

Clarifications added on 07/01/20 are shown in red font.

## Missouri Home and Community-Based Service Settings Transition Plan Public Comments

This document contains a summary of the public comments collected in response to the Revised Missouri Statewide Transition Plan (STP) for the Home and Community Based Services (HCBS) Final Rule which amends the previous Statewide Transition Plan posted on December 24, 2014. Public comment was taken from July 29, 2016 through August 29, 2016. A notice regarding the revised Statewide Transition Plan was posted in The Columbia Tribune, Independence Examiner, Kansas City Star, Springfield News-Leader and The St. Louis Post Dispatch on July 29, 2016. A complete copy of the Revised State Transition Plan is available at each of the DMH Regional Offices, the Department of Health and Senior Services Regional Evaluation Team (REV) offices, or by request. In accordance with Centers for Medicare and Medicaid Services (CMS) guidance, the Revised State Transition Plan was made available for 30 day public comment to allow all consumers, providers and stakeholders an opportunity to provide input to the revised plan. Additionally, Braille copies were available upon request.

During the public comment period, MO HealthNet Division (MHD), Department of Mental Health (DMH) and the Department of Health and Senior Services (DHSS) received comments from the following:

Parent advocates  
Family members  
Protection & Advocacy Organization  
Missouri Developmental Disabilities Council (MODCC)

Seven letters were received from parent advocates, family members, and Protection & Advocacy Organization. No changes were made to the Statewide Transition Plan as the result of any comments in this section.

**Comment:** Three of the letters reflect the concern for the freedoms of individuals' including their rights, choice and person-centered planning which should include access to services and supports without restrictions in HCBS funding. Individual's experience and choice including that of the guardian or family member should be accepted. There was concern regarding the provider assessment and the importance of communication with the stakeholders within the organization/business including clients, families, guardians and staff.

The comments focused on individuals' "choice" and having meaningful lives in whatever community they choose to live in. The assessment process with interviewing individuals should have verification of individuals experience and choice being offered. The provider self-assessments should have verification. One comment included the suggestion of more choice like community, farm, intentional or whatever they choose, not what the government chooses.

**Response:** Any setting in which HCBS are provided is required to be compliant with the HCBS rule for all services provided in the setting. The DMH individualized assessment process will determine if the individual's choices and needs are met and are supported and documented in their Person-Centered Plan. All provider self-assessments are verified through the on-site individual assessment process with the individual. The individual's on-site assessment

**includes information and evidence from the individual, and family/guardian, if the individual chooses, regarding their experiences with personal choice, wants, and needs.**

**Comment:** One of the letters received expressed satisfaction with the comprehensive waiver services. Because of the waiver, they are able to have their family member at home with them and get the care needed. The family member is able to get the privacy and the freedom needed, as well as the ability to go out in the community. There is not a limit to do certain things.

**Response: No response necessary.**

**Comment:** One letter indicated that the DMH survey does not do a good-enough job of asking the right questions. The HCBS rules should be explained and attached, and should be easy to read and comprehend. Regarding the DHSS survey, a contact for the Department of Health and Senior Services and a phone number should be listed in case the participant, or the individual helping the participant fill out the survey, has questions.

**Response: The DMH survey included CMS exploratory questions modified for easy read. DMH developed and distributed easy read documents about the HCBS rule. These documents were distributed at self-advocate conferences and at individual on-site assessments. The documents are also located on the DMH website at: <https://dmh.mo.gov/dd/hcbs.html>. DHSS does not plan to continue the original survey process. On an ongoing basis, HCBS participants will receive an annual reassessment, during which information regarding the HCBS Settings regulations will be provided and the participant will be given the opportunity to give feedback and express concerns. The participant will receive a copy of this information which will include the contact information for their local office. Additionally, any new participants will be given this information prior to starting services.**

**Comment:** Several letters were regarding the Participant Survey stating it should be the most important assessment tool while evaluating HCBS Waiver programs. There was concern about greater outreach needed to get accurate markers of community involvement in person-centered planning, **to get accurate responses from actual individuals using HCBS services, and address skipped questions.** There was also concern that the Provider Self-Assessment Survey results were not available yet. There was a question as to why the surveys do not ask for comments or feedback from the participants?

**Response: The Participant Survey is a component of the entire review process. Individual on-site assessments are performed to obtain information and evidence about the individual's experience, community involvement, and choice in settings, services and providers. Participant's surveys are considered in the individual's on-site assessment and in the provider self-assessment validation process. DMH distributed participant surveys through a variety of sources, such as on-line at <http://dmh.mo.gov/dd/hcbs.html> , through its DMH Support Coordinators during monitoring visits, at a variety of stakeholder conferences (People First, MACDDS and Real Voices, Real Choices), and stakeholder list serves (Partners in Policy Making). The provider self-assessment survey results will be posted. DHSS participant surveys were sent to all Adult Day Care participants and the surveys did request comments and feedback following each question. The survey can be located at: <http://health.mo.gov/seniors/hcbs/transitionplan.php>**

**Comment:** There was a question regarding where in the transition plan it mentions the accommodation for the individuals who may be, displaced because of non-compliance with the HCBS regulations.

**Response:** The Individuals Transition to Settings that Align with HCBS Requirements section of the STP describes the process for individuals in settings that are not HCBS compliant. Provider settings must be in compliance by March 2019 in order to continue receiving HCBS funding. If a provider has not come into compliance and relocation of individuals is necessary, the State will work with the individuals to ensure they are transitioned to settings meeting HCBS Setting requirements. The public can review pages 30 and 32 of the Amended Transition Plan to find this information.

**Comment:** A few comments about the Waiver Service are individuals with autism deserve access to the HCBS that will benefit them and will meet their particular needs; individuals with autism who receive HCBS have difficulty finding providers that can address their complex and challenging needs; True integration is only possible if the state reimburses for HCBS based off rate structures and billing guidelines that are tied to the individual's need and not based off the place they live or receive services; The state needs to show how reimbursements will be tied to individual need and not the provider

**Response:** The State has always and will continue to work to ensure provider capacity and service settings to meet the needs of individuals. Waiver service reimbursement methodologies are included in the waiver applications in Appendix I.

**COMMENT:** I appreciate the state's approach that assumes that all provider owned/controlled settings are in the "not yet" category of compliance. From my experience and understanding of such settings I would agree that most provider owned/controlled settings will have to make some changes to be compliant with the HCBS rules. I am concerned that the STP says that part of the review process is to look at person-centered plans. Without conflict free case management, the providers may not really change the plans to actually change the person's experience because they do not want to do things differently because it is expensive or too much of a hassle.

**Response:** The HCBS rule requires conflict-free case management. Conflict-free requirements were included in the Comprehensive and Community Support 2016 Waiver renewals and the Missouri Children with Developmental Disability and Partnership for Hope 2017 waiver amendments.

**COMMENT:** Is there somewhere in the DMH/DSS website where non-compliant settings are listed with the necessary remediation steps?

**Response:** The state works directly with the provider and individuals with non-compliant settings. Individuals receive the provider's Summary of Findings report as a result of the individual on-site assessment. The report will detail areas of non-compliance. DMH will continue to work with providers to become compliant with the HCBS Settings rule between March 2, 2015 and March 17, 2018. Individuals in a non-compliant setting as of March 17,

**2018 will begin the transition process to a compliant setting. Please see Individuals Transition to Settings that Align with HCBS Requirements section for further details.**

Six letters were received from individuals who are affiliated with Missouri Developmental Disabilities Council (MODDC):

The template letters were created for input from advocates and HCBS participants to ensure HCBS participants receive the benefits of, and are fully included, in the broader community. The following summarizes the six template letters. The letters requested clarity while highlighting concerns and answers for the following areas: Stakeholder Involvement; Use of Participant Surveys; The Provider Assessment Process and Other Problems in the State Transition Plan. No changes were made to the Statewide Transition Plan as the result of any comments in this section, unless otherwise noted below.

**COMMENT:** The State STP seems to focus on providers rather than focusing more on HCBS participants, their experiences, and their ideas about what needs to change. The state should do more with the STP plan and really look at the problems in our HCBS programs that prevent people with disabilities from being a part of their community and having control of their lives, with support from the programs.

**Response:** The state's intent with the HCBS rule and transition is to be person-centered throughout all processes. As part of the transition plan, the experience of the individual is central to the comprehensive review of the state delivery system and is an ongoing process. The STP is a vehicle through which the state assesses individual experiences and state/provider systemic compliance. CMS requires that the STP detail specific steps that must be taken on the state and provider level in order to make systemic changes that impact an individual's experience. The information gathered from the individual assessments is used to develop the remediation and changes with the state's and providers' systemic policies and procedures. The state added language in the Comprehensive Waiver description to clarify choice is for services and providers. The state also added language in the introduction that Missouri's Transition Plan work has focused on engaging stakeholders to be supported in exploring different avenues, learning experiences, and opportunities to know what is out in the community.

**COMMENT:** The state should involve more from stakeholders and more effort into talking to people with disabilities and other people affected by the HCBS waivers, such as families. Although the state has put the STP out for public comment, it is not always easy to know when the plan is out for comment and have enough time to read it and write comments.

**Response:** The state has kept waiver participants as the focus in all aspects. Approximately 1,100 Waiver participants throughout the state were called individually to schedule HCBS assessments based on results of a random sample and heightened scrutiny mapping. The state accommodated assessment times with the waiver participants' schedules including before and after business hours. These assessments were conducted at the participant's setting and in private based on their preference. Families and Guardians were contacted with the date and time of the assessments and had the option to participate in the assessment if the waiver participant and family desired. DMH staff conducted on-site, face-to-face assessments with individuals, guardians, and others chosen by the individual utilizing the

**DMH Assessment Tool.** DMH distributed participant surveys through a variety of sources, such as on-line at <http://dmh.mo.gov/dd/hcbs.html> , through its DMH Support Coordinators during monitoring visits, at a variety of stakeholder conferences (People First, MACDDS and Real Voices, Real Choices), and stakeholder list serves (Partners in Policy Making).

The DMH HCBS stakeholder workgroup consists of individuals from MODDC, MACDDS, MARF, Missouri P&A, People First, individual providers, self-advocates and families. Participants of the stakeholder workgroup may share the STP with their stakeholders and provide feedback to the workgroup prior to public comment. In addition, MO HealthNet sends notices out to anyone signed up for their email listserve notifying stakeholders of STP public comment periods. DMH forwards the MO HealthNet email to all individuals signed up for the DD email listserve. Newspaper notices were sent out to the 5 major newspapers across the state. Complete copies of the revised Transition Plan are available at each of the DMH Regional Offices, the Department of Health and Senior Services Regional Evaluation Team (REV) offices, or by request. The State and the DD Council will continue to explore opportunities to ensure that individuals and families receive and understand information regarding the HCBS rule, and that they are a part of system changes. The previous sentence was added to the Public Comment section of the STP.

**COMMENT:** The state is not doing much to help HCBS participants understand the rules and the changes that might happen. The changes were difficult to understand.

**Response:** The Division has taken numerous steps to ensure HCBS waiver participants understand the HCBS rule and changes. State assessors educated individuals and families about the HCBS rule before and during the assessments and answered any questions or concerns that individuals and families had. Information was distributed during HCBS assessments with websites and contact information should they have any questions at a later date. State staff educated individuals and families at conferences. Support Coordinators and providers have been educating individuals and families. The division will be providing additional HCBS training in the coming months. Several easy read documents for individuals and families may be found on the divisions HCBS website at <https://dmh.mo.gov/dd/hcbs.html>. The Division and the DD Council will continue to explore opportunities to ensure that individuals and families receive and understand information regarding the HCBS rule, and that they are a part of system changes.

**COMMENT:** The evidence the state is planning to submit for heightened scrutiny settings is concerning. The state is planning to focus the evidence only on the positive, community-based aspects of a setting. The evidence would be incomplete if the institutional qualities of the setting are never identified. If we do not know what was bad about the facility, how can we tell if the setting has overcome those issues?

**Response:** Individuals are informed if their setting is heightened scrutiny through the assessment process. There will also be further guidance coming from CMS regarding identification of heightened scrutiny settings either via on-line posting or letter notification. The state will use individual experiences as evidence for a heightened scrutiny setting's compliance with the HCBS rule. Individuals receive the provider's Summary of Findings report as a result of the individual on-site assessment. Evidence packages submitted to CMS will include information from the individual, family/guardian, provider remediation, and from the local community. Evidence submitted to CMS for heightened scrutiny settings is only for

those providers that the state deems compliant with the HCBS rule, per CMS guidance. The state is in the process of writing a report that explains the overall findings for all assessments including heightened scrutiny. The report will detail areas of non-compliance. DMH will continue to work with providers to become compliant with the HCBS Settings rule between March 2, 2015 and March 17, 2018. Individuals in a non-compliant setting as of March 17, 2018 will begin the transition process to a compliant setting. Please see Individuals Transition to Settings that Align with HCBS Requirements section for further details.

**COMMENT:** The STP indicates that the regulatory review was undertaken to “allow the State to operate HCBS programs in a manner that comports with the HCBS Final rule.” The regulatory review should also consider how the code of state regulations could be improved to support the final rule to the maximum extent possible. Strong regulatory language would help ensure families.

**Response:** The STP contains a crosswalk of system policy, procedures, manuals, waivers, & state regulations which outlines what the state will revise and implement in order to come into compliance with the rule. The crosswalk link can be found in the STP on page 8.

**COMMENT:** Participant surveys are one of the important pieces of the STP for identifying problems in the HCBS programs. It is important that a person understands the HCBS rules before they are asked to take a survey about the HCBS rule. The DMH survey did not do a good job of asking the right questions. The questions may have been asked with providers and some participants may be intimidated to answer questions in certain ways in order to receive positive comments. This could lead to inaccurate responses.

**Response:** The DMH survey included CMS exploratory questions modified for easy read. DMH developed and distributed easy read documents about the HCBS rule. These documents were distributed at self-advocate conferences and at individual on-site assessments. The documents are also located on the DMH website at: <https://dmh.mo.gov/dd/hcbs.html>. The intent of the state was for individuals, families, and/or guardians to complete the participant surveys. State staff also offered to assist individuals in completing participant surveys.

The Division has taken numerous steps to ensure HCBS waiver participants understand the HCBS rule and changes. State assessors educated individuals and families about the HCBS rule before and during the assessments and answered any questions or concerns that individuals and families had. Information was distributed during HCBS assessments with websites and contact information should they have any questions at a later date. State staff educated individuals and families at conferences. Support Coordinators and providers have been educating individuals and families. The Division and the DD Council will continue to explore opportunities to ensure that individuals and families receive and understand information regarding the HCBS rule, and that they are a part of system changes.

**COMMENT:** The on-site assessment section of the STP has many positive features, including face-to-face assessments. However, the choice to summarize the results of the assessment process creates room for bias to influence the overall assessment of a setting. The assessments need to be very robust, and focus on the individuals’ opinions of their experience in the setting. The state does not describe any process for quality reviews of the summaries to determine if a person summarizing the results has done so accurately or if there are differences in the

information, such as from a provider and from a participant, whether that difference was noted or otherwise resolved in a way that would hide relevant information regarding noncompliance.

**Response: The summaries of the on-site assessments are mailed to the individuals and providers. Individuals can provide feedback and comments to the summary of findings. Providers are required to respond with proposed remediation to the findings noted.**

**COMMENT:** The provider self-assessment process is not usually a very reliable approach to identifying a problem. Providers will not indicate if they are doing a bad job. The assessment was optional for providers, and the assessment tool was very basic. In addition, providers were not encouraged to submit the self-assessments, because the state said it would perform onsite assessments of some of the providers who completed the survey, and that the surveys would be reviewed before a provider compliance review.

**Response: The provider self-assessment Survey was open for a period of time August 21, 2014 through September 10, 2014 as indicated in the MO HealthNet Provider Bulletin dated August 22, 2014. The State also sent notices to providers on June 23, 2014, with a follow-up notification sent in August 2014. DMH attend provider association meetings to educate providers on the provider self-assessment survey request and the importance of completion. 100% of the provider self-assessment surveys received are validated through the individual's on-site assessment.**

**COMMENT:** The state needs to make sure surveys are filled out by HCBS participants every year so they get a response from most people, not just the few who choose to respond. Every waiver participant should be asked to take the survey and they should get any assistance they need to understand it.

**Response: The HCBS survey questions have been incorporated into ongoing monitoring processes which include all waiver participants. The Ongoing Compliance/Monitoring Review section of the STP describes the process to incorporate requirements of the HCBS Setting Rule into existing review processes and quality integrated functions: Provider Relations Reviews; Quality of Service Reviews including National Core Indicator Survey; Targeted Case Management Technical Assistance Coordinator Reviews; Service Monitoring by Support Coordinators; Licensure and Certification Reviews; and the CIMOR EMT Contacts Process which includes anonymous input from individuals served and their advocates. The quarterly/annual monitoring processes include on-site, face to face assessments with waiver participants about their HCBS services.**

**COMMENT:** The process for stakeholder input in the heightened scrutiny process is not very clear. I think it is very important that the state's assessment of each setting's compliance with the rules is public so that we can tell the state if we think an assessment of a setting is incorrect. We understand that the state likely cannot know everything about every setting.

**Response: The federal HCBS definition of a heightened scrutiny setting is any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving**

**Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless CMS determines through the heightened scrutiny process, based on information presented by the state or designated party, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based.**

**The State Transition Plan indicates that the state will engage stakeholders, advocacy organizations, and providers in the heightened scrutiny review process and include this information as a part of the evidentiary package submitted to CMS. Per CMS, evidence of how a setting overcomes its presumed institutional qualities should focus on the qualities of the setting and how it is integrated in and supports full access of individuals receiving HCBS into the greater community. The heightened scrutiny process will also engage stakeholders, advocacy organizations, and providers through the public comment and forum process.**

**COMMENT:** The state does not talk about making sure we have more settings to choose from as other settings change. HCBS participants are supposed to have the choice of a non-disability specific setting and we do not have enough of those settings now for people to have that choice. Also, we will likely need new providers to take over for providers that do not want to meet the rules.

**Response: Individuals have freedom to choose where they live within their available resources. The State has always and will continue to work to ensure provider capacity and service settings to meet the needs of individuals.**

Comment: The other piece of the plan that is missing is there is no way for participants or their families to complain about a provider not following the HCBS rules. There should be a way an individual can complain about a setting violating the rules and receive a meaningful response to that complaint.

**Response: The Ongoing/Monitoring Review section of the STP explains that DMH will include the DMH website URL on the Client Rights brochure and a statement in regards to the ability to make anonymous reports to Office of Constituent Services (OCS). The Division Individual Rights document will include a statement in regards to the ability for individuals to file anonymous reports to OCS. The DMH Client Rights brochure and other information regarding consumer rights and abuse/neglect is posted on this web site. The site also has a consumer safety video which discusses abuse and neglect and the reporting and investigation process, as well as the brochure Keeping Mental Health Services Safe which is a written version of the video. In the Frequently Asked Questions section on the website it does state and answer the question: What should I do if I suspect that a mental health client or family member may have been the victim of abuse or neglect? You may call the toll free number at 1-800-364-9687 and ask for the Office of Constituent Services. The office encourages everyone to make the contact for the safety of all clients. All calls will be kept confidential and the caller can choose to remain anonymous.**



**COMMENT:** I think it is good that providers are going to be trained on the HCBS rules, but I think it would be helpful if waiver participants and other stakeholders were part of the training or at least had input on the trainings.

**Response:** DMH is in the process of developing additional trainings and will continue to work with DD Council and waiver participants to explore opportunities to ensure that individuals and families are a part of training and system changes.

**COMMENT:** The state should be encouraged to make providers meet the rules as soon as possible so there will be time to address any problems and help people find new settings. People need a lot of time to find a new place to live or to spend the day. The rules require that there be choice, so this decision should not be limited or rushed. We also need to make sure people get plenty of assistance in trying to find new settings.

**Response:** Per the Provider Individual Remediation and Provider Remediation Status Updates sections of the STP, DMH will continue to work with providers to ensure compliance with the HCBS Settings rule between March 2, 2015 and March 17, 2018. Individuals in a non-compliant setting as of March 17, 2018 will begin the transition process to a compliant setting. DMH will require all providers with remediation/transition plans to submit monitoring updates on a quarterly basis. The process for tracking and monitoring provider remediation plans will include monitoring provider transition plans by central office staff based upon milestones submitted and accepted by the department, during routine Provider Relations Reviews, Quality of Service Reviews to include National Core Indicator Surveys, TCM Technical Assistance Coordinator Reviews, Service Monitoring by Support Coordinators, and Licensure and Certification Reviews. A tracking spreadsheet that identifies the provider transition plan milestones and deliverable dates will be used to help coordinate this effort. The central office staff will monitor evidence submitted by the providers in relation to their approved milestones. Technical assistance will be provided if there is a problem with the implementation of the remediation plan, if providers are not implementing the plans or if the providers decide to significantly change their plans or the implementation of their plans. Status updates will occur between March 2, 2015 and March 17, 2018.

**COMMENT:** The STP does not give information about the due process rights that will be provided if a person is faced with the choice between not moving and giving up waiver services.

**Response:** Individuals Transition to Settings that Align with HCBS Requirements section within the STP indicates that individuals will be given timely notice and due process, and will have a choice of alternative settings through a person-centered planning process. Transition of individuals will be comprehensively tracked to ensure successful placement and continuity of Waiver service.