

LOUISIANA STATEWIDE TRANSITION PLAN: ADDENDUM

LA submission 9/17

CMS Responses- September 2019

LDH State Responses-December 2019

Public Comment/Notice Period Process:

The Louisiana Department of Health (LDH) submitted this STP Addendum for public comment on February 23, 2018. The STP Addendum Public Notice (*PUBLIC NOTICE: Louisiana Department of Health: Home and Community-Based Services Settings Rule Statewide Transition Plan*) was published in eight (8) Louisiana newspapers detailing how to gain access to the Addendum and/or receive a hard copy. Comments could be submitted electronically or via mail. The deadline for submitting public comments to LDH was March 25, 2018.

Comments received: OAAS, OBH, and OCDD received no public comments.

The Addendum was further revised in 2019 to address additional comments and questions received from CMS. The public notice period for the revised Addendum began August 9, 2019 and ended September 8, 2019. The notice was published in eight (8) Louisiana newspapers detailing how to gain access to the Addendum and/or receive a hard copy document for review. Additionally, notices and the Addendum document were posted on OAAS', OBH's, and OCDD's public-facing websites. Comments could be submitted electronically via e-mail or in writing via standard mail.

No comments were received by OAAS, OBH, or OCDD during the public notice period.

CMS follow up:

Please clarify the state's intent regarding the Addendum and if the state will be including this information in the main STP narrative, attaching it to the STP, or including a link to the STP within the Addendum to make a complete document with opportunity for meaningful comment before the next time the state goes out for public comment. Please note public comment will need to be completed after the results of the validation are completed before coming back in for final approval.

Please describe the second form of public notice (electronic.)

Please note any relevant updates or progress made should be included in the STP either via updating the STP or including the following documents as attachments to the STP, "Progress Tracking for Louisiana Statewide Transition Plan, 2017 Q1," "2017 Quarter 1 Current Louisiana Work Plan Master," and "Site Specific Assessment and Validation Analysis, office of Aging and Adult Services, January 31, 2017"

State Response:

OBH response: Once the addendum is approved, the state plans to incorporate this information into the STP using tracked changes and recirculate the updated STP for public comment.

Electronic notice is sent to the OBH-HCBS listserv, which includes providers, advocates, and other stakeholders who have expressed interest in receiving updates about the Statewide Transition Plan.

CMS response (Sept. 2019): Once the state completes validation for the Therapeutic Foster Care settings and incorporates its compliance findings in the STP, the state will need to go back out for public comment before resubmitting to CMS.

State Response (Dec 2019):

The State will provide for public comment after validation and incorporation of findings into the STP for the Therapeutic Foster Care settings.

Setting Categorization

Individual, Private Homes

OAAS is presuming all individual, private homes to be fully compliant with HCBS characteristics. If there are any issues with a participant's housing or living situation, issues can be discussed and addressed through monthly support coordination contact. As an additional means of validation, OAAS staff interviewed a representative, statistically valid (95% CL) sample of all waiver participants (composite sample of ADHC and CCW populations) as part of its annual 1915(c) quality assurance monitoring. OAAS monitors visited participants in their homes and interviewed them about their experience with their services as it pertains to the HCBS Settings Rule. Utilizing a person centered interview approach, OAAS Regional Office staff gathered important information on choice of setting, service, and the degree or extent the participant is engaged in the community. OAAS will collect this information directly from participants annually to gauge ongoing compliance with the HCBS Settings Rule. The participant interview and home observation items may be viewed here: [Support Coordination Monitoring: Participant Interview Interpretive Guidelines](#).

For OBH, Wrap Around Agencies (WAAs) report on members' home settings on a monthly basis to the CSoC contractor. OBH is notified immediately regarding any exceptions.

For OCDD, in terms of monitoring compliance of individual, private homes, as part of the systemic assessment process, OCDD had Support Coordination complete Individual Experience Surveys for all persons participating in waiver services. This group was included in that process. In addition to the Individual Experience Survey, we also sampled some of the residential service providers via the self-assessment and site visits. Between both of these activities, the State is confident that we have monitored this group.

In the future, the State will access Support Coordination during monthly, quarterly, and/or annual periods to evaluate ongoing compliance. As a validation process, OCDD will be able to utilize Support Coordination monitoring to assure that the practice is completed. If through this process areas of non-compliance are identified, the State would require a corrective action plan to address the areas of non-compliance.

CMS follow up:

Please clarify that the state will assess settings where a beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) as a provider owned or controlled setting.

State Response:

OAAS: OAAS does not allow participants to receive services while living in an unrelated paid caregiver's home. "Recipients are not permitted to receive PAS while living in a home or property owned, operated, or controlled by an owner, operator, agent, or employee of a licensed provider of long-term care services and providers are prohibited from providing and billing for services under these circumstances. Recipients may not live in the home of a direct support worker unless the direct support worker is related by blood or marriage to the recipient (see link for "Who Can Be a Direct Support Worker (DSW flowchart) for PAS and LT-PCS?" in Appendix B of this manual chapter). These provisions may be waived with prior written approval by OAAS or its designee on a case by-case basis." [Community Choices Waiver Provider Manual](#)

CMS Response (Sept 2019): Please clarify if there are settings that received a waiver to exist as a provider owned/operated setting, and if so, were those settings assessed and validated?

State Response (Dec 2019):

OCDD: Settings identified as a private residence owned by an unrelated caregiver, or provider owned controlled setting were included in the assessment process.

OAAS: OAAS does not allow participants to receive services while living in an unrelated paid caregiver's home. No settings received a waiver to exist as a provider owned/operated setting.

CMS Response (Sept 2019): Please clarify that the assessment process, including validation and plans for remediation, included all provider owned/operated settings, not just a sample for residential settings.

State Response (Dec 2019):

OCDD: All settings, including provider owned/operated settings, received at least one of the validation strategies and where necessary, a transition plan was developed in order to meet compliance

Site-Specific Setting Assessment & Validation Processes

OCDD Validation Activities:

- a. Additional site visits were not conducted with residential providers. Individual Experience Surveys were utilized as the other option to validate provider self-assessment.
- b. OCDD requested that the Support Coordination Agencies complete the Individual Experience Survey with all individuals receiving waiver services through OCDD. While completing the analysis, OCDD will confirm that at least 80% of the total persons supported by a specific service provider participated in the IES.

CMS follow up:

Please clarify that all settings received at least one of the state's strategies for validation.

State Response:

All settings received at least one of the validation strategies noted above.

CMS Response (Sept 2019): The setting-specific assessment results should clearly be outlined in the STP.

State Response (Dec 2019):

OCDD: Yes, setting specific assessment results will be clearly outlined in the STP.

Assessment & Validation Results

OAAS

Initial numbers provided were based on participant/program counts at the time. The numbers included in the table below reflect waiver counts as of 2/7/2018.

Description of Settings	OAAS
Setting presumed to be fully compliant with HCBS Characteristics	5,125
Settings that could come into full compliance with modifications	0*
Settings that cannot comply with the HCBS requirements or are presumptively institutional in nature	1 – Adult Day Health Care Center located on the grounds of, or adjacent to a public institution

*All settings that were assessed and validated requiring remediation submitted corrective action plans that were subsequently verified by OAAS staff as meeting compliance with the HCBS Settings Rule.

State Information:

OAAS: Initial numbers provided were based on participant/program counts at the time. The numbers included in the table below reflect waiver counts as of 3/25/2019.

Description of Settings	OAAS
Setting presumed to be fully compliant with	4191
Settings that could come into full compliance	0*
Settings that cannot comply with the HCBS requirements or are presumptively	0 – Adult Day Health Care Center located on the grounds of, or adjacent to a public institution

Waiver	Setting Type	# of Sites	# of participants receiving waiver services
ADHC	Community	23	514
CCW	Community	4191	4191
Total		4214	4,705

*All settings that were assessed and validated requiring remediation submitted corrective action plans that were subsequently verified by OAAS staff as meeting compliance with the HCBS Settings Rule.

CMS Response (Sept 2019)

In the statewide transition plan, the state indicated that there were 33 ADHC sites, though two subsequently closed. Please clarify why there are eight fewer ADHC settings. How many of the 4,127 CCW sites received a waiver to exist as a provider owned/operated setting? Please clarify that those settings were assessed and validated. In addition, how did the state determine the one setting that was originally identified to undergo a heightened scrutiny review came into compliance? Please separate out settings that cannot comply from settings that are presumptively institutional in nature. Additionally, there were 5,125 settings that complied previously and now there are 4,645. Please clarify this discrepancy. The settings data should be identified by setting in the charts.

State Response (Dec 2019):

OAAS: Since the total number of ADHCs (33) was last reported, 10 providers have since closed unrelated to the HCBS Settings Rule. None of the 4,127 (number updated to 4,191 as of 11/01/2019) were allowed to exist as a provider owned/operated setting. These settings were assessed and validated through OAAS's ongoing monitoring processes. The ADHC that was identified to undergo heightened scrutiny review closed in 2017, and its participants transitioned to other ADHC locations or

services. The number of CCW setting (# of CCW participants) changes as waiver spots are filled.

OBH

Description of Settings	OBH
Settings presumed to be fully compliant with HCBS Characteristics	2,200
Settings that could come into full compliance with modifications	None
Settings that cannot comply with the HCBS requirements or are presumptively institutional in nature	4

OCDD

While OCDD had hoped to have all activities related to the validation activities completed by the end of 12/2017, the amount of data to be processed is quite large. OCDD is still in process of entering data to complete analysis and provide a clear delineation of compliance results across categories and settings. OCDD will make sure to develop a report that confirms number of settings in each of the categories noted and provide a report that will be easy for the public to review. The Milestone template will be updated to reflect the additional time needed to complete these tasks.

CMS follow up: After the validation activities are completed by OCDD and before going back out for public input please clarify the following information in the validation result charts above:

- **Please separate out the categories of settings that cannot comply from the settings that are presumptively institutional in nature that the state will submit for Heightened Scrutiny.**

State Response:

OCDD: 1 non-residential setting that will require HS

CMS Response (Sept 2019): Please clarify how many settings from each setting type fall into each compliance category. This should include what type of non-residential setting will be submitted for heightened scrutiny. Please clarify what type of non-residential settings cannot comply with the settings criteria and do not plan to comply by the end of the transition period. The state should separate out settings that cannot comply from settings that are presumed institutional into separate categories.

State Response (Dec 2019):

OCDD will have one nonresidential provider that will potentially be lifted for heightened scrutiny. This provider is a day habilitation and prevocational services provider. The reason for heightened scrutiny is that the provider is on the grounds of an institution.

State Response:

OBH response: OBH will not have any settings submitted for Heightened Scrutiny.

CMS Response:

Please delineate how many settings of each type fall into each *Description of Settings* category.

State Response (Dec 2019) (Chart Revised Jan 2020):

OCDD: The numbers were reported the same by mistake for Day Habilitation, Prevocational Services and Supported Employment. The numbers have been corrected. Please note that some of the same providers provide multiple services and in different settings. Therefore, the number of people served did not change. OCDD has experienced the closure of six (6) agencies, that provided Day Habilitation, Prevocational Services and Supported Employment. The waiver participants were offered a Freedom of Choice and made a smooth transition to their chosen agency. OCDD also added a provider in the Day Habilitation service setting. An onsite visit was conducted and the provider was deemed to be in compliance.

Service	Setting Type	# of licensed providers (Providers serve multiple services)	# of people receiving services
In home Supports (separate service names listed below- similar services but different names in each waiver):			
• Family Support Services	Community	318	1331
• Family Support Services-shared	Community	318	38
• Individual and Family Services	Community	593	7493
• Individual and Family Services- shared	Community	593	730
• Community Living Supports	Community	235	560
• Community Living Supports-shared	Community	235	11
• Habilitation	Community	218	327
Supported Employment (group)	Community	65	1517
Pre-Vocational Services	Facility Based/Community	70	135
Day Habilitation	Facility Based/Community	86	2556

Description of Setting	Residential	Non-Residential
Fully compliant	440	*2 – these two (2) agencies provided both day habilitation and prevocational services

Description of Setting	Residential	Non-Residential
Settings that could come into full compliance with modifications	**10	**79 – this includes agencies that provide both day habilitation and prevocational services
Settings that cannot comply with the HCBS requirements	0	0
Presumed institutional in nature	0	***1-heightened scrutiny (on the grounds of an institution and is a day habilitation and prevocational provider

State Response (Dec 2019):

OCDD Notes for above chart:

*These providers did not require a transition plan as they were deemed compliant

** Indicates Residential providers that own or control housing. With modifications, such as insuring appropriate lease is in place, these providers will be able to come into compliance.

**With guidance, these non-residential providers will be able to come into compliance as they already provide services in the community, but will need to make some adjustments to the amount of time, the ratio and doing more individualized activities.

***The non-residential agency that may be lifted up for heightened scrutiny is on the grounds of an institution. They service approximately 11 waiver participants between day habilitation and prevocational services and group supported employment. If at the final look at for compliance, if the agency has not overcome the qualities of an institution, the state will not lift them for heightened scrutiny and the individuals will be offered Freedom of Choice of providers who are in compliance and transition will begin six (6) months prior to the deadline for compliance.

OBH response:

Settings presumed to be fully compliant with HCBS Characteristics (As of 6/30/2019)	Providers	Members
Home Settings, including residence is owned or leased by the member or a family member (and is not provider owned or controlled) or Therapeutic Foster Care		2201
CSoC Services including Parent Support and Training, Youth Support and Training, Independent Living/Skills Building, and Short-Term Respite Care services	142	

- 2296 total enrolled – 95 in the 90-day transition period
- 142 – unduplicated (providers rendering both STR and ILSB counted once) and the FSO is counted once.

CMS Response:

- Please clarify if these numbers are based off of the results from the state's validation process or an estimate based on the waiver counts. Please note to reach final approval the state must put the aggregation of final validation results out for public comment.

State Response:

Number of people served for each type of service based on information pulled from waiver counts. Description of setting data –providers level of compliance based on validation results

CMS Response (Sept 2019): The settings data should be by setting and not by provider or service type. Please clarify this information in the charts.

State Response (Dec 2019):

OCDD: This information was included in the chart along with Notes for explanation under the chart.

OBH: CSoC services are delivered in the home or in a community-based setting, determined by each member's individual Plan of Care. Examples of the community settings include but are not limited to schools, libraries, and community centers.

State Response:

OBH response: Due to member turnover, results are based off a point-in-time waiver count and confirmed through the validation process.

CMS Response:

- Please clarify that OBH is treating the Therapeutic Foster Homes as provider owned or controlled settings and the number in the chart above reflects how many of these settings exist.

State Response:

OBH response: For Therapeutic Foster Care (TFC)/Foster Care (FC), the member setting may be considered compliant if the member is living with a foster family in a home that is not owned by the provider (DCFS or the entity who pays/oversees the family).

CMS Response (Sept 2019): Therapeutic Foster Care/ Foster Care settings are provider owned or operated as are all settings where in an individual is living with an unrelated caregiver. Please clarify if the state has assessed these settings for compliance and include those compliance findings in the updated STP.

State Response (Dec 2019):

OBH: Yes, the State has assessed all settings. Specifically, wraparound facilitators conduct direct monitoring on an established, routine basis (typically monthly) to ensure member health and welfare in the community, ensure member needs are being met, progress towards goals, and to ensure the member is residing in a home and community-based setting using a standardized form. Through this process, the wraparound facilitator escalates to the managed care entity any situations in which the HCBS criteria is deemed not met (based on form instructions and training); the managed care entity submits these findings directly to the State for review/decision. To ensure data integrity, the managed care entity validates wraparound facilitator reporting on a quarterly basis and the State validates managed care entity reporting on a routine basis through the external quality review organization. Through this comprehensive monitoring process, all members have been determined to be residing and receiving services in home and community based settings.

Further, the requirements under provider-owned and controlled settings are largely not applicable to children (e.g., the individual must have a lease or other legally enforceable agreement, must control his/her own schedule, and can have visitors at any time); however, the State has developed assessment forms, which are used by wraparound facilitators for all CSOC members through the process described above to identify any setting, whether the member is residing with an unrelated caregiver or with relatives, that do not have the spirit of a home and community-based setting (e.g., number of unrelated individuals live in the home, participation in community events to the extent of other children not in the waiver, any setting that has isolating effects).

Non-Disability Specific Settings

OAAS

Current OAAS rules and participant rights ensure participants are afforded choice in provider and service settings (Louisiana Administrative Code : [LAC 48:I.4239](#) and [Rights and Responsibilities for Applicants/Participants of HCB Waiver Services \(OAAS-RF-10-005, EFF. 9-2-14\), p.1.](#))

OBH

State assures participant access to non-disability specific settings in residential and non-residential services and is addressed with several items in the provider assessment and validation.

OCDD

Through a person centered planning process, the team is identifying individual preferences and discussing choices available, and working on an individual basis to assure that people have information to make an informed choice. Example, prevocational services is not the only option available to individuals receiving our waivers. They can choose to access and/or participate in community based employment. In addition to the above, we have worked with providers to

explore options within their communities to link people with options that may exist in the community versus all activities having to occur in the vocational setting. Example, if someone is interested in working out, is there a way to partner with a local gym and have the individual attend that gym versus participating in an exercise regimen in the provider setting. Again, options would need to be provided so that individuals are able to make informed choices regarding their options.

CMS follow up:

Please address how the state is strategically investing to build capacity across the state in an effort to assure non-disability specific options.

State Response:

OAAS: OAAS will continue to build capacity across Louisiana in an effort to assure non-disability specific options by providing initial and ongoing annual training and technical assistance on person centered planning to providers and stakeholders. OAAS also will host an annual resource fair in each of the nine regions of the state. The resource fair will offer an introduction to of community resources and information to provider agencies and stakeholders.

Each ADHC shall ensure that its setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including the option to seek employment in integrated settings if desired, engaging in community life, and to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS. In addition, during the site-specific assessment process, each setting was assessed for ability to provide community resources, transportation resources, and staff to help facilitate events and resources outside of the ADHC. If an ADHC was assessed as deficient in any of the above, they submitted a corrective action plan, and OAAS staff validated changes were made to the setting.

OCDD: The state continues to provide training opportunities and technical assistance surrounding best practices related to person center thinking/planning practices, decision making as well as assisting people to make informed choices.

CMS Response (Sept 2019): Please address how the state is strategically investing to build capacity across the state in an effort to assure non-disability specific options. If the state would like assistance, CMS can provide technical assistance as requested.

State Response (Dec 2019):

OCDD: OCDD recently joined the State Employment Leadership Network to assist our state in moving forward in increasing the employment opportunities for individuals with IDD. Our state recently participated in the ODEP EFSLMP grant and worked on

provider transformation and regional capacity building. Our state also previously received the grant and worked on State As a Model Employer and continue that initiative. Our agency is in the process of revamping all of our service definitions, rates and ratios to reflect community participation and integration for day habilitation, prevocational services and supported employment services, both group and individual. We are partnering with our vocational rehabilitation program to do a better job in providing services to individuals with IDD. Our state is moving towards becoming an Employment First State and we have drafted a report to reflect where our state plans are to go. Our agency recently partnered with our DD Council to provide training on Community Employment through an online training program to our providers, Support Coordinators and Local Governing Entity staff (OCDD regional office). Our agency is moving forward with more community participation and involvement and increasing individual, community employment for the individuals that are served in our waivers.

OAAS: One additional method OAAS will utilize to build capacity across non-disability specific settings is the Louisiana Permanent Supportive Housing (PSH) program combines permanent, subsidized rental housing with flexible, individualized housing supports to people with disabilities. PSH offers rental assistance for a variety of integrated housing units so that individuals with disabilities are able to remain in or reenter the community, and live amongst people in various levels of socioeconomic statuses and non-disabled persons.

Site-Specific Remedial Actions

OBH

For any non-compliant settings, a corrective action plan is due within 60 days of notice. The CAP must outline the specific steps and timeline for full compliance not to exceed 12 months.

One provider received notice of non-compliance, and a CAP was submitted within the 60-day timeframe. The CAP included provisions for transferring members to receive services from the provider's alternate locations. OBH worked with the provider and the CSoc contractor to ensure no disruption in services to members.

CMS follow up:

Please describe the notice process that was used for those affected by the transfer. Please also describe how those individuals were informed of and given choice of providers.

OBH noted 4 settings in their assessment and validation results "that cannot comply with the HCBS requirements or are presumptively institutional in nature". Please provide the details on the remedial actions, timeframes, and the number of participants that may reside in these settings.

Additionally, the state indicated on pg. 20 of the *Louisiana Department of Health: Home and Community-Based Services Settings Rule Statewide Transition Plan* that Group Homes

do not comply with HCBS. Please clarify if there are plans to bring these settings into compliance, and if not what is the plan for alternative funding sources or transitions to compliant settings for these individuals. Please clarify how many individuals will be affected.

State Response:

OBH:

The list of affected members was provided to the WAA with instructions to update the member's Plan of Care with the new provider location during the next scheduled Child and Family Team meeting. Members were notified that the change in provider location would not impact receiving or accessing services. Independent Living/Skills Building (ILSB) was the only waiver service provided from the non-compliant location, and all ILSB services are provided in the member's home and community and not at the physical facility location.

Regarding choice of providers, before the child/youth is enrolled in CSoC, the WAA must ensure that the parent/legal guardian understands that they have the option of accepting services through CSoC in their home and community or accepting behavioral health services provided in an institution/hospital setting. If the family agrees to services through CSoC, they sign the CSoC Freedom of Choice (FOC) form indicating CSoC is their choice.

At the time of the initial estimates for members residing in noncompliant settings, four (4) members were residing in group homes. No remedial actions were taken due to natural attrition, with the expectation that these 4 members would transition to a compliant setting, age out, or discharge out of CSoC.

Group homes are characterized as non-compliant with the HCBS rule. If a child/youth is referred to CSoC while residing in a group home or other non-HCBS setting, the WAA is responsible for collaborating with the facility treatment team, the member, and family to assist in comprehensive discharge and treatment planning to reduce disruption and to improve stabilization upon the member's reentry to a home and community environment. If the member is not transitioned to a compliant HCBS setting within 90 days, the CSoC Contractor Care Manager will warm transfer the member/family back to the appropriate MCO for referral and connection to behavioral health services and resources that may be available within their plan.

CMS response (Sept 2019): We would like to better understand the group home setting and would like to discuss this with the state.

State Response (Oct 2019):

OBH: OBH deemed group homes as non-compliant because these settings are institutional in nature. Please advise if CMS considers group homes to be a home and community-based setting.

OCDD

Information has been updated in the milestone template. For all agencies that either self-identified or after a site visit were found to be out of compliance, they received a letter indicating the need for a transition plan. For all service providers that have received a letter based on activities noted above, corrective action plans have been submitted.

State has requested that each Service Provider complete a transition plan detailing the actions and/or changes they will be making to bring settings into compliance.

- a. A template was provided to the service providers and training was completed on how to complete the transition plan document. Results from the site visits identified specific areas that the service provider would need to address. During training it was explained that each provider should evaluate areas that need to come into compliance and begin planning for approach/actions to be taken specific to those areas. Representatives from both State office and LGE office have made themselves available to assist with this process. Adjusted timeline for submission to account for completion of the analysis of the Individual Experience Surveys.
- b. Service providers have been asked to submit updates minimally on a quarterly basis to the LGE office indicating the progress that has been made. OCDD is working with the LGEs to identify a frequency at which visits will occur to monitor progress.

If a Provider is not compliant:

- a. OCDD believes that all settings will be able to come into compliance.
- b. OCDD intends to implement a transition plan for those needing to transfer to a different setting. Individuals will be given timely notice and a choice of alternative providers.

CMS follow up:

Please provide the details of the transition plan for those who may need to transfer to a different setting to include the associated timeframes, a description and timeline for how the state will provide beneficiaries and their support team with proper notice of the setting will not come into compliance with the settings criteria, assurance of choice of settings for relocation, and assurance that there will be no disruption of services during the transition period and an explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

State Response:

- 1. OCDD intends for Service Providers to have completed implementation of transition plans and validation that agencies are in compliance by March 2020**

2. Once settings that will not remain in compliance have been identified OCDD will begin sending notification regarding disenrollment process to all entities involved and request that the SC agencies begin person centered planning practices to identify options to transition persons to preferred options. Additionally, OCDD with LGE offices will develop a transition plan for each agency/individual impacted to assure that there is no disruption in service.
3. Provider agencies/individuals will be given opportunity to appeal decision.
4. This process will begin 5/2020 with anticipated completion 2/2021

CMS Response (Sept 2019): Please clarify who is included in “all entities involved” regarding notification of disenrollment and if that also includes the individual. Please indicate how the state will ensure that needed services and supports are in place prior to the individual’s transition. Please clarify how many people will be affected by the two settings being unable/unwilling to comply.

State Response (Dec 2019):

OCDD: “All entities” include, the individual, their families/guardians as necessary, the Local Governing Entity staff (OCDD regional office), provider, support coordinator, and OCDD State Office as necessary.

Heightened Scrutiny

OAAS

OAAS has identified one ADHC that will be submitted for heightened scrutiny. This ADHC currently serves two clients. If the ADHC cannot overcome non-compliance, implementation of a transition plan will be developed and implemented for those needing to transfer to an appropriate HCBS Setting. Individuals will be given timely notice and a choice of alternative providers. Transition of individuals will be tracked to ensure successful placement and continuity of service. All affected participants will be transitioned to a compliant setting by 9/1/18.

OAAS will submit a STP with Heightened Scrutiny information to CMS for review by 3/31/18.

OAAS will conduct heightened scrutiny reviews to determine if any ADHCs are located on the grounds of, or adjacent to, a public institution; located in a publically or privately-owned inpatient facility treatment. (info from above section moved to HS for consistency of review)

CMS Note Above:

(info from above section moved to HS for consistency of review)

State Response:

OAAS- The identified ADHC is no longer serving HCBS ADHC participants as of 07/30/2018. They independently dis-enrolled from the Medicaid HCBS waiver.

OBH

OBH has determined that all sites are compliant and will not require the heightened scrutiny process.

OCDD

OCDD is currently collating all information to finalize a list of agencies that may require the heightened scrutiny process.

For OCDD, the heightened scrutiny process will be much like the process utilized for the systemic assessment. After a provider has identified completion in terms of the implementation of the transition plan, OCDD will validate that the transition plan has been implemented and that the setting has achieved community status. Only after OCDD has verified this finding would the site be lifted to CMS for review. Information/Evidence would be submitted to describe how the setting was evaluated, information regarding implementation of transition plan, and overall results of a validation visit to confirm that it has achieved community status. **(info from above section moved to HS for consistency of review)**

CMS follow up:

The date has passed for the 3/31/18 submission of the OAAS HS information the state indicated it planned to submit. Please clarify the new date by which the state intends to submit this information.

State Response:

OAAS:

OAAS's Heightened Scrutiny Policy is as follows:

When determining whether to move a setting forward to CMS for heightened scrutiny review, OAAS will consider information or comments received from participants, families, case management staff, or LDH staff. OAAS also considers information or comments received from external partners such as the disability rights organizations, stakeholders or other advocacy groups. OAAS conducts a site visit at the setting and interview staff and administrators to determine if the setting's design, policies and practices. In addition, OAAS will review to see if they are designed to meet all participants needs within the setting, restricts or poses barriers to accessing the local community or if they do not support participant access to the local community. This includes interviewing participants to determine if their experience in the setting is isolating and if so whether that isolation is caused by systemic conditions inherent in the setting's design, policies or practices.

OAAS will move a setting forward to CMS for heightened scrutiny review when the state determines the setting is located in a building that is also a publically or privately operated facility that provides inpatient institutional treatment. The setting will be move forward if it is located in a building on the grounds of, or immediately adjacent to a public institution. Another decision to move a setting forward is if the setting's design, policies or practices systemically isolate participants from their greater community.

When the state submits a setting to CMS for heightened scrutiny review, the evidentiary package will include the following:

- The name and location of the facility;
- The characteristics of the setting or other reason the setting was identified for heightened scrutiny;
- How the setting was assessed for having the effect of isolating participants from the broader community;
- How the state performed the heightened scrutiny review;
- What information was collected in addition to onsite reviews and interviews;
- The results of the participant, staff and administrator interviews, provider self-assessment, and provider site visit;
- The results of observations made during the onsite review will include how the setting is integrated in and considered a part of the local community. In addition, it will include how individuals participate in typical community activities and engage in community life. In the case of a setting located in a building providing inpatient institutional treatment or in a building on the grounds of or immediately adjacent to a public institution, the state will also provide the following information:
- When applicable, a copy of the setting's corrective action plan, and include issues and characteristics that are not fully in alignment with the HCBS Settings Rule, the actions the setting will take to address identified issues, the state's approval of the corrective action plan, milestones, and the proposed date of completion, and the state's plan to monitor. Monitoring will include the setting's achievement of the milestones outlined in the corrective action plan; and participant experience post implementation of the setting's corrective action plan.

CMS Response (Sept 2019): Please include the date(s) by which the state plans to submit settings to CMS that the state has identified will undergo heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at [Home and Community Based Settings Requirements Compliance Toolkit](#)

State Response (Dec 2019):

OCDD: It appears that OCDD will have one setting to submit for heightened scrutiny. OCDD will work with the setting to determine when they have met compliance except for the location, as they are on the grounds of an institution. At that time, OCDD will lift them for heightened scrutiny if they have met the other areas of compliance.

OAAS: OAAS does not currently have any settings to submit for heightened scrutiny, however, if any are identified in the future through our on-going monitoring, we will follow the heightened scrutiny process outlined above.

CMS Response:

For OAAS, OCDD, and OBH please clarify the following information related to heightened scrutiny:

- Describe the process the state used to identify settings that are presumed to have the qualities of an institution for each of the three categories.

State Response:

OCDD worked collaboratively with the LGE offices to identify potential settings that might require heightened scrutiny review based on the criteria identified by CMS

CMS Response (Sept 2019): Please clarify the process by which the state along with their LGE offices determined if a setting fell under the institutional presumption. Did they use GEO mapping, onsite reviews, or some other method?

State Response (Dec 2019):

OCDD: An onsite visit was conducted to make the determination if a site was presumed institutional. All of the vocational provider agencies received an onsite validation visit by either the LGE office and/or the OCDD State Office.

State Response:

OBH response: The approved assessment tool (OBH Provider Survey included in Appendix C.3 of the STP) is used to ensure provider facilities meet the HCBS requirements.

CMS Response (Sept 2019): Please clarify how OBH identified settings that are presumed institutional including settings that have the effect of isolating beneficiaries from the broader community.

State Response (Dec 2019):

OBH: Using the HCBS settings rule as a guide, OBH developed the provider and member assessment survey forms, which are conducted on an established frequency to identify any settings that may be non-compliant. The managed care entity conducts the provider survey for all providers as part of initial credentialing and recredentialing (every three years) for CSoC waiver service providers to determine if the setting is considered home and community-based in accordance with the settings rule. The managed care entity also monitors compliance annually as part of onsite audits. Further, OBH's policy (which precedes the HCBS settings rule) requires waiver services

to be delivered in the community, such as the member's home, library, schools, restaurants, etc.

- Categorization of each specific setting flagged for heightened scrutiny by each of the three categories (i.e., settings located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment; settings located in a building on the grounds of, or immediately adjacent to, a public institution; and settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS).

State Response:

OCDD: 1 setting was identified to require heightened scrutiny review as it is a setting located in a building that is a privately operated facility providing inpatient institutional care. This particular provider provides and non-residential services.

OBH response: Provider facilities are flagged as non-compliant if the setting does not meet the following requirements: (1) integrated within the community of the members served, (2) not located in a building that also provides inpatient institutional treatment, and (3) not located in a building on the grounds of or immediately adjacent to a public institution such as a nursing facility/home, IMD, ICF/IID, or hospital. OBH will not have any settings submitted for Heightened Scrutiny.

CMS Response Sept 2019): Please clarify the types of settings that have been identified for heightened scrutiny review. This could be accomplished by clarifying the settings types in the validation results above.

State Response (Dec 2019):

OCDD: One site that provides both day habilitation and prevocational services has been identified as needing heightened scrutiny as it is on the grounds of an institution.

OAAS: OAAS reviewed the ADHC and CCW settings for heightened scrutiny. Currently, all settings meet HCBS Settings requirements.

- A timeline of milestones for implementing a plan for completing the heightened scrutiny process by the state including the public notice processes for these settings.

State Response:

OCDD: Initial site visit post provider self-assessment. Identified areas to be considered and asked agency to complete a transition plan. As part of the follow up process to assure progress is being met on transition plan, OCDD will partner with the LGE office to validate that the provider has implemented completely their transition plan.

OBH response: OBH will not have any settings submitted for Heightened Scrutiny.

CMS Response (Sept 2019): For OCDD and OASS, please include milestones and accompanying timeframes for implementing the heightened scrutiny process by the state including the public notice processes for these settings.

State Response (Dec 2019):

OAAS: OAAS does not have any settings to submit for heightened scrutiny, however, if any are identified in the future through our on-going monitoring, we will follow the heightened scrutiny process outlined above.

OCDD: OCDD has added milestones and accompanying timeframes including public notice to the STP for implementing the heightened process for these settings.

- CMS requests the state clearly articulate how the final decision will be made on whether or not to move a setting to CMS for HS review. Please clarify the threshold and determining factors that bring the state to a yes or no for moving the setting forward.

State Response:

OCDD: Once the service provider has indicated that they have completed their transition process, OCDD will request that a provider self-assessment be completed to confirm that they are able to demonstrate compliance with all areas of the regulation. Upon receipt of the provider self-assessment a site visit will be conducted to validate information in the provider self-assessment. A statistically significant sample of individuals supported by the agency will be interviewed to validate/confirm that experiences reported reflect the intent of the regulation. Reviewing evidence from onsite visit and survey results-with at least 90% of the individuals interviewed confirming their experiences, OCDD will consider this as success in terms of overcoming the presumption of institutionalization. A report of findings will be drafted and the results will be posted for 30 days for public comment. Submission of packet for HS to CMS will occur after public comment period. Timeline to complete review and submit to CMS for HS 3/2020.

If the state level review does not result in evidence supporting that the setting has overcome the presumption of institutionalization, OCDD will begin the disenrollment process as outlined in earlier section. Following the timelines noted.

OBH response: OBH will not have any settings submitted for Heightened Scrutiny.

CMS Response (Sept 2019): Please include the threshold and determining factors that bring the state to a yes or no for submitting a setting for heightened

scrutiny for OBH settings. Although the state does not plan to submit settings under OBH, the state should have a process in place if a setting is discovered (e.g. through ongoing monitoring) to fall under the institutional presumption and thus require heightened scrutiny review.

State Response (Dec 2019):

OBH: Because the CSoC waiver is a newer program that was developed in 2012, initial policies made clear that services are provided in a community setting. The program oversees waiver services for a maximum of 2,400 children and youth at a given point in time, and enrollment is not on a long-term basis. The CSoC contractor also provides annual trainings for providers on the requirements of the HCBS settings rule. Based on these factors, OBH made the determination to not submit any provider settings for Heightened Scrutiny. If a setting is determined to be institutional, then the CSoC contractor does not contract with the provider.

508 Compliance

CMS Response:

The state is encouraged to assure that all materials are 508 compliant before going out for public comment. Regardless of format, all Web content or communications materials produced are required to conform to applicable Section 508 standards to allow federal employees and members of the public with disabilities to access information that is comparable to information provided to persons without disabilities. We have reviewed your Statewide Transition Plan and found 508 compliance issues that need to be fixed before the document can be posted onto the CMS Website. The following is a list indicating some, but may not be all, issues identified:

- Document is missing alternative text
- Repeated blank characters in document
- Tables should be checked for reading order
- No headings in document

For additional information on how to ensure Section 508 compliance for your submissions, please refer to the general information on 508 available at NCRTM Accessibility Resources.

State Response:

The State has reviewed Section 508 requirements and have amended this document and the Statewide Transition Plan for the purpose of 508 compliance.

CMS Response (Sept 2019):

The following 508 compliance issues remain:

- The PDF of the Statewide Transition Plan needs a title and bookmarks to help navigate the document.
- The Addendum is missing heading levels. Headings create structure and help users find information within the document.
- The Addendum's color contrast is not 508 compliant

State Response (Dec 2019):

- **The state has added a title and bookmarks to help navigate the document.**
- **Heading levels have been added to the Addendum.**
- **Color contrast in the Addendum has been adjusted.**