ATTACHMENT A to Massachusetts Statewide HCBS Transition Plan

DRAFT- September 23, 2014

The Massachusetts Department of Developmental Services Transition Plan for Compliance with the HCBS Community Rule

Introduction

The transition plan (see Appendix A for a summary of transition plan tasks and timelines) which follows responds to the HCBS Community Rule published on March 17, 2014 by the Centers for Medicare and Medicaid Services (CMS). The CMS Community Rule is intended to assure that individuals receiving long-term services and supports have full access to the benefits of community living and the opportunity to receive services in the most integrated settings possible. The new rule creates a more outcome-oriented definition of home and community based settings, rather than one based solely on a setting's location, geography, size or physical characteristics. It is with this general perspective in mind, that DDS conducted a review and assessment of our compliance with the following HCBS Waiver Programs:

- The Adult Intensive Supports Waiver
- The Adult Community Living Waiver
- The Adult Supports Waiver
- The Children's Autism Spectrum Disorder Waiver
- The Acquired Brain Injury Residential Habilitation Waiver
- The Money Follows the Person Residential Supports Waiver

These waivers support individuals in the community in their own homes or apartments, in homes and apartments with family members and other informal supports and in 24 hour residential settings. The transition plan focuses primarily on 24 hour residential settings.

While the outcomes identified in the Final Rule defining what a community experience is, apply to day and employment settings, a separate transition plan will be developed for these settings. It is anticipated that the day/employment transition plan will be submitted for review during the next several months. The process for review of day/employment settings will mirror that which is being utilized for residential settings, including the assessment of specific settings and the public review process. The assessment process for review of settings will focus on day activity programs, since DDS has already developed a detailed plan for the transformation of segregated sheltered workshop settings in its "Blueprint for Success: Employing Individuals with ID in Massachusetts." The Blueprint for Success, with its timelines and milestones, will be an integral part of the Transition Plan submitted for day and employment settings. (see Appendix B)

Overall DDS Assessment Process

The review process in which DDS is engaged involves a number of critical steps:

1. A thorough review of DDS' regulations, policies and procedures, Waiver service definitions, provider qualifications and quality management and oversight systems was conducted. This was critical to determining whether the systemic infrastructure was

consistent with the principles of community integration. (Section I- Systemic Assessment)

2. A review of existing 24 hour residential settings was conducted to determine those settings that had a license and certification in good standing and met standards consistent with the HCBS Rule.
3. An assessment of specific 24 hour residential settings was conducted of designated sites that Central, Regional, and Area Office DDS staff identified as potentially presumed to have the qualities of an institution. Staff closely followed CMS guidance for this identification, looking at settings that are campus based; are located in a building on the grounds of, or immediately adjacent to a public institution; include a cluster of homes co-located next to one another or that have the effect of isolating individuals from the broader community. (Section II- Provider Assessment)
4. Identified sites were then categorized as fully compliant, compliant with changes, and settings that cannot meet the requirements.
5. Since the services and method of delivery is so unique, a separate assessment of the services and supports provided in the children's autism waiver was conducted.
6. A new DDS policy was drafted regarding future development of any settings that would be considered not to meet the CMS requirements.
7. Advice and consultation was gathered from a small stakeholder group (including providers, advocates and participants/family members) prior to finalizing a draft of the transition plan.
8. Publication of the draft transition plan, open public forums, review of and response to public comments will be completed.
9. The transition plan will be finalized.
10. Once finalized, implementation of the plan and its various components will be subject to periodic updates with stakeholders to gather continued feedback and keep stakeholders apprised of progress toward implementation of the plan. Stakeholders involved will include but not be limited to Arc/Massachusetts, Massachusetts Advocates Standing Strong, Massachusetts Families Organizing for Change, the Massachusetts Developmental Disabilities Council, the Brain Injury Association of Massachusetts and The Association of Developmental Disability Providers. In addition, periodic updates will be shared with DDS' Statewide Advisory Council and the Statewide Quality Council. It is anticipated that updates will be shared with the abovementioned stakeholders on a semi-annual basis.

Details of findings are described in more depth in the sections that follow. In addition, please refer to the chart of summary of tasks and timeframes in Appendix A.

Public Input Process

DDS is committed to ensuring this plan is reviewed publicly and the public has an opportunity to have input into it. As part of the commitment to an open and public process the following forums/ meetings took place or will take place leading up to the submission of the transition plan to CMS:

- Initial introduction of the intent of the HCBS rule and the process DDS was going to use, with DDS staff, providers, advocacy groups, individuals and families;
- Ten regional meetings with providers and DDS staff to provide more details;

- Formation of a stakeholder group to review and provide input into the draft transition plan. This stakeholder group included representation from several advocacy groups including but not limited to Arc/Massachusetts, Massachusetts Advocates Standing Strong, Massachusetts Families Organizing for Change, Massachusetts Developmental Disabilities Council, the Brain Injury Association of Massachusetts, and the Association of Developmental Disability Providers; and
- Information and updates on the DDS web-site

DDS will also participate fully in Massachusetts Medicaid (MassHealth) public input activities including the following:

- Publication of draft plan for 30 days with the opportunity for comments to be submitted by email or regular mail
- Public Forums will be held on November 6, 2014 from 6:00 p.m. to 8:00 p.m. at Massachusetts Bay Community College in Wellesley, Massachusetts, and November 12, 2014 from 10:30 a.m. to 12:30 p.m. at Westfield State University in Westfield, Massachusetts.
- Review and comment on all input received by email, mail and in the public forums

I. Systemic Assessment

Listed below are the documents that were reviewed to determine whether and how DDS was positioned to assure that our standards were consistent with those outlined in the new community rule. It would be unreasonable to expect specific settings to comply with the new rule if DDS' own regulations/policies do not. Where areas for improvement were identified, they are indicated below as part of the transition plan.

1) DDS regulations 115 CMR 1.00-10.00 were reviewed with an emphasis on the following chapters:
   - **a.** Chapter 5.00 – Standards to Promote Dignity
   - **b.** Chapter 7.00 - Standards for Services and Supports
   - **c.** Chapter 8.00 - Licensure and Certification

2) Policies and Procedures

3) Review of Waiver Service Definitions

4) Review of Provider Qualifications including review of the open bid process for providers

5) Review of Quality Management and oversight systems including review of the licensing and certification process

Findings and Remedial Actions

1) Regulations:

a. **Chapter 5.00**: For the most part, Chapter 5.00 clearly articulates the outcomes regarding integration, choice, and quality of life to which the HCBS rule aspires. Changes, however, need to be made to the current section on the implementation of behavior management plans. DDS is currently engaged in a major initiative to implement the practice of Positive Behavioral Supports (See Appendix C). This approach to supporting individuals replaces the emphasis in Chapter 5.00 on management of behavior to one which incorporates the principles, intent and

implementation of the philosophy of positive behavioral supports. This major cultural shift in DDS and its provider system will necessitate a re-writing of this section of the regulations.

b. **Chapter 7.00**: Chapter 7.00 clearly articulates the expectations that DDS has of its providers with respect to qualifications of staff, environmental standards and outcomes for individuals. All standards were found to be entirely consistent with the CMS community rule, with 2 exceptions:
    i. Current regulations stipulate that locks on bedroom doors that provide access to an egress are not permitted. This stipulation is necessary in order to assure the swift evacuation of all individuals in the event of a fire or other emergency. In order to protect individual safety at the same time we safeguard individuals' right to privacy and choice, the following change will be made to this section of the DDS regulations:
        1. "Bedroom doors are lockable unless clinically contraindicated or unless an individual or his or her guardian, if applicable, chooses a bedroom with access to egress and consents to the bedroom door not having any lock."
    ii. Homes with a capacity greater than 5 are "grandfathered" in if they had a license prior to 1995.
        1. Current language in the regulation stipulates that capacity in excess of five (which was "grandfathered" if a provider had a license prior to 1995) should be reduced, if the Department should determine at any time that the site can no longer accommodate more than five individuals. The revised regulatory language adds a sentence to indicate that IF it is determined that a provider needs to reduce capacity it would need to develop and implement a plan to reduce the capacity to five or fewer.

d. Chapter 8.00: Chapter 8.00 articulates the system DDS uses to license and certify its providers. The process is a very stringent one, assuring that providers meet all the components consistent with the HCBS community rule. No changes are indicated to this chapter.

2) **Policies and Procedures**

a. The CMS rule requires individuals to have a legally enforceable agreement comparable to a lease. The intent of this rule is to safeguard individuals against an arbitrary or capricious eviction from their home. DDS has transfer regulations in place that essentially ensure this important safeguard (115 CMR 6.63- Transfers). Providers, however, do not necessarily have a specific document that either the individual and/or his/her guardian sign to assure that they will not be evicted without due process. DDS will develop a template for such an agreement and phase in implementation for each individual in provider controlled settings.
b. While Section II addresses existing settings and how DDS will work on a transition plan with specified providers that are currently not compliant, we do not have a specific policy in place that clearly articulates our position on settings which CMS considers not to meet the criteria for community based settings. Therefore, DDS has developed and disseminated a policy that spells out our position on future

development of settings as well as how existing settings that do not come into compliance with the rule will be dealt with.

3) **Waiver Service Definitions**

We reviewed all Waiver service definitions to determine if the definitions themselves meet the following requirements:

1. Does the service ensure individuals receive services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-based services?
2. Does the service definition allow for integration and access to the greater community?
3. Are the services selected by the individual?
4. Does the service optimize interaction, autonomy and independence in making life choices?
5. Does the service facilitate choices regarding supports and who provides them?

Based on these criteria, we determined that all current Waiver service definitions are in compliance with the HCBS rule.

4**) Provider Qualifications**

Providers of 24 hour residential settings were recently the subject of an open bid process and were required to be qualified to provide services and supports. All providers that were qualified were shown to adhere to the requirements for supports to individuals. The RFR that providers responded to outlined critical outcomes with respect to choice, control, privacy, rights, integration and inclusion in community life. This process demonstrated, for all residential providers, DDS's commitment to the HCBS settings requirements. One example that illustrates the practical application of this commitment is that every individual living in DDS qualified settings served through the Intensive Supports Waiver was given a choice as to whether they wanted to live in their current home or move to another location. All providers that were qualified demonstrated adherence to the requirements for supports to individuals. On an on-going basis, provider qualifications are reviewed through the DDS licensure and certification process described in the following section. No changes are recommended as part of the transition plan for the way in which providers are qualified.

5**) Review of quality management and oversight systems.**

DDS has an extensive and robust quality management system (QMIS) which addresses the criteria in the HCBS rule in every aspect of the system. These processes have been in place for many years, and based upon review were determined to be responsive to the outcomes addressed in the HCBS Rule.

While DDS has many quality management systems in place, listed below are those components that most directly relate to the HCBS rule:

a. **Licensure and certification process**: The licensure and certification process is the basis for qualifying providers doing business with the Department. The process applies to all public and private providers of residential, work/day, site based respite and individualized home support services. The system measures

important indicators relating to health, personal safety, environmental safety, communication, human rights, staff competency, and goal development and implementation for purposes of licensure, as well as specific programmatic outcomes related to community integration, support for developing and maintaining relationships , exercise of choice and control of daily routines and major life decisions, and support for finding and maintaining employment and/or meaningful day activities. Survey teams review provider performance through on-site reviews on a prescribed cycle. Providers are required to make corrections when indicators are not met, and are subject to follow up by surveyor staff. These indicators are supportive of and fully in compliance with the HCBS Community Rule.

b. **Area Office Oversight**: DDS Area Office staff conduct bi- monthly visits to all homes providing 24-hour support and quarterly visits to homes providing less than 24-hour support. A standardized form is used to assure that health ,safety and human rights protections are in place. Results from these visits are monitored by Area Office staff. Visits assure an on-going presence by Department staff.

c. **Service Coordinator Supervisor Tool**: The SC Supervisor Tool measures the quality, content and oversight of the service planning process and its implementation. The tool measures how effective the service planning process is in involving the individual, how well the objectives reflect the vision of the individual, whether the services being delivered address both individual needs and goals, whether the services are modified as needs and goals change, and whether service coordinators are aware of and addressing issues of concern raised by the individual. No changes are needed in order to assure that this tool reviews important indicators of a process that builds off of an individual's desired goals and objectives, and assures that individuals exercise choice and control of their services and supports.

d. **Incident Reporting**: DDS has a web-based incident reporting and management system, which requires providers to report a specifically defined set of incidents within 24 hours. The provider must report specific details regarding the incident as well as what actions they took to protect the health and safety of the individual and what long range actions they may take. For an incident to be closed, DDS staff must review the report and approve the actions taken. Aggregate information from the system is reviewed and analyzed and forms the basis for service improvement targets. Some incidents may involve events that directly relate to the HCBS Community Rule; the current Incident Reporting system will continue to be used to monitor these events.

e. **Human Rights System**: The Department's Human Rights System is based on the principle that affirmation and protection of individual rights must occur on all levels of the organization and in all services and supports. Therefore, each location where individuals live or work has a Human Rights officer and providers have Human Rights Coordinators. On all levels of a provider's service system, individuals are supported to understand their rights, know who they can turn to if they have a complaint, and to speak up on their own behalf. In addition, Human Rights Committees with representation from individuals, families and professionals monitor human rights issues, including the review of behavioral interventions and restraint reports. By virtue of this strong human rights

system, individuals are supported to exercise choice, control and informed decision making consistent with the intent of the Community Rule.

f. **Site Feasibility**: Providers intending to serve individuals in 24-hour residential supports, site-based respite or facility based work sites must have any proposed sites reviewed for their feasibility to provide the necessary physical site requirements for the individuals proposed. Prior to moving any individual into a home or work site, staff reviews the location and assures that all necessary safeguards are in place and the location can be approved for occupancy. These safeguards include accessibility issues, so ongoing compliance with certain aspects of the HCBS Community Rule will be monitored for new providers and settings.

g. **Quality Councils**: The Department has a Statewide Quality Council. The Council has representation from self-advocates, family members, providers and DDS staff. The Council's sole function is dedicated to reviewing and analyzing data and making recommendations for statewide and local service improvement targets and monitoring progress toward achieving targets. Since its inception, the Council has reviewed and monitored, among other outcomes, statewide efforts to assist individuals to develop relationships and obtain employment in integrated settings.

h. **National Core Indicator Surveys**: Massachusetts has participated in the National Core indicators (NCI) survey for many years. Participation in NCI has enabled the Department to benchmark its performance on several key indicators of quality against other states and the national averages. Data from NCI is incorporated into the QA Briefs. NCI involves indicators related to the experience of individuals in settings. As such, continued involvement in the NCI surveys reinforces DDS' commitment to the principles and outcomes delineated in the HCBS Community Rule.

II. Provider Assessment

Concurrent with the systemic review delineated in the previous sections, DDS embarked upon a review, in conjunction with its providers, to assess whether 24 hour residential settings are in compliance with the community rule.

The process utilized was the following:

- A tool was developed that borrowed substantially from the exploratory questions that CMS had published.
- The tool was piloted with a specific provider for whom we knew there might be challenges to meeting the requirements.
- Based upon the pilot, the tool was modified and finalized for implementation.
- Some initial assumptions were made by Central Office Quality Management and Field Operations staff as to what settings met or would have difficulty meeting the criteria.
- Based upon the CMS criteria, settings were identified that DDS knew were substantially in line with the requirements of the new rule. DDS has approximately 2100 community residences, both public and private, that offer 24 hour supports. The vast majority of these homes are located in the community and integrated into the many neighborhoods of the State. Given the outcomes that are reviewed during the licensure and

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certification process, DDS is confident that providers that have received a full license and certification meet the standards established in the community rule. With the exception of the legally enforceable lease/written agreement and the locks on bedroom doors requirements, which will be dealt with on a statewide systemic basis, these homes are deemed to fall in the category of "setting, which with changes, will comply."

- DDS Central Office, Regional and Area staff were then asked to identify all settings which according to CMS are presumed to have the qualities of an institution. Based upon this analysis 14 settings were identified for the in-depth review utilizing the above mentioned assessment tool. These assessments were completed by each identified provider, with a review by DDS Central and Regional Office staff, to identify areas for remediation and improvement.
- Given that all services offered as part of the Autism Services Waiver are self-directed and none are residential in nature, no specific review of settings needed to be conducted and are not included in the section related to review of existing 24 hour settings.

Findings

Based upon the review and assessment, the settings mentioned above fall into the following designations:

- The setting, with minor changes, will comply: 2100
- The setting, with more substantive changes, will comply: 14 providers/58 settings
- The setting cannot meet the requirements: none

Remedial Actions

1) 2100 homes deemed to be in compliance with the exception of locks and legally enforceable leases will phase in these 2 changes over a period of one year. Any divergence in these requirements will be incorporated into an individual's Person Centered Plan.
2) 14 providers with a total of 58 settings will require more substantive changes but are expected to be able to comply. The residential providers in these settings and DDS are collaborating on detailed provider transition plans related to these changes. The necessary changes include changes identified in the provider specific self-assessment tool. Providers will have until September 30,2015 to more fully develop the plans related to specific settings. Once developed, plans will be reviewed and approved by DDS, and provider progress towards implementing its strategic and transition plans will be monitored on a quarterly basis. To assist providers in this process, DDS developed criteria that it will use to review the content of each provider's compliance plan (See Appendix D).
3) The Association for Developmental Disability Providers (ADDP), which is the Statewide organization that represents the vast majority of ID providers, has established a work group to provide technical assistance to providers as they develop their strategic plans and move towards compliance with the HCBS Rule.
4) DDS will be initiating a work group comprised of DDS staff and the 14 providers to assist providers in implementing their transition plans. The group would look into

the financial, real estate, programmatic and other considerations central to implementation of the plans.

5) Full implementation of changes identified in a provider's transition plan will be expected by March 16, 2019. Individuals in settings that cannot meet requirements will be notified by the DDS Waiver Unit that they will no longer be residing in settings on the HCBS Waiver. Individuals will be informed of their right to request a move to another setting and of implications if they choose to stay in their current setting.
6) If, at any time prior to March 16, 2019, a provider presents evidence of full compliance with the rule, and that compliance is verified and agreed to by DDS and EOHHS, the setting would be submitted to CMS for review and consideration as a HCBS setting.

<u>Ongoing Monitoring and Public Input Processes</u>

1. Ongoing Monitoring

For all settings in which changes will be required, DDS will institute a process to assure that the changes occur as stipulated. This process will include consultation and support to providers to enable them to successfully transition, quarterly reporting by providers to update DDS on progress towards compliance, and reviews by designated Area, Regional and Central Office staff to assure adherence to transition plans and processes.

In addition, the QMIS systems outlined in "5) Review of Quality Management and Oversight Systems" will provide continued oversight and assurance that systems, providers and settings remain in compliance with the spirit and intent of the HCBS Rule.

Should any of the ongoing monitoring indicate a need for a substantive change in the transition Plan, DDS along with MassHealth will revise the Transition Plan, complete public input activities (as noted below) and resubmit the Transition Plan for CMS approval.

2. Ongoing Public Input

DDS is committed to transparency during both the planning phase and the implementation phase to comply with the HCBS Community Rule. Transparency will be achieved through the following activities:

1) Information and updates on the implementation of the Transition Plan will be posted on the DDS website.
2) Updates will be provided to the Quality Councils (as noted above), DDS' Statewide Advisory Council and other stakeholder groups on at least a semi-annual basis. These groups will include but not be limited to Arc/Massachusetts, Massachusetts Advocates Standing Strong, the Massachusetts Developmental Disabilities Council, the Brain Injury Association of Massachusetts, Massachusetts Families Organizing for Change, and The Association of Developmental Disability Providers. Thus, individuals and families receiving services, self-advocates, potential recipients of services and providers will be made aware of progress towards compliances.
3) If, in the course of monitoring activities, DDS determines that substantive changes to the Transition Plan are necessary, DDS and MassHealth will engage in public input activities including:

- Publication of draft plan for 30 days with the opportunity for comments to be submitted by email or regular mail
- Public Forums
- Review and comment on all input received by email, mail and in the public forums

Appendices

Appendix A- Summary of Tasks and Timelines
Appendix B- Blueprint for Success (Employment Supports)
Appendix C- Positive Behavioral Supports Policy and Guidelines
Appendix D- DDS Criteria for review of Provider Transition Plans

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Appendix A **SUMMARY OF TRANSITION PLAN TASKS AND TIMELINES**

Transition category	**Specific tasks**	**Timeframes**	**Comments**
Systemic Changes	Regulatory changes to Chapter 5.00	In process. Scheduled to become effective January, 2017	
	Regulatory changes to Chapter 7.00	In process. Scheduled to become effective January, 2017	
	Development of template for leases	By January, 2015	
	Phasing in of lease template for providers	By January, 2016	
	Locks on bedroom doors	By January, 2016	
	Full Implementation of Positive Behavioral Supports	In process	
	Full Implementation of Blueprint for Employment	In process	
Specific Setting Changes	Transition plan for NEV	Plan completion no later than Sept. 30,2015	Plan implementation no later than March 16, 2019
	Transition plan for Cardinal Cushing	Same as above	
	Transition plan for Crystal Springs	Same as above	
	Transition plan for Ledges	Same as above	
	Transition plan for Charles River	Same as above	
	Transition Plan for Berkshire Hills Music Academy	Same as above	
	Transition Plan for DDS Central STOPS	Same as above	
	Transition Plan for SE STOPS	Same as above	
	Transition Plan for Templeton	Same as above	
	Transition Plan for Riverbrook	Same as above	
	Transition Plan for Berkshire Meadows	Same as above	
	Transition Plan for Archway	Same as above	
	Transition Plan for Dr. Franklin Perkins	Same as above	
	Transition Plan for C/W STOPS	Same as above	
Oversight of changes	Develop specific mechanism to monitor transition plans	No later than June 30, 2015	
	50% of milestones across setting specific transition plans are met	June 30, 2017	If 50% of milestones are not met, determine if change to DDS Transition Plan is needed.
	75% of milestones across setting	June 30, 2018	If 75% of milestones

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	specific transition plans are met		are not met, determine if change to DDS Transition Plan is needed.

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