

## **Attachment 1**

### **District of Columbia Home & Community-Based Waiver Settings Compliance Update-Operations**

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Submitted to CMS December 21, 2022

**Description of how the state’s oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations;**

Excerpt from District of Columbia Statewide Transition Plan (September 30, 2020 Update)

The following excerpts address each oversight area below by Intellectual and Developmental Disability (IDD) and Elderly and persons with Physical Disabilities (EPD) groups respectively:

1. Policy on compliance with HCBS Settings Rule
2. HCBS service definitions and requirements
3. All regulations governing HCBS
4. Provider requirements
5. Licensing requirements and regulations
6. All relevant policies, procedures, and protocols
7. Provider training requirements
8. Human Care Agreements (IDD only)

#### **Section V: Assessment & Remediation**

##### **A. Policy on Compliance with HCBS Settings Rule**

###### **1. DDS Policy on Compliance with HCBS Settings Rule (2015-DDS-POL23).**

DDS issued a policy requiring that agency staff and providers participate in efforts to assess and achieve compliance with the HCBS Settings Rule. This includes the expectation that providers conduct a critical and honest self-assessment; cooperate fully with the assessment and transition process; and demonstrate on-going efforts, cooperation and progress towards compliance with the HCBS Settings Rule. The policy was issued by the projected date of April 1, 2015 and posted on the DDS website at: <http://dds.dc.gov/publication/hcbs-settings-rule-compliance-policy>.

**September 2019 Update:** No update. The District of Columbia has completed all required policy updates, with final policies published in September 2018, as discussed above.

**September 2018 Update:** In May 2018, DDS issued a Home and Community Based Services for People with Intellectual Disabilities Day Setting Heightened Scrutiny Review Procedure, 2018-DDS-PR-02, and accompanying Transmittal # 18-2, incorporating the methodology described within this Statewide Transition Plan. Please see <https://dds.dc.gov/publication/heightened-scrutiny-procedure> and <https://dds.dc.gov/publication/heightened-scrutiny-transmittal-18-2>, respectively.

## **2. DHCF Policy on Compliance with HCBS Settings Rule**

DHCF will issue a transmittal informing all providers of DHCF's expectations that they will come into compliance with the HCBS Settings Rule. The transmittal is planned for release during the third quarter of 2017.

**September 2019 Update:** DCHF adjusted its policy strategy by incorporating the settings requirements in its monitoring assessment for Assisted Living Facilities. HCBS Settings requirements are reinforced annually with each ALF during an on-site visit as a part of the annual monitoring process. This strategy has proven effective as evidenced by 100% compliance in the first quarter of Fiscal Year 2019.

**September 2018 Update:** In anticipation of the March 17, 2022 initial deadline for full compliance with the HCBS Settings rule, DHCF will issue a transmittal as planned in 2018. As policies and procedures are drafted for the waiver, the settings requirements will also be incorporated.

## **B. State Level Self-Assessment Process, Results and Remediation**

### **1. HCBS Settings for People with IDD**

DDS established an HCBS Settings Rule Advisory Group and held a series of meetings to assess all rules, regulations, licensing requirements, certifications processes, policies, service definitions, protocols, practices and contracts to determine which characteristics of HCBS settings are already required and where there are gaps. The review group identified areas where changes are needed to ensure compliance with the HCBS settings characteristics rule and made recommendations for remediation.

1. DDS invited representatives of the groups below to participate in the review group and invited and consulted with others, including the Department of Health (DOH), as needed. DDS posted the meeting dates on its website and members of the public were welcome to attend and participate. DDS State Office of Disability Administration (SODA) is responsible for arranging and facilitating the meetings. DDS Information Technology (IT) Unit posts items, as needed, on the website. Although the state level self-assessment process has been completed, meetings will continue, as needed, through the remediation process. For example, DDS reconvened the group to provide input into a draft of proposed Host Home regulations. Planning is underway to conduct a meeting to discuss challenges and solutions for compliance with the leasing/ written residency agreement sections of the HCBS Settings Rule.

Although meetings are open, invited members of the review group include:

- a. DDS, including representatives from DDA Service Coordination, DDA Waiver Unit, SODA, a Person-Centered Thinking Leader, DDS/DDA's Provider Certification Review team and others, as needed, including representatives from DDS/DDA Quality Management Division;
  - b. DHCF;
  - c. DC Developmental Disabilities Council
  - d. Project ACTION!, DC's self-advocacy group;
  - e. DC Supporting Families Community of Practice;
  - f. Quality Trust for Individuals with Disabilities;
  - g. Disability Rights DC/ University Legal Services, DC's protection and advocacy organization;
  - h. DC Coalition of Disability Services Providers; and
  - i. Georgetown University Center for Excellence in Developmental Disabilities.
2. The state level assessment was completed, as projected, by September 1, 2015 and has resulted in DC having a list of required changes needed to the waiver itself, implementing regulations, and policies, procedures and practices. The self-assessment included a review and analysis of:
- a. **All HCBS waiver service definitions and provider requirements** (including all residential, day and vocational services) are attached.  
The HCBS waiver is available on-line on the DDS Waiver Amendment Page at:  
<http://dds.dc.gov/node/1220341>

Remediation: The District is planning several additional waiver amendments to support compliance with the HCBS Settings Rule and seeks public comment on these as described below and welcomes additional ideas. DDS will ensure appropriate public notice and comment periods for the proposed waiver amendments, including posting of the entire waiver application with the proposed amendments. DDS will also ensure appropriate due process notice

to all impacted HCBS IDD waiver beneficiaries. Changes to the waiver will be completed by November 2017, as part of the waiver renewal, and may vary from what is described below based upon public comment.

- **Provider Qualifications for All HCBS Settings:** Modify language in provider qualifications for Supported Living, Supported Living with Transportation, Host Home, Residential Habilitation, Day Habilitation, and Employment Readiness to require that any new settings must meet all requirements of the HCBS Settings Rule. Require that all Supported Living, Supported Living with Transportation, and Host Home settings fully comply with the HCBS Settings Rule as of the effective date of the waiver renewal.
- **Residential Habilitation:** Limit the size of all new settings to no more than 4 people or less per setting; those who wish to stay with their housemates are not required to move. After November 1, 2020, settings that are currently for 5 or 6 people will be targeted for reduction through attrition.
- **Day Habilitation: Eligibility Limitations based on Level Of Need (LON):**

**Service limitations for new individual admissions to Day Habilitation services:**

(1) People who are 64 years old and younger and have a Level of Need Day Composite score of 2 or less would not be eligible to attend Day Habilitation services, unless approved by DDS due to extenuating circumstances or barriers that are expected to be resolved within six months. Exceptions may only be granted for 6 month periods and must be accompanied by an Individual Support Plan goal aimed at addressing the barrier to participation in other day or employment waiver supports. Alternative services, including Employment Readiness, Small Group Supported Employment, Individualized Day Supports, and Companion services that are offered during regular day service hours, would be available, in combination, for up to forty hours per week.

(2) People who are 64 and younger and have a Level of Need Day Composite score of 3 or 4 would not be eligible to attend Day Habilitation programs, unless they have tried other day and employment options for one year first unless approved by DDS due to extenuating circumstances or barriers that are expected to be resolved within six months. Any exceptions must be accompanied by an ISP goal aimed at addressing the barrier to participation in other day or employment waiver supports. Alternative services including Supported Employment, Individualized Day Supports, Employment Readiness and Companion would be available in combination for up to forty hours per week.

(3) In addition to the limitations described above, Day Habilitation services may not be authorized for any waiver participant for more than 24 hours per week. Wrap around services are available, including Supported Employment, Individualized Day Supports, Employment Readiness and Companion in combination for up to forty hours per week. This limitation is not applicable to Small Group Day Habilitation services.

**Service limitations for people currently in Day Habilitation services:**

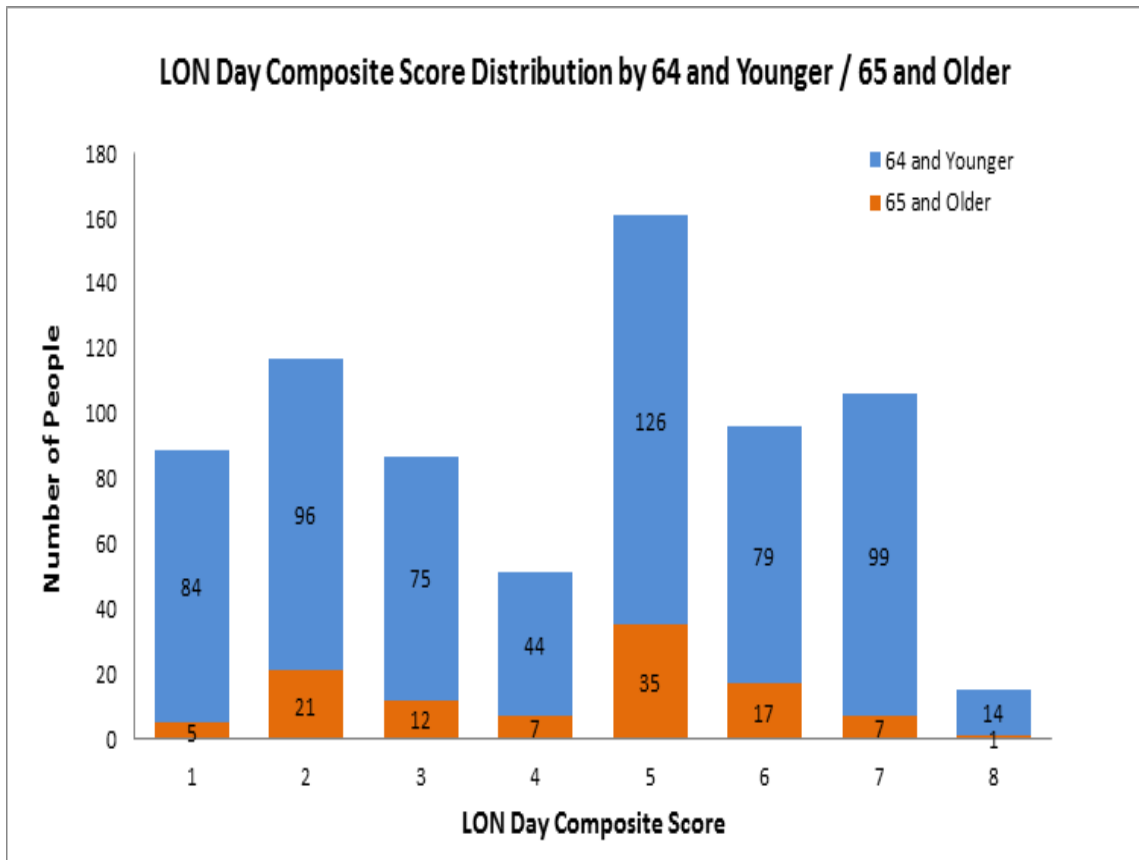
(1) Within one year from the waiver effective date, any person with a Level of Need Day Composite score of 1 or 2 would no longer be eligible for Day Habilitation services and services may no longer be authorized. Instead the person should be offered employment services, either through the waiver, the Rehabilitation Services Administration, or other community based options, subject to the exception described below. This would be implemented on a rolling basis over the course of the year, with the new service limitation discussed and choice of alternative options offered at the person's next ISP meeting. Exception: For people with an ISP meeting that is scheduled within 90 days of the first anniversary of the waiver effective date, DDS may authorize Day Habilitation services for up to 90 days following the ISP meeting to ensure a smooth transition.

(2) Within one year from the waiver effective date, regular Day Habilitation services may not be authorized for any waiver participant with a Day Composite Level of Need score above 2 for more than 24 hours per week, subject to the exceptions described below. Wrap around services are available, including Supported Employment, Individualized Day Supports, Employment Readiness and Companion in combination for up to

forty hours per week. Exceptions: This limitation is not applicable to Small Group Day Habilitation services. Additionally, for people with an ISP meeting that is scheduled within 90 days of the first anniversary of the waiver effective date, DDS may authorize up to 40 hours of Day Habilitation services per week for up to 90 days following the ISP meeting to ensure a smooth transition.

(3) For any person who is currently receiving Day Habilitation services who will be subject to a reduction in authorized service hours due to the service limitations listed above, DDS will provide timely and adequate due process notice of the change in services and the person's appeal rights.

The chart below indicates the current LON Day Composite Scores amongst people who are attending Day Habilitation programs.



You can learn more about the Level of Need Screening and Assessment Tool at: <http://dds.dc.gov/book/intake-and-eligibility/level-need-assessment-and-screening-tool>.



- **Size Limitations on Day Habilitation and Employment Readiness Settings**
  - a. Current Day Habilitation and Employment Readiness settings that have a daily census under fifty people in the setting for more than 20% of the day, may only receive authorizations for services for new participants up to a daily census of fifty people in the setting.
  - b. Current Day Habilitation settings that have a daily census of fifty people or more in the setting for more than 20% of the day will not be eligible for authorizations for services for new participants until their daily census is less than fifty people in the setting. (There are no current Employment Readiness settings that have a daily census over 50 people in the setting.)
- **Employment Readiness: Time Limitation on Services**

For people who are not currently enrolled in Employment Readiness services, the service may only be authorized for up to one year, except that DDS may approve up to a one year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services.

For people who are currently enrolled in Employment Readiness services, the service may only be reauthorized for up to one year from the person's next ISP date, except that DDS may approve up to a one year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services.

If a person has exhausted Employment Readiness services and: (1) has had at least one year since the end of that service; (2) expresses an interest in employment; and (3) the support team has identified specific goals around building employment skills that are reflected in the ISP, then DDS may authorize Employment Readiness services one time, for up to one year. (Total of up to three years of Employment Readiness services.)

Exception: At any time that a person loses his or her job, or is employed and is seeking to learn new job skills, DDS may authorize Employment Readiness services for up to one year.

For any person who is currently receiving Employment Readiness services who will be subject to a reduction in authorized service hours due to the service limitations listed above, DDS will provide timely and adequate due process notice of the change in services and the person's appeal rights, using the process described in the DDS Person Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

**September 2019 Update:** No update. As noted in 2018: DC provided all Waiver changes with approval.

**September 2018 Update:** DC renewed its waiver, effective November 20, 2018. Selected changes include:

- A requirement that all Residential Settings be fully compliant with the HCBS Settings Rule.
- A requirement that all providers of Employment Readiness services become Vocational Rehabilitation providers
- Size limitations for Residential Habilitation settings
- Time limitations for use of Employment Readiness services
- Limitations on the size of Day Habilitation programs
- Limitations on number of hours a person may be authorized to use Day Habilitation services
- Limitations on who may use Day Habilitation services
- Requirement that Supported Employment and Employment Readiness staff have training that is the equivalent to ACRE/ CESP training.

**b. All regulations governing HCBS**

The regulations are available on the DDS website at: <http://dds.dc.gov/page/hcbs-waiver-service-description> or via the DC Regulations website at: <http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=29-19>.

Remediation: DDS and DHCF began the publishing the first round of regulation revisions in spring 2015. However, the regulation implementation date was timed to the effective date of the waiver amendments, which did not occur until September 2015. Once it became apparent that the waiver would not be approved over the summer, DDS and DHCF held off on publishing new regulations until we had a better sense of when the waiver would be approved. Regulatory revisions will continue, on an ongoing basis, as needed, to ensure full compliance with the HCBS Settings Rule no later than March 17, 2022.

The bulk of the changes made are in the “General Provisions,” which apply to all HCBS Settings. Please see, online: <http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=29-19>. First, we require via regulation that each waiver provider develop and adhere to policies which ensure that each person receiving services has the right to the following:

- Be treated with courtesy, dignity, and respect;
- Direct the person-centered planning of his or her supports and services;
- Be free from mental and physical abuse, neglect, and exploitation from staff providing services;
- Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;
- Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation; and
- Be informed orally and in writing of the following:
  - Complaint and referral procedures including how to file an anonymous complaint;
  - The telephone number of the DDS customer complaint line;
  - How to report an allegation of abuse, neglect and exploitation;

- For people receiving residential supports, the person’s rights as a tenant, and information about how to relocate and request new housing.

We also added a new section, below, to the “General Provisions”:

### **HOME AND COMMUNITY-BASED SETTING REQUIREMENTS**

- (1) All Supported Living, Supported Living with Transportation, Host Home, Respite Daily, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:
  - (a) Be chosen by the person from HCBS settings options including non-disability settings;
  - (b) Ensure people’s right to privacy, dignity, and respect, and freedom from coercion and restraint;
  - (c) Be physically accessible to the person and allow the person access to all common areas;
  - (d) Support the person’s community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
  - (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community;
  - (f) Provide information on individual rights;
  - (g) Optimize the person’s initiative, autonomy and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact;

- (h) Facilitate the person's choices regarding services and supports, and who provides them;
  - (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP;
  - (j) Provide opportunities for the person to engage in community life;
  - (k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
  - (l) Control over his or her personal funds and bank accounts; and
  - (m) Allow visitors at any time.
- (2) All Supported Living, Supported Living with Transportation, Host Home, Residential Habilitation, and Respite Daily, settings must:
- a) Be integrated in the community and support access to the greater community;
  - b) Allow full access to the greater community;
  - c) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to lease and provider owned properties.
  - d) Develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (1) Privacy in his or her personal space, including entrances that are lockable by the person (with staff having keys as needed);
  - (2) Freedom to furnish and decorate his or her personal space (with the exception of Respite Daily);
  - (3) Privacy for telephone calls, texts and/or emails; or any other form of electronic communication, *e.g.* FaceTime or Skype; and
  - (4) Access to food at any time.
- (3) All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:
- a) Privacy for personal care, including when using the bathroom;
  - b) Access to snacks at any time;
  - c) Privacy for telephone calls, texts and/or emails; or any other form of electronic communication, *e.g.* FaceTime or Skype; and
  - d) Meals at the time and place of a person's choosing.

Any deviations from the requirements in 1(l) and (m), 2(d) and 3 must be supported by a specific assessed need, justified in the person's person-centered Individualized Support Plan, and reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review included discussion of the following elements:

- (a) What the person's specific individualized assessed need is that results in the restriction;

- (b) What prior interventions and supports have been attempted, including less intrusive methods;
- (c) Whether the proposed restriction is proportionate to the person's assessed needs;
- (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;
- (e) When the HRC or the person's support team will review the restriction again;
- (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
- (g) Whether the HRC has assurance that the proposed restriction or intervention will not cause harm.

Please note that the Provider HRC review is a pre-requisite to the ISP Support Team meeting. The ISP team must allow review and approve all deviations from the requirements and there must be documentation in the ISP of all the elements discussed above. DDS is currently piloting a new ISP process that incorporates this review. The new ISP process will begin for all waiver recipients no later than September 30, 2017 and will be implemented on a rolling basis throughout as each person has their next scheduled ISP meeting.

All of the above changes have been made through Emergency and Proposed Rulemakings and are in effect. The public comment period closed on June 13, 2016, without any public comments. A final rulemaking for "General Provisions" was published on August 12, 2016 (see attached). In addition to the changes described above, DC updated individual regulations for each of the HCBS Settings, detailed in the Statewide Assessment Reporting Charts, attached.

DDS recognizes that there is additional regulatory action to take, although much of the HCBS Settings Rule has already been adopted into DC regulations and requirements. Rather than make all of the changes at once, we decided to allow some time to give providers an opportunity to build capacity, train staff, and change their practices. DDS plans to continue to update the General Provisions, and, if needed, the Day Habilitation, and Employment Readiness regulations, to implement standards that meet the requirements of the HCBS Settings

Rule for all settings. All regulations will be fully updated to ensure HCBS Settings compliance by September 2018, which leaves sufficient time for providers to come to compliance and DDS to move any people who are in settings we determine will not become compliant with the rule. Additionally, for both day and residential settings, DDS will continue to analyze the results of the site-by-site assessments and what we learn through Provider Performance Review to determine whether additional regulatory action is needed to address compliance with the HCBS Settings Rule.

DC recognizes that changing regulations alone does not always lead to changes on the ground level for people receiving services. As described throughout this document, DDS is using a variety of quality functions to measure provider compliance with the HCBS Settings Rule, providing technical assistance, require individual remediation plans, called Provider Corrective Action Plans, and follow any issues through to remediation. This includes the changes we have made to our Provider Certification Review process to add questions that test compliance with all aspects of the HCBS Settings Rule; the new requirements for a Continuing Improvement Plan for HCBS Settings Compliance in Provider Certification Review through the Provider Performance Review; the revised Service Coordination Monitoring Tool; the focus on the HCBS Settings Rule at all Provider Leadership meetings, and more. Simply put, DDS has revised significant portions of our Quality Management System so that we have the ability to assess provider compliance with the HCBS Settings Rule; provide support for compliance; and ensure remediation throughout the transition period and ongoing.

**September 2019 update:** No update. DC completed all regulatory changes for HCBS IDD Waiver providers.

**September 2018 update:** DC has completed its update of regulatory changes related to compliance for HCBS IDD waiver providers. Based upon input from the HCBS Settings Advisory Group, DC added information to the rules that describe examples of what is expected for a setting to be found in compliance. These examples were taken from the CMS sub-regulatory guidance exploratory questions and recommendations from members of Project ACTION!, DC's self-advocacy group.

Emergency and proposed rules were adopted on November 24, 2018, to implement the new waiver. Final rules were adopted on March 2, 2018. Both sets of rules are available at:



<https://dcregs.dc.gov/Common/DCMR/SectionList.aspx?SectionNumber=29-1938>. The full text of the final rule is as follows:

## **1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS**

1938.1 All Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Companion, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:

- (a) Be chosen by the person from HCBS settings options including non-disability settings. For residential settings, this includes, but is not limited to, ensuring that:
  - (1) People select their home and know that they have protections against eviction;
  - (2) People choose their roommates and know how to request a roommate change; and
  - (3) People who have a roommate are offered the choice of available residential settings with a private bedroom, if they have the ability to pay.
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint. This includes, but is not limited to, ensuring that:
  - (1) People are provided personal care assistance in private, as appropriate;
  - (2) Information is provided to people on how to make an anonymous complaint;
  - (3) People's health and other personal information (e.g., mealtime protocols, therapy schedules) are kept private;

- (4) Staff do not talk about people's private information in front of other people who do not have a right and/ or need to know; and
  - (5) Staff address people by their names or preferred nicknames.
- (c) Be physically accessible to the person and allow the person access to all common areas. For residential settings, this includes, but is not limited to, ensuring that:
- (1) People have full access to the kitchen, dining area, living room, laundry, and all other common areas of their home; and
  - (2) The home is fully accessible to meet the needs of the people living there, including all common areas and supports as needed, such as grab bars and ramps.
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
- (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community. This is evidenced in part by the following:
- (1) People who desire to work are supported to pursue work in the community; and
  - (2) People engage in meaningful non-work activities in the community.
- (f) Provide information on individual rights;
- (g) Optimize the person's initiative, autonomy, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;

- (h) Facilitate the person's choices regarding services and supports, and who provides them;
- (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP, in accordance with DDS guidance;
- (j) Provide opportunities for the person to engage in community life, as evidenced in part by people being able to shop, attend religious services, schedule appointments, have lunch with friends and family, etc. in the community, as they choose;
- (k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS, as evidenced in part by people using community resources, such as parks, recreational centers, community health clinics, etc.;
- (l) Control over his or her personal funds and bank accounts, as evidenced in part by people being able to access their funds, when they want to, and without advanced notice;
- ~~(m)~~ Allow visitors at any time within the limits of the lease or other residency agreement;
- (n) Be integrated in the community and support access to the greater community. This is evidenced in part by the following:
  - (1) People receive the supports they need to see family and friends and spend time doing activities of their choosing in the community; and
  - (2) People are encouraged to learn travel skills so that they can use public transportation.
- (o) Allow full access to the greater community.

1938.2

All Supported Living, Supported Living with Transportation, Host Home Without Transportation, and Residential Habilitation settings must:

- (a) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under the relevant landlord/tenant law for that jurisdiction. This includes a responsibility to ensure that each person knows their rights regarding housing, as explained by their lease or written residency agreement, including when they could be required to relocate, and understand the eviction process and appeals rights. This provision applies equally to leased and provider owned properties;
- (b) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
  - (1) Privacy in his or her personal space, including entrances to living spaces that are lockable by the person (with staff having keys as needed). This is evidenced in part by staff knocking and receiving permission prior to entering a person's living space;
  - (2) Freedom to furnish and decorate his or her personal space, as evidenced in part by people's living space reflecting their taste and preferences (*e.g.*, furniture, linens and other household items reflect people's choices), within the limits of the lease or other residency agreement or consistent with the governing Human Care Agreement;
  - (3) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, *e.g.* FaceTime or Skype, with or without support, based on person's preference; and

- (4) Access to food at any time, as evidenced in part by:
  - a. Each person has meals at the time and place of his or her choosing;
  - b. People can request an alternative meal, if desired; and
  - c. Snacks are available and accessible at any time unless there is documentation of a medical condition that requires restrictions.

1938.3 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment, Companion and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) A secure place to keep their belongings;
- (b) Access to snacks at any time;
- (c) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, *e.g.* FaceTime or Skype, with or without support, based on the person's preference; and
- (d) Meals at the time and place of a person's choosing.

1938.4 Any deviations from the requirements in §§ 1938.1(l) and (m), 1938.2(b) and § 1938.3 must be supported by a specific assessed need, justified and documented in the person's person-centered Individualized Support Plan, as well as reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review and person-centered planning meeting included discussion of the following elements:

- (a) What the person's specific individualized assessed need is that results in the restriction;
- (b) What prior interventions and supports have been attempted, including less intrusive methods;
- (c) Whether the proposed restriction is proportionate to the person's assessed needs;
- (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;
- (e) When the HRC and the person's support team will review the restriction again;
- (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
- (g) Whether the HRC and the person's support team has assurance that the proposed restriction or intervention will not cause harm.

**September 2019:** No update. DC has completed all regulatory changes, with final regulations published in March 2018, as discussed above.

**c. DDS/DDA Provider Certification Review (PCR) process**

DDS's PCR policy, procedure, guidance and tools are available on-line at: <http://dds.dc.gov/book/vi-administrative-dda/provider-certification-review-policy-and-procedures>.

**Credentials and Training of the PCR staff**

The development of the HCBS indicators was completed by the senior managers of the PCR team in partnership with DDS leadership. The senior managers on the PCR team were responsible for training and ongoing management of quality measures to insure reliability of the PCR team's assessment of these indicators. The senior managers have had years of experience in waiver programs in several states, have received multiple

trainings in person centered thinking and personal outcome measures from both state agencies and national leaders in these areas. Specifically, the Senior PCR managers trained the PCR staff members in the identification of the elements required to be present in order for any one HCBS indicator to be met.

More broadly, the PCR reviewers have been hired to review the provider's ability to meet all waiver requirements including HCBS designated indicators for services they offer. They perform these reviews each week as part of the PCR certification process. All PCR reviews come with at least one year of experience in an HCBS waiver setting. Many come with case management, quality management, or program management experience. On hire, each reviewer receives orientation to all indicators including HCBS indicators in the District's IDD waiver program. The tools contain written guidance on how to interpret if indicators are met, not met, or not applicable. A new reviewer is paired with a seasoned reviewer on average for the first three reviews which involves observing, then conducting a review with the guidance of the seasoned reviewer, then co-reviewing a person in the sample- in which both reviewers complete an answer sheet, and inter rater reliability can be established. Senior managers complete an annual inter rater reliability session with each reviewer. All answer sheets for each review are reviewed by a senior manager before they are approved to determine that statements accurately fit the designation a reviewer has selected. Only approved answer sheets are submitted to the database to determine the results. There is often discussion between the senior review manager and the individual reviewer about how the reviewer arrived at their conclusions, and this assures the Manager that the reviewer's thinking is in line with the current guidelines.

Each of the HCBS indicators have a set of sub questions which help the reviewer determine the designation of the indicator. Sub questions have been selected based on CMS published guidance and the current DDS waiver rules. All sub questions of an indicator must be satisfied in order for the indicator to be marked as met. This configuration insures that all reviewers are looking at the same set of criteria, and forms the basis of a "not met" answer. Here are two examples to illustrate the indicator and the sub questions to that indicator:

Indicator: Does the person have access to use a phone or computer privately, with or without support, based on the person's preferences?

Subset questions:

Is there a computer or phone available to the person in a private area?

If not, is it due to a restriction based on an assessment?

If there are limitations, is there documentation of the provider HRC review which meets the criteria outlined in the HCBS Waiver rule, Chapter 19 Section 1938?

Indicator:

Has the provider created a culture in which visitors are accepted and encouraged?

Subset questions:

Does the person express that they can have visitors whenever they want?

Does the family feel they can drop in whenever they want?

Are visitors treated the same as visitors would be in the greater community? If not, is it due to a restriction based on an assessment?

If there are limitations, is there documentation of the provider HRC review which meets the criteria outlined in the HCBS Waiver rule, Chapter 19 Section 1938?

Continuing education is ongoing. Each reviewer must attend the District's Person Centered Thinking Training. Bi Monthly educational sessions are offered by PCR Senior Managers to reviewers to insure changes to DDS policy, and Service Rules are understood and implemented. Specific HCBS indicators are selected to be highlighted in one of these sessions. Included in these sessions are discussions with and among reviewers of what they are collecting as evidence that indicators are being met to share "best practices" identified by the staff.

Remediation:

First, to assist providers in completing the Day and Vocational Provider Self-Assessment and the Residential Provider Self-Assessment the PCR team completed a crosswalk of the self-assessment indicators to the PCR indicators. This crosswalk was sent out to providers with the self-assessment.

When it was decided by DDS to use the PCR process as a way to collect information and validate the results of the self-assessment, a closer look was made to the self-assessment indicators and the associated CMS

Recommended Assessment Questions. The PCR team determined that the PCR indicators might be too broad



and might not be sufficient to successfully demonstrate whether they met the requirements of CMS. At that time, new indicators were written as part of the PCR tool that better matched the CMS assessment questions.

The PCR tool, as originally designed has a person centered component and an organizational component. The person centered tools consist of 8 domains:

1. Rights and dignity
2. Safety and Security
3. Health and Wellness
4. Decision Making
5. Community Inclusion
6. Relationships
7. Service Planning and Delivery
8. Satisfaction

Each indicator, within the tool is designated as either QA or QI. QA indicators are based on rules, policies and procedures and must be met. QI indicators are what would be considered best practice and are not required to be met. QA indicators have a weighted number assigned to them.

For purposes of completing the self-assessment validation, an addition domain 9 was added, which consisted of the newly created HCBS indicators. For the purpose of validation, the indicators were designated as QI, no weight was assigned to them and they do not currently impact a provider's score. As of July 1, 2016, all but the indicators having to do with leasing/tenant agreements will become Q/A indicators with weights assigned to these indicators. At that time, all the HCBS indicators will be placed in the appropriate domains as listed above.

The same process was completed for the organizational indicators. The organizational tool contains 6 outcomes. They are:

1. The provider has systems to protect individual rights.
2. The provider has a system to respond to emergencies and risk prevention.

3. The provider ensures that staffs possess the needed skills, competencies and qualifications to support individuals.
4. The provider has a system to improve Provider certification over time.
5. The provider ensures that each individual has the opportunity to develop and maintain skills in their home and community.
6. The provider will ensure individuals are safe and receive continuity of services when receiving respite services.

An additional outcome was added to the organizational tool for HCBS requirements at the organizational level.

Each outcome has individual indicators which must be met and have a weight assigned to them, as in the person centered tools. The indicators written for the HCBS validation process were given a QI status and assigned to Outcome 7.

It should be noted, that some of the items being measured in the self-assessment were already things DDS designated as QA indicators in the PCR such as privacy when completing personal care. In those instances, the original PCR indicator stayed in its domain and continued to have a weight assigned to it.

Domain 9 and Outcome 7 were added to the relevant tools in the PCR database. They were added to the following services:

- (c) Day Habilitation
- (d) Day Habilitation 1:1
- (e) Employment Readiness
- (f) Supported Living
- (g) Supported Living Periodic
- (h) Host Home
- (i) Residential Habilitation

(j) Organizational tool (for all services)

Once the new indicators were written, research was done to better understand the CMS expectations. Documents such as the CMS exploratory questions were used. The CQL Toolkit for States prepared by Kerri Melda and Drew Smith was used to assist in developing exploratory questions. These documents were used to create guidance for the PCR reviewers. Guidance was suggested as to questions to ask, documents to review and observations to make. Once the guidance was written, PCR reviewers were trained. They were also given copies of all documents used to develop the guidance.

On October 1, 2015 the PCR team began completing the validation assessment questions as a part of the PCR process.

Meetings were held with the database support team to best determine how the information could be entered and reports generated. The database was set up to run a report by provider with the scores for each HCBS indicator. The database was also set up to run aggregate scores for all providers by service and for a defined time period. After conducting reviews for about six (6) weeks, it became clear through meetings with the PCR reviewers additional guidance was needed for completing the assessments.

Each HCBS indicator was dissected and 2-4 subset questions were written for each indicator. The subset questions were designed, so that if one of them was marked no, then the indicator had to be marked no. However, if all of them were marked yes, it did not guarantee the indicator could be marked yes. This is based on the rationale that the reviewer would be forced to focus on 2-4 things per indicator, but would still have the flexibility to mark the indicator as “not met” if additional things were discovered during the course of the review. The subset questions were reviewed by the full PCR team and training was conducted. The subset questions were then added to the database.

When an indicator is designated as “not met”, the reviewer must write an evidence statement identifying what they observed, read or heard to support the indicator being not met. The database allows DDS to see the individual statements.

The indicators are cross walked with the CMS assessment questions and starting in January 1.2016, each of the HCBS indicators have a CMS assessment designation making it possible for the database to be able to generate reports linking these together. Also with the subset questions now in the database, there will be the ability to report what caused the indicator to not be met due to how the subset questions were answered. This will assist the District in identifying causes for the not met indicators and make amelioration more accurate and timely.

For reviews beginning October 1, 2015, providers were sent an email at the time of the PCR announcement explaining the role PCR would have in supporting DDS to validate the results of the HCBS rule. They were sent the tools that would be used as part of the process.

To assist DDS in meeting required timelines, additional reviews of the day providers are being conducted outside of the usual PCR calendar. Providers were contacted by phone and sent the tools that would be used.

The tools were also uploaded to the DDS website. Information about the process was shared at the day provider meeting in November 2015, and again at the February 2016 meeting as well as at the Provider Leadership meeting in January 2016 and the February 2016 DDA Town Hall Meeting.

**September 2019 Update:** Additional designations of HCBS indicators have been added and currently the following services are measured and reported:

- Day Habilitation
- Day Habilitation 1:1
- Day Habilitation Small Group
- Employee Readiness
- IDS and IDS Small Group
- Supported Employment Job Placement and Small Group
- Supported Employment Job Training and Support and Small Group
- Supported Employment Long Term Follow Along and Small Group
- Companion Services and Small Group

- Supported Living ( Regular and periodic)
- Host Home
- Residential Habilitation
- Organizational Tool ( for all services)

All service designations (individual as well as group) of the services of Individualized Day supports, Companion Services and Employment Services have been added to the services that are assessed by the PCR and the PCR tools of these services have been revised to include a review of all HCBS Settings Requirements for these services.

**September 2018 Update: HCBS indicators are measured and reported for the following services:**

- Day Habilitation
- Day Habilitation 1:1
- Day Habilitation Small Group
- Employment Readiness
- IDS Small Group
- Supported Employment Job Placement Small Group
- Supported Employment Job Training and Support Small Group
- Companion Services Small Group
- Supported Living (regular and periodic)
- Host Home
- Residential Habilitation
- Organizational Tool (for all services)

As of July 2018, all HCBS indicators became Q/A indicators, are assigned a weight, and are assigned to one of the organizational outcomes.

DDS has updated the PCR guide and tools to include the requirement that providers must score 100% on all HCBS designated indicators in the PCR tools in order to receive an Excellent rating. Prior to this requirement a provider could receive an excellent rating if they scored 90-100% on indicators. This new criteria recognizes the importance of meeting the CMS HCBS setting requirements, and DDS's commitment to insuring providers are providing people with services per these requirements. When a provider does not meet the requirement of 100%, they will not be able to achieve an Excellent rating, regardless of their score, and are required to remediate the problem area through a corrective action process that is followed by DDS to resolution.

**September 2019 Update:** DC completed all needed changes to Provider Certification Review in April 2018. DC conducted a 100% review of all day settings, as well as a sample of all residential settings, by provider using the 2018 updated PCR tool.

**d. DOH licensing requirements and regulations.**

These rules govern Residential Habilitation facilities and are in addition to the waiver rules. They are available on-line at: <http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=22-B35>.

Remediation: These regulations, in addition to the waiver regulations, govern Residential Habilitation services. They were reviewed by the HCBS Settings group, which made recommendations for remediation to DDS in areas where the rule is either silent or in conflict with the HCBS Settings Rule. DDS has shared those recommendations with the Mayor's Inter-Agency Task Force on Coordination and Management of the Supports and Services Delivery System for Persons with Intellectual and Developmental Disabilities. The Task Force is charged with overseeing and coordinating those steps deemed necessary and appropriate with respect to improving the District government's supports and services delivery system for persons with intellectual and developmental disabilities. Membership includes the DDS Deputy Director for DDA, who is the Task Force Chairperson; the Senior Deputy Director, DHCF; and the Senior Deputy Director, DOH /Health Regulation and

Licensing Administration. The Task Force was established by Mayoral Order, available on-line at: <http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=388211>.

The Task Force is working on revising the Residential Habilitation regulations to comply with the HCBS Settings Rule, and revised regulations are expected to be published by September 2018.

**September 2019 Update:** The District of Columbia’s Residential Habilitation providers have made great strides in meeting compliance with the HCBS Settings Rule, with 100% of all habilitation settings (32 of 32 settings) in full compliance after remediation. This is based upon data from service coordination monitoring of 100% of people residing in residential habilitation settings.

**September 2018 Update:** DC has updated its HCBS IDD waiver, implementing regulations, and the Provider Certification tools, to require compliance with the HCBS Settings for all residential habilitation settings. With the change to the regulations and certification tools, changes to the licensing regulations are no longer required. That is because in order to provide residential habilitation services, the provider must meet both certification and licensing requirements. Therefore, the HCBS Settings Rule requirements need not be contained in both sets of regulations. As evidence of the effectiveness of these changes, DC notes that Residential Habilitation providers have made great strides in meeting compliance with the HCBS Settings Rule, with 79% of all residential habilitation settings (27 of 34 settings) in full compliance, based upon data from service coordination monitoring of 100% of people living in residential habilitation settings. By comparison, at this time last year (prior to the changes in the waiver and implementing regulations), only 2 residential habilitation settings were found to be fully compliant with the HCBS Settings Rule.

**e. All relevant DDS/DDA policies, procedures, and protocols, including Quality Management practices and tools.**

These items are available on-line at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

Remediation: Based on the assessment, DDS has begun to revise policy and procedures and this will continue, on an ongoing basis, as needed, to ensure full compliance with the HCBS Settings Rule no later than March 17, 2022. DC has established specific timelines and milestones for additional revisions needed to achieve compliance with the HCBS Settings Rule. In instances where a change in rule or policy requires a public comment period, time lines have been adjusted accordingly to accommodate time needed to process and respond to public input and incorporate such comments into document revisions. The Statewide Assessment Reporting Charts, attached, detail the results of the systemic analysis of policies and procedures and projected timelines for completion of all revisions by September 2018.

Of note, DDS has made changes to its *Provider Performance Review* (PPR) policy and procedure (2015-DDS-QMD-POL001), available on-line at: <http://dds.dc.gov/book/iv-quality-management/provider-performance-review-policy-and-procedure>. As part of the FY2016 PPR process, starting in November 2015, the HCBS Setting Standards are discussed, the provider's Transition Plan is reviewed, and each provider has a "Continuous Improvement Plan" (CIP) area of improvement related to ensuring that their agencies policies, procedures, and protocols reflect the utilization of Person First Language, Person Centered Thinking outcomes, and compliance with HCBS Settings Standards across all service models. As part of the quarterly CIP follow up contacts the assigned Quality Resource (QRS) staff will review the provider's progress towards meeting each of their agency's areas of improvement, including benchmarks outlined in their transition plan developed to come into compliance with the HCBS Settings Rule.

HCBS performance related goals have been added to all CIP's since FY 16.

PPR will request updated Provider Transition Plans as part of the PPR provider profile starting in FY17. Additionally, HCBS compliance is monitored through PCR and through the updated Service Coordination Monitoring Tool (SCMT), the results of which will be added to the PPR process in FY 2017.

**September 2019 Update:** DDS incorporated the results of service coordination monitoring of HCBS indicators and PCR into the PPR. HCBS Settings Rule requirements are incorporated into the various PPR domains:



- Health and Wellness
- Rights and Dignity
- Service Planning and Delivery
- Safety and Security
- Relationships
- Community
- Choice and Decision-making
- Fiscal and Organizational Accountability

PPR results in a provider quality improvement plan to address performance measures falling below established benchmarks as well as quality improvement strategies in support of advancing best practice. Quality improvement plans for HCBS waiver providers also include a system for maintaining full compliance with the requirements of the federal HCBS Settings Rule.

DDS staff are responsible for creating and following an annual schedule of review for each residential, day and vocational provider. Staff track the effectiveness of their assigned providers' quality improvement plans on a quarterly basis through review of performance measures as well as the providers' progress updates.

No further changes to PPR process is needed. DDS has made all required changes to the PPR.

**September Update 2018:** PPR has worked with providers to add HCBS performance goals to all CIPs. However, DDS experienced challenges with adding the results of service coordination monitoring and PCR to the annual PPR review; it was more difficult to automate than we projected from an IT perspective. Once we ran into the complications with IT, instead we did a pilot whereby we were able to incorporate findings from the HCBS Settings assessments into PPR. A redacted example is available upon request from CMS. Based upon

this pilot, we are training the Quality Resource Specialists on this new method as an interim step, while we continue to work with our IT department on an automated solution. QRS training will be completed by October 2018.

We expect to fully incorporate the results of service coordination monitoring of HCBS indicators and PCR into the PPR no later than March 1, 2019. We will roll this out through the PPR year, as providers have their annual PPR meetings.

Note that although there have been delays in fully transforming our PPR process, DDS remains confident in the ability of our quality management system, as a whole, to find and remediate issues related to HCBS Settings Rule compliance on both an individual and systems level. Any negative finding on an HCBS indicator from service coordination monitoring results in an issue, which is assigned to both a provider and a staff member at DDS, who follows the issue through to remediation. The same is true for any negative finding from a PCR issue, whether it is related to an individual or organizational level indicator. Finally, PPR requires providers to create and follow a CIP that includes addressing any challenges the provider is experiencing with reaching compliance with the Settings Rule.

#### **f. Provider training requirements.**

*DDA's Provider Staff* training policy is available on-line at: <http://dds.dc.gov/node/735312>. In addition to the HCBS Settings Advisory Group, DDS engaged with stakeholders through our Training Curriculum Committee to review and revise training requirements. DDS Human Capital Administration led this effort.

Remediation: DDS has made changes to training for all levels of provider employees.

- Training for Direct Support Professionals: DDS has revised its Phase One training modules for all provider Direct Support Professionals (DSP) to emphasize person-centered thinking, the importance of self-direction, and key requirements of the HCBS Settings Rule, such as respect, dignity and privacy, the role of the DSP in supporting community integration and helping people build relationships, and Employment First.
- Training for Provider Executives, Qualified Intellectual and Developmental Disabilities Professionals, and Managers: All providers are required to attend training on Person-Centered Thinking and Supporting Community Integration through Discovery. (see, DDA Provider Staff Training Policy at <http://dds.dc.gov/node/735312>).

Finally, DDS has changed the format of its Provider Leadership and Day/ Employment Leadership meetings to make them more of a forum for training, discussion, information sharing and problem solving. The HCBS Settings Rule is discussed at each of these monthly meetings. The Day and Employment providers meeting has become a Community of Practice, aimed at supporting compliance with the HCBS Settings Rule.

The HCBS related rules are discussed at every meeting with the provider. We will ensure that it is included on the agenda.

September 2019 Update: DDS has delayed the implementation of the ACRE/CESP requirement for one year and we are working with providers on developing the ACRE training.

**September 2018 Update:** DC added the following training requirements for DDA providers of Employment Readiness, Supported Employment and Small Group Supported Employment services: All Employment Support Professionals shall complete a professional development course which:

1. Meets the requirements for an ACRE Basic Employment Certificate (“BEC”); or
2. Meets the requirements for an ACRE Professional Employment Services Certificate; or
3. Meets the requirements for CESP Certification; or
4. Is comparable to ACRE BEC or CESP training. Specifically, the competency-based course must include 40 hours of competency based training in the following:
  - a. Application of Core Values and Principles to Practice or Federal Policy and Historical Perspective (four hours required);
  - b. Individualized Assessment and Employment/ Career Planning or Customer Profile and Employment Selection; (six hours required);
  - c. Community Research and Job Development or Organizational Marketing and Job Development (five hours required);
  - d. Workplace and Related Supports or Job-Site Training (ten hours required); and
  - e. Other trainings such as Specific Disabilities, Long Term Support, Funding, Benefits Counseling, etc.(ten hours required).

As described above, DDS offered a train-the-trainer course and certified 27 new trainers to help providers meet these new expectations.

#### **g. Human Care Agreements**

A sample Human Care Agreement is [attached for review](#).

Remediation: Based on the systemic assessment, in 2015 DDS made the following changes to the District’s Master Human Care Agreements (HCA) for Residential Supports to support compliance with the HCBS Settings Rule, applicable to provider owned or operated HCBS Settings for Supported Living, Supported Living with Transportation, Residential Habilitation and Host Homes services. (Please note that the District’s HCA’s are funded solely with local funds and do not use any Medicaid funding.)

DDS updated the language in the Master HCA for Fiscal Year 2017 to require the following:

- The Provider's settings must support people's full access to the greater community.
- Leases shall be in the names of the people who are being supported. If this is not possible, then the Provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to leased and provider owned properties.
- Each person receiving support, must have access to a telephone or other communication device, as appropriate, to use for personal communication in private at any time the person is at home, unless there is a restriction is based on the person's assessed need and that is justified in his or her person centered plan.
- All residences must offer the person privacy in his or her room (subject to the person having a roommate).
- The entrance to person's room must be lockable by the person, with only the person, his or her roommate, if applicable, and appropriate staff having a key. Any exception shall be based on the person's assessed need and justified in his or her person centered plan.
- People may choose any provider of services if new room and board funding is not concurrently requested.
- Clothing and furniture reflect the person's preferences.
- People receiving supports must have the freedom to furnish and decorate their room, subject to the lease or other residency agreement.
- People receiving supports must have access to food at any time in their home, unless there is a restriction is based on the person's assessed need and that is justified in his or her person centered plan.

- People receiving supports shall have the right to visitors of his or her choosing at any time, in their residence. Any exception shall be based on the person’s assessed need and justified in his or her person centered plan.
- The homes must be physically accessible for the person and meet his or her support needs. Any obstructions that limit a person’s mobility in the home must have environmental adaptations to ameliorate the obstruction.
- Adds a definition – “HCBS Settings Rule: refers to Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers, 79 Fed. Reg. 2948, 3030-31 (Jan. 16, 2014) (to be codified at 42 C.F.R. § 441.301I(4)).”
- Requires the provider to have a detailed Provider Transition Plan, including benchmarks and milestones that describes how all settings in which waiver services are provided will fully comply with the federal HCBS Settings Rule by March 17, 2022.

Requires that all new settings must be fully compliant with all requirements of the HCBS Settings Rule at the time they are established

The HCA also requires that the provider follow all of the governing waiver regulations and DDS policies and procedures.

DDS staff and providers were trained on the new HCA Agreement on January 31, 2017, with a second training scheduled for February 21, 2017.

Also, please see the Statewide Assessment Reporting Charts, attached for a summary of the results of the systemic analysis of DDA’s Master HCA for Residential Supports.

September 2018 Update: No additional changes were required to the HCA. DC continues to use the HCA with the requirements detailed above.

## **2. HCBS Settings for People who have Physical Disabilities**

1. DHCF invited representatives of the groups below to participate in the review group and invited and consulted with others, including the Department of Health (DOH) and Department of Behavioral Health (DBH), as needed. DHCF posted the meeting dates on its website and members of the public were welcome to attend and participate. Although the state level self-assessment process has been completed, meetings will continue, as needed, through the remediation process.

Although meetings are open, invited members of the review group included:

- a) DHCF;
- b) DOH;
- c) DBH;
- d) DDS;
- e) DC Office of Disability Rights;
- f) ADAPT/Direct Action;
- g) DC Long Term Care Coalition;
- h) DC Long Term Care Ombudsman;
- i) DC Health Care Association;
- j) DC Home Health Provider Association;
- k) DC Center for Independent Living.

2. The state level assessment was completed by June 30, 2016 and has resulted in DC having a list of required changes needed to the waiver itself, implementing regulations, and policies, procedures and practices. The self-assessment included a review and analysis of:
  - a. All HCBS waiver service definitions and provider requirements (including assisted living and adult day health services). The HCBS waiver is available on-line at:  
<http://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/Home%20and%20Community%20Based%20Services%20Waiver%20for%20Persons%20who%20are%20Elderly%20and%20Individuals%20with%20Physical%20Disabilities%20%28EPD%29%20Notice%20of%20Emergency%20and%20Proposed%20Rulemaking.pdf>

Remediation: DHCF submitted a Waiver Amendment to CMS on July 20<sup>th</sup>, 2015 and it was approved on October 23<sup>rd</sup>, 2015. The changes were as follows: The Waiver Amendment adds new services, amends existing service descriptions and reimbursement methodologies, adds new provider types and qualification standards and includes requirements to conform with the new Home and Community-Based Services (HCBS) requirements under 42 CFR 441.301 of the federal rulemakings by proposing new conflict-free requirements for case management and person-centered planning to comply with these regulations. It also includes a CMS required HCBS settings Transition Plan to explain how the District's assisted living facilities enrolled under the Waiver will comply with the setting requirements under 42 CFR 441.301.

- **Provider Qualifications for All HCBS Settings:**

Modify language in provider qualifications for Assisted Living Facilities and Adult Day Health to require that any new settings must meet all requirements of the HCBS Settings Rule.

- b. **All regulations governing HCBS.** The regulations are available on the DHCF website at:



EPD Waiver:

<http://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/Home%20and%20Community%20Based%20Services%20Waiver%20for%20Persons%20who%20are%20Elderly%20and%20Individuals%20with%20Physical%20Disabilities%20%28EPD%29%20Notice%20of%20Emergency%20and%20Proposed%20Rulemaking.pdf#page=5&zoom=auto,-150,613>.

Non-Medicaid Mental Health Community Residence Facilities:

<http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=22-B38>

EPD & Non-Medicaid Assisted Living Facilities Licensed under the Department of Health:

<https://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/AssistedLivingLaw.PDF>

See the attached Statewide Assessments charts for a detailed analysis of DHCF, DOH, and DBH regulations relative to compliance with the federal HCBS Settings rule.

A high level summary of DHCF’s legal analysis is set forth in the table below. *Legal Analysis of HCBS Settings Regulations compared to DC Regulations*

CMS HCBS Setting Requirements	Do DC Regulations Meet Federal HCBS Standards?		
	Assisted Living Facilities-EPD	Assisted Living Residence-	Mental Health Community Residence Facilities-

		DOH-Non-Medicaid	Non-Medicaid
The setting is integrated in and supports full access to the greater community	Yes	Yes	No
Is selected by the individual from among setting options	Yes	Yes	Yes
Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint	Yes	Yes	No
Optimizes autonomy and independence in making life choices	No	Yes	No
Facilitates choice regarding services and who provides them	No	No	No
The individual has a lease or other legally enforceable agreement providing similar Protections	Yes	Yes	Yes
The individual controls his/her own schedule including access to food at any time	No	No	No

The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit	No	No	No
The individual can have visitors at any time	No	No	No
The setting is physically accessible	Yes	Yes	Yes

Remediation: Regulatory revisions will continue, on an ongoing basis, as needed, to ensure full compliance with the HCBS Settings Rule no later than March 17, 2022. An analysis, remediation and timeline consistent with the crosswalk referenced in Section II. is attached for each setting type listed above.

1. The District made significant changes to the proposed EPD Waiver Regulations to ensure compliance with CMS' settings requirements. These include the following:

Consistent with federal requirements, all EPD waiver service settings that are not an individual's natural home, including an assisting living facility and an adult day health program must meet the Home and Community-Based Setting Requirements pursuant to 42 CFR 441.301(c) (4):

- (a) Be chosen by the person receiving EPD Waiver services;
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (c) Be physically accessible to the person and allow the person access to all common areas;
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy, and opportunities for employment and meaningful non-work activities in the community;

- (e) Provide information on individual rights; and
- (f) Allow visitors at any time, with any exception based on the person's assessed need to be justified in his or her person-centered plan.

Additionally, the following requirements were added for all residential EPD settings that are not the individual's natural home must:

- (a) Be integrated in the community and support access to the greater community;
- (b) Provide opportunities for the person to engage in community life;
- (c) Allow full access to the greater community;
- (d) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to leased and provider owned properties;
- (e) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
  - (1) Privacy in his or her personal space, including entrances that are lockable by the person (with staff having keys as needed);
  - (2) Freedom to furnish and decorate his or her personal space (with the exception of Respite Daily);
  - (3) Control over his or her personal funds and bank accounts;
  - (4) Privacy for telephone calls, texts and/or emails; and
  - (5) Access to food at any time.

Because it is not specifically addressed in the rule, the District, in sub-regulatory guidance will stipulate that the setting must provide individuals who are sharing units a choice of roommates.

- 2. DHCF is in discussions with the Department of Behavioral Health regarding revising regulations for community residence facilities for mentally ill persons to comply with the Rule.

Beginning in July through October 2015, DHCF had meetings with the DBH to revise the Mental Health Community Residence Facility regulations. These regulations provide for the health, safety, and welfare of individuals with mental illness residing in mental health community residence facilities (MHCRFs). The revisions ensure that our Waiver beneficiaries reside in settings that are compliant with the HCBS rules, but also help us to ensure that any Medicaid beneficiary that attends non-residential services such as Adult Day Health must reside only in settings (Mental Health CRFs, and other CRFs) that also meet all of the requirements of the federal rules. The regulations are currently posted as second & proposed rulemaking, and incorporate the settings requirements as outlined in the attached table that accompanies the systemic assessment.

**September 2019 Update:** On June 28, 2019, DOH posted its third notice of Emergency and Proposed Rulemaking for Assisted Living Residences. It is available in its entirety at: [https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/ALR%20Regulations%203178\\_01%5B7709%5D.pdf](https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/ALR%20Regulations%203178_01%5B7709%5D.pdf). As noted in last year's update, the rule incorporates the HCBS settings requirements.

The EPD Waiver regulation remains as amended above, and comports with the HCBS Settings rule.

**September 2018 Update:** During the year, DOH drafted an Emergency and Proposed Rule for Assisted Living Residences, amendments to Chapter 101, ASSISTED LIVING RESIDENCES, of Title 22-B, PUBLIC HEALTH AND MEDICINE, as a supplement to the legislation referenced above. DHCF and DOH agreed to language that addresses all Medicaid requirements, including the HCBS settings rule, as follows:

“10100.04 An ALR that participates in the Medicaid Home Community-Based Services Waiver program for the Elderly and Persons with Physical Disabilities, as approved by the Council of the District of Columbia and the Centers for Medicare and Medicaid Services, shall maintain compliance with Chapter 42 (Home and Community-Based Services Waiver for Persons Who Are Elderly and Individuals with Physical Disabilities) of Title 29 of the District of Columbia Municipal Regulations (“DCMR”).”

The emergency and proposed rule is available in its entirety at:

<https://www.dcregs.dc.gov/Common/DCMR/SectionList.aspx?SectionNumber=22-B10100>

- c. **DHCF Provider Requirements.** DHCF’s provider policies, procedures, guidance and tools are available on-line at: <https://www.dc-medicaid.com/dcwebportal/documentInformation/getDocument/14944> and [www.dc-medicaid.com](http://www.dc-medicaid.com)

Remediation:

As mentioned above, DHCF’s Long Term Care Administration (LTCA) revised its EPD Waiver provider requirements and the application process in order to ensure organizations providing EPD services to DC residents are supporting and facilitating greater individualized community exploration and integration.

In addition to reengineering the internal mechanism for processing provider applications, the LTCA adopted a Long Term Care Provider Review Checklist that applicants must use when submitting their application materials. The Checklist will include HCBS Setting requirements and will be posted on DHCF's provider site ([www.dc-medicaid.com](http://www.dc-medicaid.com)) in FY2017. As this checklist is being refined, a section will be added that reflects the HCBS settings rule, where applicants, when appropriate, must attest to complying with the rules and submit their policies and procedures, as appropriate. DHCF will use CMS’ “Exploratory Questions to Assist States in Assessment of Residential Settings” to amend the checklist. Only applicants with approved policies and procedures will be referred to DHCF’s Division of Public and Private Provider Services for enrollment as EPD waiver and 1915(i) providers. As mentioned earlier, provider readiness and enrollment processes for the District’s new 1915(i) providers included on-site review of compliance with the HCBS Settings requirements. Additionally, DHCF developed an addendum to the conflict-free assessment tool with the HCBS Setting rule requirements for prospective 1915(i) applicants. Data collection began in FY15.

**September 2019 Update:** As noted in earlier sections, the LTCA universal monitoring tool incorporates the HCBS settings requirements. Assisted Living Facilities (ALFs) are assessed annually for compliance with requirements along with other elements of the tool.

- d. **DOH licensing requirements and regulations.** These rules govern Assisted Living facilities and are in addition to the waiver rules. They are available on-line at: <http://doh.dc.gov/service/health-care-facilities> and <https://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/AssistedLivingLaw.PDF> .

Remediation: DHCF is working with DOH/HRLA's Intermediate Care Facilities Division (ICFD) which licenses group homes for persons with intellectual, developmental and physical disabilities residing in the District of Columbia. The ICFD also licenses Home Care Agencies, Community Residence Facilities, and Assisted Living Residences to ensure their compliance with local licensure requirements. In this role, HRLA staff inspects licensed health care facilities and providers who participate in the Medicare and Medicaid programs, responds to consumer and self-reported facility incidents and/or complaints, and conducts investigations. When necessary, HRLA takes enforcement actions to compel facilities and providers to come into compliance with District and Federal law. DHCF and DDS are working with HRLA to revise the regulations for community residential facilities which incorporate both licensed small group homes known as community residence facilities and assisted living residences. The revisions specific to the community residence facility regulations will be promulgated with a formal opportunity for public comment. Final publication is anticipated in FY 2017. In FY 2018, DOH will draft regulations relative to Assisted Living Residences that support compliance with the HCBS settings rule.

As a result of the revised regulations which are under development in FY17, DOH will account for the added requirements relative to HCBS settings during its monitoring process of ALRs and CRFs. At present, providers must have their DOH license renewed annually (within 90 days of license expiration). The renewal requires that a surveyor or team of surveyors (depending on the type/size of provider) make an unannounced site visit which includes three stages. First, the surveyors will observe staff interaction with individuals receiving HCBS

services, assess whether the environment is in compliance with the regulations, and interview staff and clients. Then, the surveyors begin record verification, which includes reviewing medication administration, employment records, and policies and procedures. From this information, the surveyors make a compliance decision to determine if there are any deficient practices, which will be shared with the provider during the site visit exit interview. A written report detailing results of the site visit and the observed deficiencies is shared with the provider within ten days of the exit interview, and the provider then has ten days to respond with a corrective action plan. Upon receipt and approval of the plan, DOH may conduct an unannounced follow up site visit to ensure that the corrective action plan is being adhered to. This monitoring process will account for compliance with the HCBS settings rule and associated policies and procedures of the provider/licensee. Please note that DHCF will work with DOH to train staff on the new HCBS settings rules within three (3) months of the rules being promulgated.

Per DHCF's original submission to CMS, we committed to co-host at least 3 trainings for providers upon publication of the revised existing DOH standards and completion of the revised EPD Waiver provider requirements. As mentioned, DOH is still in the process of finalizing regulations, and the EPD waiver rules are due for publication in summer 2016. DHCF coordinated monthly meetings with case managers to provide training and technical assistance on LTCA-related issues, including the forthcoming EPD waiver rules. Formal training will be scheduled upon the actual publication. We anticipate these trainings will begin in the Summer of 2017 and will be publicized via the DHCF website and provider listserv.

**September 2019 Update:** On June 28, 2019, DOH posted its third notice of Emergency and Proposed Rulemaking for Assisted Living Residences. It is available in its entirety at: [https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/ALR%20Regulations%203178\\_01%5B7709%5D.pdf](https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/ALR%20Regulations%203178_01%5B7709%5D.pdf). As noted in last year's update, the rule incorporates the HCBS settings requirements.

**September 2018 Update:** During the year, DOH drafted an Emergency and Proposed Rule for Assisted Living Residences, amendments to Chapter 101, ASSISTED LIVING RESIDENCES, of Title 22-B, PUBLIC HEALTH AND MEDICINE, as a supplement to the legislation referenced above. DHCF and DOH agreed to language that addresses all Medicaid requirements, including the HCBS settings rule, as follows:



“10100.04 An ALR that participates in the Medicaid Home Community-Based Services Waiver program for the Elderly and Persons with Physical Disabilities, as approved by the Council of the District of Columbia and the Centers for Medicare and Medicaid Services, shall maintain compliance with Chapter 42 (Home and Community-Based Services Waiver for Persons Who Are Elderly and Individuals with Physical Disabilities) of Title 29 of the District of Columbia Municipal Regulations (“DCMR”).”

The emergency and proposed rule is available in its entirety at:

<https://www.dcregs.dc.gov/Common/DCMR/SectionList.aspx?SectionNumber=22-B10100>

- e. **All relevant DHCF policies, procedures, and protocols.** While final policies and procedures for the EPD Waiver are anticipated in the fourth quarter of 2017, the Person-Centered Individualized Service Plan Guide is currently available on-line at:

[http://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/PCP%20Template\\_04-12-2016\\_Savable.pdf](http://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/PCP%20Template_04-12-2016_Savable.pdf)

Remediation: DHCF’s EPD Monitoring Team has amended its comprehensive monitoring tool for all EPD waiver services to reflect the HCBS settings requirements. The EPD Monitoring Team also uses the aforementioned Readiness Checklist for renewals of assisted living providers’ status as EPD Waiver providers.

Beyond DHCF’s efforts to monitor enrolled Medicaid providers for compliance with the HCBS settings requirements, the LTCA also administers an individual face-to-face, conflict-free assessment to establish the level of need for beneficiaries who receive long term care services and supports, as mentioned above. Using ‘MS’ Exploratory Questions to Assist States in Assessment of Residential Settings, DHCF developed an

Addendum to the LTC conflict-free assessment tool. Nurses conducting the assessment tool were trained on this new Addendum on April 15, 2015 and have been using this tool to conduct individual assessments of settings when an EPD waiver beneficiary does not live in their natural home.<sup>1</sup>

As mentioned under Training and Capacity Building, the 2<sup>nd</sup> Proposed Rulemaking was published March 18, 2016

(<http://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/Long%20Term%20Care%20Services%20and%20Supports%20Assessment%20Process%20Notice%20of%20Second%20Proposed%20Rulemaking.pdf>).

On April 15<sup>th</sup>, DHCF participated in training for all EPD Waiver Providers to ensure that they understood the setting options. The training materials communicated the various setting requirements including a person's right to privacy, dignity, and respect, and the other principles incorporated in the HCBS final rule.

EPD assisted-living service providers deemed noncompliant with the HCBS settings rule will be notified of areas of deficiency and given 30 days to submit a corrective action plan to DHCF. DHCF will utilize this corrective action plan as a component of ongoing monitoring processes. If the provider continues to be non-compliant, DHCF will evaluate the appropriateness of various sanctions as established by DHCF's amended rules. In the event that people must be transitioned from one provider to another because the provider setting does not comply with the HCBS Settings Rule, DHCF will coordinate transitions and ensure continuity of services in accordance with DHCF's Transition policy and procedure. Enforcement of compliance rules was launched in April 2016 subsequent to implementation of monitoring efforts that incorporate HCBS Settings requirements.

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<sup>1</sup> The District's process for conducting individualized settings assessments for EPD Waiver enrollees was reviewed and given approval by Ralph Lollar before submission of the Statewide Transition Plan in 2015.

In addition, policies and procedures for EPD Waiver case managers are inclusive of the settings requirements. The Person-Centered Individualized Service Plan Guide and tool specifically requests that case managers assess if an individual's residence was chosen by the person, and is integrated in and supports full access to the greater community. It further defines access as "access to 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." This language is consistent with the HCBS settings requirements. EPD Case Management, Assisted Living, and Adult Day Health policies and procedures under development and expected in the fourth quarter of 2017 will incorporate the settings requirements, as well.

**September 2019 Update:** No new update.

**September 2018 Update:** As noted previously, in 2017-2018, the LTCA Oversight and Monitoring Division collaborated with the Quality Division and EPD Waiver Unit to update its monitoring tool for all EPD monitoring activities. Through this process, settings for Assisted Living and Community Residence Facilities monitoring tool was incorporated in the universal tool. The settings requirements were also included in the person-centered planning template embedded in the District's new case management system, DC Care Connect, launched in July 2018.

- f. **Provider training requirements.** DHCF's provider training policy is available on-line at: [www.dc-medicaid.com](http://www.dc-medicaid.com) and <http://doh.dc.gov/service/health-care-facilities>.

**Remediation:** Upon publication of the revised existing DOH standards and completion of the revised EPD Waiver provider requirements, DHCF will work with DOH and DCOA's ADRC to co-host no less than three trainings for providers on both the DOH standards and the new EPD provider requirements. DHCF and the ADRC will also co-host training for stakeholders on the DOH standards and the new EPD provider requirements. We anticipate these trainings will begin in the FY18 and will be publicized via the DHCF website and provider listserv.

September 2019 Update: No new update.

September 2018 Update: Once the DOH emergency and proposed regulation for ALRs is published, DHCF will work with the Health Regulation and Licensing Administration to establish trainings specifically for the Medicaid-enrolled providers, given the general provision in the rule that Medicaid providers must abide by rules set forth for the District's EPD Waiver.

## Attachment 2

### District of Columbia Home & Community-Based Waiver Settings Compliance Update-Assessment

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Submitted to CMS December 21, 2022

#### **Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance**

Excerpt from District of Columbia Statewide Transition Plan (September 30, 2020 Update)

#### **Section VI: Achieving Compliance, Sustaining Ongoing Compliance, and Amendments to the DC HCBS Waivers Transition Plan**

Activities related to the Statewide Transition Plan are done in partnership with sister District agencies, as appropriate, in particular the Department of Disability Services (DDS), the Department of Health (DOH), the Department of Behavioral Health (DBH), the Deputy Mayor of Health and Human Services (DMHHS), and the Office on Aging (DCOA). The DMHHS oversees the interagency activities, receives and reviews updated work plans, and convenes interagency meetings, as needed, to check-in with each agency, discuss progress and any challenges, and to ensure each agency is capably handling their components of the Statewide Transition Plan.

This STP will be submitted to CMS by September 30, 2017, after public comments, and will be updated by September 30, 2018, or upon request by CMS.

**September 2019 Update:** DC has reached full compliance with the HCBS Settings Rule. This is the final update to the Statewide Transition Plan. In future years, compliance will be demonstrated through performance measures in both the IDD and EPD waivers, and upon request by CMS.

**September 2018 Update:** DC is on target to reach full compliance with the HCBS Settings Rule by March 2019. DC will provide a final set of updated data by September 30, 2019, or upon request by CMS.

## DC HCBS IDD Waiver

- A. As a result of the assessments, DDS has begun issuing revisions to policies and procedures as needed, continuing on an ongoing basis, as needed, to ensure full compliance by March 17, 2022. All revised policies will be distributed to agency staff and providers, posted on the DDS website at <http://dds.dc.gov/page/policies-and-procedures-dda>, and will be discussed at meetings with provider leadership. All policy and procedure updates will be completed by September 2018.

### **September 2019: No update at this time.**

**September 2018 Update:** The following is a short description of policy and procedure changes, particular where the changes we have (or have not made) varied from previous projections. Additionally, please see the attached updated Statewide Assessment-I/DD Policies & Procedures chart.

**Human Rights and Most Integrated Day:** DDS initially thought that we would amend these policies to include the miscellaneous requirements from the HCBS Settings Rule and CMS Exploratory Guidance – for example, the requirement for providers to have an anonymous complaint system, or right to visitors at any time. Instead, at the request of the DDS HCBS Settings Advisory Group, we added this level of detail to the District’s **revised HCBS Setting Regulations**, as discussed above. This makes sense because our Most Integrated Day and Human Rights policies apply across DDA settings, including ICFs and individual homes, while the necessary changes apply only to HCBS Settings.

**Provider HRC Procedure and Behavior Support Policy:** DDS initially planned to update the Provider HRC procedure to require providers to review all person-centered modifications and potentially to change the definition in the behavior support policy of the term “restriction” to clarify that BSPs are not required for these person-centered modifications. Instead, we did this by **revised regulations, revised Individual Support Plans (ISP) Policy and Procedure** and a **new Provider HRC Meeting Minutes template**. Additionally, we published a new **Person Centered Modifications Procedure** to provide clarity in three processes for both DDS and DDA providers. The procedure ensures clarity about which HCBS Settings Rule requirements modifications are permissible, the requirement for Provider HRC and support

team reviews, and the requirement to have these reviews reflected in Person Centered Plans.

**Personal Funds Policy:** Language was added to the **updated HCBS regulations** and **revised Personal Funds Policy** to require that people receiving HCBS services in a setting have control over his or her personal funds and bank accounts.

**Contribution to Costs:** DDS made this change through **updated regulations**, requiring that people who have a roommate are offered the choice of available residential settings with a private bedroom, if they have the ability to pay. DDS asks about this regularly through Service Coordination monitoring. We currently have 490 people in our system who live with a roommate and are not married or otherwise engaged in a romantic relationship. None of them have expressed a desire to move or change their roommates, and if any person was interested in having their own bedroom, DDS would call a person-centered planning meeting to begin the process of transitioning the person to a Supported Living setting.

**Individualized Daily Schedules:** DC now requires through **updated regulations** and a **new Individualized Daily Schedules Policy** that providers create individualized daily schedules for each person receiving supports. They must include activities aligning with the person's goals, interests and preferences, as reflected in his or her ISP, in accordance with DDS guidance.

**Lockable Spaces:** DDS now requires through **updated regulations** and a **new Lockable Space Policy** that providers ensure people have entrances to living spaces which are lockable by the person (with staff having keys as needed), as well as a secure place to keep their belongings at day programs.

**Heightened Scrutiny Procedure:** Discussed above in Section V.

- B. As results of the assessments, DDS and DHCF have begun promulgate revised regulations for the HCBS waiver, on an on-going basis, continuing on an ongoing basis, as needed, to ensure full compliance by March 17, 2022. All regulations are posted on the DDS website and online at the DC Register, <http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=29-41> . All remaining regulatory updates will be completed by September 2018.

**September 2019: DDS achieved full compliance and will continue to review and update as needed to ensure that we maintain compliance.**

**September 2018 Update:** As discussed above, all regulatory changes have been completed by March 2, 2018.

- C. For providers needing assistance to come into compliance, the state has facilitated a Day and Employment Community of Practice, comprised of both non-compliant and compliant providers who can talk through provider-specific issues and problem-solve how to achieve compliance together. DDS also provides one-to-one technical assistance, as well as uses the monthly Provider Leadership meeting, so that there is support for all providers.

**September 2019 Update:** As discussed above, the DDS Day and Employment Community of Practice continues to meet, and DDS continues to use the monthly Provider Leadership meeting to conduct training, as needed, on the HCBS Settings Rule.

**September 2018 Update:** As discussed above, the Day and Employment Community of Practice continues to meet monthly, and DDS continues to use the monthly Provider Leadership meeting to conduct training on the HCBS Settings Rule.

- D. As compliance with the HCBS Settings Rule is achieved, strategies to assure on-going compliance include:
1. Incorporating the assessment by the person into ongoing service coordination monitoring activities.

Update: The design and staff training has been completed. IT will complete their work by March 2017. Service Coordinators will complete the 100% site-by-site assessment by the end of July 2017.



**September 2019 Update:** Service Coordinators completed the 100% site-by-site assessment in July 2018 and immediately began a new round, which was completed in July 2019. That data was used to update this Plan. Service Coordinators have now started another monitoring cycle, which will be completed in July 2020.

**September 2018 Update:** Service Coordinators completed the 100% site-by-site assessment in July 2017 and immediately began a new round, which was completed in July 2018. That data was used to update this Plan. Service Coordinators have now started another monitoring cycle, which will be completed in July 2019. Results will be included in the September 2019 update to this Statewide Transition Plan.

Results will be included in the following HCBS IDD waiver performance measure: Assurance No. 5 -- Administrative Authority.

<b>Sub Assurance No. 1 (Performance Measure 3 of 3):</b>			
<i>The Medicaid Agency retains ultimate administrative authority and responsibility for the operation of the waiver program by exercising oversight of the performance of waiver functions by other state and local/regional non-state agencies (if appropriate) and contracted entities.</i>			
Performance Measure 3/3:	Percentage of settings that meet HCBS settings requirements.		
Numerator/Denominator:	Number of settings that meet the HCBS settings requirements/Number of settings reviewed		
Discovery Method:	DDS will conduct a 100% review quarterly. DHCF will aggregate and analyze data quarterly.		
Responsible Party:	DDS	Compliance:	<b>Annual Measure</b>

DDS will submit compliance findings for this sub-assurance annually to DHCF in the 4<sup>th</sup> quarter of the Waiver Year. DHCF will share this information with CMS through annual evidentiary reporting.

2. Quality assurance methodologies incorporate monitoring performance measures that ensure compliance with the HCBS Settings Rule.

Update: The requirements have been incorporated into Provider Performance Review via a plan of correction for use by providers to come into compliance with the HCBS Settings Rule. As of October 1, 2016, PPR will incorporate site-by-site data into the PPR process for more detailed and specific support for compliance by setting.

As of March 2017 any findings of non-compliance through Service Coordination monitoring generates a provider Issue, which is followed by assigned DDS staff through to remediation.

Additionally, the DDS Quality Improvement Committee regularly reviews compliance data. Sample QIC Agendas and meeting minutes are available upon request.

**September 2019 Update:** As described above, PPR now fully incorporates HCBS Settings data.

**September 2018 Update:** As described above, PPR will more fully incorporate HCBS Settings data into their reviews by March 1, 2019.

3. Provider certification and licensing requirements will incorporate requirements that reflect compliance with the HCBS Settings Rule.

Update: New indicators have been added to the PCR process and these are used with all providers subject to the HCBS Settings Rule. As of July 1, 2016 any findings of non-compliance require a Plan of Correction.

**September 2018 Update:** As of July 2018, all HCBS Settings Rule requirements have a weighted indicator in PCR with findings of non-compliance requiring a Plan of Correction.

September 2019: No update. As indicated above, as of July 2018, all HCBS Settings Rule requirements have a weighted indicator in PCR with findings of non-compliance requiring a Plan of Correction.

4. Continued review of NCI data and external monitoring data to support its ongoing compliance monitoring efforts.

Update: This was completed and continues to be updated as NCI data is released. Data is shared with the public on the DDS website and with the DDS Quality Improvement Committee (QIC). Updated NCI data was reviewed most recently by the QIC on July 5, 2016. QIC meeting minutes are posted on-line at:

<http://dds.dc.gov/publication/quality-improvement-committee-qic>.

September 2018 Update: DDS continues to update its analysis of NCI data annually and share it on the DDS website and with the QIC.

September 2019: No update. As described above, DDS continues to update its analysis of NCI data annually and share it on the DDS website and with the QIC.

- E. DDS's Deputy Director for DDA is responsible for monitoring and ensuring DDS's compliance with this Transition Plan. DDS has created a work plan to track each item in this transition plan and ensure timely completion. This is reviewed with responsible staff, on an ongoing and periodic basis, as needed to ensure full compliance with the HCBS Settings Rule no later than March 17, 2022. Please see the work plan for the initial Statewide Transition Plan which indicates that DDS has met almost all timelines and milestones from the initial Statewide Transition Plan, with the exception being completion of the site-by-site assessment of residential settings, as discussed above. This is available on-line at: <http://dds.dc.gov/publication/transition-work-plan-website-version-2-9-2016>. An updated version of the work plan that incorporates all benchmarks and milestones related to the HCBS IDD waiver in this Updated Statewide Transition Plan will be created by DDS Performance Management

Unit, to continue to track progress. This will be completed by November 30, 2016 and posted on-line by DDS IT by December 31, 2016.

**September 2019 Update:** The DDS Deputy Director for QAPMA is responsible for reporting to DHCF on the waiver performance measure regarding HCBS Settings compliance, discussed above. The DDS Performance Management Unit tracks, trends and analyzes on-going provider compliance with the Statewide Transition Plan. The DDS State Office of Policy, Planning and Innovation is responsible for ensuring that all policies, procedures, regulations, and proposed waiver documents comply with the requirements of the HCBS Settings Rule.

**September 2018 Update:** DDS Performance Management, in coordination with the State Office of Policy, Planning and Innovation, tracks on-going progress with the Statewide Transition Plan.

**September 2017 Update:** DC does have an updated and detailed work plan for HCBS IDD waiver compliance, which we will include as an attachment to the STP. Although DC created this within the timelines listed in the STP, and is using it to track progress, we did not publish it online. This is because we have viewed this as an interim document. We understand that DC would soon be receiving a Milestone Reporting Template from CMS and we planned to use that to report both to CMS and the public on our progress. Once received, DC will decide which tool works best for the public. DC will publish updates on an annual basis on our website.

## **DC HCBS EPD Waiver**

- A. DHCF will begin issuing revisions to policies and procedures as needed, continuing on an ongoing basis, as needed, to ensure full compliance by March 17, 2022. All revised policies will be distributed to agency staff and providers, posted on the DHCF website at <http://dhcf.dc.gov/page/dhcf-medicaid-regulations> and will be discussed at monthly meetings with providers .

- B. As a result of the systemic assessment, DHCF revised regulations for the HCBS waiver to ensure full compliance. All regulations are posted on the DHCF website and online at the DC Register, <http://www.dcregs.dc.gov/Default.aspx>. The regulation is compliant with the HCBS settings rule.
- C. The District submitted an update to the Statewide Transition Plan upon completion of the full systemic assessment and review of the site-based residential assessments.
- D. For providers needing assistance to come into compliance, DHCF will provide one-to-one technical assistance.
- E. As compliance with the HCBS Settings Rule is achieved, strategies to assure on-going compliance include:

1. Incorporating the assessment by the person into ongoing service coordination monitoring activities.

Update: Ongoing, incorporated in the universal monitoring tool.

2. EPD Waiver Monitoring methodologies incorporate monitoring performance measures that ensure compliance with the HCBS Settings Rule.

Update: Ongoing. The requirements have been incorporated into EPD Waiver monitoring activities.

2. Provider certification and licensing requirements will incorporate requirements that reflect compliance with the HCBS Settings Rule.
3. A Long Term Care Provider Review Checklist has been added to the provider certification process, and this is used with all new providers subject to the HCBS Settings Rule.

- F. DHCF's Long Term Care Administration is responsible for monitoring and ensuring DHCF's compliance with this Transition Plan. DHCF has created a work plan to track each item in this transition plan and ensure timely completion. This is reviewed with responsible staff, on an ongoing and periodic basis, as needed to ensure full compliance with the HCBS Settings Rule no later than March 17, 2022. A new version of the work plan will be created by DHCF and DDS, to continue to track progress. This will be developed by the DDS Performance Management Unit and DHCF staff by May 2017 and will be posted on the DDS website on the Waiver Amendment Information page by DDS IT, and on the DHCF website by the Office of the Chief Technology Officer by June 2017.

**September 2019 Update:** DHCF demonstrated compliance with the HCBS Settings rule during the year. All EPD waiver providers in the Statewide Transition Plan are 100% compliant.

**September 2018 Update:** LTCA's Oversight and Monitoring Division, in collaboration with the EPD Waiver Unit, will continue to track progress toward compliance with the HCBS settings requirements.

**September 2017 Update:** A workplan for the HCBS EPD Waiver with an overview of major tasks is attached. As noted for the HCBS IDD Waiver workplan above, we understand that DC would soon be receiving a Milestone Reporting Template from CMS and we plan to use that to report both to CMS and the public on our progress. Once received, DC will decide which tool works best for the public. DC will publish updates on an annual basis on our website.

## Attachment 3

### District of Columbia Home & Community-Based Waiver Settings Compliance Update-Grievance

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Submitted to CMS December 21, 2022

**Description of a beneficiary's recourse to notify the state of provider non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.**

#### Intellectual and Developmental Disabilities HCBS Waiver

Excerpt from District of Columbia Statewide Transition Plan (September 30, 2020 Update)

pp. 116-117. First, we require via regulation that each waiver provider develop and adhere to policies which ensure that each person receiving services has the right to the following:

- Be treated with courtesy, dignity, and respect;
- Direct the person-centered planning of his or her supports and services;
- Be free from mental and physical abuse, neglect, and exploitation from staff providing services;
- Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;
- Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation; and
- Be informed orally and in writing of the following:
  - Complaint and referral procedures including how to file an anonymous complaint;
  - The telephone number of the DDS customer complaint line;
  - How to report an allegation of abuse, neglect and exploitation;
  - For people receiving residential supports, the person's rights as a tenant, and information about how to relocate and request new housing.

p. 217. The new DDA Complaints policy (2016-DDA-POL01) includes an option for anonymous complaints. Please see: <https://dds.dc.gov/page/dda-formal-complaint-system> (Updated December 2022).

DC HCBS Waiver Settings-Regulatory Compliance Update-Grievance 12-21-22

## **Elderly and persons with Physical Disabilities HCBS Waiver**

Excerpt from the District of Columbia Application for 1915(c) HCBS Waiver:  
DC.0334.R05.00 - Feb 01, 2022 (EPD)

### Appendix F-3 State Grievance/Complaint System

DHCF's Long Term Care Operations Division within LTCA is responsible for the operation of the grievance/complaint system. Additionally, the District of Columbia Office of Health Care Ombudsman and Bill of Rights (OHCOBR), an independent office located within DHCF, operates a separate complaint resolution system, through which waiver participants may also make complaints. LTCA and OHCOBR coordinate on the resolution of all types of complaints, including those related to this waiver, and to facilitate the development of program improvements to address underlying systemic issues that may have led to complaints.

- a) Participants may make all types of complaints or grievances to DHCF pertaining to the provision of waiver services.
  
- (b) The timelines for resolving complaints are as follows. All complaints that indicate that a participant's health and/or welfare are at immediate risk are addressed within 24 hours or next business day of the receipt of the complaint. Complaints pertaining to Medicaid eligibility determination and denial or reduction of service are addressed within seven (7) business days; all other complaints are addressed within ten business days and resolved within thirty (30) days of the receipt of the complaint. If the complaint remains unresolved after the third week, it is elevated to LTCA management for further intervention. If after thirty (30) days the complaint remains unresolved, it is elevated to the LTCA Director for intervention. Complainants are also informed upon the initiation of the complaint of the right to a fair hearing and how to obtain one.
  
- (c) When a participant, or advocate authorized by the participant, contacts the LTCA, the complaint is documented and logged into a cloud-based, electronic complaints management system and assigned to one of several staff persons in the LTCA for investigation and resolution. These staff investigate and use a variety of processes and mechanisms to resolve the complaint, depending upon the nature of the complaint. These processes and mechanisms include, but are not limited to: interviewing the participant, participant representative, service provider, and others with knowledge of the problem to obtain a clear understanding of the problem; reviewing the participant's service records and provider documentation; and reviewing billing records. Once the problem is well understood, staff can take a number of actions as appropriate

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including: directing the provider to develop and implement a corrective action plan (to be approved by LTCA staff); assisting the participant to choose another provider and transfer to that provider; referring the situation to Adult Protective Services or other intergovernmental resources; referring the situation to the DHCF Division of Program Integrity when instances of provider fraud or abuse are suspected; and referring complainants to the fair hearing process when certain complaints are not resolvable to the complainant's satisfaction or involve issues pertaining to eligibility for or denial of services.

In addition to the LTCA complaints receipt and resolution process, the Office of Health Care Ombudsman and Bill of Rights (OHCOBR) manages its own complaints process. The OHCOBR is comprised of two legislative requirements, the Ombudsmans Program (D.C. Code § 7-2071.01 et seq.), and the Grievance Procedures for Health Benefit Plans (D.C. Code § 44-301.01 et seq). In February, 2008, the D.C. Medical Assistance Administration of the D.C. Department of Health (DOH) became a separate, cabinet-level agency, DHCF, for the administration of the Medicaid program (D.C. Code § 7-771.01 et seq.) and obtained jurisdiction over matters pertaining to both requirements. These laws, regulations, and policies pertaining to complaints and grievances are available to CMS upon request.

December 2022 Update: DHCF LTCA complaint contacts are listed on the Contact Information page of the LTCA section of the DHCF Website (<https://dhcf.dc.gov/page/contact-information-0>).