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# Home and Community-Based Services (HCBS) Statewide Transition Plan

*Independent. Integrated. Individual.*

*Revised: October 28, 2016*

**Prepared by:**

**South Carolina Department of Health and Human Services (SCDHHS)**

# Table of Contents

Statewide Transition Plan Content.....	1
1. Introduction .....	1
1.1 Statewide Plan Development.....	2
2. Communications and Outreach.....	4
2.1 Public Notice and Comment.....	4
2.2 Communication.....	5
2.3 Update February – March 2016 .....	6
2.4 Update August – October 2016.....	7
3. Assessment of System-wide policies .....	9
3.1 Process of System-wide Review .....	9
3.2 Outcomes of System-wide Review .....	10
3.3 Actions to bring System into Compliance.....	27
3.4 Ongoing Compliance of System.....	29
3.5 Residential Systemic Review .....	31
3.6 Process of Residential Systemic Review .....	31
3.7 Outcomes of Residential Systemic Review .....	32
3.8 Actions to bring Residential System into Compliance.....	32
3.9 Ongoing Compliance of Residential System .....	33
4. Assessment of Settings .....	33
4.1 Setting Types.....	33
4.2 Setting Assessment Process .....	35
4.3 Outcomes.....	38
4.4 Actions for Compliance .....	40

4.5 Ongoing Compliance .....	44
5. Heightened Scrutiny.....	48
5.1 HCB Settings Quality Review .....	49
5.2 Initial C5 Heightened Scrutiny Assessment .....	49
5.3 C4 Individual Facilities/Settings Assessment .....	50
5.4 Geocode Data Generation.....	51
5.5 Consultation with TAC.....	51
5.6 Public Input.....	51
5.7 HCB Settings Quality Review Next Steps .....	52
Appendix A-1 – Public Comment Summary.....	55
Appendix A-2 – Public Comment Summary, Feb. 24-Mar. 25, 2016 .....	63
Appendix A-3 – Public Comment Summary, Aug. 17 – Oct. 7, 2016 .....	68
The following Appendices are online at the <a href="#">SCDHHS HCBS Website</a> :	
<a href="#">Appendix B</a> - Systemic Listing and Links	
<a href="#">Appendix C</a> – C4 Day (non-residential) Setting HCBS Self-Assessment	
<a href="#">Appendix D</a> – C4 Residential setting HCBS Self-Assessment	
<a href="#">Appendix E</a> – C4 Non-residential self-assessment Global Analysis	
<a href="#">Appendix F</a> – C4 Residential self-assessment Global Analysis	
<a href="#">Appendix G</a> – Relocation Guidelines: Community Residential Care Facility (CRCF) Residents	
<a href="#">Appendix H</a> – Admissions/Discharges/Transfer of Individuals to/from DDSN Funded Community Residential Settings	
<a href="#">Appendix I</a> – TAC, Inc. Report: Review and Feedback on the HCBS Final Rule Transition	

# South Carolina Department of Health and Human Services (SCDHHS) Home and Community-Based Services (HCBS) Statewide Transition Plan

## 1. Introduction

The Center for Medicare and Medicaid Services (CMS) issued a final rule on Home and Community-Based Services (HCBS) establishing certain requirements for services that are provided through Medicaid waivers. There are specific requirements for where home and community-based services are received which will be referred to as the “settings requirements.”

CMS has listed the following as the requirements of all home and community-based (HCB) settings. They must have the following qualities (per 42 CFR 441.301 (c)(4)):

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

For provider owned and/or controlled residential HCB settings, CMS has listed the following additional conditions that must be met (per 42 CFR 441.301(c)(4)(vi)):

- A legally enforceable agreement (lease, residency agreement, or other form of written agreement) is in place for each individual in the HCB home/setting within which he/she resides.
- Each individual has privacy in their sleeping or living unit.
- Units have lockable entrance doors with the individual and appropriate staff having keys to doors as needed.
- Individuals sharing units have a choice of roommates.
- Individuals can furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals have freedom and support to control their schedules and activities
- Individuals have access to appropriate food any time.

- Individuals may have visitors at any time.
- The setting is physically accessible to the individual.
- Any modification of the additional conditions for HCB residential settings listed above must be supported by a specific assessed need and justified in the person-centered service plan.

CMS has also listed the following as settings that are not home and community based (per 42 CFR 441.301 (c)(5)):

- A nursing facility
- An institution for mental diseases (IMD)
- An intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- A hospital
- Any other settings that have the qualities of an institutional setting. This includes:
  - Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
  - Any setting in a building on the grounds of, or immediately adjacent to, a public institution<sup>1</sup>
  - Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

Any of the settings that have qualities of an institutional setting will be presumed to be institutional, and therefore HCB services cannot be provided in that setting, unless the Secretary of the US Department of Health and Human Services determines through heightened scrutiny that the setting does have the qualities of home and community-based settings and services can still be provided in that setting.

The South Carolina Department of Health and Human Services (SCDHHS) has branded this effort for HCBS with the tagline: *Independent•Integrated•Individual*. This tagline was developed because home and community-based services help our members be independent, be integrated in the community, and are based on what is best for the individual.

### **1.1 Statewide Plan Development**

CMS required that each state submit a “Statewide Transition Plan” by March 17, 2015. The Statewide Transition Plan outlines how the state will come into conformance and compliance with the HCBS Rule settings requirements. States must come into full compliance with the HCBS Rule requirements by March 17, 2019.

The Statewide Transition Plan applies to all settings where home and community-based services are provided. In South Carolina, home and community-based services are currently offered through the following waiver programs:

- Intellectually Disabled and Related Disabilities waiver (ID/RD)
- Community Supports waiver (CS)

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<sup>1</sup> A public institution is defined as an inpatient facility that is financed and operated by a county, state, municipality, or other unit of government.

- Head and Spinal Cord Injury waiver (HASCI)
- Pervasive Developmental Disorder waiver (PDD)<sup>2</sup>
- Medically Complex Children waiver (MCC)
- Community Choices (CC) waiver
- HIV/AIDS waiver
- Mechanical Ventilator Dependent waiver
- Psychiatric Residential Treatment Facility (PRTF) Alternative/Children's Health Access in Community Environments (CHANCE) waiver<sup>3</sup>

In addition, the state added Healthy Connections Prime as an option for Community Choices, Mechanical Ventilator Dependent and HIV/AIDS waiver participants. Through Healthy Connections Prime, waiver participants age 65 and older who receive both Medicare and Medicaid and meet other eligibility criteria will get all of their care, including primary care, behavioral health and long term care services, from one health plan, known as a Coordinated and Integrated Care Organization (CICO).

SCDHHS formed a workgroup to address and solicit input on how the state could come into compliance with the HCBS rule. This group is composed of members from:

- SC Department of Health and Human Services (34%)
- SC Department of Mental Health (1%)
- SC Department of Disabilities and Special Needs (9%)
- SC Vocational Rehabilitation Department (3%)
- Other governmental partners (4%)
- Advocacy groups (18%):
  - AARP South Carolina
  - Family Connection of South Carolina
  - Protection & Advocacy for People with Disabilities, Inc.
  - Able South Carolina
- Providers (26%):
  - Local Disabilities and Special Needs Boards
  - Housing providers for the mentally ill population
  - Adult Day Health Care Providers
  - Private providers of Medicaid and HCBS services
- Beneficiaries and family members (5%)

The large workgroup broke into sub-groups to address different tasks of coming into compliance with the HCBS Rule. The large group meets monthly to discuss the progress of the sub-groups and to examine issues, concerns and the overall vision of how the state can come into compliance with the new regulation.

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<sup>2</sup> This waiver is transitioning to a state plan service

<sup>3</sup> This waiver was a demonstration waiver with services ending in 2016 as the final beneficiaries no longer required the intensity of waiver services.

Per CMS requirements, the first draft of this Statewide Transition Plan (February 26, 2015) was made available for the public to read and comment on before being submitted to CMS for review. This plan may change as the state goes through the process of coming into compliance with the HCBS Rule. Since its initial submission, the Statewide Transition Plan has been revised four (4) times as noted in the chart below. Anytime this plan undergoes any substantive changes after submission to CMS, the state will make it available again for public comment and input.

### Revisions to Statewide Transition Plan

Date of Revision	Reason
September 25, 2015	CMS first review of Statewide Transition Plan requiring revisions
February 4, 2016	CMS review of STP draft before public notice
February 24, 2016	Public notice and comment period of STP due to substantive changes
March 31, 2016	Revised STP submitted to CMS with updates to completed systemic assessment
August 17, 2016	Public notice and comment period of STP due to substantive changes per CMS feedback
October 28, 2016	Revised STP submitted to CMS based on public comments and technical changes from CMS

## 2. Communications and Outreach – Public Notice Process

### 2.1 Public Notice and Comment on Statewide Transition Plan

SCDHHS used multiple methods of public notice and input for the Statewide Transition Plan that was submitted to CMS on February 26, 2015.

- Eight statewide public informational meetings were held that provided an overview of the HCBS Rule and the Statewide Transition Plan. Those dates and locations were:
  - Sept. 3, 2014                      Aiken, SC
  - Sept. 11, 2014                    Orangeburg, SC
  - Sept. 16, 2014                    Anderson, SC
  - Sept. 25, 2014                    Lyman, SC
  - Oct. 2, 2014                        Myrtle Beach, SC
  - Oct. 9, 2014                        Greenwood, SC
  - Oct. 16, 2014                      Beaufort, SC
  - Oct. 21, 2014                      Rock Hill, SC

Emails with an attached flyer containing information about the plan were sent out to individual providers, advocate groups and state agencies. Those entities shared the information with their networks, including beneficiaries. A general notification of these meetings was also printed in SCDHHS' member newsletter; all Medicaid members receive this newsletter.

- A website specific to the HCBS Rule was developed and went live on Sept. 4, 2014. URL: [scdhhs.gov/hcbs](http://scdhhs.gov/hcbs). It contains the following content:
  - Meeting dates, times, and locations
  - Information on the HCBS workgroup, including meeting minutes and mid-month updates
  - Formal presentation delivered at the eight public informational meetings above
  - Draft of the Statewide Transition Plan
  - A comments page where questions and comments may be submitted on the HCBS Rule and/or the Statewide Transition Plan
- Tribal Notification was provided on Oct. 27, 2014. A Tribal Notification conference call for the Statewide Transition Plan was held Oct. 29, 2014.
- The Medical Care Advisory Committee (MCAC) was provided an advisory on the Statewide Transition Plan on Nov. 12, 2014.
- Public notice for comment on the Statewide Transition Plan, along with the plan itself, was posted on the SCDHHS HCBS website on Nov. 7, 2014 ([msp.scdhhs.gov/hcbs/site-page/about](http://msp.scdhhs.gov/hcbs/site-page/about) AND [msp.scdhhs.gov/hcbs/resource/additional-resources](http://msp.scdhhs.gov/hcbs/resource/additional-resources)) and on the SCDHHS website on Nov. 10, 2014 ([scdhhs.gov/public-notice](http://scdhhs.gov/public-notice)).
- Public notice for comment on the statewide transition plan was sent out via the SCDHHS listserv on Nov. 7, 2014.
- Four public meetings were held in November and December of 2014 to discuss the statewide transition plan. These meetings were held in the following cities:
  - Nov. 13, 2014                      Florence, SC
  - Nov. 18, 2014                      Greenville, SC
  - Dec. 2, 2014                        Charleston, SC
  - Dec. 4, 2014                        Columbia, SC
- For those unable to attend a public meeting, a live webinar was held on Wednesday, Nov. 19, 2014. This meeting was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website: <http://www.familyconnectionsc.org/webinars>
- Comments were gathered from the public meetings listed above (the eight in September and October as well as those in November and December), from electronic communications sent to SCDHHS and from communications mailed to SCDHHS.
- SCDHHS reviewed the comments and incorporated any appropriate changes to the Statewide Transition Plan. A summary of the public comments is included with this Statewide Transition Plan submitted to CMS in February 2015 (Appendix A-1). South Carolina's HCBS Statewide Transition Plan, as submitted to CMS on February 26, 2015, was posted in the following locations:
  - [scdhhs.gov/public-notice](http://scdhhs.gov/public-notice)
  - [msp.scdhhs.gov/hcbs/site-page/statewide-transition-plan](http://msp.scdhhs.gov/hcbs/site-page/statewide-transition-plan)

## **2.2 Communication during the Implementation of the Statewide Transition Plan**

SCDHHS continues to hold monthly HCBS workgroup meetings and/or communicate to the workgroup monthly via email. This communication keeps stakeholders informed of the

progress made during the implementation of the Statewide Transition Plan. Additionally, SCDHHS will publish on its main website and its HCBS website an annual update on transition plan activities. This update will also be made available in SCDHHS county offices and shared with interested stakeholders.

SCDHHS also continues to take advantage of presentation opportunities, whether at various conference opportunities or to provider organizations, advocacy and self-advocacy groups, family groups, and other interested stakeholders. SCDHHS is also providing face-to-face, informal technical assistance to individual provider agencies to address any questions or concerns about the HCBS rule and its requirements.

These communication efforts should allow for ongoing transparency and input from stakeholders on the HCBS Statewide Transition Plan.

As noted in the guidance and Questions and Answers documents provided by CMS, any substantive changes in an approved Statewide Transition Plan will require the state to go through the public notice and comment process again.

### **2.3 Update February – March 2016**

This Statewide Transition plan was revised three times since its original submission to CMS on Feb. 26, 2015:

- [September 25, 2015](#)
- [February 3, 2016](#)
- [February 23, 2016](#)

The version dated February 23, 2016, went out for public notice and comment on February 24, 2016, through March 25, 2016. It was available through the following methods:

- Public notice printed in the following newspapers:
  - The State (Columbia and midlands area) – Feb. 23, 2016
  - The Post and Courier (Charleston and lowcountry area) – Feb. 24, 2016
  - The Greenville News (Greenville and the upstate) – Feb. 23, 2016
- On the [SCDHHS HCBS website](#)
- On the SCDHHS website under [“Public Notice”](#)
- On the [SCDDSN website](#)
- On the [Family Connection of SC website](#)
- On the [Able South Carolina website](#)
- On the [SC Developmental Disabilities Council website](#)
- On the [AARP South Carolina website](#)
- On the [Protection & Advocacy \(SC\) website](#)
- Sent out via the SCDHHS listserv
- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all [Healthy Connections Medicaid County Offices](#)
- Available in print form at all Community Long Term Care (CLTC) Regional Offices

- Tribal Notification was provided on Feb. 22, 2016. A Tribal Notification conference call for the Statewide Transition Plan was held Feb. 24, 2016.
- The Medical Care Advisory Committee (MCAC) was provided an advisory on the Statewide Transition Plan on Feb. 9, 2016.
- A live webinar was held on Wednesday, Feb. 24, 2016. This meeting was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website.
- Written comments on the Statewide Transition Plan were sent to:  
Long Term Care and Behavioral Health  
ATTN: Kelly Eifert, Ph.D.  
South Carolina Department Health and Human Services  
P.O. Box 8206  
Columbia, South Carolina 29202-8206
- Comments could be submitted to <https://msp.scdhhs.gov/hcbs/webform/comments-questions>. All comments were received by March 25, 2016.
- Comments were gathered from the webinar on Feb. 24, 2016 and from communications mailed to SCDHHS. SCDHHS reviewed the comments and provided a written summary and response found in Appendix A-2.

The South Carolina HCBS Statewide Transition Plan was submitted to CMS on March 31, 2016, and is posted in the following places:

- [scdhhs.gov/hcbs/site-page/statewide-transition-plan](http://scdhhs.gov/hcbs/site-page/statewide-transition-plan)
- [scdhhs.gov/public-notices](http://scdhhs.gov/public-notices)
- Available in print form at all [Healthy Connections Medicaid County Offices](#)
- Available in print form at all Community Long Term Care (CLTC) Regional Offices

#### **2.4 Update August – October 2016**

This Statewide Transition Plan is on its fourth revision since its original submission to CMS on Feb. 26, 2015. The version dated Aug. 17, 2016, was out for public notice and comment through Oct. 7, 2016. It was available through the following methods:

- Public notice printed in the following newspapers:
  - The State (Columbia and midlands area) - Aug. 19, 2016
  - The Post and Courier (Charleston and lowcountry area) – Aug. 19, 2016
- On the [SCDHHS HCBS website](#)
- On the SCDHHS website under [“Public Notice”](#)
- On the [SCDDSN website](#)
- On the [Family Connection of SC website](#)
- On the [Able South Carolina website](#) and [Facebook page](#)
- On the [SC Developmental Disabilities Council website](#)
- On the [AARP South Carolina website](#)
- On the [Protection & Advocacy \(SC\) website](#) and [Facebook page](#)
- On the [IMPACT South Carolina Facebook page](#)
- Sent out via the SCDHHS listserv

- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all [Healthy Connections Medicaid County Offices](#)
- Available in print form at all Community Long Term Care (CLTC) Regional Offices
- Tribal Notification was provided on July 25, 2016. A Tribal Notification conference call for the Statewide Transition Plan was held Aug. 9, 2016.
- The Medical Care Advisory Committee (MCAC) was provided an advisory on the revised Statewide Transition Plan on Aug. 16, 2016.
- Nine public meetings were held August – October of 2016 to discuss the statewide transition plan. These meetings were held in the following cities:
  - Aug. 23, 2016                      Anderson, SC
  - Sept. 8, 2016                      Fort Mill, SC
  - Sept. 13, 2016                     Charleston, SC
  - Sept. 15, 2016                     Greenville, SC
  - Sept. 20, 2016                     Myrtle Beach, SC
  - Sept. 22, 2016                     Florence, SC
  - Sept. 27, 2016                     Aiken, SC
  - Sept. 29, 2016                     Beaufort, SC
  - Oct. 4, 2016                        Columbia, SC
- For those unable to attend a public meeting, a live webinar was held on Tuesday, Aug. 23, 2016. This meeting was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website. Registration was online here: <http://www.familyconnectionsc.org/training-events//sc-home-and-community-based-services-statewide-transition-plan>
  - The webinar presentation, along with the transcript, is available at: <https://msp.scdhhs.gov/hcbs/site-page/presentations>
- Written comments on the Statewide Transition Plan were sent to:  
Long Term Care and Behavioral Health  
ATTN: Kelly Eifert, Ph.D.  
South Carolina Department Health and Human Services  
P.O. Box 8206  
Columbia, South Carolina 29202-8206
- Comments could be submitted to <https://msp.scdhhs.gov/hcbs/webform/comments-questions>. All comments were to be received by October 7, 2016.
- Comments were gathered from the webinar, the public meetings, and from communications emailed and mailed to SCDHHS. SCDHHS reviewed the comments and provided a written summary and response found in Appendix A-3.

The South Carolina HCBS Statewide Transition Plan was submitted to CMS on October 28, 2016, and is posted in the following places:

- [scdhhs.gov/hcbs/site-page/statewide-transition-plan](http://scdhhs.gov/hcbs/site-page/statewide-transition-plan)
- [scdhhs.gov/public-notice](http://scdhhs.gov/public-notice)
- Available in print form at all [Healthy Connections Medicaid County Offices](#)
- Available in print form at all Community Long Term Care (CLTC) Regional Offices

### 3. Assessment of System-Wide Regulations, Policies, Licensing Standards, and Other Regulations

#### 3.1 Process of System-Wide Review

SCDHHS compiled a list of the laws, regulations, policies, standards, and directives that directly impact home and community-based settings. The list was vetted through the appropriate leadership at SCDHHS, the South Carolina Department of Disabilities and Special Needs (SCDDSN), and other stakeholders to ensure that it was complete.

The list of laws, regulations, etc., was separated according to HCB setting. They were read and reviewed to determine that the law, regulation, etc. is not a barrier to the settings standards outlined in the HCBS Rule. This review took place between October 2014 and January 2015. Any changes to any of the following laws, regulations, policies, standards, and directives after that time period have not been reviewed but will be subject to the ongoing compliance process. The settings for South Carolina are divided as follows:

- Day Services Facilities (primarily serving individuals with intellectual disabilities or related disabilities, or individuals with Head and Spinal Cord Injuries)
  - Adult Activity Centers (AAC)
  - Work Activity Centers (WAC)
  - Unclassified Programs
  - Sheltered Workshops
- Adult Day Health Care Centers (primarily serving frail elderly individuals, or individuals with physical disabilities)
- Residential habilitation settings (primarily serving individuals with intellectual disabilities or related disabilities that are served through the ID/RD Waiver, or individuals with Head and Spinal Cord Injuries):
  - Community Training Home I
  - Community Training Home II
  - Supervised Living Program II
  - Supported Living Program I
  - Community Residential Care Facilities

A report was developed detailing the relevant laws, regulations, policies, standards, and directives that correspond with each HCBS settings requirement. A committee of external stakeholders (including providers, advocates, and other state agencies) reviewed the system-wide assessment and document. That group provided feedback to verify the findings of the SCDHHS review. Changes and clarifications to the systemic assessment were made based on the external stakeholder committee review.

In January of 2016, additional laws, regulations, and policies were reviewed for one additional setting in the Medically Complex Children's waiver: Pediatric Medical Day Care. Those laws, regulations, and policies are found in the Outcomes section 3.2 below.

### 3.2 Outcomes of System-Wide Review

Based on feedback from CMS, SCDHHS reformatted the below information. The information and results have not changed, but the full analysis is now included indicating where our system complies with or conflicts with the HCB setting requirements, the remediation needed, and the timeframe within which the remediation occurred or will occur. The chart gives the overview of the HCBS system in South Carolina, and the narrative below provides the details for any changes that need to take place.

**3.2.1 Identified Laws/Regulations/Policies Found Not Compliant.** With the first draft of the Statewide Transition Plan, SCDHHS identified the following areas as not being fully compliant with the Federal settings regulations. Since that draft, SCDHHS has sought specific action to come into compliance with the HCBS regulations to remediate or ameliorate the below areas of concern.

1. **SC Code Ann. § 44-20-420:** *“The director or his designee may designate the service or program in which a client is placed. The appropriate services and programs must be determined by the evaluation and assessment of the needs, interests, and goals of the client.”*
  - a. This law is not compliant with 42 C.F.R. 441.301(c)(4)(iv). Having the director or his designee designate the services or program in which a client is placed does not optimize an individual’s initiative, autonomy, and independence in making life choices.
  - b. Ameliorated by [SCDDSN Directive 567-01-DD](#) (updated 7/2015) which includes language about person-centered approach to service planning, and ameliorated by [SCDDSN Day Habilitation Standard](#) #18 (updated 4/2016) which states, "Individuals receiving a DDSN Day Service are supported to make decisions and exercise choice regarding the specific DDSN Day services to be provided." Incorporating the person centered service planning process ensures that individuals will make the choices for the services and supports they receive rather than having those choices made for them.
2. **SC Code Ann. § 44-20-490:** *“When the department determines that a client may benefit from being placed in an employment situation, the department shall regulate the terms and conditions of employment, shall supervise persons with intellectual disability, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served.”*
  - a. This law is not compliant with 42 C.F.R. 441.301(c)(4)(iv). Having the director or his designee determine that a client may benefit from being placed in an employment situation, and then regulating the terms and conditions of that employment does not optimize an individual’s initiative, autonomy, and independence in making life choices.
  - b. Ameliorated by [SCDDSN Directive 567-01-DD](#) (updated 7/2015) which includes language about person-centered approach to service planning, and ameliorated by

- [SCDDSN Day Habilitation Standard](#) #18 (updated 4/2016) which states, "Individuals receiving a DDSN Day Service are supported to make decisions and exercise choice regarding the specific DDSN Day services to be provided." Incorporating the person centered service planning process ensures that individuals will make the choices for the services and supports they receive rather than having those choices made for them.
3. **S.C. Code Reg. 61-84-103:** *“Facilities shall comply with applicable local, state, and federal laws, codes, and regulations. R. 61-84-103(c)(1): Compliance with structural standards: [Existing facilities]...shall be allowed to continue utilizing the previously-licensed structure without modification.”*
    - a. This regulation is not fully compliant with 42 C.F.R. 441.301(c)(4)(vi). This regulation may allow for a CRCF to not be compliant with ADA regulations if it falls under the grandfather clause of this regulations.
    - b. Ameliorated by [SCDDSN Residential Habilitation standards](#) (updated 6/2016) which require compliance with all federal statutes and regulations which includes federal ADA regulations. Also ameliorated by and [SCDDSN Directive 700-02-DD](#) (updated 1/2014) which requires all DDSN settings, which would include any CRCF in which residential habilitation service is received, to comply with the federal ADA regulations.
  4. **SCDDSN Directive 200-01-DD, Personal Funds Maintained at the Residential Level:** *“A locking cash box shall be maintained in a secure location at each residence for the sole purpose of securing cash for the people living there. Access to the cashbox shall be limited to a minimum level of staff.”*
    - a. This directive is not fully compliant with 42 C.F.R. 441.301(c)(4)(i) and is not fully compliant with 42 C.F.R. 441.301(c)(4)(iv). Storing an individual’s personal cash in a cash box collectively with other residents’ money, and that cash box is only accessible by a limited number of staff, does not optimize an individual’s autonomy and does not allow an individual to control personal resources. This places a barrier on an individual’s free use of their own money and may create a situation where an individual has to justify the use of their own money to a staff member to gain access to it.
    - b. Remediated on March 2, 2016 by SCDDSN, and approved by SCDHHS, with the removal of the above language which was replaced with the following: “Residential service providers must manage residents’ personal funds in accordance with individualized financial plans established for each resident.”
  5. **SCDDSN Directive 200-12-DD, Management of Funds for People Participating in Community Residential Programs:** *“Personal funds should be managed under the direction of the provider except in the following situations: 1) A different representative payee has already been established for a person, or 2) An assessment of the person’s abilities clearly demonstrates that he/she has the cognitive ability and financial skills to manage his/her funds.”*

- a. This directive is not fully compliant with 42 C.F.R. 441.301(c)(4)(i) and is not fully compliant with 42 C.F.R. 441.301(c)(4)(iv). Having the default protocol put an individual's personal funds under the control of the provider does not optimize an individual's autonomy and does not allow an individual to control personal resources.
  - b. Remediated on March 2, 2016 by SCDDSN, and approved by SCDHHS, with the removal of the above language which was replaced with the following: "Residents [...] have the right to manage his/her own personal funds. However, when the resident needs assistance to manage their funds and does not have a willing representative to serve as his/her payee, the residents funds should be managed under the direction of the residential service provider."
6. **SCDDSN Directive 533-02-DD, Sexual Assault Prevention, and Incident Procedure Follow-up:** *"The family/guardians/family representative of both alleged perpetrator and victim should be notified of the incident as soon as possible by the Facility Administrator/Executive Director (or designee)."*
- a. This directive is not fully compliant with 42 C.F.R. 441.301(c)(4)(iii) and it is not fully compliant with 42 C.F.R. 441.301(c)(4)(iv). Mandating that a beneficiary's family/guardians/family representative be notified if an incident occurs may violate a beneficiary's right to privacy if that beneficiary does not want their family/guardian/family representative to be notified.
  - b. To be remediated by SCDDSN, and subject to approval by SCDHHS, by removing the above language and replacing it with the following: "If the alleged perpetrator or the victim has a legal guardian, the legal guardian will be notified of the incident by the Facility Administrator/Executive Director (or designee) as soon as possible following the incident. If the alleged perpetrator and/or victim is an adult who does not have a legal guardian, with consent, those chosen by the service recipient to be informed of the incident will be notified by the Facility Administrator/Executive Director."
7. **SCDHHS Policy: Leave of Absence from the State/CLTC Region of a Waiver Participant:** *"Individuals enrolled in Medicaid home and community-based waivers who travel out of state may retain a waiver slot under the following conditions: the trip out-of-state is a planned, temporary stay, not to exceed 90 consecutive days which is authorized prior to departure; the individual continues to receive a waiver service; waived services are limited to the frequency of services currently approved in the participant's plan of service; waived services must be rendered by South Carolina Medicaid providers; the individual must remain Medicaid eligible in the State of South Carolina."*
- SCDDSN Medicaid Waiver Policy Manuals Medicaid HCB Waiver Policy Regarding Waiver Services Provided while Clients Travel Out-of-State:** *"[...] Waiver participants may travel out of state and retain a waiver slot under the following conditions: the trip is planned and will not exceed 90 consecutive days; the participant continues to receive a waiver service consistent with SCDDSN policy; the waiver service received is provided by a South Carolina Medicaid provider; South Carolina Medicaid eligibility is maintained."*

*During travel, waiver services will be limited to the frequency of service currently approved in the participant's plan. Services must be monitored according to SCDDSN policy. The parameters of this policy are established by SCDHHS for all HCB Waiver participants."*

- a. These policies do not specifically touch on any of the home and community-based settings requirements, but it may be an unnecessary restriction on waiver participants if they wanted to travel longer than 90 consecutive days. These policies may need further review.
- b. The policy was reviewed and determined that it was an administrative requirement. Therefore, changes will not be sought to these policies.

Feedback from CMS on earlier versions of the systemic assessment resulted in some additionally raised concerns for the State to address.

- "The state found all of its day service setting standards to be fully compliant with 42 CFR 441.301(c)(4)(iv), which requires a setting to not regiment an individual's schedule and provide independence in life choices (p. 64). South Carolina's standards for Adult Activity Centers, Work Activity Centers, Sheltered Workshops, and "Unclassified" Day Programs, however, require staffing ratios – including administrative staff, not just direct support staff – of 7:1, 7:1, 10:1, and 10:1, respectively. These types of fixed staffing ratios raise concerns about whether a setting can support individualized activities and full access of individuals to the greater community. The standards also require the posting of program schedules at these facilities with defined start times, break times, and meals. Please describe within the STP how the state determined that these standards for a regimented schedule demonstrate full compliance with federal requirements or explain how these issues will be remediated."
  - **SCDHHS Response:** The standards for the fixed staffing ratios and the posting of a program schedule are dictated by the SC Code of Regulations [[SC Code of Regs 88-410 \(B 1 a-d\)](#) and [88-435 \(C 1-3\)](#)]. Because they are included in the Regulation, they are included in the [SCDDSN Standards for Licensing Day Facilities](#). These staffing requirements reflect the minimally required staffing ratios and in no way pose an absolute requirement. In an effort to support individualized activities and full access to the greater community, the SCDDSN Standards for Licensing Day Facilities provide guidance to explain the standard. The guidance instructs that [SCDDSN Directive 510-01-DD](#) entitled "Supervision of People" be used as the method through which the most appropriate level of supervision and support for the each person supported is to be determined, including each person's need for independent functioning. The guidance will be revised by December 2016.
  - In an effort to support individualized activities and full access to the greater community, the [SCDDSN Standards for Licensing Day Facilities](#) provide guidance to

explain the standard. For the requirement that program schedules be posted, the guidance instructs that the “schedules of activities should reflect the general schedule for the program. It is not necessary to specify the discrete activities that will occur with each service or program area. It is acceptable to identify the program start time, break times, lunch times, etc.” The guidance will be revised by December 2016.

- “It does not appear that the citations provided by the state for Community Training Homes, Supportive Living Programs and the CLOUD are fully compliant with ensuring individuals are choosing from setting options that include non-disability specific options, ensuring only appropriate staff have access to keys for lockable doors, and ensuring individuals have access to visitors and food at any time. Please explain how the state will remediate these issues in the STP.”
  - **SCDHHS Response:** SCDHHS is currently receiving technical assistance from CMS sponsored subject matter experts on the issue of non-disability specific settings options. The other issues raised have already been remediated through [SCDDSN Residential Habilitation Standards](#) (updated 6/2016) which now include all HCBS requirements.
- CMS also pointed out various regulations within [SC Code of Regs. 61-84](#) (standards for licensing Community Residential Care Facilities) that seemed to be conflicting with the HCBS settings requirements.
  - **SCDHHS Response:** These regulations are licensing regulations promulgated by the South Carolina Department of Health and Environmental Control (SCDHEC). They apply to all CRCFs, or assisted living facilities, across the state, and not just to the provider owned and/or controlled CRCFs. DSN Board/Qualified provider owned and/or controlled CRCFs are contracted to provide residential habilitation services under the administration of SCDDSN. SCDDSN residential habilitation standards apply on top of the SCDHEC licensing regulations. As noted above, the SCDDSN residential habilitation standards now include all of the HCBS settings requirements for residential settings as they were updated in June of 2016.
    - R. 61-84-2705(I), the STP states, *“If resident doors are lockable, there shall be provisions for emergency entry. There shall not be locks that cannot be unlocked and operated from inside the room.”*
      - This is ameliorated by [SCDDSN Residential Habilitation Standard 2.5](#) and [SCDDSN Residential Habilitation Standards 2.4](#)
    - S.C. Regs. 61-84-904 requires only that Community Residential Care Facilities provide transportation only to local physician and medical services. The regulation includes no mention of facilitating access to other supports. The

state's systemic assessment provides no explanation for how this *"supports full access of individuals receiving Medicaid HCBS to the greater community"*

- DSN Board/Qualified provider owned and/or controlled CRCFs have their own house transportation which is used by beneficiaries if they do not own their own vehicle. These vehicles are used in the same manner as any other private residence with private transportation (i.e. to run errands, take someone to appointments, go out to eat, participate in community events, etc.)
- S.C. Regs. 61-84-1001(E) permits the development of "house rules" for Community Residential Care Facilities so long as these rules do not contradict the resident's "Bill of Rights For Residents of Long-Term Care Facilities." This resident's bill of rights does not address all of the areas required by the federal rule. Please explain how the state will ensure that house rules are not more restrictive than the settings rule permits.
  - House rules are developed by the consent of the residents in the home as an agreement of how they want to live together as roommates and therefore would not be restrictive on an individual who chooses to abide by those house rules.
- S.C. Regs. 61-84-1001(L) allows access to telephones only during business hours and *"other times when appropriate."* However, 42 CFR 441.301(c)(4)(vi)(C) addresses beneficiaries' ability to control their own schedules and 42 CFR 441.301(c)(4)(vi)(D) allowing residents' visitor access at times of their choosing.
  - This regulation is ameliorated by [SCDDSN Residential Habilitation Standards RH 2.0](#)

**3.2.2 Compliance by Settings Type.** SCDHHS has created two crosswalks showing how HCB services are provided in compliance with the HCBS regulation by setting type. These two charts show how these settings are operated within South Carolina’s system of governance of various health facilities and through the Medicaid program. This information has been presented in multiple formats with the different versions of this statewide transition plan. The format below has been adopted to better synthesize the information and show how systemically each setting is regulated, and to show areas of compliance. Each setting type now has all of the laws, regulations, and policies that affect it within the one chart and with any noted required action to be taken if needed.

**Chart 1 – Day Care Settings**

Chart 1 details the laws, regulations, and policies that are used to regulate an adult day health care center and a pediatric medical day care center. These settings are utilized in South Carolina for individuals who need the specific service provided in the setting, regardless of payor source. The laws and regulations that apply to how these settings are operated are not just for Medicaid HCBS beneficiaries but also apply to individuals not receiving Medicaid HCBS.

HCBS Regulation	Adult Day Health Care	Pediatric Medical Day Care	Action Required	Timeline
<p><b>42 CFR 441.301(c)(4)(i):</b> The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community; including opportunities to seek employment and work in competitive integrated settings; engage in community life; control personal resources; receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p><b>Compliant:</b> A person choosing to receive services in an Adult Day Health Care is choosing to participate in activities and therapies designed to activate, motivate and/or retrain participants to enable them to sustain or regain functional independence. Each facility has to make available social, group, individual, educational, recreational, and other activities. These activities take place in the facility, normally, but there must be opportunities for excursions or outings to points of interest of participants, assistance with community and personal referral activities, and planned indoor and outdoor recreation. Additionally, the setting is licensed the same as any other Adult Day Health Care facility in the state. <a href="#">S.C. Code. Regs. 61-75 (D).</a></p>	<p><b>Compliant:</b> Licensed the same as any other child care facility in the state. See <a href="#">SC Code Ann.§§ 63-13-10.</a></p>	<p>None</p>	<p>None</p>

HCBS Regulation	Adult Day Health Care	Pediatric Medical Day Care	Action Required	Timeline
<p><b>42 CFR 441.301(c)(4)(ii):</b> The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p><b>Compliant:</b> Beneficiaries have an array of services and supports to choose from and offered to them during the development of their person-centered service plan. Beneficiaries must be given freedom of choice when selecting services and providers which is documented in their Support plan. <a href="#">See CLTC provider manual Section 2</a></p>	<p><b>Compliant:</b> Beneficiaries have an array of services and supports to choose from and offered to them during the development of their person-centered service plan. Beneficiaries must be given freedom of choice when selecting services and providers which is documented in their Support plan. <a href="#">See TCM provider manual Section 2</a></p>	None	None
<p><b>42 CFR 441.301(c)(4)(iii):</b> Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p><b>Compliant:</b> <a href="#">S.C. Code Ann. 44-26-10 et. seq.</a>: "Rights of Clients with Intellectual Disability"; <a href="#">S.C. Code Ann.43-35-5 et seq.</a> "Adult Protections" A statement of Rights of Adult Day Care Participants must be posted in each facility. The rights, including but not limited to, privacy, dignity, respect, and the freedom from coercion and restraint can be found in <a href="#">S.C. Code Regs. 61-75(N)</a>.</p>	<p><b>Compliant:</b> Each facility must have a statement on behavior management that includes the prohibition of emotional and physical abuse, and of chemical or physical restraint (<a href="#">SC Code Regs 114-506 (B)</a>). Additionally, the facility must maintain the confidentiality of the attending children's records (<a href="#">SC Code Regs 114-503(I)</a>).</p>	None	None

HCBS Regulation	Adult Day Health Care	Pediatric Medical Day Care	Conflicting/Action Required	Timeline
<p><b>42 CFR 441.301(c)(4)(iv):</b> Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p><b>Compliant:</b> <a href="#">SC Reg. 61-75-901</a>: Individuals have the right to participate in a program of services and activities designed to encourage independence, learning, growth, and awareness of constructive ways to develop one's interests and talents to self-determination within the day care setting.</p>	<p><b>Compliant:</b> Each facility must develop a daily planned program of activities for the children attending the center that are age appropriate and designed to promote developmental growth, including opportunities for alone time in quiet areas (<a href="#">SC Code Regs 114-506 (A)</a>)</p>	None	None
<p><b>42 CFR 441.301(c)(4)(v):</b> Facilitates individual choice regarding services and supports, and who provides them.</p>	<p><b>Compliant:</b> Beneficiaries are offered freedom of choice of providers within the geographic location in which they live. <a href="#">See CLTC provider manual Section 2</a></p>	<p><b>Compliant:</b> Beneficiaries are offered freedom of choice of providers within the geographic location in which they live. <a href="#">See TCM provider manual Section 2</a></p>	None	None

## Chart 2 – SCDDSN Operated Home and Community Based Settings – Day Services and Residential Habilitation Services

Chart 2 details the laws, regulations and policies that are used to regulate the SCDDSN-operated home and community based settings (i.e. Day services and Residential Habilitation services). Previously this information was presented by setting type, which was broken down by supervision level for residential habilitation services settings and specific service for day services facilities. However, this did not accurately reflect that these settings are regulated by the same standards regardless of supervision level for residential habilitation services settings or specific service type for day service facilities. SCDHHS is now presenting the information to show how the SCDDSN-operated waivers are regulated systemically. This was to cut down on duplicative information since many of the rights and responsibilities follow the beneficiary regardless of the setting in which they receive services.

HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
<b>42 CFR 441.301(c)(4)(i):</b> The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community	<b>SECTION 44-20-20:</b> It is the purpose of [DDSN services] to assist persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries by providing services to enable them to participate as valued members of their communities to the maximum extent practical and to live with their families or in family settings in the community in the least restrictive environment available. <a href="#">SCDDSN Residential Habilitation Standards 3.1</a> , People are supported to maintain and enhance links with families, friends, or other support networks.	None	None
<b>42 CFR 441.301(c)(4)(i):</b> include[es] opportunities to seek employment and work in competitive integrated settings	<a href="#">SCDDSN Directive 700-07-DD</a> "Employment Services- Individual, provided in integrated settings, is the first and preferred Day Service option to be offered to working age youth and adults [.]"	None	None
<b>42 CFR 441.301(c)(4)(i):</b> engage in community life	<b>SECTION 44-26-90.</b> Rights of client not to be denied. Unless a client has been adjudicated incompetent, he must not be denied the right to: (6) marry or divorce; (7) be a qualified elector if otherwise qualified. The county board of voter registration in counties with department facilities reasonably shall assist clients who express a desire to vote to: (a) obtain voter registration forms, applications for absentee ballots, and absentee ballots; (b) comply with other requirements which are prerequisite	None	None

	for voting; (c) vote by absentee ballot if necessary; (8) exercise rights of citizenship in the same manner as a person without intellectual disability or a related disability. <a href="#">SCDDSN Residential Habilitation Standards 3.0</a> , People are supported and encouraged to participate and be involved in the life of the community		
<b>HCBS Regulation</b>	<b>Supporting</b>	<b>Conflicting/Action Required</b>	<b>Timeline</b>
<b>42 CFR 441.301(c)(4)(i):</b> control personal resources	<b>SECTION 44-26-90.</b> Rights of client not to be denied. Unless a client has been adjudicated incompetent, he must not be denied the right to: (1) dispose of property, real and personal; (2) execute instruments; (3) make purchases; (4) enter into contractual relationships (5) hold a driver's license <a href="#">SCDDSN Day Standard 14</a> : "Individuals are expected to manage their own funds to the extent of their capability."	None	None
<b>42 CFR 441.301(c)(4)(i):</b> receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<a href="#">SCDDSN Day Services Standards (All services)</a> .: Community Services provides individuals the opportunity to maximize their exposure, experience and participation within their local community. Through this process the individual will gain access to inclusive citizenship and social capital.	None	None
<b>42 CFR 441.301(c)(4)(ii):</b> The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.	Beneficiaries have an array of services and supports to choose from and offered to them during the development of their person-centered service plan <a href="#">See SCDDSN Case Management Standards</a> .	State is currently receiving TA from CMS re: development of non-disability specific settings for these services.	TBD

HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
<p><b>42 CFR 441.301(c)(4)(ii):</b> The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>Beneficiaries must be given freedom of choice when selecting services and providers which is documented in their Support plan. <a href="#">See SCDDSN Case Management Standards</a> <a href="#">SCDDSN Residential Habilitation Standard</a> RH4.2 "Within the residential service plan the preferences of individuals must be identified."</p>	<p>None</p>	<p>None</p>
<p><b>42 CFR 441.301(c)(4)(iii):</b> Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p><b>SECTION 44-26-160.</b> (A) No client residing in an intellectual disability facility may be subjected to chemical or mechanical restraint or a form of physical coercion or restraint unless the action is authorized in writing by an intellectual disability professional or attending physician as being required by the habilitation or medical needs of the client and it is the least restrictive alternative possible to meet the needs of the client. (B) Each use of a restraint and justification for it must be entered into the client's record [.] (C) No form of restraint may be used for the convenience of staff, as punishment, as a substitute for a habilitation program or in a manner that interferes with the client's habilitation program. [...] (F) The appropriate human rights committees must be notified of the use of emergency restraints. (G) Documentation of less restrictive methods that have failed must be entered into the client's record when applicable. <a href="#">SCDDSN Day Standard 13</a>: "Individuals receiving a DDSN Day Service are free from abuse, neglect and exploitation." <a href="#">SCDDSN Day Standard 14</a>: "Each individual's right to privacy, dignity and confidentiality in all aspects of life is recognized, respected and promoted. Personal freedoms are not restricted without due process." <a href="#">SCDDSN Residential Habilitation Standards</a>: "Despite the presence of disabilities, people retain the same human, civil and constitutional rights as any citizen. People</p>	<p>None</p>	<p>None</p>

	receiving Residential Habilitation Services rely on their services for support and encouragement to grow and develop, to gain autonomy, become self-governing and pursue their own interests and goals. Effective Residential Habilitation programs take positive steps to protect and promote the dignity, privacy, legal rights, autonomy and individuality of each person who receives services."		
<b>HCBS Regulation</b>	<b>Supporting</b>	<b>Conflicting/Action Required</b>	<b>Timeline</b>
<b>42 CFR 441.301(c)(4)(iv):</b> Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<a href="#">SCDDSN Day Standard 18</a> : "Individuals receiving DDSN Day Service are supported to make decisions and exercise choice regarding the specific DDSN Day services provided." - SCDDSN Day Services Standards <a href="#">SCDDSN Residential Habilitation Standards: RH2.1</a> People are supported to make decisions and exercise choices regarding their daily activities	<a href="#">SC Code Ann. § 44-20-420</a> : "The director or his designee may designate the service or program in which a client is placed. The appropriate services and programs must be determined by the evaluation and assessment of the needs, interests, and goals of the client." AND <a href="#">SC Code Ann. § 44-20-490</a> : (A) When the department determines that a client may benefit from being placed in an employment situation, the department shall regulate the terms and conditions of employment, shall supervise persons with intellectual disability, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served. <b>Action Required:</b> Remediate conflicting statutes through sub-policy guidance on person-centered service planning	Completed 07/2015
<b>42 CFR 441.301(c)(4)(v):</b> Facilitates individual choice regarding services and supports, and who provides them.	<a href="#">SCDDSN Day Standard 18</a> : "Individuals receiving DDSN Day Service are supported to make decisions and exercise choice regarding the specific DDSN Day services provided." - SCDDSN Day Services Standards <a href="#">SCDDSN Residential Habilitation Standards 1.2</a> : People's preferences/wishes/desires for how, where, and with whom they live are learned from the person: prior to entry into a residential setting; and continuously; DDSN Waiver	None	None

	Policy. State is currently receiving TA from CMS re: development of non-disability specific settings for these services		
<b>HCBS Regulation</b>	<b>Supporting</b>	<b>Conflicting/Action Required</b>	<b>Timeline</b>
<b>42 CFR 441.301(c)(4)(vi)(A):</b> The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State[.]	<a href="#">SCDDSN Residential Habilitation Standard 2.6</a> : "A legally enforceable agreement (lease, residency agreement, or other form of written agreement) is in place for each person in the home setting within which he/she resides. The document provides protections that address eviction process and appeals comparable to those provided under South Carolina's Landlord Tenant Law, ( <a href="#">S.C. Code Ann. § 27-40-10 et. seq.</a> )"	None	None
<b>42 CFR 441.301(c)(4)(vi)(B):</b> Each individual has privacy in their sleeping or living unit	<a href="#">SCDDSN Residential Licensing Standard 2.7</a> : "When occupied by more than one (1) resident the setting must afford each resident sufficient space and opportunity for privacy including bathing/toileting facilities behind a lockable door, lockable doors on bedroom/sleeping quarters and lockable storage."; <a href="#">SCDDSN Residential Habilitation Standard 2.5</a> "Each resident must be provided with a key to his/her home."	None	None
<b>42 CFR 441.301(c)(4)(vi)(B)(1):</b> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<a href="#">SCDDSN Residential Habilitation Standards 2.4</a> : "Each resident must be provided with a key to his/her bedroom."	State will include the following to the Residential Habilitation Standard "with only appropriate staff having access."	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(B)(2):</b> Individuals sharing units have a choice of roommates in that setting.	<a href="#">SCDDSN Residential Habilitation Standards 2.7</a> " People who share a bedroom, have a choice of roommates in that setting."; <a href="#">SCDDSN Residential Habilitation Standards 2.8</a> " People sharing apartments have a choice of roommates in that setting."	None	None

HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
<p><b>42 CFR 441.301(c)(4)(vi)(B)(3):</b> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p><a href="#">SCDDSN Residential Habilitation Standard 2.9</a>: "People have the freedom to furnish and decorate their sleeping or living units within the lease/other agreement."</p>	None	None
<p><b>42 CFR 441.301(c)(4)(vi)(C):</b> Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	<p><a href="#">SCDDSN Residential Habilitation Standards RH2.1</a> "People are supported to make decisions and exercise choices regarding their daily activities." <a href="#">SCDDSN Residential Habilitation Standard 2.10</a> "Individuals have access to food at all times."</p>	None	None
<p><b>42 CFR 441.301(c)(4)(vi)(D):</b> Individuals are able to have visitors of their choosing at any time.</p>	<p><a href="#">SCDDSN Residential Habilitation Standards RH 2.0</a>: "Personal freedoms, such as the right to make a phone call in private, to decide to have a friend visit, choices as to what to have for a snack, etc. are not restricted without due process." <b>SECTION 44-26-100</b>. General rights of clients; limitations on rights. (2) receive visitors. A facility must have a designated area where clients and visitors may speak privately</p>	None	None
<p><b>42 CFR 441.301(c)(4)(vi)(E):</b> The setting is physically accessible to the individual</p>	<p><a href="#">SCDDSN Residential Habilitation Standards</a>, "Residential Habilitation services demonstrate due regard for the health, safety and well-being of each person when they: Meet or exceed applicable federal, state and local fire, health and safety regulations, policies and procedures." See also <a href="#">SCDDSN Directive 700-02-DD</a> Compliance with the ADA</p>	None	None
<p><b>42 CFR 441.301(c)(4)(vi)(F):</b> Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified</p>	<p><a href="#">SCDDSN Directive 535-02-DD</a>: "The Human Rights Committee is to safeguard and protect the rights of individuals receiving services to ensure that they are treated with dignity and respect in full recognition of their rights as citizens as opposed to their rights as consumers."</p>	State will include this specific requirement in documentation requirements.	12/31/2016

in the person-centered service plan.			
<b>HCBS Regulation</b>	<b>Supporting</b>	<b>Conflicting/Action Required</b>	<b>Timeline</b>
<b>42 CFR 441.301(c)(4)(vi)(F)(1):</b> Identify a specific and individualized assessed need.		State will include this specific requirement in documentation requirements.	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(F)(2):</b> Document the positive interventions and supports used prior to any modifications to the person-centered service plan.		State will include this specific requirement in documentation requirements.	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(F)(3):</b> Document less intrusive methods of meeting the need that have been tried but did not work.		State will include this specific requirement in documentation requirements.	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(F)(4):</b> Include a clear description of the condition that is directly proportionate to the specific assessed need.		State will include this specific requirement in documentation requirements.	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(F)(5):</b> Include regular collection and review of data to measure the ongoing effectiveness of the modification.		State will include this specific requirement in documentation requirements.	12/31/2016

HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
<b>42 CFR 441.301(c)(4)(vi)(F)(6):</b> Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated		State will include this specific requirement in documentation requirements.	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(F)(7):</b> Include the informed consent of the individual		State will include this specific requirement in documentation requirements.	12/31/2016
<b>42 CFR 441.301(c)(4)(vi)(F)(8):</b> Include an assurance that interventions and supports will cause no harm to the individual.		State will include this specific requirement in documentation requirements.	12/31/2016

### 3.3 Actions to Bring System into Compliance

For those policies, procedures, standards and directives that need modification as indicated in the previous section, SCDHHS will work with the appropriate internal staff and external agencies to make necessary changes. Small teams of key personnel began meeting in the fall of 2015 to review these policies and procedures to determine where changes needed to be made to bring waiver policies and procedures in line with the HCBS requirements. See Section 3.2 (pages 10-15) for full details on those changes.

SCDHHS has two Divisions, Community Long Term Care (CLTC) and Community Options, that are responsible for eight of the waiver programs. Staff in each division are reviewing waiver documents and related policies and procedures for areas that can be revised.

**3.3.1. CLTC Compliance Actions.** CLTC at SCDHHS operates the following three 1915(c) waivers:

- Community Choices (CC) waiver
- HIV/AIDS waiver
- Mechanical Ventilator Dependent waiver

CLTC will make several changes in its waiver document(s), program policies and procedures as it relates to HCBS compliance. The Community Choices waiver and the HIV/AIDS waiver were submitted to CMS for renewal on May 31, 2016 and were approved on August 19, 2016. The Mechanical Ventilator Dependent waiver had an amendment submitted to CMS on May 31, 2016 and was approved on August 17, 2016. Changes to those waiver documents to meet the HCBS standards were included and since approved, the appropriate changes will be made to corresponding waiver policies and procedures.

- Elements of the assessment tool used for Adult Day Health Care (ADHC) center site visits will be incorporated into CLTC's application process for potential providers. This will include the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings.
- The assessment tool used for Adult Day Health Care (ADHC) center site visits will be incorporated into CLTC's regular compliance reviews of ADHC's<sup>4</sup>. This tool covers the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings. These compliance reviews occur every 18-24 months.
- The language in the Community Choices waiver document was changed in the following areas:
  - The language for the ADHC service definition was revised to indicate that the service may *originate* from the ADHC, thus allowing providers flexibility to incorporate community access as part of its program.
  - The ADHC provider qualifications "other standard" was revised to include HCBS requirements.

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<sup>4</sup> CLTC is the program area responsible for contracting with ADHCs, however please note that participants in the ID/RD and CS waivers may also use this setting.

Since the waiver was approved, it will be in effect on or before September 1, 2016. Additionally, the scope of work for ADHC's will also be changed to reflect this amended language.

Since CMS approved the CC waiver document, SCDHHS anticipates the changes to be made by December 31, 2016. SCDHHS will use its internal policy management review process for implementing any additions or changes to policy in accordance with standard agency practice.

**3.3.2. Community Options Compliance Actions.** Community Options at SCDHHS administers five 1915(c) waivers:

- Intellectually Disabled and Related Disabilities waiver (ID/RD)
- Community Supports waiver (CS)
- Head and Spinal Cord Injury waiver (HASCI)
- Pervasive Developmental Disorder waiver (PDD)<sup>5</sup>
- Medically Complex Children waiver (MCC)

Community Options operates the MCC waiver, which was submitted to CMS for renewal in September of 2016. Included in the waiver document were changes to meet the HCBS standards, which includes Appendix C-5 and Appendix D. Once approved, the appropriate changes will be made to corresponding waiver policies and procedures. The entire MCC waiver policy manual is currently under review and revision to include appropriate person-centered language, with specific focus on the Care Coordination chapter, along with any other appropriate HCBS changes. Due to extensive Request for Additional Information (RAI) questions from CMS on the waiver renewal, these changes are anticipated to be completed by April 2017, pending CMS approval of the waiver renewal.

**Community Options and SCDDSN compliance actions.** Community Options contracts with SCDDSN to operate the other four waivers listed above. Community Options created a joint workgroup with SCDDSN that began in fall of 2015 to review SCDHHS and SCDDSN waiver specific policy, procedures, directives, and standards based on the outcomes of this assessment. Together they will make the necessary changes to waiver manuals, operating standards and corresponding directives, and quality indicators to bring waiver policy and procedures in line with the HCBS requirements.

- The ID/RD waiver was submitted to CMS for renewal on Dec. 17, 2015, and is currently under review by CMS. Changes to the waiver document to meet the HCBS standards were included and once approved, the appropriate changes will be made to corresponding waiver policies and procedures.
- The CS waiver is up for renewal effective July 1, 2017. SCDHHS and SCDDSN began waiver renewal activities in June 2016. SCDHHS expects to present the proposed CS renewal plan to the Medical Care Advisory Committee in November 2016 and to begin the first required Tribal Notification starting in December 2016. Changes to the waiver document to meet the HCBS standards will be included and once approved by CMS, the appropriate changes will be made to corresponding waiver policies and procedures. SCDHHS anticipates these changes to be completed no later than March 2018.

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<sup>5</sup> This waiver is transitioning to a state plan service.

- The HASCI waiver is up for renewal effective July 1, 2018. The Community Options Division of SCDHHS is scheduled to begin the Renewal process in approximately March of 2017. They are currently completing the HASCI Evidentiary Project in advance of the renewal. Changes to the waiver document to meet the HCBS standards will be included and once approved by CMS, the appropriate changes will be made to corresponding waiver policies and procedures. SCDHHS anticipates these changes to be completed by February 2019.

To ensure compliance overall with the settings requirements for the waivers they operate, SCDDSN will make any necessary changes to their standards and directives that relate to settings where waiver services are provided, such as the residential habilitation standards and all Day Service standards documents as noted above. SCDDSN also uses a Quality Improvement Organization (QIO) to assess service providers for contract compliance and quality assurance. The key indicators utilized by the QIO that determine contract compliance and quality assurance for waiver service providers will be updated to reflect any changes made in the standards and directives. The RFP for the SCDDSN QIO provider will be posted in spring of 2017 and will be effective October 1, 2017. The RFP is reflective of the required use of the key indicators by the QIO to ensure compliance with SCDDSN policies, standards, and directives which will include HCB settings requirements.

Many of the systemic changes were completed by the end of March 2016 and the remaining changes are anticipated to be completed as indicated in Section 3.2 and Section 3.3.

### **3.4 Ongoing Compliance of System**

Once system policies, procedures, standards, and directives have been updated to reflect the new HCBS requirements, ongoing compliance of the system will be monitored per the updated policies.

As mentioned in the previous section, SCDHHS serves as the Administrative and the Operating Authority for four 1915(c) waivers: Community Choices (CC), Mechanical Ventilator Dependent, HIV/AIDS, and Medically Complex Children (MCC). With the introduction of Healthy Connections PRIME, the state retains full operational and administrative authority of this program and the waivers of which it is a part. Performance requirements, assessment methods, and methods for problem correction related to PRIME are described more thoroughly in the three-way contract between CMS, the CICOs and the state.

**3.4.1. CLTC Ongoing Compliance.** The CLTC division of SCDHHS has waiver review as part of the overall CLTC Quality Assurance (QA) Plan. SCDHHS Central Office has a QA Task Force committee to review all data accumulated. The QA Task Force meets bi-monthly throughout the year to identify and pursue action plans for making improvements in the waiver programs, including any issues related to HCBS settings requirements, as well as in the quality management framework and strategy. This process allows a thorough assessment of areas needing improvement and areas of best practice. Systems improvement for statewide problems can be addressed through different measures, including revision of policy and procedures, thereby allowing SCDHHS to ensure compliance with the new HCBS standards.

Additionally, staff members of CLTC have received and will continue to participate in in-depth training from CMS on HCBS requirements. Any new employees will receive training from knowledgeable staff members on the HCBS requirements.

**3.4.2 Community Options ongoing compliance – MCC Waiver.** The Division of Community Options of SCDHHS serves as the Administrative and the Operating Authority for the Medically Complex Children (MCC) waiver. Community Options utilizes Phoenix as its data system for this waiver. The State Medicaid Agency and the Care Coordination Services Organization (CSO) will meet quarterly to monitor and analyze operational data and utilization from Phoenix to determine the effectiveness of the system and develop and implement necessary design changes. Annually the Medicaid Agency and CSO will review trended data to evaluate the overall quality improvement strategy. This process allows a thorough assessment of areas needing improvement and areas of best practice. Systems improvement for statewide problems can be addressed through a variety of measures which include revision of policies and procedures allowing SCDHHS to ensure compliance with the new HCBS standards.

**3.4.3 Community Options ongoing compliance – SCDDSN operated waivers.** SCDHHS maintains a Memorandum of Agreement (MOA) with SCDDSN and is implementing an Administrative Contract as well to outline responsibilities regarding SCDDSN's operations for the following waivers: Intellectually Disabled/Related Disabilities (ID/RD), Community Supports (CS), Head and Spinal Cord Injury (HASCI), and Pervasive Developmental Disorders (PDD). The MOA requires SCDDSN to submit any policy, procedure, or directive changes that are related to waiver operations to SCDHHS for review and approval. This secondary review allows for ongoing monitoring of systemic HCBS compliance.

SCDHHS also uses a Quality Improvement Organization (QIO), an additional contracted entity, quality assurance staff, and other agency staff to continuously evaluate the operating agency's (SCDDSN) quality management processes to ensure compliance. The QIO conducts validation reviews of a representative sample of initial level of care determinations performed by the operating agency (SCDDSN) as well as reviews all adverse level of care determinations. The additional contracted entity provides specific quality management tasks like provider agency operational audits. SCDHHS Quality Assurance (QA) staff conduct periodic quality assurance reviews that focus on the CMS quality assurance indicators and performance measures. To ensure compliance of quality and general operating effectiveness, SCDHHS will conduct reviews of the operating agency (SCDDSN). SCDHHS also utilizes its Division of Program Integrity, who works cooperatively with QA and Waiver staff, to investigate complaints and allegations of suspected abuse or fraud that may impact the system. Program Integrity also maintains a good working relationship with the Medicaid Fraud Control Unit at the Attorney General's office to investigate suspected fraud or initiate criminal investigations. Statewide problems can be addressed through different measures, including revisions of policy and/or procedures. These processes allow the state to take the necessary action to ensure compliance with the new HCBS standards.

It is through these established systems of quality assurance review that ongoing compliance of HCBS standards will be monitored after the transition period ends on March 17, 2019.

### **3.5 Residential Systemic Review**

SCDHHS initially created a provider self-assessment tool that was designed to evaluate individual residential homes/settings for compliance with the HCBS criteria outlined in 42 CFR 441.301(c)(4). After a pilot test of the residential assessment tool was completed, it was determined that the residential assessment tool should be used to assess residential setting types owned and/or operated by a provider and not the individual settings themselves. Although provider agencies may operate multiple residential settings, they are operated using the same policies, procedures, and expectations set up by each agency and developed under the SCDDSN Residential Habilitation standards. The SCDDSN Residential Habilitation standards apply to all HCB residential providers in South Carolina.

There are six types of residential settings with approximately 1600 individual residential settings in total. Most of these settings are utilized by participants in the ID/RD and HASCI waivers, with some settings utilized by participants in the Community Choices and HIV/AIDS waivers. The description of the settings is listed in the “Assessment of Settings” section, page 33.

### **3.6 Process of Residential Systemic Review**

The residential systemic review process, at the provider level, was accomplished through the C4 Individual Facilities/Settings self-assessment process.

**3.6.1 C4 Individual Facilities/Settings Self-Assessment.** The C4 assessment was designed to evaluate individual facilities to determine compliance with the HCBS criteria outlined in 42 CFR 441.301(c)(4). For residential settings, it also encompassed the requirements outlined in 42 CFR 4421.301(c)(4)(iv).

**Development of the assessment tool and criteria.** An assessment tool was developed for residential facilities utilizing the criteria outlined in the 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. This tool was developed collaboratively with various stakeholders including providers, advocacy groups, and other state agencies. The assessment tool was used by providers to complete the self-assessment of their residential setting types (listed on page 33). The assessment was an online tool. For providers who did not have internet access, SCDHHS made available paper copies.

SCDHHS conducted a pilot test of the assessment tool to determine reliability and decide if any revisions needed to be made prior to distributing to providers. The pilot test was conducted with providers who own or operate home and community-based settings. The testing process also aided in the development of clear instructions on how to complete the assessment. Pilot testing began in January 2015 and was completed in March 2015. It was determined from the pilot test results that residential facilities would be assessed by residential setting type, which included a review of policies for the setting. The assessment along with the instructions can be found in [Appendix D](#).

**Resources to conduct assessments.** Resources to conduct the assessments came from SCDHHS personnel and financial resources as well as individual provider personnel and financial resources.

SCDHHS sent electronic notification of the residential self-assessment process to providers in April 2015. Following the notification the agency sent individual letters to providers with instructions on how to conduct the residential assessments in May 2015. For providers who did not have internet access, paper copies of the assessment tools were made available to them.

**Timeframe to conduct assessments.** Individual letters were sent on May 15, 2015, to all HCBS residential providers with instructions on how to complete by July 1, 2015. Providers had 45 calendar days to complete and return the self-assessment for the settings they own and/or operate to SCDHHS. The deadline was established based on the letter's approximated day of delivery to providers.

**Assessment review.** SCDHHS published a global analysis document detailing the areas of concern systemically for all residential providers on November 23, 2015, on the HCBS website at <https://msp.scdhhs.gov/hcbs/site-page/c4-settings-assessment>. Residential providers will receive individual written feedback from SCDHHS after review of the self-assessments. Included in this written feedback will be SCDHHS' expectation that providers self-assess all of their settings to determine each setting's level of compliance with the new standards and establish any steps needed to come into compliance for any deficiencies. The individual feedback to all residential providers is anticipated to be completed before the independent site visits begin in January 2017.

### **3.7 Outcomes of Residential Systemic Review**

Information gathered from the residential self-assessment by providers was compiled into one document for a global analysis of residential settings by setting type ([Appendix F](#)). The number of setting types represents the number of providers who own and/or operate that type of residential setting. It is not representative of the total number of individual residential settings.

Based on these initial results from individual providers, it appears that some of the individual programs may not be fully compliant with SCDDSN standards and may need to adjust their policies on the following:

- Visitation
- Lockable doors and privacy
- Staff accessing residents' rooms
- Proper storage of individual health information
- Requiring residents to participate in activities and/or adhering to prescribed schedules

Additionally, many programs need to create a lease or residential agreement, or revise and enhance their existing one, that meet the requirements listed in 42 CFR 441.301(c)(4)(vi)(A).

Other issues related to the physical characteristics of settings are discussed under the "Assessment of Settings" section of this document.

### **3.8 Actions to Bring the Residential System into Compliance**

SCDHHS is developing initial individualized responses by provider for their residential setting types based upon their self-assessment results. The agency will leverage responses from the

self-assessment to identify any global policy or programmatic changes that are necessary for the provider to comport with the new HCBS standards. Progress towards these changes will be noted as independent site visits are conducted at individual residential settings. A final response to providers will be provided once the independent site visits are completed and that data is reviewed. For providers who still have corrective actions to make to come into compliance with the new standards after the site visit is completed, they will be required to create an action plan for their facility(ies) and indicate how they will bring it(them) into compliance with the requirements. That process is further detailed under “Assessment of Settings: Actions for Facilities Deemed not in Compliance” (page 40).

SCDDSN Residential Habilitation Standards were revised in June 2016 at RH 2.6 to state “A legally enforceable agreement (lease, residency agreement, or other form of written agreement) is in place for each person in the home setting within which he/she resides. The document provides protections that address eviction process and appeals comparable to those provided under South Carolina’s Landlord Tenant Law, (S.C. Code Ann. § 27-40-10 et. seq.)” To ensure compliance of residential providers with the requirement of a legally enforceable tenancy agreement, SCDDSN developed a boilerplate lease for individuals receiving residential services and shared this sample with some of its residential providers. SCDDSN will finalize this language and include it in the [SCDDSN Room and Board Directive 250-09-DD](#) as a resource. SCDDSN anticipates that this will be completed by January 1, 2017. To allow time for residential providers to secure a certified property manager as required by state law, all residential providers will be given until July 1, 2017 to fully comply with this requirement.

Other global policy or programmatic changes that need to be made are addressed in the “Actions to Bring System into Compliance” section above.

### **3.9 Ongoing Compliance of Residential System**

Ongoing compliance of the residential system will be accomplished in two ways. First, the ongoing compliance actions described above in section 3.4 for the overall system encompass any needed changes to and monitoring of residential policies, procedures, standards and directives. Second, residential providers will be subject to regular licensing reviews and compliance reviews as described in the “Assessment of Settings: Ongoing Compliance” section (page 44).

## **4. Assessment of Settings**

### **4.1 Setting Types**

There are four primary settings where home and community-based services are provided in the nine waiver programs, excluding private residences:

**4.1.1 Day Services Facilities.** There are approximately 83 Day Services Facilities most of which are licensed as an Adult Activity Center (AAC) and/or a Work Activity Center (WAC), an Unclassified Program and/or a Sheltered Workshop.

**4.1.2 Adult Day Health Cares (ADHC).** There are approximately 76 Adult Day Health Care settings, utilized in various waivers.

**4.1.3 Pediatric Medical Day Care.** This medical day treatment program provides health and social services needed to ensure the optimal functioning of children with medically complex needs, ages 4 weeks to 6 years old. This setting is only available to participants in the MCC waiver, and there is only one setting in the state.

**4.1.4 Residential Homes.** The residential habilitation service is provided in approximately 1600 residential settings, largely available through the ID/RD waiver and to HASCI waiver participants. There are five types of residential settings operated under SCDDSN policies, standards, and directives that are utilized to provide the residential habilitation service.

**Supervised Living Program II (SLP II).** This model is for individuals who need intermittent supervision and supports. They can handle most daily activities independently but may need periodic advice, support and supervision. It is typically offered in an apartment setting that has staff available on-site or in a location from which they may get to the site within 15 minutes of being called, 24 hours daily.<sup>6</sup>

**Supported Living Program I (SLP I).** This model is similar to the Supervised Living Model II; however, people generally require only occasional support. It is offered in an apartment setting and staff are available 24 hours a day by phone.<sup>7</sup>

**Community Training Home I (CTH I).** In the Community Training Home I Model, personalized care, supervision and individualized training are provided, in accordance with a service plan, to a maximum of two people living in a support provider's home where they essentially become one of the family. Support providers are qualified and trained private citizens.<sup>8</sup>

**Community Training Home II (CTH II).** The Community Training Home II Model offers the opportunity to live in a homelike environment in the community under the supervision of qualified and trained staff. Care, supervision and skills training are provided according to individualized needs as reflected in the service plan. No more than four people live in each residence.<sup>9</sup>

**DSN Board/Qualified Provider Community Residential Care Facility (DDSN CRCF).** For SCDDSN Residential Habilitation providers who offer the option of CRCF settings, this model, like the Community Training Home II Model, offers the opportunity to live in the community in a homelike environment under the supervision of qualified, trained caregivers. Care, supervision and skills training are provided according to identified needs as reflected in the service plan<sup>10</sup>. These CRCF's are licensed by SC Department of Health and Environmental Control (SCDHEC) but must meet the SCDDSN Residential Habilitation standards which are above and beyond SCDHEC regulatory requirements.

**4.1.5 Other Residential homes.** There are other residential settings in South Carolina that may be utilized by waiver participants as their primary residence that are also utilized by

<sup>6</sup> SCDDSN (October 2016). [Residential Habilitation Standards](#), p. 4.

<sup>7</sup> SCDDSN (October 2016). [Residential Habilitation Standards](#), p. 4.

<sup>8</sup> SCDDSN (October 2016). [Residential Habilitation Standards](#), p. 4.

<sup>9</sup> SCDDSN (October 2016). [Residential Habilitation Standards](#), p. 4.

<sup>10</sup> SCDDSN (October 2016). [Residential Habilitation Standards](#), p. 4.

individuals not receiving Medicaid HCBS in the community. Waiver participants are not receiving HCB services in these settings through their waiver.

**Community Inclusive Residential Supports (CIRS).** This model, previously named Customized Living Options Uniquely Designed (CLOUD), was created to promote personal development and independence in people with disabilities by creating a customized transition from 24 hour supervised living to a semi-independent living arrangement. Participants are responsible for selecting support providers, house mates, and housing.<sup>11</sup>

**Community Residential Care Facility (CRCF).** Licensed by SC Department of Health and Environmental Control (SCDHEC), CRCF's are residential settings that offer room and board and provide/coordinate a degree of personal care for a period of time. They are designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement.<sup>12</sup> Waiver participants in the Community Choices waiver, HIV/AIDS waiver, ID/RD waiver, Community Supports waiver, and/or the HASCI waiver may choose to live in CRCFs. These CRCFs are not Medicaid Waiver providers and room and board is either paid out of individuals private funds or may be derived from 100% state funds through the Optional State Supplement (OSS) program.

## 4.2 Setting Assessment Process

The setting assessment process was divided into two separate assessment phases, a provider self-assessment phase and an independent site visit phase. Additionally, a survey for waiver participants and a survey for family members of waiver participants was created to solicit feedback on their experiences in the HCB settings that they or their family members use. They can be found at:

Beneficiary survey: <https://msp.scdhhs.gov/hcbs/site-page/beneficiary-survey>

Family survey: <https://msp.scdhhs.gov/hcbs/site-page/family-survey>

**4.2.1 C4 Individual Facilities/Settings Self-Assessment.** The C4 assessment was designed to evaluate individual facilities to determine compliance with the HCBS criteria outlined in 42 CFR 441.301(c)(4). This assessment tool was used for the providers' self-assessment and will be refined and revised for use on the independent site visits.

Providers self-assessed each of their individual non-residential settings. A self-assessment tool specific for non-residential settings was sent to every non-residential provider to complete on each of their non-residential settings. A copy of the non-residential provider self-assessment with instructions can be found in [Appendix C](#).

As mentioned in the previous section, "Assessment of System-Wide Regulations, Policies, Licensing Standards, and Other Regulations," the residential setting assessment evolved into a systemic review of each residential setting type based on feedback provided from the pilot test of the tool. Residential providers completed this assessment for each type of residential setting they own and/or operate, not necessarily for each of their individual residential settings.

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<sup>11</sup> SCDDSN (October 2016). [Residential Habilitation Standards](#), p. 4.

<sup>12</sup> SCDHEC (June 26, 2016). [R.61-84, Standards for Licensing Community Residential Care Facilities](#), p. 6

The process of the self-assessments is described below.

**Development of the assessment tools and criteria.** Two assessment tools were developed for individual facilities: one for residential settings and another for non-residential facilities which include all day services facilities licensed by SCDDSN, Adult Day Health Care Centers, and the Pediatric Medical Day Care. The criteria used to create these tools is outlined in 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. The assessment tools were used by providers to complete the self-assessment of individual facilities. The setting-specific assessments were online tools. For providers who did not have internet access, SCDHHS made available paper copies.

**Resources to conduct assessments and site visits.** Resources to conduct the assessments came from SCDHHS personnel and financial resources as well as individual provider personnel and financial resources.

SCDHHS sent electronic notification of the individual facility self-assessment process to providers in April 2015. Following the notification the agency sent individual letters to providers with instructions on how to conduct the setting-specific assessments in May 2015. For providers who did not have internet access, paper copies of the assessment tools were made available to them.

Individual letters were sent on May 15, 2015, to all HCBS residential and non-residential providers with instructions on how to complete that self-assessment by July 1, 2015. All non-residential settings were assessed. As stated above, each residential provider only conducted a self-assessment of each of their residential setting types.

Any setting, residential or non-residential, that self-identified through the initial C5 assessment or the C4 self-assessment as potentially being subject to the heightened scrutiny process will be subject to the Home and Community-Based Settings Quality Review process (see page 48).

**Timeframe to conduct assessments and site visits.** Each part of the assessment process has an estimated time for completion. These time frames are based on personnel and financial resources and may vary.

Providers had 45 calendar days to complete and return the self-assessment for the settings they own and/or operate to SCDHHS. This is for non-residential and residential settings. The deadline was established based on the letter's approximated day of delivery to providers.

**Assessment review.** SCDHHS individually reviewed all setting-specific self-assessments to determine each setting's status regarding HCBS compliance. Based on a review of the self-assessments, SCDHHS sent initial feedback to providers on their settings to help them get started on making any needed changes towards compliance prior to the independent site visits.

SCDHHS sent initial written feedback to Adult Day Health Care (ADHC) providers on their self-assessments on March 8, 2016. Initial written feedback was sent to SCDDSN Day services providers with facilities on March 22, 2016. Residential providers' self-assessments are under review. Included in their written feedback will be SCDHHS' expectation that residential providers self-assess all of their settings to determine each setting's level of compliance with the new standards and establish any steps needed to come into compliance for any deficiencies. The initial feedback to residential providers is anticipated to be completed before the independent site visits on those settings begin.

For the Pediatric Medical Day Care, SCDHHS reviewed the initial assessment and documentation gathered at the time of the site visit to determine if the setting is in compliance. The documentation included the admission packet, transportation agreement, and the family and patient policies. It was noted that this Pediatric Medical Day Care serves children ages 4 weeks up through age 6 years. It is licensed as a Child Care Center per the [licensing requirements](#) required by the SC Department of Social Services (SC DSS).

**4.2.2. C4 Individual Facilities/Settings Independent Site Visits.** The C4 independent site visits are designed to evaluate individual facilities to determine compliance with the HCBS criteria outlined in 42 CFR 441.301(c)(4). These will be conducted after the self-assessments by providers are complete. The assessment tools that were used for the provider self-assessments will be refined and revised for use on the independent site visits. The independent site visits will be completed by the following entities:

- SCDHHS staff will conduct the site visits for the Adult Day Health Care facilities and the Pediatric Medical Day Care.
- A contracted vendor will conduct the site visits for all of the SCDDSN Day Services facilities and residential settings.

The process of the site visits is described below.

**Development of the assessment tools and criteria.** Three assessment tools were developed based on the tools used for the provider self-assessments: one for Adult Day Health Care Centers, one for all day services facilities licensed by SCDDSN, and one for residential settings. The Pediatric Medical Day Care site visit was conducted using the non-residential facility self-assessment tool. The criteria used to create these tools is outlined in 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. SCDHHS will work with the contracted vendor to refine and finalize the assessment tools for the SCDDSN day services facilities and the SCDDSN residential settings.

**Resources to conduct assessments and site visits.** Resources to conduct the site visits for the Adult Day Health Care and the Pediatric Medical Day Care came from SCDHHS personnel and financial resources. Resources to conduct the site visits for the SCDDSN day services facilities and SCDDSN residential settings will come from SCDHHS personnel and financial resources in addition to the personnel and financial resources of a contracted vendor.

All non-residential, individual HCB settings will be subject to an independent site visit. They comprise approximately 76 Adult Day Health Care centers, approximately 83 discrete day services facility locations in which multiple non-residential settings may be located, and one Pediatric Medical Day Care. Individual site visits will occur after the provider self-assessments.

The Pediatric Medical Day Care site visit was conducted on January 21, 2016, by SCDHHS staff.

The Adult Day Health Care facility site visits will be conducted by SCDHHS staff. These began in late January of 2016.

SCDDSN day services facilities and SCDDSN residential settings will be subject to a site visit. SCDHHS will contract with an outside vendor to conduct site visits on the discrete day services facility locations and on 100% of the residential settings that are contracted with SCDDSN.

***Timeframe to conduct assessments and site visits.*** Each part of the assessment process has an estimated time for completion. These time frames are based on personnel and financial resources and may vary.

Independent site visits of the Adult Day Health Care settings are anticipated to take approximately 18 months to complete. This time frame began as SCDHHS started its site visits on ADHC settings in late January 2016. This extended deadline is due to a reevaluation of the time needed for the site visit, assessment and review process as well limited personnel resources.

To complete site visits on the SCDDSN Day Services facilities and residential settings, SCDHHS solicited proposals from qualified entities to conduct those site visits. Site visits by a contracted vendor on SCDDSN Day Services facilities and on residential settings contracted with SCDDSN are anticipated to begin in January 2017 after a contract has been awarded to a qualified vendor. These site visits are anticipated to take approximately 9 months to complete.

***Assessment review.*** SCDHHS will individually review all setting-specific assessments to determine if each setting is or is not in compliance. To determine the level of compliance or non-compliance, SCDHHS will use the data collected during both the provider self-assessment and the independent site visit assessment. Providers will receive final written feedback from SCDHHS on each setting after the independent site visits are completed and both assessments are reviewed.

The Adult Day Health Care settings review will be done by SCDHHS staff. The review will include the self-assessment of the facility, the independent site visit of the facility which includes feedback from individual participants on the facility and its program, the facility's policies, and any beneficiary or family member survey data from that facility (mentioned at the beginning of section 4.2). SCDHHS' goal is to complete the final assessment review of Adult Day Health Care settings no later than August 2017. This extended deadline is due to a reevaluation of the time needed for the site visit, assessment and review process as well limited personnel resources.

SCDHHS' goal to complete the final assessment review of SCDDSN day service facilities and residential settings is within one month after the completion of those site visits which is anticipated to be November 2017. The review will be done by SCDHHS staff and SCDDSN staff. The review will include the self-assessment of the facility/setting, the independent site visit of the facility/setting which includes feedback from individual participants on the facility/setting and its program, the facility's policies, and any beneficiary or family member survey data from that facility/setting (mentioned at the beginning of section 4.2).

### **4.3 Outcomes**

The outcomes of the setting assessment process is listed below by the provider self-assessment outcomes and the final HCBS compliance outcomes, determined after independent site visits and full reviews are completed.

As individual facilities are assessed and reviewed, SCDHHS will compile that data to submit to CMS. Upon completion, SCDHHS will be able to show what percentage of facilities, by type, meet the settings criteria and what percentage do not and will need to create a plan of compliance. The review for Adult Day Health Care is anticipated to be completed by June 2017, with anticipated submission to CMS of an amended Statewide Transition Plan by the end of

August 2017, after going through public notice and comment. The review for SCDDSN Day service providers and residential providers is anticipated to be completed by October 2017 with anticipated submission to CMS in an amended Statewide Transition Plan by December 2017, after going through another public notice and comment period.

**4.3.1 C4 Individual Facilities/Settings Self-Assessment Outcomes.** There was 100% participation by providers in completing the Non-residential settings self-assessment and 100% participation by providers in completing the Residential settings self-assessment.

To date, SCDHHS has gathered preliminary information from the Initial C5 Assessment (see page 49), the C4 provider self-assessment, and selected site visits conducted with the Technical Assistance Collaborative (TAC), Inc. (see page 51). Based on that information, SCDHHS estimates that the following number of settings fall into the following categories.

**Non-residential Settings**

HCBS Compliance Category	Number of Settings			
	ADHC	AAC	WAC	Unclassified
Fully comply with federal requirements	0	0	0	0
Do not comply – will require modifications	0	0	0	0
Cannot meet requirements – will require removal from the program/relocation of individuals	2 <sup>13</sup>	0	0	0
Subject to State Review for possible Heightened Scrutiny Review by CMS	74	52	30	28

**Residential Settings**

HCBS Compliance Category	Number of Settings					
	SLP I	SLP II	CTH I	CTH II	CLOUD	CRCF
Fully comply with federal requirements	198	0	0	0	0	0
Do not comply – will require modifications	0	102	156	618	11	34
Cannot meet requirements – will require removal from the program/relocation of individuals	0	0	0	0	0	0
Subject to State Review for possible Heightened Scrutiny Review by CMS	3	4	0	50	4	12

As indicated in the charts above, SCDHHS is subjecting all non-residential facilities to state review for possible Heightened Scrutiny review by CMS (the HCB Settings Quality Review

<sup>13</sup> This number represents two adult day health care centers located in other facilities

process, see page 48). The data in the charts above will likely change once the independent site visits are completed on the settings and a full review is completed for each individual setting.

After initial review, it was determined that the Pediatric Medical Day Care setting is compliant with the HCBS settings requirements. Systemically, its licensing laws and regulations are the same as any other child care center facility used by individuals not receiving Medicaid HCB services. Additionally, it meets the HCB settings requirements outlined in 42 CFR 441.301(c)(4) as appropriate for children in the age group served at this facility. Therefore, this environment meets the settings characteristics outlined in the HCBS Rule.

**4.3.2. Final HCBS Compliance determination.** The final level of HCBS compliance of individual settings will be determined after independent site visits and full reviews are completed. SCDHHS will develop an individualized response by provider for each facility based upon the self-assessment and site visit. The agency will leverage responses from the self-assessment and site visit to identify gaps in compliance, as well as include any global policy or programmatic changes that are necessary for the provider to comport with the new HCBS standards as detailed in the “Assessment Review” section, 4.2.2, above (page 38). SCDHHS will develop these responses as site visits are completed.

To date, 24 Adult Day Health Care facility site visits have been completed, but have not undergone a full review. Those full reviews will be completed and responses will go out between November and December of 2016. Once those responses are sent out, SCDHHS will continue with the ADHC site visits.

The SCDDSN day services facilities and the residential providers contracted with SCDDSN will not have a final HCBS compliance determination made until the independent site visits are completed and a full review is done on each of those settings.

#### **4.4 Actions for Facilities Deemed not in Compliance**

Based on the outcome of the full review, providers must create a compliance action plan for their facility(ies) and indicate how they will bring it(them) into compliance with the requirements. The action plan must include a timeframe for completion and be submitted to SCDHHS for approval within 30 days of receiving the written notice. Compliance Action Plans for Adult Day Health Care facilities will be reviewed by SCDHHS staff. Compliance Action Plans for SCDDSN day services facilities and contracted residential provider settings will be reviewed by SCDHHS staff and SCDDSN staff. Each action plan will be reviewed to determine if the action plan is approved or needs revision. SCDHHS will send providers a letter indicating whether their action plan is approved and they can move forward with their changes, or whether the action plan needs further work. If the action plan needs further work, SCDHHS will give providers two weeks from receipt of the letter to make changes to the action plan and resubmit it to SCDHHS for approval. SCDHHS, and SCDDSN where appropriate, will review the revised action plan and will either approve it, or send notification to the appropriate program area to have the provider and setting reviewed for disciplinary action.

In addition to participating in the compliance action plan review process, SCDHHS will include the appropriate SCDHHS program area and/or SCDDSN on communication sent to

providers at every step of the settings assessment process. SCDHHS will submit copies of the following to the appropriate SCDHHS program area and/or SCDDSN:

- Each provider's initial response letter to their self-assessment
- Each provider's final, individualized response letter
- SCDHHS' response to each provider's initial submission of a compliance action plan (whether it is approved or needs revision), along with a copy of the provider's initial action plan
- SCDHHS' response to providers who had to submit a revised action plan (whether it is approved or will be sent to program area for disciplinary action review), along with a copy of the provider's revised action plan
- A copy of a provider's approved action plan

This will allow the appropriate SCDHHS program area and/or SCDDSN to monitor progress toward compliance and continued monitoring of compliance through established quality assurance and/or licensing protocols. Those protocols are detailed in the "Ongoing Compliance" section on page 44.

SCDHHS or a contracted vendor will conduct follow-up site visits to monitor the progress of those providers who must come into compliance, in accordance with their approved compliance action plans. These visits will occur after a facility's action plan has been approved by SCDHHS, but before the March 2019 compliance deadline. The appropriate SCDHHS program area and/or SCDDSN will receive the results of those follow-up site visits to assist them in monitoring the progress of their providers of becoming compliant with HCB standards.

CMS provided feedback to SCDHHS about "reverse integration" as a strategy for access and integration compliance, indicating it cannot be the only method providers use to meet access and integration compliance. To address this issue, SCDHHS will provide and share technical assistance with providers to help settings ensure they facilitate full access and integration for waiver participants into their community. This will include informal information sharing as site visits are conducted or informal meetings with providers are held, presentations done at provider association meetings, resources sent to providers, program areas and other state agencies, and formal feedback through individual responses to completed site visits to assist in this transition period. As mentioned in the "Actions to Bring System into Compliance" section (page 27), the assessment tool utilized for the ADHC site visits will be incorporated into the provider reviews that are conducted at least every 18-24 months by SCDHHS staff. This tool will cover the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings and will help measure compliance of settings providing access and integration for waiver participants into their community. SCDDSN, as noted on page 47, plans to incorporate elements of the two assessment tools (Day and Residential) used in the independent site visits into their provider assessment so that the new HCBS requirements detailed in 42 CFR 441.301(c)(4) are captured as part of the regular review process by the QIO.

**4.4.1 Relocation of Waiver participants.** Relocation of waiver participants may be needed due to a setting's inability to come into compliance with the new standards, or a setting is deemed by CMS through the heightened scrutiny process to not be home and community-based. SCDHHS will utilize the following procedures to transition participants in those settings to an appropriate setting. Each participant will have an individualized transition plan that is

designed to meet their needs. These procedures may change to best meet the needs of the waiver participants.

***Relocation of waiver participants in non-compliant Adult Day Health Care settings.***

SCDHHS would identify all participants authorized to receive services from the provider of the non-compliant setting. The appropriate area offices and/or agencies would be notified of the status of the setting as non-compliant. Additionally, the participants' case managers would be informed of the status of the setting as non-compliant so that they could reach out to their participants to inform them of the setting's status change. Case managers would provide the participants with a list of other available, compliant providers from which they can choose. Once a participant chooses a provider, the case manager can then make a referral and process an authorization for that participant for the new provider.

If the participant chooses not to use another provider, the case manager may explain alternative options should the waiver participant choose to still receive services from the non-compliant provider setting. If there is no other viable provider, the case manager may work to authorize other services to substitute for the service change. The case manager would then monitor the participant to ensure that the new service package is meeting the participant's needs in accordance with the person-centered plan.

As noted in the table above (page 39) there are two adult day health care settings that cannot meet HCBS standards as they are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. The number of waiver participants currently receiving services in those settings is 19 total. At this time, these are the only two settings believed to not be home and community based that will require relocation of waiver participants. Relocation of these waiver participants will not begin until after a site visit is completed on each site.

***Relocation of waiver participants in non-compliant SCDDSN Day services settings.***

SCDDSN would identify all participants authorized to receive services from the provider of the non-compliant setting. The appropriate district offices and/or agencies would be notified by SCDHHS of the status of the setting as non-compliant. Additionally, the participants' case managers would be informed of the status of the setting as non-compliant so that they could reach out to their participants to inform them of the setting's status change. The appropriate District Office would facilitate the relocation of participants with the case managers and any other appropriate personnel, providing the participants with a list of other available, compliant providers from which they can choose. Once a participant chooses a provider, the case manager can then make a referral and process an authorization for that participant for the new provider. SCDDSN will keep SCDHHS informed of all waiver participant relocations.

If the participant chooses not to use another provider, the case manager may explain alternative options should the waiver participant choose to still receive services from the non-compliant provider setting. If there is no other viable provider, the case manager may work to authorize other services to substitute for the service change. The case manager would then monitor the participant to ensure that the new service is meeting the participant's needs in accordance with the person-centered plan.

***Relocation of waiver participants in non-compliant Residential settings.*** There are two types of residential settings: those that are authorized to provide the waiver service of residential habilitation (and are providers contracted with SCDDSN) and those that are not but

waiver participants may choose to live in the setting (see “Other Residential homes” on page 34).

If a CRCF that is not a provider of residential habilitation (and is not contracted with SCDDSN) is identified as a non-compliant setting, SCDHHS would identify the waiver participants who are living that non-compliant setting. To relocate those residents, the “Relocation Guidelines: Community Residential Care Facility (CRCF) Residents” developed by SCDHHS with SCDHEC, SCDMH, SCDSS, and SCDDSN will be utilized for proper protocol and procedure. See [Appendix G](#) for those guidelines.

If any residential setting that is contracted with SCDDSN to provide residential habilitation or provide residential services is identified as a non-compliant setting, SCDHHS will work with SCDDSN to identify all participants authorized to receive services from the provider who owns/operates the non-compliant setting. To relocate those residents of any SCDDSN funded community residential setting, the “Admissions/Discharge/Transfer of Individuals To/From DDSN Funded Community Residential Settings” directive would be followed utilizing the “Transfer” protocol in Section III of the document ([Appendix H](#)). SCDDSN will keep SCDHHS informed of all waiver participant relocations.

If the participant chooses not to use another residential provider, the participant’s case manager may explain alternative options should the waiver participant choose to still receive residential services from the non-compliant provider setting or still choose to live in the non-compliant residential setting.

SCDHHS will also be sure to notify all appropriate agencies/program areas of the status of the setting as non-compliant so that no new waiver referrals are made to that non-compliant setting.

**Timeline.** Relocation of waiver participants would be made after:

- SCDHHS has determined the setting (either day or residential) to be institutional and can no longer provide HCB services, or
- CMS has determined after a heightened scrutiny review that the setting is institutional and can no longer provide HCB services.

This process of relocation is anticipated to begin in mid-to-late 2017 as SCDHHS anticipates it will have concluded its independent site visits for Adult Day Health Cares by the end of June 2017. Those relocations are anticipated to be completed by the end of the 2017 calendar year. For waiver participants in SCDDSN Day service provider locations or residential provider locations that may be non-compliant, those relocations will begin later in 2017 at the conclusion of those site visits and should be completed by December 2018.

For waiver participants who choose to be relocated from either a non-compliant Adult Day Health Care or Day service setting, they will be given 30 days’ notice that they will need to move to a new, compliant setting. This notice is intended to minimize disruption of services for the waiver participant. Additionally, each participant’s case manager will ensure an individualized approach for transitioning each waiver participant from non-compliant settings.

For waiver participants who choose to be relocated to a compliant residential setting, they will be given 30 days’ notice that they will need to move to that new, compliant setting. Additionally, each participant’s case manager will ensure an individualized approach for transitioning each waiver participant from non-compliant settings. All other protocols outlined in either the “Relocation Guidelines: Community Residential Care Facility (CRCF) Residents” or

the “Admissions/Discharge/Transfer of Individuals To/From DDSN Funded Community Residential Settings” will be followed as appropriate. This notice, along with the other detailed protocol, is intended to minimize disruption of services for the waiver participant.

**4.4.2 Non-disability specific settings.** SCDHHS will utilize technical assistance provided and conduct research on other states that have implemented the use of non-disability specific settings to explore what could be learned and adapted for South Carolina. SCDHHS will also explore potential relationships with existing local resources to see how they can be utilized to provide home and community-based services to waiver participants in a setting that is non-disability specific.

**4.4.3 Individual private homes.** Individuals not living in provider owned or controlled homes deserve the same access and integration to their community as individuals not receiving HCB services. To ensure that these individuals are not isolated in their communities in which they choose to live, SCDHHS must confirm that individual private homes were not established or purchased in a manner that isolates them from their community. The two program areas charged with this duty will be CLTC Division and the Community Options Division of SCDHHS. The CLTC Division of SCDHHS will explore appropriate ways to gather this information through the regular case manager face-to-face visits or annual re-evaluation assessments of the waiver participant. The Community Options Division of SCDHHS will discuss with SCDDSN appropriate ways to gather this information through the regular case manager face-to-face visits or annual re-evaluation assessments of the waiver participant. After policy and process revisions and any staff and/or provider training, a process will be determined and implemented by July 1, 2017.

#### **4.5 Ongoing Compliance**

Ongoing compliance of settings is currently monitored through SCDHHS policies and procedures as well as SCDDSN policies, procedures, standards and directives. The Pediatric Medical Day Care setting is monitored through SCDHHS policies and procedures in addition to regulatory compliance through SC DSS. There are established compliance systems in place at the agencies that monitor providers and their services to ensure they are compliant in providing the waiver services as stated in their contracts/enrollment agreements which are in line with the waiver documents. It is through these established systems, which are described below, that ongoing compliance of the settings with the new HCBS requirements will be monitored. As mentioned in the “Ongoing Compliance of the System” section of this document (page 29), the policies, procedures, standards and directives that direct the current compliance systems will be updated to reflect the new HCBS requirements to ensure the ongoing compliance of the settings.

SCDHHS serves as the Administrative and the Operating Authority for four of the 1915(c) waivers: Community Choices (CC), Mechanical Ventilator Dependent, HIV/AIDS, and Medically Complex Children (MCC). With the introduction of Healthy Connections PRIME, the state retains full operational and administrative authority of this program and the waivers of which it is a part. Performance requirements, assessment methods, and methods for problem correction

related to PRIME are described more thoroughly in the three-way contract between CMS, the CICOs and the state.

**4.5.1. Ongoing Compliance – Adult Day Health Care settings.** The CLTC division of SCDHHS has waiver review as part of the overall CLTC Quality Assurance (QA) Plan. This includes review of Adult Day Health Care settings that provide home and community-based services. Information is gathered and compiled from many data sources including Provider Compliance Reports from SCDHHS staff; APS/critical incident reports; and provider reviews conducted at least every 24 months by SCDHHS staff (which includes reviews of ADHC's).

As part of the CLTC QA Plan, information gathered is taken to the Quality Improvement Task Force, which is scheduled to meet bi-monthly. Data is reviewed and discussed for discovery of noncompliance and strategies for remediation. Reports and trends are shared with area offices and providers as appropriate. Anything requiring corrective action generates a report and request for corrective action plan to the area office administrator. This includes corrective action for ADHC's. All reports, corrective action plans, appeals and dispositions are brought to the Quality Improvement Task Force to review outcomes. Outcomes would assist in determining necessary policy or system changes. This process allows a thorough assessment of areas needing improvement and areas of best practice.

As mentioned in the "Actions to Bring System into Compliance" section (page 27), the assessment tool utilized for the ADHC site visits will be incorporated into the provider reviews that are conducted at least every 18-24 months by SCDHHS staff. This tool will cover the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings.

Ongoing monitoring and compliance of ADHCs will be conducted in two ways: by a designated staff member of CLTC to conduct on-site reviews and by a contracted vendor to collect participant feedback on their specific ADHC program. The reviews will begin 18-24 months after the initial assessment and compliance action period and will consist of an onsite visit to each facility to observe settings and participants' individual integration into the community. The staff member will utilize a questionnaire (to be completed by December 2017) that contains the same components of the initial assessment to complete the on-site reviews. The contracted vendor will also utilize a questionnaire that contains the same components of the initial assessment to collect participant feedback via telephone surveys. Currently, the State has a sanctioning policy ranging from corrective action plans up to termination and the State anticipates utilizing the same sanctioning policy to address noncompliance with the HCBS regulatory requirements. Tracking of compliance results will be stored in CLTC's Phoenix system for easy reporting.

In June 2017, CLTC will host a provider training to address recent changes to service provision related to HCBS requirements. Providers will receive an in-depth training on the regulations and ongoing expectations of reviews. The State will host additional trainings for providers as requested. Staff members of CLTC have received and will continue to participate in in-depth training from CMS on HCBS requirements. Any new employees will receive training from knowledgeable staff members on the HCBS requirements.

It is through this established system of quality assurance review, provider compliance, and staff and provider training that ADHC settings' ongoing compliance of HCBS standards will be monitored.

**4.5.2. Ongoing Compliance – Pediatric Medical Day Care.** As stated previously, the Division of Community Options of SCDHHS serves as the Administrative and the Operating Authority for the Medically Complex Children (MCC) waiver. Community Options utilizes Phoenix as its data system for this waiver. The State Medicaid Agency and the CSO will meet quarterly to monitor and analyze operational data and utilization from Phoenix to determine the effectiveness of the system, including the provision of the Pediatric Medical Day Care service, and develop and implement necessary design changes. Annually the Medicaid Agency and CSO will review trended data to evaluate the overall quality improvement strategy. For settings compliance, an annual site visit to this facility, conducted by SCDHHS staff or a contracted vendor, will be instituted to ensure its ongoing compliance with HCBS standards. Information gathered from the site visit will be coupled with information reported during the annual unannounced inspection conducted by SCDDSN to monitor compliance of this setting. These processes together allows a thorough assessment of areas needing improvement and areas of best practice for SCDHHS to ensure compliance with the new HCBS standards. It is through this enhanced system of quality assurance that the Pediatric Medical Day Care setting ongoing compliance of HCBS standards will be monitored.

**4.5.3. Ongoing Compliance – SCDDSN Day services facilities and contracted residential settings.** SCDHHS maintains a Memorandum of Agreement (MOA) with SCDDSN and has four service contracts with SCDDSN that outline the provider responsibilities for the following waivers: Intellectually Disabled/Related Disabilities (ID/RD), Community Supports (CS), Head and Spinal Cord Injury (HASCI), and Pervasive Developmental Disorders (PDD). Additionally, SCDHHS is implementing an Administrative Contract to outline responsibilities regarding SCDDSN's waiver operations for each waiver. As mentioned in the "Actions to Bring System into Compliance" section (page 27), the Community Options Division of SCDHHS created a joint workgroup with SCDDSN that began in fall of 2015 to revise SCDHHS and SCDDSN waiver specific policy, procedures, directives, and standards including those related to compliance of providers and settings. Together they will make the necessary changes to waiver manuals, operating standards and corresponding directives, and key indicators to bring waiver policy and procedures in line with the HCBS requirements to ensure ongoing compliance of settings.

SCDHHS uses a Quality Improvement Organization (QIO), an additional contracted entity, quality assurance staff, and other agency staff to continuously evaluate the operating agency's (SCDDSN) quality management processes to ensure compliance. The QIO conducts validation reviews of a representative sample of initial level of care determinations performed by the operating agency (SCDDSN) and all adverse level of care determinations for all waivers operated by SCDDSN. The additional contracted entity provides specific quality management tasks like provider agency operational audits. SCDHHS Quality Assurance (QA) staff review all critical incident reports, ANE reports, results of QIO provider reviews, and receive licensing/certification reviews upon completion and any received participant complaints. SCDHHS QA staff conduct periodic quality assurance reviews that focus on the CMS quality assurance indicators, performance measures, financial expenditures, and appropriateness of services based on assessed needs. In addition, SCDHHS QA staff perform look-behind reviews of the SCDDSN QIO reports to ensure appropriateness of findings and the return of Federal

Financial Participation (FFP) as warranted. SCDHHS QA staff also utilize other systems such as Medicaid Management Information Systems (MMIS) and Truven Analytics Healthcare to monitor quality and compliance with waiver standards. SCDHHS also utilizes its Division of Program Integrity, who works cooperatively with QA and Waiver staff, to investigate complaints and allegations of suspected abuse or fraud that may impact the system. Program Integrity also maintains a good working relationship with the Medicaid Fraud Control Unit at the Attorney General's office to investigate suspected fraud or initiate criminal investigations. To ensure compliance of quality and general operating effectiveness, SCDHHS will conduct a review of the Operating Agency (SCDDSN).

SCDDSN contracts with an independent Quality Improvement Organization (QIO) to conduct assessments of service providers by making on-site visits as a part of its quality assurance process. Providers are reviewed at least annually to every 18 months. This includes on-site visits to Day (non-residential) settings and residential settings. During these visits, records are reviewed, participants and staff are interviewed, and observations made to ensure that services are being implemented as planned and based on the participant's need, and that they comply with contract and/or funding requirements and best practices. SCDDSN plans to incorporate elements of the two assessment tools (Day and Residential) used in the independent site visits into their provider assessment so that the new HCBS requirements are captured as part of this regular review process by the QIO.

SCDDSN also utilizes the independent QIO to complete annual Licensing Inspections for all Day Programs and certain residential settings (CTH Is, CTH IIs, and SLP IIs) contracted for operation by the agency. Any Community Residential Care Facilities (CRCF's) are reviewed for licensing inspections by the South Carolina Department of Health and Environmental Control (SCDHEC). Many of the current licensing standards for SCDDSN include the HCBS settings requirements. Other HCBS requirements for settings will be included in the quality assurance process as noted above.

As a policy and resource to provider agencies, SCDDSN has developed an Agency Directive 567-01-DD to address Employee Orientation, Pre-service and Annual Training Requirements. This directive covers all staff in provider organizations and ensures the philosophy and practical application of HCBS principles are present at each service location. Compliance with this directive is measured by the independent QIO through SCDDSN's Contract Compliance Review Process.

SCDDSN recognizes that the quality of the services provided is dependent upon well-trained staff. It is the intent of this directive to establish the required minimum level of staff competency so that those who support individuals with disabilities acquire the knowledge, skills and sensitivity to meet the needs of those individuals, consistent with the mission and vision of SCDDSN. SCDDSN has included requirements for person-centered, community based services within the context of various training modules and on-going training and technical assistance available to provider agencies.

Staff whose job descriptions indicate the duty of working directly with individuals who receive services shall be trained according to the minimum requirements set forth in the Directive. Competency will be demonstrated by a combination of written tests and skills checks. All staff are also required to receive a minimum of an additional ten (10) hours of job-related

training annually, which will continue to focus quality service delivery. Professional staff meetings, workshops and conferences related to job functions may be considered in meeting this requirement.

As mentioned above, providers of HCB Services will be subject to Contract Compliance Reviews and Licensing Reviews by SCDDSN's contracted QIO. Employee training is a specific component within the Provider agency's Administrative Review. Key Indicators target training for Residential, Day Service, Respite, and Case Management Staff. As a quality improvement strategy, SCDDSN has developed a checklist for providers to use to ensure staff training requirements for new employees and for annual/ on-going training. In addition, provider funding may be recouped if the employees do not meet minimum training requirements.

SCDDSN monitors the results of the QIO's reports as they are completed (approximately 30 days after the review date) to monitor overall compliance with quality assurance measures and to ensure appropriate remediation. Any deficiencies found with the provider's compliance will require a written Plan of Correction that addresses the deficiency both individually and systemically. This includes any deficiencies related to the new HCBS standards. A follow-up review will be conducted approximately 6 to 8 months after the original review to ensure successful remediation and implementation of the plan of correction. SCDHHS reviews the submitted results of DDSN QIO quality assurance review activities throughout the year.

SCDDSN also monitors the QIO reports of findings to identify larger system-wide issues that require training and/or technical assistance. The additional review is also completed in an effort to analyze trends that require remediation in policy or standards. Any issues noted are communicated through the provider network in an effort to provide corrective action and reduce overall citations. These issues are addressed through periodic counterpart meetings with SCDDSN personnel and representatives of Provider Associations. After much collaboration and the opportunity for public comment, policy revisions are implemented as needed. Current and proposed SCDDSN Directives and Standards are available to the public for review at any time on the SCDDSN Web-site at [www.ddsn.sc.gov/aboutddsn](http://www.ddsn.sc.gov/aboutddsn).

It is through the SCDHHS QA process, SCDDSN service provider assessment process and the annual licensing inspection process that day and residential settings' ongoing compliance with HCBS standards will be monitored.

## **5. Heightened Scrutiny**

Heightened scrutiny is the process of identifying settings that are presumed to have the characteristics of an institution and therefore are subject to more intense review (scrutiny) by the state. Using the criteria in 42 CFR 441.301(c)(5), SCDHHS will gather data on settings to determine whether the settings have home and community-based qualities. SCDHHS named this process the "HCB Settings Quality Review." After completing this review, the state will then determine if any of the settings will be submitted to CMS for final heightened scrutiny review.

## 5.1 HCB Settings Quality Review Process

SCDHHS has undertaken the following actions to identify settings that may need to go through the HCB Settings Quality Review process:

- Initial C5 Heightened Scrutiny Assessment
- C4 Individual Facilities/Settings Self-Assessment
- Geocode Data generation
- Consultation with Technical Assistance Collaborative (TAC), Inc.
- Public Input

The criteria that SCDHHS will use to determine which settings will be subject to the settings quality review includes the following:

- Does the setting have institutional characteristics as defined in 42 CFR 441.301(c)(5)(v)?
- Are there geographic location concerns that indicate potential clustering of settings or isolation from the community?
- Are there programmatic characteristics of settings that may have the effect of isolating individuals?
- Outcomes of the five (5) processes listed above

## 5.2 Initial C5 Heightened Scrutiny Assessment

This assessment was designed to gather initial data to assist SCDHHS in determining if any settings might be subject to the heightened scrutiny process detailed in 42 CFR 441.301(c)(5)(v).

Providers self-reported if any of the settings they own or operate have the following qualities:

- Are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Are in a building on the grounds of, or immediately adjacent to, a public institution;
- Has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

**5.2.1 Development of the assessment tools and criteria.** The assessment tool questions utilized the criteria directly from 42 CFR 441.301(c)(5). Providers listed the physical addresses of each facility they own/operate and answered a questionnaire to see if they would be subjected to heightened scrutiny. A letter with directions on how to complete the online assessment was mailed to providers. Providers were directed to review the CMS technical guidance on settings that have an effect of isolating individuals to assist in their answers to the assessment.

**5.2.2 Resources to conduct assessments.** Resources to conduct the assessments came from SCDHHS personnel and financial resources as well as individual provider personnel and financial resources.

**5.2.3 Timeframe to conduct assessments.** The “C5” (heightened scrutiny) assessment was mailed out the week of Nov. 3, 2014. Providers only completed one assessment to list each facility they own/operate. Providers had until Dec. 1, 2014, to complete the “C5” assessment and return it to SCDHHS. That was approximately 26 calendar days.

**5.2.4 Assessment review.** SCDHHS reviewed the initial data gathered from the “C5” assessments to prioritize site visits for any provider who self-reported that they may need to go through the formal heightened scrutiny process (SCDHHS HCB Settings Quality Review).

It became apparent during the collection of data and while communicating with the providers that SCDHHS was overly broad in its determination to send assessments to all providers. The following provider types do not have home and community-based settings to assess by the nature of the services provided:

- Early Intensive Behavior Intervention (EIBI) providers,
- Early Interventionists,
- Applied Behavior Analysis (ABA) therapy providers, and
- CRCF providers who do *not* serve HCBS waiver participants.

The C5 assessment data does not include any of the providers listed above. *Aggregate data results are provided in Outcomes section below.*

**5.2.5 Outcomes.** Providers completed the “C5” assessment based on their own interpretation of the regulations and materials provided by CMS on the settings that have the effect of isolating individuals. Actual compliance or non-compliance with 42 C.F.R. 441.301(c)(5) will be determined by SCDHHS or CMS.

**Initial C5 Initial Assessment Results**

<b>Setting Type</b>	<b># Settings Assessed</b>	<b>May be Subject to C5 Process</b>
ADHC	43	4
AAC	55	9
WAC	32	3
Workshop	6	2
CLOUD*	7	0
CRCF	43	3
CTH I	98	0
CTH II	619	5
SLP I	88	0
SLP II	74	2
<b>Total #</b>	<b>1065</b>	<b>28</b>

*\*Customized Living Options Uniquely Designed – now CIRS; residential pilot project for individuals with disabilities that may be utilized by waiver participants*

- Provider Response: 67.46%
- Total Providers: 126
- Providers who responded: 85
- Providers who did not respond: 41

Although there was not 100% provider participation in completing the Initial C5 Heightened Scrutiny Assessment, the same questions were included as part of the C4 Individual Facilities/Settings Assessment in which there was 100% provider participation.

**5.3 C4 Individual Facilities/Settings Self-Assessment**

This self-assessment asked providers a series of questions that looked at the physical qualities of the setting and programmatic qualities of the setting. This was for all non-residential and

residential settings. The details of this self-assessment process begin on page 35. The assessments can be found in [Appendix C and Appendix D](#).

The results of the self-assessment that indicate physical or programmatic characteristics that may isolate waiver participants were used to determine if the setting should be placed under the HCB Settings Quality Review process. These identified settings will go through the HCB Settings Quality Review process that will take place concurrently with the independent site visits.

#### **5.4 Geocode Data generation**

SCDHHS had the [Division of Medicaid Policy Research](#) in the Institute of Families and Society at the University of South Carolina complete a geocode analysis of the physical locations of all HCB settings within South Carolina. This data has broken down the proximity of each setting to public and private institutions and other HCB settings. It shows generally where HCB settings are located in comparison to the broader community of each town. The information gathered from this project will be used to determine if there are geographic location concerns that indicate potential clustering of settings or isolation from the community. These settings will be included in the HCB Settings Quality Review.

#### **5.5 Consultation with Technical Assistance Collaborative (TAC), Inc.**

Through the procurement process, SCDHHS selected TAC, Inc. to review South Carolina's HCBS residential programs.<sup>14</sup> TAC, Inc. conducted selected site visits around the state to get a general overview of what the waiver residential program looks like. Setting types visited included CRCFs, SLP IIs, and CTH IIs. TAC, Inc. furnished a report to SCDHHS in November 2015 with its findings. That report is included with this plan as [Appendix I](#). The results from that report include identifying characteristics of residential settings that may not comport with the HCB standards. That information will be used to inform SCDHHS of any residential settings that should be placed under HCB Quality Settings Review because they display those characteristics.

#### **5.6 Public Input**

SCDHHS sought public input in the fall of 2015 on settings that might be subject to the heightened scrutiny process. Public notice was sent out on October 30, 2015 informing the public about SCDHHS HCB Settings Quality Review process. The public comment period was from November 2, 2015, to December 31, 2015. The public notice was communicated in the following ways:

- Posted on the SCDHHS HCBS website: <https://msp.scdhhs.gov/hcbs/site-page/hcb-settings-quality-review>
- Posted on the SCDHHS website: <https://www.scdhhs.gov/public-notice/home-and-community-based-services-hcbs-final-rule-heightened-study-scdhhs-seeks>
- Email sent via the SCDHHS listserv on November 3, 2015
- Individual emails sent to the HCBS Workgroup, providers, advocate groups, and other stakeholders on November 3, 2015

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<sup>14</sup>TAC, Inc. was awarded a solicitation for consulting services on supportive housing and HCBS review April 2015.

Additionally, a live webinar was held on November 18, 2015, to explain to the public what SCDHHS was looking for in this public input process. The webinar was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website: <http://www.familyconnectionsc.org/webinars>

Information provided through this public input was reviewed for inclusion on the independent site visits that will occur beginning in 2016.

## **5.7 HCB Settings Quality Review Next Steps**

**5.7.1. HCB Settings Quality Review – Criteria.** SCDHHS is using all of the above information to inform which settings will need to go through the HCB Settings Quality Review. After individual settings, residential and non-residential, have been identified to be included in the HCB Settings Quality Review process, they will be instructed to submit the following evidence to SCDHHS for review:

- License from applicable licensing agency
- Zoning information of surrounding area
- Description of how the program or setting helps individuals access community settings used by individuals not receiving Medicaid waiver services
- Documentation of training for staff employed in the setting that indicate training or certification in home and community-based services
- Documentation of training for staff employed in the setting that indicate training or certification in person-centered thinking and/or planning
- Documentation of how individuals' schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.)
- Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided where public transportation is limited
- Pictures of the site and other demonstrable evidence (taking in consideration the individual's right to privacy)
- Any other evidence the provider thinks will show the setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.

For residential HCB settings, the following additional evidence must be submitted:

- Documentation that the setting complies with the requirements for provider owned or controlled settings at §441.301(c)(4)(vi)A through D:
  - Legally enforceable agreement between the provider and resident with:
    - same responsibilities and protections from eviction that tenants have under landlord/tenant law; OR
    - If tenant laws don't apply, the state must ensure written agreement is in place that addresses eviction appeals.
  - Provides an individual privacy in their sleeping/living unit
  - Entrance doors lockable by individual with only appropriate staff having keys

- Individuals have a choice of roommate, if have to share
- Individuals have the freedom to furnish and decorate their sleeping/living units
- Individuals have the freedom and support to control their own schedules/activities
- Individuals have the freedom to have access to food at any time
- Individuals are able to have visitors, of their choosing, at any time.
- Physically accessible to individuals.

**5.7.2 Site visits.** One part of the review process consists of a site visit to the setting under review utilizing the refined and revised C4 settings assessment. Interviews with waiver participants who utilize the setting will also be conducted. Additionally, SCDHHS will ask the provider of the setting to produce evidence that the setting *does not* have institutional qualities and either *does* meet or *could* meet, with corrective action, the HCB settings requirements. The evidence is outlined above and detailed at <https://msp.scdhhs.gov/hcbs/site-page/hcb-settings-review>.

**5.7.3 Heightened Scrutiny Determination.** Once the site visits are completed and all documentation, evidence and other data gathered are reviewed, SCDHHS will review all of the provided information to determine if the setting is one of the following:

1. Institutional and can no longer provide HCB services. This setting will not be sent to CMS for heightened scrutiny review.
2. Is not institutional and is home and community-based. This setting may need some corrective action to be fully compliant, but will go through the transition period.
3. Is presumed institutional, but is home and community based and will therefore be sent to CMS for final Heightened Scrutiny review.

For any setting that SCDHHS determines is subject to heightened scrutiny by CMS, SCDHHS will request that the provider produce evidence (if they have not already done so) that the setting does not have institutional qualities and does meet the HCB settings requirements. If the setting is home and community-based but requires some compliance action before it fully meets the HCB requirements, SCDHHS will work with the provider of that setting to ensure that corrective action is taken to meet the HCB requirements before submitting the setting to CMS for final Heightened Scrutiny review. The evidence will be reviewed by SCDHHS and may be made available for public comment.

Once SCDHHS has made its heightened scrutiny determinations, it will solicit an outside review of those determinations by advocacy groups. They will be provided with the regulatory language, applicable CMS guidance, information on the HCB Settings Quality Review process, and all documentation for each setting to evaluate SCDHHS findings. That feedback will be utilized to further refine SCDHHS heightened scrutiny submission to CMS.

**5.7.4 Public notice and comment.** After the determinations are made, SCDHHS will publish a list of settings it has identified as presumed institutional, but is a home and community-based setting, for public review and comment in the amended Statewide Transition Plan that will be submitted to CMS per CMS guidance. SCDHHS anticipates submission of a heightened scrutiny list of any Adult Day Health Care (ADHC) settings to CMS for review by October 27, 2017. The heightened scrutiny list of any Day Services facilities or Residential Habilitation settings will be submitted to CMS by December 29, 2017. SCDHHS will solicit comments from the public, including beneficiaries and/or personal representatives of

beneficiaries, as to the qualities of each of these settings. The public will be able to suggest the addition of any setting to the list if a member of the public determines it may meet the definition of a setting that has institutional qualities that isolate individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. SCDHHS will conduct a site visit on any setting that is on the list. SCDHHS will take public comment under consideration, but ultimately any determination as to what settings SCDHHS will submit to CMS for its review, what settings will not need to be submitted to CMS for review, and what settings will no longer be able to provide HCBS after March 17, 2019, will be made by SCDHHS.

**5.7.5 Submission to CMS for Heightened Scrutiny Review.** After the public notice and comment period on the Statewide Transition Plan with the included list of settings subject to heightened scrutiny, SCDHHS will submit a final list of settings for CMS Heightened Scrutiny Review.

For any setting that is not home and community-based and remedial actions are not sufficient enough to make the setting compliant with the home and community-based regulations, appropriate action will be taken by SCDHHS to insure continuity of care for any current waiver participants' receiving home and community-based services in this setting. Procedures for participant relocation will be followed as outlined in the "Relocation of Waiver participants" section above (page 41).

### **Conclusion**

If you have any comments or questions about this STP, or would like to obtain a copy of any of the documents mentioned in this STP, please contact Dr. Kelly Eifert, at:

[kelly.eifert@scdhhs.gov](mailto:kelly.eifert@scdhhs.gov)

or

Long Term Care and Behavioral Health

ATTN: Kelly Eifert, Ph.D.

South Carolina Department Health and Human Services

P.O. Box 8206

Columbia, South Carolina 29202-8206

## **Appendix A-1**

### **Summary of the Public Meetings and Comments for the South Carolina Department of Health and Human Services HCBS Statewide Transition Plan**

South Carolina Department of Health and Human Services (SCDHHS) held four public meetings in the following South Carolina cities:

- Nov. 13, 2014                      Florence, SC
- Nov. 18, 2014                      Greenville, SC
- Dec. 2, 2104                        Charleston, SC
- Dec. 4, 2014                        Columbia, SC

An online webinar was also held on Nov. 19, 2014. It was recorded and posted online at: [familyconnectionsc.org/webinars](http://familyconnectionsc.org/webinars). A transcript of the webinar was made available for later viewing during the public comment period.

These meetings provided information about the state's HCBS Statewide Transition plan and created an opportunity for the public to comment on the plan. The public was provided the proposed information prior to the meetings, and the proposed Statewide Transition Plan was posted online for public viewing and comment. The public was also provided the opportunity to submit comments through the mail and/or comment section on the SCDHHS HCBS website.

### **South Carolina Department of Health and Human Services HCBS Statewide Transition Plan**

Per 42 CFR 441.301 (c)(6)(ii)(A), the state is submitting a Statewide Transition Plan to detail how South Carolina will come into compliance with the new home and community-based (HCB) settings requirements.

The following is a summary of the actions identified in the Statewide Transition Plan:

#### **Assessment of System-Wide Regulations, Policies, Procedures, Licensing Standards and Other Regulations**

- A list of regulations, policies, procedures, licensing standards and other regulations that directly impact home and community-based settings will be compiled.
- They will be read and reviewed to determine that the laws, regulations, etc. are not a barrier to the settings standards outlined in the HCBS Rule.
- Changes will be pursued as appropriate for any regulations, policies, etc. that do not meet the HCBS settings requirements outlined in the CFR.

#### **Assessment of Settings**

- Identification of all Home and Community-Based settings.
- Identification of any HCB settings that might be subject to the heightened scrutiny process.
- Distribution of self-assessment tool to providers for completion.
- Review of individual self-assessments; based on the results SCDHHS will provide individualized responses to providers on each setting.

- Site visits of HCBS settings will be conducted by SCDHHS after self-assessments are completed.
- Action Plans will be developed by providers and be approved by SCDHHS to bring settings into compliance with the HCBS rule.

### **Communication and Outreach**

- Provide several methods of communication with the public regarding general information on the HCBS Rule and Statewide Transition Plan.
- Provide public notice and comment on the Statewide Transition Plan (details below).

42 CFR 441.301 (c)(6)(iv)(B) directs the state to submit with the Statewide Transition Plan a summary of the comments received during the public notice period.

## **Summary of comments and clarifications February 2015**

### 1. Systems Policies and Assessments

#### **Comments/Questions**

- Is there a list of the laws compiled yet that impacts HCBS rules, settings available on the DHHS site?
  - *No, but a summary of the review, which includes the laws and regulations reviewed, will be included in the Statewide Transition Plan. This will be posted on the SCDHHS website and the SCDHHS HCBS website.*
- The transition plan should include a timeline for SCDHHS to develop a comprehensive oversight process to ensure compliance with the Final Rule.
  - *Oversight of compliance will be incorporated into existing oversight structures as these HCB standards will be the “new norm”. That timeline for policy revision is included in the plan.*

### 2. Facilities and Assessments

#### **Comments/Questions**

- Provider assessments are coming out in January?
  - *Yes, we still anticipate January. We will post information on the HCBS website and contact providers directly, which is included in the plan.*
- Providers complete the self-assessment and then it takes about 18 months for SCDHHS to review it, is that right?
  - *That is the anticipated time frame for review, including a site visit, which is included in the plan.*
- C4 assessments are for day facilities, right?
  - *The C4 assessment is for all home and community-based settings, day and residential, as specified in the plan.*
- Is the result of the review made public?
  - *We will not publish individual assessment outcomes. It may be provided in aggregate data to CMS indicating how many settings are compliant, how many may become compliant, and how many may not be able to be compliant.*
- What about enforcement by 2019?

- *After March 17, 2019, only providers who are fully compliant with the HCBS rule will be able to provide home and community-based services.*
- In addition to SCDHHS assessments of existing facilities and services, SCDHHS should contract for trained external reviewers who can assess the opportunities for interaction outside the facility or program. While self-assessment is a valuable first step in prioritizing assessments, all programs and facilities should be reviewed by an independent assessor.
  - *We appreciate the commenter's suggestion. As we move forward through the assessment and transition period, SCDHHS will explore contracting outside/independent reviewers to assess opportunities for interaction outside the facility or program.*
- Will adult day health care be included with the HCBS changes?
  - *Yes, they are listed as a setting type in the plan.*
- On page 2 of the Statewide Transition Plan, item A. 2 (b) lists Adult Day Health Centers as serving frail elderly and people with physical disabilities which is not exactly correct. In some communities the adult day health centers are serving people with intellectual disabilities, but who have no physical disability.
  - *The descriptor was meant to define the primary population served, not the only population served.*
- If day programs are not meeting the new standards, will SCDHHS work with them?
  - *Yes, SCDHHS will provide feedback on the self-assessments and the site visit results along with providing guidance on action plan development. This is noted in the plan.*
- In day programs, we want our people out in the community, yes, but some of them require total care and where will these clients fit?
  - *Each individual has a person-centered service plan which reflects their individual needs and goals when it comes to choosing appropriate services.*
- The day programs have a big imbalance. If you want to work in an integrated work setting, you won't be picked up and taken to work. There is transportation to day programs only.
  - *We appreciate this comment and SCDHHS is actively engaging with providers and stakeholders on this issue.*
- Day program availability is an issue. Is there any plan for increasing the capacity in day programs?
  - *We appreciate this comment and SCDHHS is actively engaging with providers and stakeholders on this issue.*
- Is there a Best Practices Guide regarding Day Services that has been developed since it was mentioned that South Carolina is looking at what other states have done?
  - *Currently there is not a guide but information is being collected from other states.*
- Will some service arrays for day services be different or change, like respite?
  - *It is possible that service arrays may change.*
- Several questions were asked regarding the addition of beds/residential facilities for people with intellectual disabilities and with physical disabilities. It is needed; when will it happen?
  - *We appreciate this comment and SCDHHS is actively engaging with providers and stakeholders on this issue.*
- A few questions were asked about some of the group homes that are larger. Given the intent of the CMS regulations, is there a need to reduce or modify them to comply? Are we ensuring qualities of home life is achieved?

- *The C4 self-assessment will be the best tool to determine the need to change the size of the setting and make accommodations for the current residents if needed.*
- The transition plan should have a timeline to develop smaller scale settings than the four bedroom group home that has been the model for many years.
  - *We appreciate the commenter's suggestion. SCDHHS has contracted with the Technical Assistance Collaborative to assist the state in developing a strategic plan to create and enhance housing options in the state.*
- The transition plan should have a short deadline for development of appropriate language to comply with the requirement for a legally-enforceable tenancy agreement.
  - *We appreciate the commenter's suggestion. Where providers may not have legally-enforceable tenancy agreements in place (based on assessment and other information gathered), that feedback and direction will be given to providers in their feedback from SCDHHS. Deadlines will be a part of a provider's action plan for correction.*
- Integration in the community should mean that these individuals have meaningful choice of other housing at the same age as other young adults. The transition plan does not include consideration of this issue.
  - *We appreciate the commenter's suggestion. SCDHHS has contracted with the Technical Assistance Collaborative to assist the state in developing a strategic plan to create and enhance housing options in the state.*
- The goal of the five year plan was to open beds at regional centers, right? This would mean respite was decreased over time with beds but this will actually increase, right?
  - *There was a goal to expand residential services, but not related to the regional centers.*
- What is the plan to de-bed state run facilities (institutions) across all populations?
  - *That has not been a focus in developing this transition plan.*
- How does the CMS Rule apply to institutional regional services?
  - *It doesn't apply to the institutional population.*

### 3. Person-centered Planning/Conflict-Free Case Management

*Please note that while the Statewide Transition Plan only focuses on HCB settings, policies, and public notice, the State received several comments on this topic and wanted to include them here.*

#### Comments/Questions

- How are we determining that Freedom of Choice is provided and understood?
  - *This will most likely be addressed through proper training for case managers and education for beneficiaries and families.*
- Most importantly, Person Centered Planning should be the basis of all plans. Supported Decision Making needs to be at the heart of this as well.
- I know much of the emphasis is on environmental issues pertaining to the physical layout of programs. I know the idea of smaller group settings is something to strive for, but the financial resources to do some of the necessary changes may be huge and difficult to achieve. I would suggest that a key focus needs to be on the issue of choice and promoting individualized services. Even in larger group settings choice and individualized services can be achieved. I don't want to see us (providers) using environmental factors as an excuse for not promoting the person centered services. Please make sure that you strengthen the notion of choice and individualized services in your plan.

- *We agree with the emphasis on choice for beneficiaries and will make sure to address it as SCDHHS works to examine all aspects of coming into compliance with the HCBS rule.*
- The transition plan should include development of protocols for the person-centered plan and criteria for individuals who provide the assessments used in developing the plan. It should include a timeline for training participants and providers about the goals of the Final Rule and the person-centered planning process.
  - *The guidelines regarding the waiver transition plans indicate that they must only address the HCBS rule settings requirements and how those will be assessed and brought into compliance. We do appreciate the commenter's suggestion and will take it under advisement as SCDHHS works to examine all aspects of coming into compliance with the HCBS rule.*
- As part of the transition plan to improve meaningful choice for participants, P&A suggests review of the National Core Indicators Data on choice of home and work.
  - *This review will be part of SCDHHS' work to examine all aspects of coming into compliance with the HCBS rule.*
- The transition plan should include a process to clarify the appeals process for applicants and recipients of SCDDSN services and members of HMOs. SCDHHS should amend its fair hearing regulation to clarify what it covers and provide an adequate cadre of professional hearing officers to ensure thorough, fair and expeditious review of all decisions affecting Medicaid recipients.
  - *Review of all processes related to HCB services will be part of the system assessment of policies as addressed in the plan.*
- How much influence/impact will families have in this new Person-centered planning world if the beneficiary wants something else?
  - *The case manager acts as a mediator to resolve disputes in those instances.*
- Please explain conflict free case management.
  - *To separate service coordination from the same entity that provides services to promote and ensure freedom of choice for the beneficiary.*
- For conflict-free case management, what does the transition plan look like? Do individual providers or the state have to deal?
  - *Yes, it will be part of SCDHHS' work to examine all aspects of coming into compliance with the HCBS rule.*
- Are we looking at other service arenas where conflict free case management already exists?
  - *Yes.*
- Do you have a vision for Conflict Free Case Management?
  - *It is being developed. There will be a sub-group created to review what we do now and what other states are doing, and to develop some potential models.*
- Will case manager positions be cut?
  - *It is unclear at this time, but SCDHHS' ultimate goal is to provide conflict free case management in compliance with the HCBS standards.*

#### 4. Other comments

##### **Comments/Questions**

- What does this mean to families? Will services change? Will they lose their waiver?

- *Services should only change to be compliant with the new standards, which seek to improve services. No one should lose their waiver; this is not the intent.*
- How will this affect other waiver services?
  - *Any providers of waiver services will have to comply with the new standards by March 17, 2019.*
- Will these changes hold up the people getting the services?
  - *No, SCDHHS does not anticipate any disruption in services to beneficiaries.*
- Is there something or somewhere I can comment here on this web site?
  - *Yes, online comments can be made at: <https://msp.scdhhs.gov/hcbs/webform/comments-questions>.*
- What do you want from those attending the public meeting and those in the DSN community? What do you need in terms of the Final Rule?
  - *We need ideas from the community and we need everyone to be open to new ideas that are coming as a result of the HCBS requirements. Implementing these new standards will require input from community and flexibility in changes to services. We would like everyone to stay connected to the process and assessments as they happen.*
- What are we doing with the community and how they treat people with disabilities?
  - *This will be part of SCDHHS' work to examine all aspects of coming into compliance with the HCBS rule and working with advocates and partner agencies.*
- What about the safety factor for the disabled being integrated into the community?
  - *Safety is part of the service plan and specific to the individual and would be part of the person-centered planning process.*
- Is there a time frame for potential changes to the service area?
  - *For the HCBS Rule, the deadline is by March 2019.*
- Would 1915(i) help increase capacity?
  - *It may once it is available.*
- What happens to DSN Boards and their roles?
  - *DSN Boards will continue to provide services as they transition to compliance with the new standards.*
- How is the CMS Rule going to help get more providers, especially in places where there are not a lot of options currently?
  - *That is unclear. We must make this field more attractive and get more quality providers trained.*
- Does the plan for self-assessment that is going out in January mention anything about increases in the cost of care due to criteria?
  - *It doesn't address that specific question.*
- If there is an increased expectation of services, there may be an increase in the cost of providing the service.
  - *Yes, the self-assessments will be important to help us determine the potential financial impact.*
- What is the additional burden and impact on providers?
  - *We want beneficiaries' needs met and services and settings brought up to standard. All providers will self-assess which may help better determine the burden and/or impact to providers.*

- Are there currently programs, supports and/or dollars to hire and encourage businesses to hire individuals with disabilities?
  - *There are some federal incentives for businesses where a certain percentage of employees have disabilities. SC Vocational Rehabilitation Department also deals directly in this area.*
- What about employment issues? Small towns don't employ people with disabilities.
  - *We appreciate this comment and SCDHHS is actively engaging stakeholders on this issue.*
- Are there states where Vocational Rehabilitation offers incentives and/or contributes to help in finding employment?
  - *SCDHHS is meeting with SC Vocational Rehabilitation to determine how both agencies can work together on this issue.*
- Jobs in the community may pay less than what people make in the day center. Will people be forced to give up their center job?
  - *No, it is about personal choice.*
- SCDHHS should increase coordination with the Vocational Rehabilitation Department to increase training and employment opportunities outside the DSN Board framework. SCDHHS should work with the Governor's office to implement the National Governors' Association employment initiative.
  - *This work may be part of SCDHHS' work to examine all aspects of coming into compliance with the HCBS rule.*
- We moved here from Pennsylvania. There, working with our OVR was important. They could get job supports through a waiver with DSN. Transportation is an issue. Here public transportation is slim. How do we address these issues?
  - *Transportation in this state is an issue. SCDHHS is actively engaging providers and stakeholders on this issue.*
- Protection and Advocacy (P & A) strongly supports this initiative and the expanded inclusiveness of individuals with disabilities. However, they would like to see external assessments of the facilities in addition to the self-assessments. Also, they support meaningful choices for individuals once school is completed. They would like to involve others besides SCDDSN and SCDHHS to help move in right direction. Vocational Rehab was mentioned as one agency to help better support these endeavors. They would like to see continued oversight to insure best practices and noted that abuse and neglect was easier to spot when individuals were institutionalized. It is harder to spot when individuals are spread out in homes, etc. This needs to be monitored closely. P & A appreciates SCDHHS moving South Carolina forward in these areas.
- The transition plan should include a strategy to gather information about the availability of community programs which could be modified to include waiver participants.
  - *We appreciate the commenter's suggestion and will take it under advisement as we move forward through the assessment period.*
- The transition plan should address the need for SCDHHS to work with SCDHEC and other members of the Adult Protection Coordinating Council to assess the need for changes in the system for investigating abuse/neglect/exploitation of vulnerable adults. Data from SLED show that many cases occur in CTH IIs. As individuals move into smaller facilities there will be a need to determine the best way to protect them. P&A believes that procedures to protect individuals in the community are an essential part of person-centered planning and SCDHHS

quality control. The transition plan should also consider development of an adult abuse registry as a means of protecting waiver participants.

- *Review of all processes related to HCB services will be part of the system assessment of policies.*
- There were comments on how SCDHHS needs to look at how we can share resources between agencies.

## **5. Response**

The guidelines regarding the Statewide Transition Plan indicate that it must only address the HCBS rule settings requirements and how those will be assessed and brought into compliance. Many individual responses have been provided above that note what was included as part of the Statewide Transition Plan. Other comments will be taken under advisement as SCDHHS works to examine all aspects of coming into compliance with the HCBS rule.

**Appendix A-2**  
**Summary of the Public Notice and Comments for the**  
**South Carolina Department of Health and Human Services**  
**HCBS Statewide Transition Plan**

South Carolina Department of Health and Human Services (SCDHHS) provided the following public notice for the revised South Carolina HCBS Statewide Transition Plan:

- Advertisement in The State newspaper, Feb. 23, 2016
- Advertisement in The Post and Courier, Feb. 24, 2016
- Advertisement in The Greenville News, Feb. 23, 2016
- Online webinar on Feb. 24, 2016. It was recorded and posted online at: [familyconnectionsc.org/webinars](http://familyconnectionsc.org/webinars). A transcript of the webinar was made available for later viewing during the public comment period.
- On the [SCDHHS HCBS website](#)
- On the SCDHHS website under [“Public Notice”](#)
- On the [SCDDSN website](#)
- On the [Family Connections website](#)
- On the [Able South Carolina website](#)
- On the [SC Developmental Disabilities Council website](#)
- On the [AARP South Carolina website](#)
- On the [Protection & Advocacy \(SC\) website](#)
- Sent out via the SCDHHS listserv
- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all [Healthy Connections Medicaid County Offices](#)
- Available in print form at all Community Long Term Care (CLTC) Regional Offices

The revised Statewide Transition Plan was posted online for public viewing and comment. The public was also provided the opportunity to submit comments through the mail and/or comment section on the SCDHHS HCBS website.

**South Carolina Department of Health and Human Services**  
**HCBS Statewide Transition Plan**

The South Carolina Department of Health and Human Services (SCDHHS) gives notice that the revised draft Statewide Transition Plan, required per Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Rule (42 CFR 441.301(c)(6)), is available for public review and comment. The revised South Carolina Statewide Transition Plan will be submitted on March 31, 2016. It will be effective upon CMS approval.

The following is a summary of the revisions made in the draft Statewide Transition Plan (originally submitted Feb. 26, 2015):

### **Communication and outreach**

- Update provided on this public notice and comment period for the Feb. 24, 2016, draft of the Statewide Transition Plan (page 5).

### **Assessment of system-wide regulations, policies, procedures, licensing standards and other regulations**

- Laws, regulations and licensing standards for Pediatric Medical Day Care settings were added and reviewed as they are a setting in the Medically Complex Children's waiver (page 10).
- Residential setting self-assessment was moved to this section as the self-assessment was a policy review by setting type and not by individual setting (page 7).
- Under "Outcomes of System-wide review," the identified policy in #7 for waiver participants traveling out of state was identified in SCDHHS policy in addition to SCDDSN policy (page 13).
- "Outcomes of Residential Systemic review" added on page 13.
- "Actions to bring the System into Compliance" has been expanded to provide greater detail on immediate compliance actions (page 14).
- "Actions to bring the Residential System into Compliance" added on page 16.
- "Ongoing Compliance of System" has been expanded to provide greater detail on ongoing compliance actions (page 16).
- "Ongoing Compliance of Residential System" added on page 17.

### **Assessment of settings**

- In the identification of settings, differentiated between Community Residential Care Facilities (CRCFs) that contract with SCDDSN to provide residential habilitation and those CRCFs that do not (page 18).
- Added the Pediatric Medical Day Care setting (page 19).
- Updated the timeframe for when individual site visits will occur (page 20).
- Under "Outcomes," updated the number of settings, by setting type, estimated to fall into each of the HCBS Compliance Categories (tables, pages 21 and 22).
- "Actions for Facilities Deemed not in Compliance" has been expanded to provide greater detail on immediate compliance actions (page 22).
- "Actions for Facilities Deemed not in Compliance" includes a section on "Relocation of Waiver Participants" (page 23).
- "Ongoing Compliance" has been expanded to provide greater detail on ongoing compliance actions for HCBS settings (page 25).

### **Heightened Scrutiny**

- This section was pulled out of the "Assessment of settings" section and given much more detail on what this process will look like for providers with settings subject to heightened scrutiny. It begins on page 27.

## **South Carolina Home and Community-Based Services Statewide Transition Plan Timeline**

- The timeline was updated to reflect the changes and additions listed above along with updated dates (page 32).

### **Overall revisions**

- The following appendices were added:
  - Systemic Review Spreadsheet (Appendix B)
  - C4 Day (non-residential) Setting HCBS Self-Assessment (Appendix C)
  - C4 Residential Setting HCBS Self-Assessment (Appendix D)
  - Non-residential self-assessment Global Analysis (Appendix E)
  - Residential self-assessment Global Analysis (Appendix F)
  - Relocation Guidelines: Community Residential Care Facility (CRCF) Residents (Appendix G)
  - Admissions/Discharges/Transfer of Individuals to/from SCDDSN-Funded Community Residential Settings (Appendix H)

42 CFR 441.301 (c)(6)(iv)(B) directs the state to submit with the Statewide Transition Plan a summary of the comments received during the public notice period.

### **Summary of comments and clarifications February 2016**

SCDHHS received a total of 10 public comments, six (6) submitted via mail and four (4) submitted during the webinar. Each comment and response is provided below.

#### 1. Systems Policies and Assessments

##### **Comments/Questions**

- As part of assessing whether vocational services are provided in a community-based environment, DHHS should review any agreements with the Vocational Rehabilitation Department in order to increase training and employment opportunities outside the DSN Board framework.
  - *We appreciate the commenter's suggestion and staff at SCDHHS will review the relationship with Vocational Rehabilitation for opportunities to increase training and employment services for waiver beneficiaries.*
- (Webinar) How is DDSN Directive 533-02-DD, "Sexual Assault Prevention, and Incident Procedure Follow-up," not in compliance?
  - *As written, DDSN Directive 533-02-DD mandates that a beneficiary's family/family representative/guardian is notified is an incident occurs. This may violate a beneficiary's right to privacy, if that beneficiary does not want their family/family representative/guardian to be notified.*

#### 2. Facilities and Assessments

##### **Comments/Questions**

- We continue to support the need for trained external assessors to conduct site reviews.
  - *We appreciate the commenter's suggestion. SCDHHS has requested money in the upcoming state fiscal year budget to contract with an external reviewer to conduct,*

*at minimum, the residential site visits, but this is dependent upon the final SC legislative budget allocation to SCDHHS for state FY17.*

- Community Residential Care Facilities, especially the very large ones, are highly segregated environments. Whether or not technically subject to heightened scrutiny, they should be extremely carefully reviewed.
  - *We appreciate the commenter's suggestion and SCDHHS will engage in discussions with SCDHEC (the regulatory body for CRCF's) on how the two agencies can work together on this issue.*
- Assessment of residential options should at least include family homes as South Carolina has the second-highest percentage of individuals with developmental disabilities who still reside in their family home. Assessing true participation and true integration in the community may include if these individuals have meaningful choice of other housing options as other adults [*not receiving HCBS*] of the same age. The transition plan does not include consideration of this issue.
  - *We appreciate the commenter's suggestion and note that the regulations allow states to presume a waiver participant's private home meets the HCB settings requirements. The person-centered planning process would be utilized to address this commenter's concern about other housing options.*
- (Webinar) Will the findings of the site visits be available for public review?
  - *SCDHHS will be posting the findings of the Quality Review assessments (heightened scrutiny process) to [scdhhs.gov/hcbs](http://scdhhs.gov/hcbs).*
- (Webinar) Can you explain how person-centeredness and choice will figure into the assessment of programs?
  - *When site visits are conducted, SCDHHS will look at the physical characteristics of the setting, look at service plans for individuals served in that setting, and observe the activity in that setting/program. Additionally, whether at the time of the site visit or at a separate time, interviews or focus groups with individuals who utilize the setting will be conducted to get additional feedback on the qualities of the setting.*

### 3. Other comments

#### **Comments/Questions**

- Regarding making HCBS recipients aware of their rights to integrated services and how to complain or appeal, a new section in 42 CFR 441.745(a)(1)(iii) (State plan HCBS administration) states, "A state must provide individuals with advance notice of and the right to appeal terminations, suspensions, or reductions of Medicaid covered services as described in part 431, subpart E." DHHS should have one path of appeal for all stages of Medicaid...the current process of separate review through DDSN, and internal processes for HMO appeals, causes confusion and delay for recipients.
  - *We appreciate the commenter's suggestion. It is important to note that the cited regulatory reference is only for state plan home and community-based services which South Carolina currently does not have and therefore is not applicable here and is outside the scope of the Statewide Transition Plan. It is important to clarify that SC Medicaid uses MCO's (Managed Care Organizations) not HMO's. We assume that was the commenter's intent. HCBS waiver participants cannot also be enrolled*

*with Medicaid MCO's; they are typically eligible for fee-for-service state plan services instead. It is also important to note that MCO's and Medicaid waivers require appeal processes for their enrollees as stated in 42 CFR 438.400(a)(3) and 42 CFR431 Subpart E respectively. However, to address some of the commenter's concerns, SCDHHS will be updating SC Regulations 126-150 through 126-158, which address SCDHHS appeals, as appropriate this calendar year (2016). Additionally, a new ["Appeals and Hearings" webpage](#) was created as a resource for all Medicaid recipients.*

- The transition plan should include a strategy to gather information about the availability of community programs which could be modified to include waiver participants, such as community day programs run by Area Agencies on Aging and city and county recreation commissions.
  - *We appreciate the commenter's suggestion but note that the Statewide Transition Plan is for the transition of existing services and settings into compliance and this comment references what would be considered new settings. However, SCDHHS will explore this as an option for expanding existing services utilizing new settings.*
- (Webinar) For someone who provides services for medically fragile children, specifically safe transportation, will the waiver cover these services in full including vests for children with behavioral problems or older teens attacking the driver?
  - *This question would be better asked directly of one of SCDHHS' waiver administrators to be able to go fully in depth on the issues with this question as this is outside the scope of the Statewide Transition Plan. If you are unsure who to contact, please contact Kelly Eifert or Cassidy Evans directly and we will connect you with the proper person (our emails were on the slides for the webinar).*

### Appendix A-3

## Summary of the Public Notice and Comments for the South Carolina Department of Health and Human Services HCBS Statewide Transition Plan

South Carolina Department of Health and Human Services (SCDHHS) provided the following public notice for the revised South Carolina HCBS Statewide Transition Plan, dated Aug. 17, 2016:

- Public notice printed in the following newspapers:
  - The State (Columbia and midlands area)
  - The Post and Courier (Charleston and lowcountry area)
- On the [SCDHHS HCBS website](#)
- On the SCDHHS website under [“Public Notice”](#)
- On the [SCDDSN website](#)
- On the [Family Connection of SC website](#)
- On the [Able South Carolina website](#) and [Facebook page](#)
- On the [SC Developmental Disabilities Council website](#)
- On the [AARP South Carolina website](#)
- On the [Protection & Advocacy \(SC\) website](#) and [Facebook page](#)
- On the [IMPACT South Carolina Facebook page](#)
- Sent out via the SCDHHS listserv
- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all [Healthy Connections Medicaid County Offices](#)
- Available in print form at all Community Long Term Care (CLTC) Regional Offices
- Nine public meetings were held August – October of 2016 to discuss the statewide transition plan. These meetings were held in the following cities:
  - Aug. 23, 2016                      Anderson, SC
  - Sept. 8, 2016                      Fort Mill, SC
  - Sept. 13, 2016                     Charleston, SC
  - Sept. 15, 2016                     Greenville, SC
  - Sept. 20, 2016                     Myrtle Beach, SC
  - Sept. 22, 2016                     Florence, SC
  - Sept. 27, 2016                     Aiken, SC
  - Sept. 29, 2016                     Beaufort, SC
  - Oct. 4, 2016                        Columbia, SC
- For those unable to attend a public meeting, a live webinar was held on Tuesday, Aug. 23, 2016. This meeting was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website. Registration was online here: <http://www.familyconnectionsc.org/training-events//sc-home-and-community-based-services-statewide-transition-plan>
  - The webinar presentation, along with the transcript, is available at: <https://msp.scdhhs.gov/hcbs/site-page/presentations>

- The public was also provided the opportunity to submit comments through the mail and/or comment section on the SCDHHS HCBS website.

## **South Carolina Department of Health and Human Services HCBS Statewide Transition Plan**

The South Carolina Department of Health and Human Services (SCDHHS) gives notice that the revised draft Statewide Transition Plan, required per Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Rule (42 CFR 441.301(c)(6)), is available for public review and comment. The revised South Carolina Statewide Transition Plan will be submitted by or on Oct. 28, 2016. It will be effective upon CMS approval.

The following is a summary of the revisions made in the draft Statewide Transition Plan (last submitted March 31, 2016):

### **Communication and outreach, renumbered section 2**

- Update provided on this public notice and comment period for the Aug. 17, 2016, draft of the Statewide Transition Plan (page 7).

### **Assessment of system-wide regulations, policies, procedures, licensing standards and other regulations, renumbered section 3**

- Systemic Crosswalk reformatted to include language that indicates compliance or non-compliance, remediation actions and timelines for those actions. It is no longer Appendix B but incorporated into the narrative (pages 9 – 27).
- All residential setting self-assessment information moved together to sections 3.5–3.8 for easier reading.
- “Ongoing Compliance of System” has been expanded to provide greater detail on ongoing compliance actions (page 30).

### **Assessment of settings, renumbered section 4**

- Updated section 4.2 to include beneficiary survey and family survey information (page 35).
- Updated the timeframe for when individual site visits will occur (page 37).
- Under “Outcomes,” updated the setting types estimated to fall into each of the HCBS Compliance Categories to delineate “AAC, WAC and Unclassified” day program types (table, page 38).
- “Relocation of Waiver Participants” section added current estimated number of beneficiaries that will need to be relocated from non-compliant settings (page 41).
- The timeline for the relocation of waiver participants was clarified (page 42).
- “Ongoing Compliance” has been expanded to provide greater detail on ongoing compliance actions for HCBS settings (page 43).

### **Heightened Scrutiny, renumbered section 5**

- Clarified in section 5.1 the criteria to be used to determine which settings will be subject to the Home and Community-Based (HCB) Settings Quality Review.
- Section 5.8, “next steps” includes a new introductory section that identifies what information will be used in the review of settings that go through the Quality Review Process. This information will help SCDHHS determine which settings will be submitted to CMS for their Heightened Scrutiny review.

### **South Carolina Home and Community-Based Services Statewide Transition Plan Timeline**

- The timeline was removed to reduce confusion to the reader. All information was incorporated into the narrative.

### **Overall revisions**

- Document renumbered to make the “Introduction” section 1, all other sections subsequently renumbered as noted above.
- The following appendices were re-lettered and removed from the main document and placed online (with links to the direct appendices in the document) at <https://msp.scdhhs.gov/hcbs/site-page/statewide-transition-plan>:
  - C4 Day (non-residential) Setting HCBS Self-Assessment (Appendix B)
  - C4 Residential Setting HCBS Self-Assessment (Appendix C)
  - Non-residential Self-Assessment Global Analysis (Appendix D)
  - Residential Self-Assessment Global Analysis (Appendix E)
  - Relocation Guidelines: Community Residential Care Facility (CRCF) Residents (Appendix F)
  - Admissions/Discharges/Transfer of Individuals to/from SCDDSN-Funded Community Residential Settings (Appendix G)
  - TAC, Inc. Report: Review and Feedback on the HCBS Final Rule Transition (Appendix H)

42 CFR 441.301 (c)(6)(iv)(B) directs the state to submit with the Statewide Transition Plan a summary of the comments received during the public notice period.

### **Summary of comments and clarifications October 2016**

SCDHHS received a total of 39 public comments, twenty-two (22) from public meetings, four (4) submitted via mail and thirteen (13) submitted during the webinar. A summary of comments and responses is provided below.

#### **1. Communication and Outreach**

##### **Comments/Questions**

- Several questions were asked on the availability of the presentation on the web and via hard copy.
  - *Copies of the presentation (webinar and public meetings) can be mailed. It is also posted on the SCDHHS HCBS website, along with the recording of the webinar and*

- the accompanying transcript (<https://msp.scdhhs.gov/hcbs/site-page/presentations>). The link to the presentation was posted in the webinar chat box during the webinar as that was easier for participants to access immediately.*
- Can we share your powerpoint from today's presentation with our staff?
    - *Yes! You can find it on our website here: <https://msp.scdhhs.gov/hcbs/site-page/presentations>*
    - It is the last presentation on the list.*
  - (Webinar) For the public meetings, will conference lines be available?
    - *No, but please note that the main content will be the same, so the only difference will be question and answer time at each public meeting.*
  - Where on your website are the links for the family consumer surveys?
    - *Those are going to be found under the tab that says "Members and Families." If you scroll over that, it should pop down and menu, and you should be able to see the surveys there (<https://msp.scdhhs.gov/hcbs/site-page/members-families>).*
  - Who are you (SCDHHS) working with in the community to address community attitudes about having people with disabilities integrated into and be a part of the community?
    - *SCDHHS cannot address societal attitudes about people with disabilities being a part of their community – and certainly could not do it alone. That is definitely a culture change. This is not a part of the Statewide Transition Plan, but certainly something important to address and would really be a community effort.*
  - Are there people not "in the system" that are on the (HCBS) workgroup?
    - *We do have members that are waiver participants or family members of waiver participants, as well as members of Advocacy and support groups (like Protection & Advocacy, Able SC, SC Developmental Disabilities Council, and Family Connection of SC).*
  - If you (SCDHHS) get local community leaders to facilitate a discussion on HCBS and these changes, you would get a packed house and great feedback and information.
    - *Please send us their names and contact information so we can arrange for that!*

## 2. Systems Policies and Assessments

### **Comments/Questions**

- The charts showing state law and regulations impeding compliance with the Final Rule indicate several times that a DDSN directive would "Remediate conflicting statutes through sub-policy guidance." While as a practical matter the directives (or standards) may permit compliance, they are not statutes, or even regulations (which DDSN has not promulgated for most settings such as CTHs, etc.). DDSN directives and standards can be changed at any time and cannot supersede a statute. Until residents of DDSN-licensed facilities have the same legal protections as residents of DHEC-licensed facilities (that is, the right to participate in the development of regulations, with legislative review), they do not have the same rights as other community members.
  - *We have addressed the language use in the systemic assessment. However, the issue of SCDDSN developing regulations is a matter to directly address with that*

- agency. We will share these concerns with SCDDSN as we (SCDHHS) do not have authority to tell another state agency to promulgate regulations.*
- How will employment be used for non-restrictive and community work?
    - *There is not that level of policy detail in the Statewide Transition Plan. However, SCDDSN began the “Employment First” initiative, released in October of 2015. Additionally, we will look at the Day Program structure to see how that program can move people towards independence. We want to move away from Sheltered Workshops as the final stop for employment but rather use it as a stepping stone towards employment.*
  - We are a new provider and will be starting job coaching soon. It is our understanding that we can only provide 10 hours of job coaching. Will there be any increase in that hour limitation?
    - *We will look into that to first make sure there is a limitation, and not as a result of a waiver cost capitation or waiver budget issue. When we found out the answer, we will let you know.*
  - DHEC Regulation 61-25, Retail Food Establishments, is being applied to CRCFs operated by qualified providers of waiver services in South Carolina. I fail to understand how any provider could comply with this regulation while coming into compliance with the HCBS Final Rule.
    - *We were not aware of that issue, so we thank the commenter for bringing that to our attention. We will look into that.*
  - Have you taken a look at what the budgetary impact will be of these requirements?
    - *We recognize that there will be an impact, particularly as services should be delivered in an individualized, person-centered manner. However, we also have no good answer to that as it will be a different measure from provider to provider depending on the services they provide and the people they serve.*
  - Are Medicaid rates going to increase to pay for all this individualized service?
    - *Adult Day Health Care rates increased in August 2016, and other rates are being reviewed by leadership. We do know we have to be budget neutral, particularly in light of the Governor’s recent announcement that our agency (SCDHHS) should prepare for a 3% budget cut for next year. We do need to look at our waiver rate structure to see where changes can be made.*
  - Where is the money going to come from to hire staff to have these individualized services?
    - *We don’t have a good answer for that. We do know we have to be budget neutral, particularly in light of the Governor’s recent announcement that our agency (SCDHHS) should prepare for a 3% budget cut for next year. We do need to look at our waiver rate structure to see where changes can be made.*

### 3. Facilities and Assessments

#### Comments/Questions

- I was reading the timeline you listed for your settings reviews. Are you still planning to do an RFP (request for proposal) for the site visits and do you still plan to have that begin in January of 2017?
  - *Yes. The RFP went out in September and our plan is to have that awarded and meet with whomever gets the contract before the holidays and have them begin work in January 2017.*
- **None** of the Work Activity Centers were in compliance (page 38). The Transition Plan should include more specific information about how DHHS and DDSN will phase out segregated work environments. P & A recommends consideration of the process that Tennessee is using to change the state's approach to work for waiver participants.
  - *We want to clarify that the Statewide Transition Plan stated that it was "estimated" that none of the Work Activity Centers were compliant and would be subject to heightened review. That final determination will not be made until all the site visits and evidentiary review is completed. Once that is complete, SCDHHS and SCDDSN will have a better picture of what changes each Work Activity Center will need to make to become compliant. We appreciate the commenter's suggestion of reviewing Tennessee's process and have shared that resource with all DSN board providers.*
- The transition plan refers to CMS feedback about "reverse integration" as a strategy for access and integration compliance. As we stated in our previous letter, the transition plan should include a strategy to gather information about the availability of community programs which could be modified to include waiver participants, such as community day programs run by Area Agencies on Aging and by city and county recreation commissions.
  - *We want to clarify that CMS stated to SCDHHS that "reverse integration" could **not** be the only strategy for access and integration compliance and that will be clearly indicated in that section (page 41). We appreciate the commenter's suggestion but note that the Statewide Transition Plan is for the transition of existing services and settings into compliance and this comment references what would be considered new settings. However, SCDHHS will explore this as an option for expanding existing services utilizing new settings.*
- What should Adult Day Health Care centers, buildings with walls, do about serving the elderly and still comply with community integration?
  - *Buildings with walls in and of themselves are not bad, it is how you design and provide your services that matter. If you take a person-centered approach, you can still meet the new requirements.*
- The concern about individual homes and services creating isolation for people –does that just apply to waiver services?
  - *The regulation applies to the waiver, but we will be looking at individual outcomes to make sure that the provision of waiver services does not unintentionally contribute to a person being isolated in their home.*

- Where can I get information on the ‘certified property manager’ required on page 36? This was not a term I was familiar with. Can you point me to some materials? (Webinar follow up question)
  - *The link to the South Carolina Code of Laws, Title 40, Chapter 57, is below.*  
[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_www.scstatehouse.gov\\_code\\_t40c057.php&d=DQICAg&c=l2yuVHfpC\\_9IAv0gltv6ZQ&r=-5IkRZLUI8twNLKgryBah2C6Ehg7XYuDutLI2EEF2Es&m=CvkEK7DWwo1Hbd\\_gkLxCucjXticgPivRD8N1ZleJ9s&s=bcKRkS1FMgZCTHZpPqQPO4RftDSTEcqK\\_Tsyfv2WMHA&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.scstatehouse.gov_code_t40c057.php&d=DQICAg&c=l2yuVHfpC_9IAv0gltv6ZQ&r=-5IkRZLUI8twNLKgryBah2C6Ehg7XYuDutLI2EEF2Es&m=CvkEK7DWwo1Hbd_gkLxCucjXticgPivRD8N1ZleJ9s&s=bcKRkS1FMgZCTHZpPqQPO4RftDSTEcqK_Tsyfv2WMHA&e=)  
*Property manager is defined here.*
- When everything is complete (referring to site visits), and it is determined that a particular [provider-owned or controlled] home does not meet the requirements, who is involved in coming up with an action plan to address that? Is it just SCDHHS? The provider and SCDHHS? Is SCDDSN included?
  - *All three entities are included. We [SCDHHS] will include the appropriate program areas (and in this case, Community Options and also SCDDSN) in all communication regarding settings. Getting a setting to compliance will not work if all parties are not involved and included in the process.*
- If a provider has some homes that are next to each other, or maybe on the same street, how many is “too many”? What is the guidance?
  - *There is not a magic number that would automatically indicate a home (or homes) would go through heightened scrutiny, or our Settings Quality Review process. We will make sure to have the context of the setting - meaning, where is it located within the broader community? What do the lives of the persons who live there look like? We will take all pieces of information to make a determination of compliance (or a setting that can get to compliance), not just rely on one single piece of information.*
- What about if you have 3 or 4 waiver participants in an apartment complex, and one of them chooses an apartment that is next to their friend (who is also a waiver participant)? Is their choice taken into consideration?
  - *Yes. Again, we will look at the situation, the location, in full context. Many of us like to live near friends, so it does not seem unusual that a waiver participant would want to live near friends.*
- I want to share a comment that came from a presentation I did to our Board of Directors on the Statewide Transition Plan. The concern that seemed to rise to the top for them was about the issue of a waiver participant being able to lock their door (to their room). The board members had concerns about that as it relates to a participant’s safety if something were to happen to the participant and their room door was locked. They wanted to be sure a plan was in place to plan for that. In general they were nervous about keys.
  - *Thank you for that comment. It is important to be person-centered first and foremost and to not make any wholesale decisions on who can and cannot have keys. Start with the presumption that everyone can have a key and lock their door, and then work through issues individually as they arise. It is making sure that no one*

*has a right taken away without properly exploring all other least restrictive alternatives, and vetting that through your Human Rights Committee, and documenting it thoroughly in the person's service plan.*

- Are these rules likely to result in even fewer available residential placements? I'm already under the impression that the only way my daughter will ever receive residential placement is if I die, at which point she will be an emergency placement. It's pretty rough to know that your family would be better off if you were dead.
  - *The intent of the rule is not to result in fewer residential placements, just that simply that they are integrated into the community. The primary residential provider, SCDDSN, is very aware of residential capacity issues, and they are constantly working on how to resolve that problem. They're not trying to get rid of any residential placements; that's not the goal of this rule. It's just to make sure that people who are in a residential placement have the same access to the community that they live in as everybody else who lives in that community.*

#### 4. Heightened Scrutiny

##### **Comments/Questions**

- We agree that existing day programs should be subject to heightened scrutiny. P & A has reviewed the TAC document. At page 3 the TAC report states:

Homes are staffed "24/7," however most residents participate in the residential providers' day programs. When residents were onsite during the visits and could be interviewed, some reported they were fine with attending the day program or sheltered workshop, while others said they would prefer to do something else. One facility director commented that some residents don't want to attend their sheltered workshop but said it "gets them out of the house." It's **questionable that all residents within a home would choose to attend the provider-run day program if they had an alternative** (emphasis in original). The final rule stresses informed choice of daily activities.

The TAC report's recommendations state:

7. The Department must address options for daily activities in order for residents to have meaningful choice. Options include expanding Supported Employment services, training providers and residents on the ability to earn wages and not lose entitlements and increasing the use of natural supports and community programs.
8. Once provider assessment results are analyzed, begin development of detailed action plans and timelines for those remedial actions which will require substantive time and effort.

P & A agrees that residents should have more choice than staying in the home or going to a segregated program.

- *Thank you for our comment and agreement of our approach.*
- After reading the transition plan several times I noticed that there is section under 5.8.4 public notice and comment that provides the public the opportunity to comment on presumed institutional settings. I have a couple of concerns about this. First, is the issue of confidentiality and privacy, by pointing out these facilities to the public we are

letting the public know locations where individuals with disabilities live. If we are supposed to create a “normalization” of our waiver participants’ lives, wouldn’t this seem to go against that? There are HIPAA issues as well as safety concerns. Just as you and I do not need to let people know where we live, so do our individuals and their guardians who may wish to keep that information private. The second issue could be even more problematic. Historically, we have had difficulty developing homes in community settings, so we have developed them quietly and as a result have become fully integrated in the neighborhoods. By providing the public with locations, we are potentially opening the doors to neighbors who previously did not know that these homes existed in their neighborhood and now that they know, could lead to new issues. Finally, I think the whole idea of getting public comment on the location of the home, whether or not it is institutional or not is really a matter for the Department and the individuals who are living in those homes to decide. It is not the public’s prerogative to decide these things. If that were the case, many of our homes in the community that currently exist would never happen. I strongly urge you to reconsider this element of your transition plan.

- *Thank you for your feedback. You echo concerns that we have already raised to CMS. Just to clarify, it is not a HIPAA concern, it is a Medicaid Confidentiality concern. Here are the citations we brought to CMS’ attention:*

*42 CFR 431 Subpart F [431.305(b)(1) specifically cites addresses as a type of information to be safeguarded]*

*At our state level: South Carolina Code of Regulations, [Chapter 126, Article I, Subarticle 4](#) “Safeguarding of Client Information” (specifically 126-171 cites addresses as protected information).*

*We are required by CMS to do public notice for heightened scrutiny, but for the residential settings, we (the state and CMS – and other states as well) are trying to figure out the best way to do this without marking a particular home as a residence for people receiving waiver services. It is important to note that this is if **only** a residential home is sent to CMS for the heightened scrutiny review. CMS has indicated they are going to post guidance on this issue soon. Thank you for taking the time to read through the plan and address this concern. It helps us further bolster our own concerns about unnecessarily identifying the people we serve as Medicaid waiver recipients in their communities.*

- For Heightened Scrutiny, there are some group homes (in the SCDDSN system) where isolation is intended because the individuals living there were involved in the criminal justice system and were judicially committed to SCDDSN. How do we deal with that in light of the rule? We, as an agency, are mandated to serve them.
  - *It was clarified that some of these individuals are on a waiver. We will meet with SCDDSN to gather more details on this particular population as this may require review by SCDHHS Legal Counsel.*
- We continue to be concerned about Community Residential Care Facilities, especially large ones and those in isolated areas; whether or not technically subject to heightened scrutiny, they should be extremely carefully reviewed.

- *We appreciate the commenter's suggestion and SCDHHS will engage in discussions with SCDHEC (the regulatory body for CRCF's) on how the two agencies can work together on this issue.*

## 5. Other comments

### **Comments/Questions**

- What is CMS? (2 x)
  - *It is the Centers for Medicare and Medicaid Services. It is the federal partner that pays the majority share for Medicaid services. They issue regulations that provides states with the parameters within which they must operate their Medicaid program.*
- Does this rule only apply to Medicaid? (meaning the HCBS rule)
  - *Yes.*
- How does this plan impact the PDD (Pervasive Developmental Disorder) waiver program?
  - *The PDD waiver program is transitioning to our state plan program, so although the PDD waiver program is still active, it is not impacted by this rule. Most of the settings are already in the community so it's not something we need to assess. Additionally, the state plan option for these types of services are already live so you can access those now.*
- From the family and provider perspective, when will we see hard guidance on what should be minimally provided and what minimally should be paid? In other words, what level of services should a family expect? And what are providers expected to do?
  - *Provision of services should take a person-centered approach. A provider should ask the person receiving services, what do you expect to get out of this service? That answer should then drive how the service is provided. There is no one cookie-cutter answer if you take a person-centered approach to service delivery.*
- Although implementation of Person-centered planning is not a component of the transition plan, as the state Medicaid Agency DHHS should consider how HCBS waiver services fit into the need for individuals to have true choice in their plans.
  - *We appreciate the commenter's suggestion and will take it under advisement as SCDHHS works to examine all aspects of coming into compliance with the HCBS rule.*