line to report that a provider is not following the HCBS Rule.</p> <p>Since ODP incorporated HCBS Rule requirements into licensing and programmatic regulations, we believe it will be easiest to have everyone contact the ODP Customer Service Line. In implementing this approach, people won’t</p>

	<p>customer service line because people with disabilities may feel uncomfortable reporting concerns to a Supports Coordinator or a provider.</p> <p>A second commenter urges ODP to create a new complaint process for reporting suspected Final Rule violations. Similar to the approach of OLTL, we suggest that ODP develop a dedicated email address for these reports along with the phone number. This will ensure that individuals, their families, and the stakeholder community are able to raise concerns about compliance.</p>		<p>have to worry about which ODP mailbox or number to call depending on the type of concern they want to report.</p>
<p>ODP Approach (pg.37)</p>	<p>One commenter recommends that ODP develop an appeal process for individuals who receive services in a setting that is determined to not meet the settings rule. The decision of where an individual receiving services lives or spends their day should rest with the individual and their support team.</p>	<p>No</p>	<p>Regulations at 55 Pa. Code Chapter 275 set forth hearing and appeal procedures for individuals requesting or receiving Medical Assistance, including services through ODP’s waivers. In accordance with §6100.223, the ISP must include the individual’s preferences related to relationships, community living, communication, community participation, employment, income and savings, health care, wellness, and education. In accordance with §6100.182, providers must ensure that an individual has the right to choose a willing and qualified provider and to control their own schedule and activities.</p>
<p>Staffing concerns</p>	<p>Two commenters expressed concerns about the sufficiency of service rates to maintain quality direct support professionals that allow people to remain in their homes and communities. One commenter expressed concern that people cannot find a provider to offer</p>	<p>No</p>	<p>In accordance with §6100.571, ODP updated the data used to establish fee schedule rates that became effective on January 1, 2022. The rates were published for a 30-day public review and comment period prior to implementation.</p>

	<p>support and urged ODP to allow for as much creatively, flexibility and innovation as possible within the minimum standards set by CMS as you revise the statewide transition plan.</p>		<p>Further, ODP has given providers opportunities to use ARPA funds to address the following for staff:</p> <ul style="list-style-type: none"> • Recruitment, retention and COVID-19 related staffing expenses for direct support professionals; and • Staff training, credentialing, and business associates programs for employments.
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COMMENTS REGARDING OLTL’S APPROACH			
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<p>General</p>	<p>One commenter applauded the Department of Human Services OLTL for the extensive work it has done since the Final Rule was first published in March of 2014. Numerous public meetings, development and publication of the Statewide Transition Plan, a public website providing extensive materials related to the OLTL approach to implementation are just a few examples of a transparent and fair process. The commenter acknowledges that there are many important ways in which the Final Rule will impact HCBS in PA. We are particularly</p>	<p>No</p>	<p>OLTL recognizes and agrees with the importance of offering Adult Daily Living as a service option for participants in the OBRA and CHC waivers. OLTL acknowledges the importance of this service option in the continuum of long-term services and supports.</p> <p>OLTL intends to work with all compliant Adult Day settings to overcome the presumption of being institutional due to physical site location.</p>

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	<p>concerned with the effect that the provision regarding settings presumed to have institutional qualities will have on some of our providers and the downstream effect on participants. We acknowledge that there are providers in our networks that are in settings that may be difficult if not impossible to bring into compliance with the portion of the Rule that requires sites to provide settings void of presumed institutional qualities. CMS defines “settings presumed to have institutional qualities” as: 1) settings located in a building that is also a publicly or privately owned and operated facility that provides inpatient institutional treatment; or 2) settings located on the grounds of, or immediately adjacent to, a public institution; or 3) settings that have the effect of isolating individuals from the broader community of individuals not receiving HCBS. The commenter acknowledges that there are Adult Day service providers that will need to go through the heightened scrutiny process,</p>		

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	<p>mainly because of their location. However, Adult Day is a vital service to certain participants in the CHC population, and while they may be located on the grounds of a nursing facility, they are not programs that isolate participants. On the contrary, they provide an opportunity for socialization and integration for participants who may be alone, lonely and isolated at home. This service is where they come to be with friends and enjoy activities together, while also potentially receiving personal care, nursing, and nutrition. The service is also providing respite to family caregivers, which can have a valuable impact on families and family caregivers.</p>		
<p>Public Comment on Pennsylvania’s STP (Page 4)</p>	<p>One commenter recommends having another public comment period after DHS amends this draft. It will offer an opportunity for stakeholders to comment about the soon to be publication of settings being put forward for Heightened Scrutiny. For example, stakeholders may have recommendations as to how this</p>	<p>No</p>	<p>The Department will be publishing sites that will be submitted to CMS for heightened scrutiny in the Pennsylvania Bulletin. This will provide another opportunity for stakeholders to provide comment on those sites being submitted for heightened scrutiny.</p>

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	information is presented, shared and included in the STP.		<p>The Department will ensure the CMS requirements are met related to the information that must be contained within the public notice. These elements include at a minimum:</p> <ol style="list-style-type: none"> 1. List the affected settings by name and location and identify the number of individuals served in each setting; <ul style="list-style-type: none"> • Any and all justifications from the state as to why the setting is home and community-based services and not institutional. This would include any reviewer reports, interview summaries, etc.; • Sufficient detail such that the public has an opportunity to support or rebut the state’s information. 2. Assessment tools have been shared with program office stakeholders for comment prior to implementation. Presentations of proposed heightened scrutiny sites may be made during

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			program office stakeholder meetings to allow receipt of stakeholder comment.
Part 2: Identification of Settings Presumed to Have Institutional Characteristics - OLTL Approach (Page 27)	Two commenters noted that if the state determines that settings implemented remediation strategies that brought the setting into compliance, the CAPs should be posted for public comment with the state’s determination.	No	OLTL currently does not publicly share provider site remediation and will continue this practice. If OLTL and the Panel agree that a site qualifies for heightened scrutiny, there will be opportunity for public comment. Changes made by the provider which directly affect participants, including any changes to policies and procedures, must be shared with participants.
Part 3: Communicating with People in Settings That Cannot or Will Not Come into Compliance - OLTL Approach (Page 29)	Two commenters recommended the state describe how OLTL will assure beneficiaries will be provided sufficient communication and support, including options among compliant settings and assurance that there will be no disruption of services during the transition period. Relocation must include a person's preferences in accordance with their person-centered plan. It should ensure stability and continuity of services, and no reduction or termination of services	Yes	Specific information for transitioning participants is included in the STP. Individuals who will have to transfer from non-compliant or presumed non-compliant settings will get advance, accessible notice through a phone call and/or visit from their SC in addition to a letter, which will ensure that this important information is received and understood. OLTL will work with each participant, their families, and their HCBS providers in assisting the participant to transfer out of the non-compliant site. Transitioning participants is a last resort and will occur in the event a provider’s agreement is terminated due to

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	should occur during the relocation process. Please provide an estimate of the number of individuals who may need assistance in this regard.		<p>continued non-compliance. Prior to transition activities, OLTL will assess and resolve any access to care concerns. Depending on the number of participants served at a non-compliant setting, there will be a 30-60 transition period. In accordance with 55 PA Code Chapter 52.61(a)(1) providers are required to give participants notice of cessation of services 30-days prior to cessation. The participants’ service coordinators will discuss service options available at that time.</p> <p>The outcome of the heightened scrutiny process may affect the estimated number of participants who may need assistance transferring to another compliant setting/location.</p>
Part 4: Ongoing Monitoring and Quality Assurance Process - OLTL Approach (Page 36)	One commenter noted how the length of the PHE affected participants knowledge of the final rule. There was a recommendation for consumers to be reeducated about their rights.	Yes	Service Coordinators are responsible for ensuring participants are fully informed of all services available in the waiver, their right to choose from and among all willing and qualified providers that are part of the CHC-MCOs provider network, and electronically document evidence of participant choice. Service Coordinators are also responsible for providing participants with information and training on the process for selecting qualified providers of services during the PCSP development process using the provider directory which is maintained by the CHC MCO.

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			<p>OLTL continues to work with Service Coordinators on their responsibility to provide education to participants as part of the person-centered planning process.</p> <p>This language will be included in the statewide transition plan.</p>
Part 4: Ongoing Monitoring and Quality Assurance Process - OLTL Approach (Page 36)	How will OLTL monitor compliance of settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS to the individual) are considered provider-owned or controlled settings and should be evaluated as such?	No	If the HCBS provider leases from a third party or owns the property, this would be considered provider owned or controlled. If the provider does not lease or own the property but has a direct or indirect financial relationship with the property owner, we would presume that the setting was provider controlled unless the property owner or provider establishes that the nature of the relationship did not affect either the care provided or the financial conditions applicable to tenants. Settings determined to be provider owned will be monitored on an ongoing basis using on-site assessment tool (Appendix D of the STP).
Part 5: Beneficiary Recourse – OLTL (Page 38)	There should also be an enforcement mechanism for waiver enrollees to challenge any setting that is not compliant with this new administrative rule and also additional oversight to ensure compliance. Consumers and families should be told of	No	Stakeholders, including family members and participants, will have the opportunity to provide comment on settings identified for heightened scrutiny. Stakeholders can provide comments that support or dispute a setting being compliant with the Final Rule. Most updates providers make are changes to policies and procedures, or updates to

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	any outcomes. Participants must be informed about how to submit complaints regarding settings.		the physical structure. Both would be shared with participants as it affects them. Information on how stakeholders can submit complaints regarding settings is addressed in the STP. Participants are also regularly contacted by their Service Coordinators to address any concerns about their services. This is another avenue to funnel back information to OLTL on potential non-compliance.
Appendix A: Overview of Pennsylvania’s 1915(c) Waivers	One commenter recommended that a sentence be added explaining how service coordination is provided through Community HealthChoices, i.e., explain role of the MCOs in providing this service.	Yes	The role of the Service Coordinator in CHC is included in the current CHC Waiver. Please see below: Service Coordinators are responsible for ensuring participants are fully informed of all services available in the waiver, their right to choose from and among all willing and qualified providers that are part of the CHC-MCOs provider network, and electronically document evidence of participant choice. Service Coordinators are also responsible for providing participants with information and training on the process for selecting qualified providers of services during the PCSP development process using the provider directory which is maintained by the CHC MCO.

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			<p>OLTL continues to work with Service Coordinators on their responsibility to provide education to participants as part of the person-centered planning process.</p> <p>This language will be included in the statewide transition plan.</p>
Appendix B: Major Service Categories and Settings	<p>One commenter noted the importance for participants access to transportation as it is is an important component of the community integration requirement as it is a crucial in how individuals access the greater community. In order for PA’s STP to be successful, there must be a sufficient rate structure for HCBS, staff training, and transportation in place.</p>	No	<p>OLTL agrees with the importance of available transportation for participants. OLTL incorporated questions in their assessment tool (Appendix D) to address access to transportation.</p>
OLTL Approach: pp.19-24:	<p>One commenter noted concerns about DHS’s reliance on self-assessments. We believe this has the potential to skew OLTL’s understanding of which settings do and do not comply with the Final Rule. We would urge OLTL to include waiver recipients and advocates on its Final Rule panel. Lived experiences with providers</p>	No	<p>In addition to the provider self-survey, the OLTL QMET staff conduct follow-up on site assessments to verify the responses on the provider self-survey.</p> <p>Thank you for the suggestion of adding a participant to the final rule panel. OLTL will consult with the CHC-MCOs and Service Coordinators about having a participant on the review panel.</p>

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	and in waiver funded settings offer a needed perspective to the panel.		
OLTL Approach: pp.19-24:	Two commenters expressed concern at the lack of detail in how the panel will review ongoing compliance with the Final Rule. Simply stating that they will do it is not enough.	No	As stated in the Statewide Transition Plan (STP), OLTL waiver providers are monitored for compliance with OLTL waiver and program requirements biennially in accordance with CHC and OBRA waiver requirements. OLTL will continue to use the monitoring strategy described in Part 1 of the STP to monitor provider compliance throughout the provider’s participation with OLTL’s programs. The on-site assessment tool will assist with determining compliance at each location. The QMET will use the on-site assessment tool (Appendix D of the STP) to monitor ongoing compliance. Additionally, OLTL has been coordinating with the Department of Aging to incorporate the tool into their regular licensing visits for Adult Daily Living providers. Any issues or concerns as a result of the ongoing on-site monitoring will be brought to the panel for review and recommendation.
OLTL Approach: pp.19-24:	The plan states that “OLTL will conduct confidential personal interviews with a representative sample of site participants, family members and staff as part of the	No	The representative sample does depend on the number of participants at each site, which varies from site to site. QMET staff have strived to interview participants at the site. However, it should be noted that due to concerns

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	<p>process.” The plan fails to state what constitutes a “representative sample” or state a minimum sample size, such as thirty percent of program participants, family members, and staff. It also fails to state how OLTL will “work with the site” to compile the heightened scrutiny package to CMS. The stakeholder community cannot adequately gauge whether this process will meaningfully measure compliance with the Rule and its goals without additional measures and information.</p>		<p>about the Public Health Emergency interviews are conducted as they are able to interact participants at the site. Interviewing program participants is a vital part of the on-site assessment process.</p> <p>OLTL will be working with sites to gather and compile the needed evidence for heightened scrutiny. This would include providing the site with the necessary documents outlined in the heightened scrutiny bulletin.</p>
<p>Identification of Settings Presumed to Have Institutional Characteristics OLTL Approach: pp. 27-28:</p>	<p>One commenter asked for clarification on the number of providers identified for heightened scrutiny. From the Plan, it is not clear whether OLTL has completed the heightened scrutiny review process or not. We request more specifics about where OLTL is in the process, and how it intends</p>	No	<p>OLTL has completed most site reviews and made the determination of which sites that need a CAP and those that OLTL has determined compliant, but because of physical location will need to go through heightened scrutiny.</p> <p>OLTL has issued CAPs that align with the compliance due date of the HCBS final rule. OLTL expects any remaining</p>

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	to ensure compliance with the Final Rule before March 1, 2023.		<p>follow-ups from outstanding CAPs to be completed by the end of this calendar year.</p> <p>OLTL has identified 11 providers representing 19 sites that are subject to heightened scrutiny. To further clarify, several sites may be under one provider. As stated in the STP, OLTL will publish a list of sites for public comment.</p>
OLTL Approach: p. 36:	One commenter expressed concern about the lack of detail provided on how OLTL will work with providers to become compliant. At some point, providers must be disenrolled from the waiver program if they cannot comply. OLTL should not be endlessly engaging in negotiations with providers, as the plan suggests it might do. OLTL cannot allow CAPs to be in place in perpetuity. There needs to be a concrete, time-limited plan in place for bringing all settings into when full compliance, and there does not appear to be one at this moment. OLTL must provide additional details to the stakeholder community about the process, any time limits, and how participants would be notified about	No	<p>There are definitive timelines for full compliance with the HCBS final rule. In accordance with monitoring procedures, a follow-up monitoring is required within 30-days of the latest remediation date on the CAP.</p> <p>The provider is notified of the type of follow-up to be performed 15 business days in advance of the follow-up monitoring. All areas of non-compliance are reviewed during the CAP follow-up assessment to determine if the action steps have been completed in accordance with the approved CAP.</p> <p>If the follow-up is performed and all the action items are verified as complete, the CAP is closed. If the follow-up is performed and not all action items were verified to be complete, the provider has 10 business days to provide verification of completion.</p>

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	compliance issues.		OLTL has issued CAPs that align with the compliance due date of the HCBS final rule. OLTL expects any remaining follow-ups from outstanding CAPs to be completed by the end of this calendar year.
Communicating with People in Settings That Cannot or Will Not Come into Compliance	If appropriate oversight and measurement of compliance with the Rule begins, we believe additional settings will eventually be identified as non-compliant. If they are not able to come into compliance, there is the potential for many people served by ODP and OLTL waivers to be in need of new providers. Therefore, DHS must do everything it can to address the staffing crisis that continues to plague the HCBS system. This way, it will be prepared to help people in noncompliant settings find alternative placements that meet their needs.	No	OLTL agrees, as we continue our ongoing monitoring, we may encounter additional sites that do not meet the Final Rule criteria. As identified in our STP, OLTL will work with those providers in accordance with the processes outlined in the STP. OLTL has invested American Rescue Plan Act funding in the recruitment and retention of HCBS providers.
	Much like ODP, OLTL is primarily relying on its general customer service number to field any reports of Final Rule noncompliance. While we are pleased to see OLTL has also created a dedicated	No	In addition to the dedicated email address, participants, family members and stakeholders currently have access to OLTL’s Participant Helpline for any concerns they may have,

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	email address for these reports, we would urge it to create a designated hotline as well.		and providers have access to the Provider Helpline for issues found.
	The STP notes that OLTL used a provider self-assessment survey in April 2015 to identify where providers provide HCBS and whether those settings might be subject to the settings rule. (STP at 19.) Assuming that home care providers and nursing facilities were required to complete the survey, it would not have been sufficient to identify share care homes. A provider would only complete the self-assessment survey if it recognized that it was providing services at a “site” as opposed to a home. No provider of services in a share care setting would believe the survey was applicable to them without clear instructions specifying that the survey must be answered for any site in which the provider had an ownership, operational or financial interest, or was the exclusive service provider.	No	In collaboration with the Department of Health, family members/stakeholder and OLTL’s QMET, we have been able to identify settings that might be subject to the rule as a provider owned and controlled setting. If the HCBS provider leases from a third party or owns the property, this would be considered provider owned or controlled. If the provider does not lease or own the property but has a direct or indirect financial relationship with the property owner, we would presume that the setting was provider controlled unless the property owner or provider establishes that the nature of the relationship did not affect either the care provided or the financial conditions applicable to tenants. We also document and complete the onsite assessment of the physical site when a report/complaint has been received.

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	<p>Two commenters expressed concern about not having enough detail on the questions added to the OLTL provider enrollment application. The STP also notes that new providers seeking to enroll as HCBS providers are asked questions related to the HCBS settings rule and if it appears they may not be complying they are asked to complete the provider self-survey referenced above. (STP at 36.) Unfortunately, the STP does not provide sufficient detail on what questions are asked on the HCBS provider application form to determine if providers with an owner, operator or otherwise financially beneficial relationship with a share care home would be identified for a self-survey. Moreover, even assuming the survey would be triggered, as stated above, it is not likely to identify home care or other providers who serve share care settings.</p>	Yes	<p>As noted in the STP, prior to any enrollment the provider is required to complete the OLTL standard application form and materials. Effective July 1, 2015, the Provider Enrollment Information form included questions and information related to the HCBS Settings Final Rule.</p> <p>In response to concerns around share care homes, this form was updated effective 09/01/2021 to capture provider who operate provider owned/with financial interest in residential settings.</p> <p>The types of questions a provider must respond to are specific to the service location where HCBS is rendered, pose qualities to isolate participants from the greater community, third-party relationships, and the financial interest of owners of residential settings. A copy of this form may be found at Provider Enrollment Information Form HCBS 9.1.2021.pdf (pa.gov).</p> <p>Applicants that are identified as not in compliance with the HCBS Settings final rule will be required to complete the provider self-survey and may be subject to an on-site assessment prior to enrollment.</p> <p>Providers who meet HS requirements based on their location; enrollment will be denied and subject to provider appeal rights. If OLTL has identified an access to care</p>

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			<p>concern for the services requested in the service area, the provider would go through the Heightened Scrutiny process prior to enrollment.</p> <p>OLTL is confident the questions added will assist in identifying any possible compliance concerns prior to enrollment.</p>
	<p>One commenter expressed concerns about the mechanism to monitor providers who newly decide to serve share care settings. While the STP notes that OLTL conducts biennial monitoring of OLTL program compliance, there is no indication that monitoring includes evaluation of compliance with the settings rule. (STP at 36.) In sum, it appears the only mechanism to identify providers who serve share care settings is passively through a call or email to OLTL. (STP at 38.)</p>	No	<p>Most of these provider owned and operated sites referred to OLTL by stakeholders were also referred by DOH. In the event it is determined that a provider has engaged in this practice, QMET will include the onsite assessment tool to assure compliance with the settings requirement. (Appendix D of the STP)</p>

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	OLTL should also train CHC plans and their service coordinators to identify and report to OLTL potential non-compliance.	No	<p>The CHC-MCOs are responsible for meeting the HCBS Settings Final Rule requirements outlined in the CHC agreement. The CHC-MCO must provide services in the least restrictive, most integrated setting. The CHC-MCO shall only provide HCBS in settings that comply with 42 C.F.R. § 441.301.</p> <p>Additionally, OLTL has included MCO representatives on the Panel who may conduct follow-up with providers in their network to address any concerns of compliance with the Final Rule.</p>
Page 35 of the STP	OLTL has developed a Participant Review Tool to be used by Service Coordinators during face-to-face visits that incorporates questions designed to receive participant feedback... It is vital that the Service Coordinators (SCs) ensure they have awareness of the clients’ conditions while conducting their face-to-face visits and obtaining participant feedback. In particular, individuals that are cognitively impaired may not respond accurately due	No	<p>OLTL requires all services to be delivered in a manner that supports the participant’s communication needs, including, but not limited to, age-appropriate communication, translation services for participants that are of limited English proficiency or who have other communication needs requiring translation, assistance with the provider’s understanding and use of communication devices used by the participant.</p>

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	to their impairment. They may also have a lack of orientation and awareness.		