

*DRAFT*

**The Massachusetts Statewide Transition Plan  
for Compliance with the  
CMS Home and Community Based Services  
Community Rule**

*July 2016 Revised Draft*

# The Massachusetts Statewide Transition Plan for Compliance with the CMS Home and Community Based Services Community Rule

---

## Contents

	Page No.
Section I..... Overview.....	1
Section II..... Background.....	2
Section III..... Public Input.....	5
Section IV..... Systemic Assessment.....	7
Section V..... Site-Specific Assessment.....	27
Section VI..... Ongoing Monitoring.....	45
Section VII..... Heightened Scrutiny.....	47
Section VIII..... Participant Relocation.....	48
Section IX..... Further Revisions to Statewide Transition Plan, Ongoing Public Input.....	49

\* \* \*

Table 1..... Regulatory Crosswalk.....	i
Table 2..... Analysis of Waiver Settings.....	xv
Table 3..... Summary of Transition Plan Tasks and Timelines.....	xviii
Table 4..... Links to Related Documents.....	xxii

# The Massachusetts Statewide Transition Plan for Compliance with the CMS Home and Community Based Services Community Rule

---

## I. Overview

The Centers for Medicare and Medicaid Services (CMS) published its final rule related to Home and Community Based Services (HCBS) for Medicaid-funded long term services and supports provided in residential and non-residential home and community-based settings (“final rule”). The final rule took effect March 17, 2014. States are required to submit transition plans to CMS within one year of the effective date indicating how they intend to comply with the new requirements within a reasonable time period. If states amend or renew any of their currently operating waivers or state plan amendments prior to the effective date, that action serves as a trigger for the state to submit a transition plan for all its waivers under 1915(c), as well as any state plan amendments under 1915(i) or 1915(k) within 120 days of the amendment/renewal submission. In addition, on December 15, 2014 CMS issued guidance to assist states in complying with the final rule as it relates to non-residential services, such as employment and day services.

The state conducted assessments of its residential supports offered through HCBS waivers in a first phase of assessment and review. A second assessment and review phase, based on the December 2014 CMS guidance regarding non-residential services, focused primarily on day and employment services, as all other non-residential waiver services are provided in a participant’s home or in the community at large.

Massachusetts submitted its statewide transition plan to CMS in a letter dated March 2, 2015. This plan addressed primarily residential waiver services; an addendum to address non-residential waiver services was submitted in a letter dated September 3, 2015. The Commonwealth is now preparing to submit to CMS its revised STP that incorporates modifications in response to feedback the state received from CMS. The following is Massachusetts’ statewide transition plan pursuant to the requirements of the final rule. This transition plan includes the state’s assessment of its regulations, standards, policies, licensing requirements, and other provider requirements to ensure settings that comply with these federal requirements. In addition, the plan summarized findings from its site-specific assessment, including any necessary corrective action plans. The transition plan also describes actions the state proposes to ensure full and on- going compliance with the HCBS settings rules, with specific timeframes for identified actions and deliverables. As described in detail in the sections below, all residential supports and non-residential services offered through HCBS waivers in Massachusetts will be in compliance with CMS requirements by or before March 2019.

## II. Background

The Massachusetts Executive Office of Health and Human Services (EOHHS) is the single State Medicaid Agency. Within EOHHS, MassHealth is the agency responsible for administering the state's Medicaid program.

This Statewide HCBS Transition Plan covers the ten 1915(c) HCBS waivers currently operating in Massachusetts, the day-to-day operations of which are the responsibility of three state agencies within EOHHS: the Department of Developmental Services (DDS), the Massachusetts Rehabilitation Commission (MRC), and the Executive Office of Elder Affairs (EOEA). Massachusetts does not currently offer services through the state plan under 1915(i) or 1915(k) authority. The ten 1915(c) HCBS waivers, and the state agencies responsible for their operation, are as follows:

<b>1915(c) Waiver</b>	<b>Waiver Number</b>	<b>Waiver Operating Agency</b>
Intensive Supports Waiver for Adults with ID	MA.0827	Department of Developmental Services
Community Living Waiver for Adults with ID	MA.0826	Department of Developmental Services
Adults Supports Waiver for Adults with ID	MA.0828	Department of Developmental Services
Children's Autism Spectrum Disorder Waiver	MA.40207	Department of Developmental Services
Money Follows the Person (MFP) Residential Supports Waiver	MA.1028	Department of Developmental Services
Acquired Brain Injury (ABI) Residential Habilitation Waiver	MA.40701	Department of Developmental Services
Money Follows the Person (MFP) Community Living Waiver	MA.1027	Massachusetts Rehabilitation Commission
Acquired Brain Injury (ABI) Non-Residential Waiver	MA.40702	Massachusetts Rehabilitation Commission
Traumatic Brain Injury Waiver	MA.0359	Massachusetts Rehabilitation Commission
Frail Elder Waiver	MA.0059	Executive Office of Elder Affairs

### ***Role of waiver-operating agencies in the STP***

The three waiver-operating agencies—DDS, MRC, and EOEA —undertook a review of their regulations, standards, policies, licensing requirements, and other provider requirements to ensure compliance of settings with the new federal requirements, as applicable within each of the waivers for which they are responsible. In addition, each agency conducted site-specific assessments for residential and site-based non-residential services. As part of the development of the STP, the three waiver-operating agencies each submitted a compliance plan to the Cross-Agency Workgroup (described below) that included these elements:

- review of applicable state standards, rules, regulations, and policies;
- assessment of waiver settings, where applicable;
- summary of how each setting meets or does not meet the federal HCBS setting requirements;
- if applicable, time frame for the development of a plan and process for bringing identified HCBS settings into compliance; and
- a plan for ensuring the health and welfare of waiver participants who reside in locations that may need to take corrective action in order to fully comply within a specified period.

### ***Role of MassHealth in the STP***

MassHealth worked individually with each waiver-operating agency to clarify the requirements of and approach to development of the transition plan as it related to each waiver, specific waiver services, settings, and populations served. MassHealth worked to ensure consistency in how the agencies' plans addressed transition issues, and to support each agency in fully understanding the issues related to specific waivers, the potential challenges of certain waiver service settings, implications for the vulnerable populations served, and the impact on waiver participants, families, advocates, and other stakeholders.

For both the state's initial STP submission that focused on residential services, and the later addendum that focused on day and employment services, MassHealth oversaw production of the plan documents and their publication for public review, including collecting, assembling, and editing, and coordinated the formatting of the documents. EOHHS also scheduled, advertised, and hosted three public forums on the STP. MassHealth and agency staff jointly convened and facilitated the public forums, maintained sign-in sheets to document who attended the forums and to identify those wishing to provide input, took notes at the forums, and supported the ability of attendees to provide input both orally and in writing. These various efforts were facilitated by MassHealth staff and undertaken in a truly collaborative and supportive manner between MassHealth and the waiver-operating agencies.

### ***Role of the cross-agency workgroup in the STP***

MassHealth's Community Waiver Unit created and convened the Cross-Agency Workgroup for Development of the Statewide Transition Plan, which included representatives from the waiver-operating agencies and initially from EOHHS. Starting in January 2014, the workgroup met monthly to ensure that a cohesive statewide transition plan was established to address the

unique needs of individuals across a wide variety of community-based settings. Through the Cross-Agency Workgroup, MassHealth ensured that best approaches were shared and leveraged to the benefit of the waiver-operating agencies as they created plans to comply with the final rule, and that each agency contributed to and collaborated on the development and production of the STP.

MassHealth has continued to convene this Cross-Agency Workgroup in support of a coordinated approach to the following activities:

- collaborative planning for the transition for each waiver;
- consultation on implementation objectives and methods;
- sharing of best practices, techniques and approaches to ensure effective communication across the agencies involved in waiver operations; and
- oversight of progress at the agency level in implementing the plan as it relates to specific waivers.

The Cross-Agency Workgroup met to review and develop the response to CMS's letter of November 5, 2015 and informal email of May 2, 2016 addressing the Commonwealth's STP. MassHealth has facilitated consensus among workgroup participants in jointly developing an approach to reformatting the STP into a consolidated document inclusive of residential and non-residential waiver settings services across the three operating agencies, and to ensuring responsiveness to other CMS questions and input.

### III. Public Input

Massachusetts is committed to ensuring that our statewide transition plan is reviewed publicly and that public input is incorporated into the final plan. The state provided opportunities for public comment as follows:

1. During three 30-day public comment periods:

- October 15 through November 15, 2014 – on the statewide transition plan; and
- May 18, 2015 through June 18, 2015 – on the addendum to the statewide transition plan regarding non-residential waiver services.
- July 8, 2016 through August 10, 2016 – on the revised statewide transition plan including site-specific assessment

2. At four public forums:

Document	Public Forum Date / Time	Location
<b>Statewide Transition Plan (STP)</b>	November 6, 2014 6:00 PM	Massachusetts Bay Community College (Wellesley, MA)
	November 12, 2014 10:30 AM	Westfield State University (Westfield, MA)
<b>Non-residential Services Addendum</b>	June 1, 2015 1:00 PM	Worcester Public Library (Worcester, MA)
<b>Revised STP</b>	August 3, 2016 10:00 AM	Worcester Public Library (Worcester, MA)

The public forums were advertised on October 15, 2014 (for the STP); on May 18, 2015 (for the addendum); and on July 8, 2016 for the revised STP in three newspapers each: the Boston Globe, Worcester Telegram and Gazette, and the Springfield Republican. The 2014 and 2015 advertisements in each newspaper directed individuals to the EOHHS website at: <http://www.mass.gov/eohhs/gov/departments/masshealth/> for further information; the 2016 newspaper advertisements directed individuals to Masshealth's Statewide Transition Plan website at: <http://www.mass.gov/eohhs/gov/departments/masshealth/federal-rules-for-home-and-community-based-waivers.html>. Information in the link as of October 15, 2014 included a summary of the new federal rule, the draft statewide transition plan, links to the draft DDS, MRC and EOEA agency-specific transition plans, and provided the mailing address and e-mail address for submission of public comment. Materials accessible through this link as of May 18, 2015 included the draft addendum to the STP, links to the DDS, MRC and EOEA agency-specific transition plan addenda addressing non-residential service settings, a mailing address and an e-mail address to which public comment on the transition plan addendum could be sent. Finally, materials accessible through the link provided in 2016 included the revised STP, a brief summary of changes in the STP, a mailing address and an email address to which public input could be sent, and information regarding the August 3, 2016 public hearing.

For the draft STP, the draft addendum, and the full, revised STP, EOHHS also emailed links to the draft documents as well as information on the public comment periods to several hundred people, including key advocacy organizations and the Native American tribal contacts. The transition plan, the addendum, and the revised full STP were also discussed during quarterly conference calls with the tribal representatives on October 21, 2014, July 20, 2015, and JulyXX, 2016, respectively. Pursuant to CMS's instruction, the newspaper notice, email, and website all provided details for requesting a printed copy of the Non-Residential Services Addendum, and copies of the Non-Residential Services Addenda were made available at the June 1, 2015 public forum. For the July 8 through August 10, 2016 public comment period, copies of the revised STP are available upon request as well as at the August 3, 2016 public hearing.

In addition, DDS engaged stakeholders in a series of meetings and outreach activities:

- 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 (April – June 2014) 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, Disability Law Center, Massachusetts Families Organizing for Change, Massachusetts Developmental Disabilities Council, the Brain Injury Association of Massachusetts, and the Association of Developmental Disability Providers;
- Periodic email updates to stakeholders; and
- Information and updates on the DDS website:  
<http://www.mass.gov/eohhs/consumer/disability-services/living-supports/independent-living/home-and-community/hbcs-community-rule/>

In total, for the initial plan and addendum, 323 individuals or agencies submitted comments in writing, through email, mail and written testimony, with nearly 100 people submitting comments through multiple formats. A summary of the comments received and the state's response to these comments was submitted with the state's original STP submission and the Addendum addressing non-residential services, each time as Attachment D (see Table 4).

For the full, revised STP, a total of XXX individuals or agencies submitted comments, including approximately XX people who submitted comments through multiple formats (in writing, through email, mail, and written testimony). A summary of the comments received and the state's response to these comments will be submitted with the state's submission of the revised STP to CMS, again as Attachment D.

The state's final transition plan, into which information originally contained in the addendum addressing non-residential service settings has been integrated, and including revisions based on the receipt of public comments, will be posted on the EOHHS website concurrent with this submission to CMS.



## **IV. Systemic Assessment**

### **A. Waivers operated by the Department of Developmental Services (DDS)**

The Department of Developmental Services (DDS) conducted systemic and site-specific reviews to evaluate compliance with the final rule for the following DDS-operated HCBS Waiver Programs:

- Intensive Supports Waiver for Adults with ID (MA.0827)
- Community Living Waiver for Adults with ID (MA.0826)
- Adults Supports Waiver for Adults with ID (MA.0828)
- The Children's Autism Spectrum Disorder Waiver (MA.40207)
- ABI Residential Habilitation Waiver (MA.40701)
- MFP Residential Supports Waiver (MA.1028)

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. DDS's transition plan addresses 24-hour residential settings and non-residential supports, including day and employment supports.

A thorough review of DDS's regulations, policies and procedures, waiver service definitions, provider qualifications, and quality management and oversight systems was conducted to determine whether the systemic infrastructure was consistent with the principles of community integration. Listed below are the documents that were reviewed. 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. 115 CMR Chapter 5.00 – Standards to Promote Dignity
  - b. 115 CMR Chapter 7.00 – Standards for Services and Supports
  - c. 115 CMR Chapter 8.00 – Licensure and Certification
- 2) Policies and procedures
- 3) Waiver service definitions
- 4) Provider qualifications – including review of the open bid process for providers
- 5) Quality management and oversight systems – including review of the licensing and certification process

### **Review of Waivers Serving Adults**

DDS conducted separate review processes on 24-hour residential settings and non-residential supports (day and employment supports). In addition to this basic separation, in reviewing the status of DDS's compliance with the requirements of the HCBS Community Rule for non-residential services, we found it helpful to separate out our analysis by employment services and what DDS terms Community-Based Day Services (CBDS). While some individuals in CBDS may be on a pathway to employment, many individuals served are of retirement age or are otherwise not participating in employment-focused activities. Therefore, the focus of many

CBDS programs is on meaningful day activities with a variety of individualized goals. In addition, DDS is at different stages of evolution with respect to these two discrete service types. This transition plan therefore reports separately on progress towards achieving the outcomes articulated in the Community Rule for employment and CBDS services.

Specifically, for DDS's actions to ensure compliance with the Community Rule with respect to employment settings, the transition plan relies heavily on the "Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts" (see Table 4) and progress reports associated with it. With respect to CBDS services, this transition plan outlines the steps DDS has taken and will be taking to identify and implement strategies needed to enhance outcomes for individuals in these settings to ensure full compliance with the Community Rule by March 2019.

## **Review of the Children's Autism Waiver**

Since the services and method of delivery are so unique, DDS conducted a separate assessment of the services and supports provided in the Children's Autism waiver. The Autism waiver supports children who reside in their family home and receive services either within their family home, or in the broader community with the explicit goal of full and appropriate integration of the child into his or her community. DDS reviewed the specific settings in which Autism waiver services are delivered. All waiver services are delivered either in the family home or in community settings in which children typically socialize, for example in parks, YMCAs, Boys and Girls Clubs, libraries, grocery stores, and outdoor public events, as well as other kinds of natural environments where children of similar chronological age are present in the community. Waiver services delivered in the community are designed to help participants develop and maintain skills to more fully and effectively participate in community activities. Through this review, DDS confirmed that all services within the Autism waiver are, by their nature and under the terms of the waiver, available and delivered only in settings that are fully integrated into the community. DDS will undertake on-going review of new planned Autism waiver service settings, if any are developed, to ensure compliance with the CMS Community Rule.

### **1. DDS Regulations (See Table 1. Regulatory Crosswalk)**

#### *115 CMR Chapter 5.00 – Standards to Promote Dignity*

For the most part, Chapter 5.00 clearly articulates the outcomes regarding integration, choice, and quality of life to which the HCBS rule aspires. Nevertheless, DDS is currently engaged in a major initiative to implement the practice of Positive Behavior Supports (see Table 4). DDS is in the process of promulgating amendments to Chapter 5.00 that are intended to replace current behavior modification standards with a system of Positive Behavioral Supports, a widely accepted and utilized framework for both systems change and individual treatment that supports individuals to grow and reach their maximum potential. This approach to supporting individuals replaces the current emphasis in Chapter 5.00 on *management* of behavior. This major cultural shift in DDS and its provider system will necessitate amending current regulations, although implementation of Positive Behavior Supports by DDS and providers is current and ongoing. Proposed amendments to Chapter 5.00 regulations will codify the implementation of Positive

Behavior Supports and will confirm conformance of this regulation with the Community Rule (see Table 3. Summary of Transition Plan Tasks and Timelines).

### *115 CMR Chapter 7.00 – Standards for Services and Supports*

Chapter 7.00 articulates the expectations that DDS has of its providers with respect to qualifications of staff, environmental standards and outcomes for individuals. Such standards were found to be consistent with the CMS Community Rule, with two exceptions. DDS is in the process of promulgating amendments to regulations that specifically address such inconsistency:

- Current regulations stipulate that locks on bedroom doors that provide access to an egress from the home are not permitted. This stipulation is necessary in order to ensure the swift evacuation of all individuals in the event of a fire or other emergency. In order to protect individual safety and at the same time safeguard individuals' right to privacy and choice, DDS is in the process of promulgating an amendment to Chapter 7.00 to include the following language :

*“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 a lock.”*  
(115 CMR 7.07(7)(f) (proposed))

In any specific situation that contraindicates or otherwise results in the participant's bedroom door not being lockable, the modification will be discussed with the participant through the person-centered planning process, and their agreement obtained and documented.

- While the final rule does not establish a maximum capacity for residential settings, it clearly reflects an overall commitment to community integration and a move away from settings with institutional-like qualities. In this vein, DDS is amending an existing regulatory provision to limit the capacity of residential settings to no greater than five residents. (115 CMR 7.08(1) (proposed)). The proposed regulations provide an exception to this limitation, however, and provide that the 151 homes identified by DDS that had a licensed capacity greater than five prior to 1995 will be permitted to retain the capacity approved in the license for the life of the original building if the site can accommodate more than five individuals. (115 CMR 7.08(2) (proposed)). Proposed regulations further provide that capacity in excess of five must be reduced if the Department determines at any time that the site can no longer accommodate more than five individuals. In the event that DDS determines that a site can no longer accommodate more than five individuals, to the provider must develop and implement a plan to reduce the capacity. DDS will work collaboratively with the provider on plans to effectuate the reduction in capacity to five or fewer individuals.

DDS also proposed the addition of a new section to Chapter 7.00 regulations that sets forth standards for both employment and day supports. (115 CMR 7.09 (proposed)). The

new section is consistent with the requirements of the Community Rule and emphasizes DDS's commitment to employment as the first option for all individuals of working age.

Promulgation of the amendments to regulations described in this section is anticipated in 2016.

### *115 CMR Chapter 8.00 – Licensure and Certification*

Chapter 8.00 articulates the system DDS uses to license and certify its providers. The stringent standards and processes specified in Chapter 8.00 ensure that all providers that achieve licensure and/or certification meet all the components consistent with the HCBS Community Rule. However, DDS identified within Chapter 8.00 an opportunity to strengthen this regulation by more clearly aligning certain elements regarding certification with the requirements of the final rule. Revisions to this certification process are currently in process and will be followed by modifications to the Chapter 8.00 regulations. (See Table 3. Summary of Transition Plan Tasks and Timelines).

## **2. Policies and procedures**

### ***Residential Settings***

#### *Tenancy protection*

The CMS rule requires individuals to have a legally enforceable agreement that provides protections comparable to those provided under landlord-tenant law. The intent of this rule is to safeguard individuals against an arbitrary or capricious eviction from their home. Currently, providers do not necessarily have a written agreement that addresses eviction processes and appeals. Based on analysis of landlord-tenant law and other applicable law, DDS has developed guidance for such an agreement and has incorporated requirements related to legally enforceable agreements into the revised licensure and certification tool (see Table 3. Summary of Transition Plan Tasks and Timelines).

#### *Non-compliant and future settings*

Section V (Site-Specific Assessment) addresses existing settings and describes how DDS is working on transition plans with identified providers that are *currently* not compliant. However, DDS did not have a specific policy in place prior to CMS's issuance of its Community Rule that clearly articulated our position on settings that CMS considers not to meet the criteria for community based settings. Therefore, DDS developed and disseminated a policy (dated September 2, 2014) that spells out the Department's position on future development of settings as well as how existing settings that do not come into compliance with the rule will be addressed. This policy is now in force. (See Table 3. Summary of Transition Plan Tasks and Timelines).

### ***Non-Residential Settings***

#### *Individual Supported Employment*

On July 20, 2010, DDS issued an "Employment First Policy." This policy articulates DDS's commitment to individual integrated employment as the preferred option for individuals of

working age. Since its issuance, DDS has been working collaboratively with providers and stakeholders to ensure that individuals are assisted to enter integrated employment options.

### *Group Supported Employment*

Issued in November 2013, “The Blueprint for Success: Employing Individuals with ID in Massachusetts” is DDS’s plan to increase integrated employment opportunities for people with intellectual disabilities and transform sheltered workshop settings. To accomplish this goal, which is aligned with the HCBS Community Rule, key policy initiatives are being implemented: halting new referrals to sheltered workshops, closing sheltered workshops, and transitioning individuals in sheltered workshops to integrated individual or group employment at or above minimum wage or enhanced CBDS or both. To that end, in FY 14, FY 15, and FY 16, DDS committed to funding a capacity-building initiative for its provider agencies. In partnership with the Institute for Community Inclusion/UMass Boston (ICI), this initiative focuses on staff training, organizational change consultation efforts, expanding an employment collaborative model, providing technical assistance, and supporting forums for individuals and families. The ICI is a nationally recognized organization with demonstrated expertise in the area of supporting employment and inclusion for individuals with disabilities. An important area of focus for these efforts has been on program design and quality features of inclusive CBDS programs, including three statewide trainings with national experts that reached more than 200 providers and DDS staff as well as technical assistance and consultation services with specific providers. This plan was developed by a group of providers, advocates, and leaders. The Blueprint for Success documented the strengths that will be enhanced and the challenges that need to be addressed to meet this goal.

Previous policy initiatives supporting compliance with the HCBS Community Rule are the Department’s commitment to developing alternatives to sheltered workshops as seen in FY2010 procurements for day and employment programs, and the establishment of new rates (2013) that incentivized integrated employment and community based day services.

### *Community-Based Day Supports*

The pillar of DDS’s systemic assessment of CBDS programs was a voluntary survey developed by DDS and distributed to 98 Community-Based Day Support providers, representing 170 CBDS settings. The purpose of the survey was to gather data about establishing standards for what constitutes a meaningful day for individuals, best practices, challenges, and qualitative and quantitative measures for CBDS services. Specifically, it incorporated questions that allowed a provider to discuss areas that were particularly challenging to it related to the Community Rule as a way to note areas that require systemic improvement. The results of the voluntary provider survey will be used to determine systemic changes needed, including but not limited to:

- Development of clear guidelines/standards that define CBDS services, including what constitutes meaningful day activities, and how services and supports can be integrated into the community more successfully;
- Provision of training and staff development activities to enhance the knowledge of providers and their staff with respect to successful strategies to support individuals in meaningful day activities (in part, through the ICI initiative);

- Development of revised certification indicators against which to measure provider performance and quality of services;
- Technical assistance to providers to assist in enhancing their program design and operation; and
- DDS review of contracting provisions to ensure appropriate incentives towards outcomes required by the Community Rule.

Data gleaned from the survey will be used to inform the existing DDS Employment Work Group that is also addressing enhancement of CBDS as well as a recently formed group of advocates, participants/family members, and other stakeholders regarding the following:

- The development of definitions and standards for what constitutes a meaningful day,
- The incorporation of both qualitative and quantitative measures into the DDS licensure and certification process, and
- Systemic strategies to assist all CBDS providers to achieve the outcomes of the Community Rule, including but not limited to technical assistance, staff development and training, and budgetary enhancements.

### **3. Waiver service definitions**

DDS reviewed all waiver service definitions to determine if the definitions themselves meet the following requirements:

- 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?
- Does the service definition allow for integration and access to the greater community?
- Are the services selected by the individual?
- Does the service optimize interaction, autonomy and independence in making life choices?
- 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. This includes the Day Habilitation Supplement, which provides additional support for individuals choosing the Day Habilitation State Plan Service who are enrolled in the DDS Adult waivers. This supplement allows individuals with substantial clinical needs to benefit from and take full advantage of this service. In addition, the flexibility of the ABI and MFP waivers to use more than one provider or more than one day or employment service setting ensures for maximum choice and opportunity for participants to access various settings and specialized services based on individualized interests.

## **4. Provider qualification**

### ***Residential Settings***

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. The RFR that providers responded to outlined critical outcomes with respect to choice, control, privacy, rights, integration and inclusion in community life, consistent with the HCBS settings requirements. All providers that were qualified were shown to adhere to the RFR's requirements for supports to individuals. On an on-going basis, provider qualifications are reviewed through the DDS licensure and certification process described below in DDS's section on Quality Management. No changes are recommended as part of the transition plan for the way in which providers become qualified.

### ***Non-Residential Settings***

Providers of Day and Employment services are the subject of an open bid process and are required to be qualified to provide services and supports. All providers that have been qualified are thus shown to adhere to the requirements for supports to individuals. The Request for Responses (RFR, 2009) that providers responded to outlines critical outcomes with respect to choice, control, career exploration, employment, rights, integration and inclusion in community life. This process demonstrates, for all Day and Employment providers, DDS's commitment to the HCBS settings requirements. An integral part of the procurement process was a requirement that providers re-structure their services to create alternative employment program options. Providers were required to submit their plan to DDS about how they would increase the number of individuals working in integrated employment, and how they would phase out sheltered workshop services within a five-year period. The RFR became an important precursor to the "Blueprint for Success."

Following qualification, providers of day and employment services are subject to licensure and certification on an on-going basis. Certification outcomes also focus on rights, choice, control, employment and meaningful day activities, and community integration. As part of ongoing monitoring to ensure that providers are moving to enhance their outcomes, DDS will revise its licensure and certification tool to clarify expectations and even more closely and strongly align the tool with the critical elements of the Community Rule (see Table 3. Summary of Transition Plan Tasks and Timelines).

In addition, for ABI and MFP day and employment providers not qualified through the above process by DDS, the Massachusetts Rehabilitation Commission Provider Standards for Acquired Brain Injury (ABI) and Money Follows the Person (MFP) Waiver Service Providers identify the requirements to become credentialed to provide waiver day and employment services. Regardless of the state agency that is directly responsible to qualify a particular provider, Massachusetts will consistently meet the requirements of the CMS Community Rule across providers, settings, and services. Please refer to Section V (Site-Specific Assessment) below for more specific information.

## **5. Quality management and oversight systems**

DDS has an extensive and robust quality management system (QMIS) that addresses the criteria in the Community Rule in every aspect of the system. These processes have been in place for many years, and through DDS's review were determined to be responsive to the outcomes addressed in the Community Rule. Listed below are those components that most directly relate to the HCBS rule.

### *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. DDS 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. The licensure and certification tool is in the process of being revised to clarify expectations and even more closely and strongly align the tool with the critical elements of the Community Rule in terms of both residential and non-residential settings. Full implementation of the revised licensure and certification process will occur in August 2016 (see Table 3. Summary of Transition Plan Tasks and Timelines).

### *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 ensure that health, safety, and human rights protections are in place. Results from these visits are monitored by Area Office staff. Visits ensure an on-going presence and oversight by Department staff.

### *Service coordinator (SC) supervisor tool*

The SC Supervisor tool measures the quality, content and oversight of the person-centered 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. As this tool reviews important indicators of a process that fully supports the person-centered approach, building off of an individual's desired goals and objectives and ensuring that individuals exercise choice and control of their services and supports, no changes are needed.



### *Incident reporting*

DDS has a web-based incident reporting and management system that 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 Community Rule; the current Incident Reporting system will continue to be used to monitor these events, as well as identify any systemic issues that must be addressed.

### *Human rights protections*

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.

### *Site feasibility*

Providers intending to serve individuals in 24-hour residential supports, site-based respite, site-based day supports, 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 to be served. Prior to moving any individual into a home, day or work site, state agency staff of the Office of Quality Enhancement (OQE), who license and certify providers, review the location and ensure that all necessary safeguards are in place and the location can be approved for occupancy.

Specifically, the site feasibility process is conducted to determine if a proposed site offers a safe and suitable living and day support environment for the individuals it is intended to serve. The review is designed to provide technical assistance to providers and Area/Regional staff by identifying any features of the home or day support affecting the well-being of individuals that would need to be addressed before it can be occupied. The review includes how the anticipated physical features of a proposed home impact programmatic outcomes, such as adequate bedroom size and number to assure privacy, bathroom design to support individuals' needs for privacy and personal care, common dining and living space conducive to interaction with housemates and entertaining visitors. A separate set of features, consistent with Community Rule requirements, is reviewed for day supports. In addition to the site feasibility process, Area and Regional Office staff are integrally involved in working with providers to determine whether a proposed location is integrated in the community, whether it facilitates access to community activities, is consistent with the needs and desires of the individuals as identified through the

person centered planning process, and does not result in homes being clustered together. These questions are also incorporated into the initial intake process prior to the feasibility review. Taken in their entirety, these processes assure that any proposed residential setting or day setting complies with both the physical/site and programmatic requirements of the Community Rule.

### *Quality Council*

The Department has a Statewide Quality Council that includes representation from self-advocates, family members, providers, and DDS staff. The Council is dedicated to reviewing and analyzing data, 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.

### *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. However, because NCI's data collection methods are anonymous, DDS does not intend to use NCI data to review a specific setting. Rather, NCI is but one small part of DDS's quality assurance process. Continued involvement in the NCI surveys reinforces DDS's commitment to the principles and outcomes delineated in the HCBS Community Rule.

## **B. Waivers operated by the Massachusetts Rehabilitation Commission (MRC)**

The Massachusetts Rehabilitation Commission (MRC) conducted a review and assessment of its compliance for the following three HCBS waivers operated by MRC:

- the Traumatic Brain Injury (TBI) Waiver (MA.0359);
- the ABI Non-Residential Waiver (MA.40702); and
- the MFP Community Living Waiver (MA1027).

All three of these waivers support individuals in the community in their own homes or apartments, or in homes and apartments with family members and other informal supports. In addition, the TBI waiver also supports participants in 24-hour, provider-operated residential settings.

MRC's systemic assessment of these three waivers included a thorough review of MRC's regulations, policies and procedures, provider qualifications and quality management and oversight systems to determine whether the systemic infrastructure was consistent with the principles of community integration as outlined in the Community Rule. In reviewing the status of MRC's compliance with the requirements of the Rule for the non-residential services (day supports and employment services), the state (MassHealth, MRC, and DDS) continues to coordinate work undertaken across both MRC and DDS to ensure consistency in practices, standards and qualifications of the many shared providers of day and employment services.

Listed below are the areas that were reviewed to determine whether and how MRC is positioned to ensure that our standards are consistent with those outlined in the Community Rule. Where areas for improvement were identified, they are indicated below as part of the transition plan.

- MRC regulations 107 CMR 12.00 *et seq.*: Statewide Head Injury Program
- MRC Community Living Division Policies and Procedures
- HCBS waiver service definitions
- Provider qualification standards and processes
- Quality Management and oversight systems including review of the Annual Monitoring Tool

### **1. MRC Regulations (See Table 1. Regulatory Crosswalk)**

107 CMR Chapter 12.00: MRC regulations for the Statewide Head Injury Program describe the referral, application, and eligibility determination process, case closure process, and rights to appeal. MRC manages compliance with regulations through contractual agreements with providers. These regulations were reviewed and were found to be in compliance with the Community Rule; no changes are recommended.

## **2. Policies and procedures** (See Table 3. Summary of Transition Plan Tasks and Timelines)

### ***Residential Settings***

Through the efforts underway by the members of the MRC policy workgroup, established specifically to review MRC policies relative to the Community Rule, the following policies were identified as needing modifications or revisions in order to ensure compliance with the CMS rule:

#### ***Tenancy protection***

The Community 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. Residential providers, however, did not necessarily have a specific document that either the individual and/or his/her guardian sign to ensure that they will not be evicted without due process. MRC developed guidance for providers regarding development of documents safeguarding individuals as discussed above in June 2016 to support providers in developing and documenting agreements with individuals. Residential providers are expected to have executed such agreements with participants by June 2017.

#### ***Locks on doors***

The Community Rule requires that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. For reasons associated with health and safety (chiefly, in order to ensure the swift evacuation of all individuals in the event of a fire or other emergency), this has not been a common practice in MRC residential homes (provider owned/leased residences). MRC developed a policy by January 2016 to address this requirement. In any specific instances where health and safety issues necessitate an exception, the modification will be discussed through the participant's person-centered planning process, and agreement obtained and documented. (See Table 3. Summary of Transition Plan Tasks and Timelines.)

#### ***Number of residents***

MRC recognizes the importance of developing homes that are in settings that are integrated into and support full access to the greater community; as a result, MRC will no longer be developing new homes in excess of five people. Larger homes can feel and appear institutional and may not fully meet the intent of the CMS requirements.

#### ***Dignity, independence, and individual choice and control***

In addition to the requirements around locks and leases, MRC identified opportunities to improve and/or strengthen its policies related to the following conditions of the Community Rule:

- Any HCBS setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Any HCBS setting 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;

- In a provider-owned or controlled residential setting, individuals have the freedom and support to control their own schedules and activities, and have access to food at any time; and
- In a provider-owned or controlled residential setting, individuals are able to have visitors of their choosing at any time; and, furthermore,
- Any modification to these and other conditions specified must be supported by a specific assessed need and justified in the person-centered service plan.

Specifically, MRC determined that the following 10 key policies for residential providers required revision to ensure compliance with the CMS ruling: (See Table 3. Summary of Transition Plan Tasks and Timelines.)

- Residential Guidelines regarding family members, significant others, friends and legal guardians
- Program participant expectations
- Elopement policy for site based programs
- Alcohol and Drug Abstinence Policy
- Leave of Absence Policy
- Sharps Policy
- Smoking Policy
- Telephone, Cable and Internet Usage Policy
- Unsupervised time in Residence/community Policy
- Vacation Policy

MRC convened an internal work group to revise the policies identified above consistent with the Community Rule. The revisions completed by this group remove any restrictive policies or procedures while ensuring the use of comprehensive and ongoing assessments to inform individualized plans. These draft policies were reviewed with stakeholders in March 2015 to ensure MRC fully understood the implications of these changes for the providers and participants. MRC has shared changes made to our policies and procedures with DDS, as well as with the Statewide Transition Plan workgroup to promote consistency between agencies. Once the draft policies were finalized in April 2015, MRC held a statewide training for all staff and providers. These trainings were completed in June 2015. Additional changes were made to the Community Living Division Practices, Policies and Procedures Manual (also referred to as the Provider Policy Manual) in 2016. MRC staff were trained in the complete 2016 manual in April 2016, and provider staff were trained regarding this manual in May 2016.

In response to the policy changes described above, the MRC clinical and program staff, working collaboratively with providers, completed initial assessment of each participant to determine if an individual may require a behavioral intervention plan stemming from clinical support needs and necessitating a modification to their person-centered plan consistent with the Community Rule.

## ***Non-residential Settings***

MRC reviewed its Community Living Division Policies and Procedures manual to ensure compliance with the Community Rule for day and employment settings. Revisions were made with input from stakeholders. Changes applicable to day and employment settings were limited to the incorporation of behavioral assessment and management into the Person-Centered Plan. MRC staff were trained in the complete manual in April 2016; provider staff were trained regarding this manual in May 2016.

In concert with DDS, MRC utilized the Day Services survey tool developed by DDS for shared providers of waiver day services, in order to avoid duplication of effort. As described above (see Section IV.A.2 Non-residential Settings), the purpose of the survey was to gather data from DDS-qualified Community-Based Day Support (CBDS) providers to inform the establishment or enhancement of existing standards for what constitutes a meaningful day for individuals for whom employment is not a goal, as well as best practices, challenges, and qualitative and quantitative measures for CBDS services. MRC staff reviewed the survey responses, and in several instances, contacted providers where clarification was needed. MRC determined that one day program provider does not meet these criteria. The program is not currently utilized by any waiver participant. If the program wishes to commit to changes in services and settings, MRC will offer support through this process. Unless that occurs, the program will not be utilized for any waiver participants.

Data gleaned from the surveys will be shared with MRC and used by DDS to inform the existing Employment Work Group that is also addressing enhancement of CBDS as well as a recently formed group of advocates, participants/family members, and other stakeholders regarding the following:

- The development of definitions and standards for what constitutes a meaningful day,
- The incorporation of both qualitative and quantitative measures into the DDS licensure and certification process,
- The modification of the MRC monitoring tool to reflect changes in program expectations and standards, and
- Systemic strategies to assist all CBDS providers to achieve the outcomes of the Community Rule including but not limited to technical assistance, staff development and training, rate reform and budgetary enhancements.

MRC distributed the same Day Services survey to seven TBI, ABI, or MFP waiver day service providers who are not also licensed or certified by DDS as CBDS providers. Again, the intent was to ensure consistency across the programs of multiple state agencies, and to collect data to support the establishment of standards around what constitutes a meaningful day for individuals, best practices, challenges, and qualitative and quantitative measures for day services. As of February 2016, surveys were reviewed, and providers were contacted as necessary to clarify responses.

### **3. Waiver service definitions**

MRC reviewed all waiver service definitions to determine if the definitions themselves meet the following requirements:

- 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?
- Does the service definition allow for integration and access to the greater community?
- Are the services selected by the individual?
- Does the service optimize interaction, autonomy and independence in making life choices?
- Does the service facilitate choices regarding supports and who provides them?

Based on these criteria, MRC determined that all waiver service definitions are in compliance with the HCBS rule. In addition, the flexibility of these waivers to use multiple providers or diverse day or employment service settings ensures maximum choice and opportunity for participants to access various settings and specialized services based on individualized interests.

### **4. Provider qualification**

#### ***Residential Settings***

Provider owned/leased residential settings were the subject of an open bid process in 2014 and were required to be qualified to begin or continue to provide residential services. The RFR that providers responded to outlined critical outcomes with respect to choice, control, privacy, rights, integration and inclusion in community life, consistent with the requirements of the Community Rule. All providers that were determined qualified to provide services and supports were shown to adhere to the requirements for supports to individuals. In addition to the initial review of qualifications involved in the procurement process, provider qualifications are reviewed through the Annual Monitoring process described in the quality management and oversight section below. No changes are recommended as part of the transition plan for the process MRC uses to qualify providers.

#### ***Non-residential Settings***

##### ***Provider standards***

The MRC Provider Standards for Acquired Brain Injury (ABI) and Money Follows the Person (MFP) Waiver Service Providers identify the requirements to become credentialed to provide waiver day and employment services. These standards have general requirements for all providers and additional requirements for each type of service a provider is seeking to provide. A thorough review identified no areas where the standards were in conflict with the Community Rule. Overall, the standards appropriately speak to community inclusion and individualized, person-centered service planning. They also point directly to the MRC Community Living Division Provider Manual, which articulates policies and procedures in alignment with the

Community Rule. Changes in the MRC Community Living Division Provider Manual were finalized in February 2016 to strengthen language and ensure alignment with the Community Rule. Under the revised Provider Manual, providers must provide services consistent with the principles of person-centered planning, and establish a complaint resolution process that includes providing consumers with a cognitively accessible, written copy of this process.

#### *Provider credentialing*

Under the ABI and MFP waivers, MRC uses the University of Massachusetts Medical School Provider Network Administration unit (UMMS-PNA) to credential day and employment services providers. UMMS-PNA, under a contract with MassHealth, credentials organizations following the MRC Provider Standards. Additionally, MRC supports the credentialing process of new day service providers by conducting an initial site visit and subsequent annual site visits. These visits use a comprehensive monitoring tool inclusive of an assessment of the physical site; policies and procedures to ensure safety and quality; staffing requirements and qualifications; individualized service planning; and community integration. For the credentialing of employment providers, MRC will work with UMMS-PNA to ensure that the requirements of the Community Rule are reflected in the review tool used by the UMMS-PNA in the credentialing and recredentialing process. (See Table 3. Summary of Transition Plan Tasks and Timelines.)

#### *Procurement*

Providers of day and employment services under the TBI Waiver are the subject of open bid processes and are qualified by either MRC or DDS (or both agencies) to provide these services and supports. The Request for Responses (RFR) that day and employment providers respond to outlines critical outcomes with respect to choice, control, career exploration, employment, rights, integration and inclusion in community life. MRC reviews the credentials of those waiver service providers who are not qualified by DDS through annual, onsite monitoring to ensure that all day and employment settings utilized for TBI waiver services meet the requirements of the Community Rule.

For the ABI/MFP/TBI waivers, MRC currently utilizes 33 day services supports providers. Of these providers, 26 are certified or licensed for comparable day services by DDS. As part of this transition plan, DDS is expanding their licensure/certification process to include the requirements of the Community Rule to ensure compliance. The remaining seven qualified day service providers are qualified for waiver day services and will undergo on-site reviews to support the full credentialing requirement by UMMS-PNA.

Similarly, for the ABI/MFP/TBI waivers, MRC currently utilizes 37 supported employment providers, 29 of which are licensed or certified by DDS. The remaining eight providers undergo monitoring and credentialing for this service by either UMMS-PNA or MRC to ensure compliance with the standards of this service and the requirements of the Community Rule.

## **5. Quality management and oversight systems**

MRC has an extensive and robust quality management system that addresses the criteria in the HCBS rule in every aspect of the system. Below are those components of the MRC system that monitor and relate to outcomes addressed in the Community Rule.



### *MRC Monitoring Tool*

The Monitoring Tool measures the quality, content and oversight of the person-centered service planning process and its implementation. This 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 case managers are aware of and addressing issues of concern raised by the individual. Proper implementation of this tool is targeted to ensure optimal person centered outcomes. Changes will be incorporated into this tool, if needed, based on the day services survey results.

### *Residential Coordinator Monitoring Tool*

Administered by the Residential Coordinator (state agency staff) on a monthly basis, this tool assesses provider compliance with all MRC requirements, ensuring that participants are receiving services consistent with their desired goals and objectives as described in their person-centered plan. No changes were identified as being necessary to ensure that this tool reviews appropriate indicators to ensure compliance with Community Rule requirements.

### *Certification process*

The certification process conducted by UMMS-PNA is the basis for qualifying providers under the ABI and MFP waivers. As detailed above in the section on provider qualification standards and processes, this process occurs for both initial certification of a provider for a specific waiver service as well as annually thereafter to ensure continued qualification for these services. The annual certification visits are conducted by MRC agency staff.

### *Incident reporting*

MRC uses access to a web-based incident reporting and management system, HCSIS, for two of its referenced waivers, ABI-N and MFP-CL. This incident reporting system is the result of a collaborative interagency project that leveraged and expanded the functionality of DDS's robust incident management system used with other HCBS waivers that are operated by DDS. For TBI waiver participants, a separate incident reporting system is maintained but with a nearly identical incident reporting tool and requirements. In both systems, 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 additional long-range actions they may take. Aggregate information from both systems is reviewed and analyzed and forms the basis for service improvement targets.

### *Site feasibility*

Providers intending to serve individuals in site-based settings must have any proposed sites reviewed by MRC staff for their feasibility to provide the necessary physical site requirements for the individual participants. Prior to serving any participant in a residential, day or employment site, review of the location is conducted to ensure 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 Community Rule will be monitored for new providers and settings.

## C. Waiver operated by the Executive Office of Elder Affairs (EOEA)

The Executive office of Elder Affairs (EOEA) is the Massachusetts state agency responsible for helping to support elders in the Commonwealth to live independently and with dignity in the settings of their choice. EOEA is the operating agency for the state's 1915(c) Frail Elder Waiver (FEW). This waiver does not include services intended to provide 24/7 care or supervision to participants, such as residential group homes, assisted living residences, or other such settings. Rather, the goal of the FEW is to support elders' abilities to age-in-place, in the community settings of their choice, including one's own private home or apartment or family home. To support this overarching goal, FEW services are provided to participants who typically reside in the community in their own private home or apartment or in a private family home. With the exception of the following waiver services: Supportive Day Program services, transportation, and respite services, all other FEW services are delivered in a participant's home and are therefore fully compliant with the Community Rule. In addition, in an effort to demonstrate full commitment to the Community Rule, the state notes that FEW participants may reside, based on their personal choice, in congregate housing settings. The transition plan for the FEW, therefore, addresses EOEA's review of elder Supportive Day Program settings as well as certain congregate housing settings in which a small number of FEW participants live. (While there is no specific "congregate housing" or "congregate" waiver service, participants who reside in such a setting may receive FEW services in their homes; therefore, the state reviewed these specific settings for compliance.)

The basic foundation of the state's administration of the Frail Elder Waiver is the state law that establishes EOEA's responsibility to implement the elder Home Care Program, which in its focus on independence and community-based programming is aligned well with the Community Rule. Specifically, M.G.L. c. 19A § 4 provides that EOEA "shall be the principal agency of the Commonwealth to mobilize the human, physical, and financial resources available to plan, develop, and implement innovative programs *to insure [sic] the dignity and independence of elders*, including the planning, development, and implementation of a Home Care program for the elderly *in the communities of the Commonwealth.*" (*emphasis added*)

In the context of this state law, EOEA administers the Frail Elder Waiver pursuant to the approved 1915(c) waiver application and in accordance with EOEA Home Care Program Regulations and additional sub-regulatory guidance. The systemic review process for the Frail Elder Waiver's compliance with the Community Rule evaluated each of these areas and is described below; see Table 1. Regulatory Crosswalk for additional detail.

### 1. EOEA Regulations (See Table 1. Regulatory Crosswalk)

The Frail Elder Waiver is administered pursuant to EOEA's Home Care Program regulations (651 CMR 3.00 *et seq.*), which set forth requirements for EOEA in the administration of the Home Care Program, as well as the functions and responsibilities of EOEA's agents (Aging Service Access Points, or "ASAPs," described below under Policies and Procedures). Our review of these regulations focused on the standards and requirements outlined in the CMS Community Rule. The Commonwealth determined that EOEA's Home Care Program

regulations, as they apply to administration of the FEW, are fully compliant with the Community Rule.

## **2. Policies and procedures**

In 2010, Elder Affairs issued a Request for Response (RFR) from qualified entities willing and able to provide comprehensive Information and Referral, Home Care, and Protective Services to Massachusetts elders. Contracts were awarded to 27 ASAPs; following a 2015 merger of two ASAPs, EOEA now contracts with 26 ASAPs. In conjunction with the EOEA Home Care Program regulations described above, Section 8.5 Contract Management of the 2010 RFR sets out the ASAPs' responsibilities and requirements as EOEA's agents for contract management, compliance, and corrective action with service providers. ASAPs are **not** providers of direct services; this prohibition ensures there is no conflict of interest in the establishment of plans of care, the provision of needed services, or in participant and provider monitoring processes.

Administration of the FEW also includes sub-regulatory guidance in the form of overarching HCBS Program Guidelines and specific Program Instructions (PIs) and Information Memoranda (IMs) that set out programmatic requirements and through which EOEA dictates and communicates certain business practices and policy and program changes to its agents.

Based on our review of the 2010 RFR as well as the HCBS Program Guidelines and relevant PIs and IMs for compliance with the Community Rule, EOEA does not recommend any changes to the RFR, PI, and IM documents as part of the transition plan. EOEA identified an opportunity to update and revise the HCBS Program Guidelines to more clearly align with the requirements of the Community Rule, including to clarify requirements for settings in which FEW participants receive services. EOEA expects to issue the revised HCBS Program Guidelines in March 2017 (see Table 3. Summary of Transition Plan Tasks and Timelines).

## **3. Waiver service definitions**

EOEA reviewed all waiver service definitions to determine if the definitions themselves meet the following requirements:

- Does the service ensure individuals receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS?
- Does the service definition allow for integration and access to the greater community?
- Are the services selected by the individual?
- Does the service optimize interaction, autonomy, and independence in making life choices?
- 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. As noted above, aside from Supportive Day Program services, transportation, and respite services, all FEW services are delivered in a participant's home; and, as we have noted, a FEW participant's home may be a congregate housing setting, if such setting is fully compliant with the Community Rule.

#### **4. Provider qualifications**

Pursuant to Section 8.5 (Contract Management) of the 2010 RFR, ASAPs review the qualifications of waiver service providers, including Supportive Day Program services. Qualifications are reviewed as part of initial on-site review visits with new providers, as well as when conducting regular monitoring visits of each provider at a minimum of every three years as part of the provider contract renewal process. EOEA has developed and, through its agents implemented, tools designed to detect, monitor, and ensure provider compliance with the CMS Community Rule on an on-going basis. Although EOEA found that the previous tool ASAPs used to review providers was consistent with the Community Rule, we identified an opportunity to strengthen the tool to align more clearly with the requirements of the rule. The Supportive Day provider review tool was therefore revised to incorporate specific questions related to the Rule's requirements to better facilitate compliance monitoring. For example, the tool includes questions about Plans of Care, meaningful activities, and physical setting. In addition, Program Instruction PI-09-13 (Home Care Program Service Definitions, Attachment A) establishes detailed Home Care program service definitions for Supportive Day services that are consistent with requirements outlined in the CMS Community Rule.

HCBS services provided through the FEW are largely delivered to participants in their current home setting. The participant's home is not chosen as part of FEW enrollment. Some participants have chosen to live in congregate housing. Congregate housing is not a waiver service within the FEW. However, since some participants live in such settings, EOEA reviewed these settings to confirm their community character.

#### **5. Quality management and oversight systems**

The administrative structure in place for the Frail Elder Waiver includes several layers of program oversight and quality management. At the state level, EOEA is the operating agency for the Massachusetts 1915(c) Frail Elder Home and Community Based Services Waiver. Reporting to the Executive Office of Health and Human Services (EOHHS), EOEA is subject to EOHHS's oversight authority. The Office of Medicaid, the medical assistance unit within EOHHS, oversees EOEA's administration of the FEW. Within this structure, the Director of Home and Community Programs and the Home Care Unit Quality Manager at EOEA have responsibility for ensuring that effective quality management systems are in place.

As EOEA's agents, 26 ASAPs implement clinical eligibility, financial, contract management, quality, and other administrative functions of the Home Care Program, including with respect to FEW participants. EOEA's oversight of ASAP operations includes on-site visits every three years. In addition, each ASAP must submit annually an attestation of compliance with program guidelines and waiver requirements in order to maintain continued designation as an appropriate contractor. At the local level, ASAPs conduct operational and administrative functions such as quality monitoring, service provider contracting, and monitoring and incident reporting under the direction of EOEA. Each ASAP's Executive Director manages day-to-day compliance with waiver guidelines along with the ASAP Home Care Program Manager and RN Manager. The provider contract manager, an employee of the ASAP, conducts all provider monitoring, including quality monitoring for all waiver services delivered to FEW participants.

## **V. Site-Specific Assessment**

### **A. Waivers operated by the Department of Developmental Services (DDS)**

In conjunction with its providers, DDS Senior and Regional Staff reviewed residential and non-residential settings in which DDS-operated waiver services are provided to assess their compliance with the Community Rule.

For the limited number of day service providers providing services only under the MFP and ABI waivers, please refer to Section 4.B.4 above, describing the Massachusetts Rehabilitation Commission (MRC) monitoring tool used for these providers, which fully assesses and ensures compliance with the Community Rule. Also see Section B, below, describing MRC's site-specific review process, findings, and remedial actions/actions related to compliance.

#### **1. Process (See Table 3. Summary of Transition Plan Tasks and Timelines)**

##### ***Residential settings***

DDS has approximately 3,300 community residences, both public and private, that offer 24-hour supports; approximately 2,200 are group home settings and over 1,000 are placement services (shared living) in private homes (see Table 3. for additional details). The vast majority of these homes are located in the community and integrated into the many neighborhoods of the State.

DDS conducted a review of existing 24-hour residential settings to determine those settings that had a license and certification in good standing. (For Assisted Living sites that are part of ABI and MFP waivers, where licensure is not applicable, the review determined whether they were credentialed in good standing.) Given the outcomes that are reviewed during the licensure and certification process conducted by DDS surveyors independent of the agency being reviewed, DDS assures that providers that have received a full license and certification meet the standards established in the Community Rule—with the exception of the requirements for legally enforceable written agreements and locks on bedroom doors, which will be dealt with on a statewide, systemic basis. As a result of this review, these homes were deemed to fall in the category of “setting, which with changes, will comply,” unless specifically identified in the next step of the review process.

Central, Regional, and Area Office DDS staff identified specific 24-hour residential settings 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. Based on this analysis, 14 providers were identified for in-depth review.

To facilitate further evaluation of the 14 providers, operating a total of 57 settings identified in step (ii) above, DDS developed and deployed a provider self-assessment tool that borrowed substantially from the exploratory questions that CMS had published:

- The tool was piloted with a specific provider for whom DDS anticipated there might be challenges to meeting the Community Rule requirements.
- Based on the pilot, the tool was modified and finalized for implementation.
- The provider self-assessments were completed by each identified provider, with review by DDS Central and Regional Office staff to identify areas for remediation and improvement.
- Verification of each of the providers' self-assessments was conducted by DDS staff through on-site visits and meetings with key agency staff.
- DDS staff then categorized each site as fully compliant, compliant with changes, or as settings that cannot meet the requirements.

## ***Non-residential settings***

### ***Employment***

As identified in Table 2, there are 106 group supported employment settings and 194 individual supported employment settings. The process described in the Blueprint for Success, including Next Steps and Progress Reports, represents the system-wide approach that DDS is taking related to transforming sheltered workshops and supporting integrated individual employment options consistent with the Community Rule.

As DDS closed all of its sheltered workshops, the focus of the Employment Workgroup shifted to a systemic review of both group employment and CBDS day supports and group employment settings. With the revision process to the statewide transition plan, DDS took the opportunity to re-evaluate the Group Supported Employment settings to ensure that all settings comply with the Community Rule. DDS reviewed site-specific data, including licensure and certification information, for a sample variety of different group employment settings, including but not limited to hospitals, retail, and community business settings, in order to evaluate provider practices at a range of different types of sites. Given that these employment settings are typical workplaces fully integrated into the community in terms of their overall community integration, DDS's review focused on the *experiences* of individuals within each setting, including the following major domains:

- Integration within the workplace (e.g., clusters of individuals with disabilities versus individuals with disabilities working in scattered ways throughout the workplace);
- Access to workplace amenities to the same degree as non-disabled workers; and
- Incorporation of individual interests and preferences.

### ***CBDS***

As described in the discussion of DDS's systemic assessment approach, DDS developed a voluntary survey that was distributed to all 98 Community-Based Day Support (CBDS) providers, representing 170 CBDS settings. The tool was instrumental in evaluating the current state of CBDS settings statewide with respect to the Community Rule requirements by asking providers about their progress in Community Rule compliance. It provided valuable information to inform DDS's approach to enhancing CBDS services through capacity building, technical assistance, training and fiscal support.

Although voluntary in nature, the survey provided rich and generalizable information upon which to base a broad compliance action strategy that will be deployed at the site level across all CBDS providers and settings. Senior DDS staff utilized site-specific program data including licensure and certification information in combination with review of the site-level data from the CBDS survey responses to establish a comprehensive understanding of this setting type in relation to requirements of the Community Rule. These review steps informed a thorough picture of the need for remediation of all CBDS sites in order to ensure comprehensive site-level compliance.

## **2. Findings**

### ***Residential settings***

Based upon the review and assessment, and as further described in the attached Analysis of Waiver Settings, the residential settings described in section 1(a) above fall into the following designations:

- The residential setting complies: 1,091
- The residential setting, with minor changes, will comply: 2,183
- The residential setting, with more substantive changes, will comply: 57 (representing 14 providers; see details below)
- The residential setting cannot meet the requirements: none

Regarding the 14 providers whose 57 settings will require more substantive changes to comply, DDS identified needed compliance actions related to the following Community Rule domains:

- The setting is integrated in and supports full access to the community –  
Examples of compliance actions include relocation of homes; reduction of number of individuals in homes; dental and medical appointments shifted to community providers; unbundling of services; fuller use of interest inventories as part of person-centered planning; wider use of community resources and partnerships; remove all “commercial” signage; and explore/encourage shared living model.
- The setting is selected by the individual from among setting options –  
Examples of compliance actions include provider staff training on person-centered planning; and unbundling of residential and day/employment services.
- The setting optimizes, but does not regiment, individual initiative, autonomy, and independence –  
Examples of compliance actions include provider staff training on person-centered planning; and additional staff to ensure individualized activities.
- The setting facilitates individual choice regarding services and supports –  
Examples of compliance actions include provider staff training on person-centered planning; additional staff to ensure individualized activities; and more individual input into hiring and retaining staff.
- Individuals have freedom to control their own schedules and activities and have access to food at any time –

Examples of compliance actions include provider staff training on person-centered planning; and additional staff to ensure individualized activities.

- Individuals are able to have visitors of their choosing at any time –  
Examples of compliance actions include revision of visiting policy to comport with Community Rule.

In addition, a few of the 57 settings may require changes to physical settings to ensure and enhance accessibility.

### ***Non-residential settings***

The non-residential settings fall into the following designations: (See Table 2. Analysis of Waiver Settings, detailing all setting types)

- The non-residential setting complies: 194 (these represent all individual supported employment settings, including 151 employment supports and 43 competitive integrated employment settings)
- The non-residential setting, with minor changes, will comply: 106 (these represent all group employment settings)
- The non-residential setting, with minor or more substantive changes, will comply: 170 (these represent all CBDS settings)
- The non-residential setting cannot meet the requirements: none
- All sheltered workshops have closed (completed June 2016)

### ***Individual Supported Employment***

The state's presumption of compliance for individual supported employment settings is based on review of the corresponding waiver service definition as described in the DDS section of the systemic assessment narrative in the STP. By definition, Competitive Integrated Employment and Employment Supports—settings for the waiver service Individual Supported Employment—comply with the Community Rule, as these settings are typical work sites that are fully integrated in the community, where people without disabilities are employed.

### ***Group Employment***

DDS determined that all 106 group employment settings require minor modification to come into full compliance with the Community Rule. Specifically, all group employment settings require some level of modification to their policies and/or practices in one or more of the following domains: meaningful integration into the workplace; access to workplace amenities to the same degree as non-disabled workers; and assurance that individuals are earning at least the minimum wage.

### ***CBDS***

Responses to the survey tool described above were received from 34 out of 98 providers, representing 45 of 170 settings. Based on DDS staff review of the survey results and site-specific program data, DDS determined that 100% of the 170 CBDS settings require



modification to come into full compliance with the Community Rule. Responses to the tool indicate that a wide variety of activities are offered by most CBDS settings; that activities are offered both on-site and off-site; that many activities are most commonly offered in a group; and that offered activities are disability-specific as well as integrated into the community. At the same time, CBDS sites identified challenges to providing a meaningful day for a variety of different populations, many of whom do not have work as a goal. Specifically, CBDS settings are challenged to meet the Community Rule in several ways, including but not limited to: insufficient funding to enable consistent individualization, access and integration; staff ratios that are not sufficient to facilitate individualized activities; individuals from different populations with varying needs; lack of access to public transportation and unclear standards/definitions/criteria.

### **3. Remedial Actions/Actions Related to Compliance (See Table 3. Summary of Transition Plan Tasks and Timelines)**

#### ***Residential settings***

The 2,183 homes deemed to be in compliance with the exception of locks and legally enforceable residency agreements will phase in these two changes. Any divergence in these requirements will be incorporated into an individual's Person Centered Plan.

As noted above in the findings section, 14 providers with a total of 57 settings require more substantive changes to achieve full compliance. The residential providers in these settings are collaborating with DDS on detailed provider transition plans related to necessary changes identified in the provider specific self-assessment tool and validated by DDS Regional/Central Office staff.

To assist providers in this process, DDS developed criteria that were used to review the content of each provider's plan ("DDS Revised Guidance Criteria to Assist Providers in Compliance with HCB Settings Requirements," see Table 4). DDS also initiated a work group comprised of DDS staff and providers to assist providers in implementing their transition plans. The group is looking into the financial, real estate, programmatic and other considerations central to implementation of the plans. One potential outcome of this review may be a "waiver compliance package" that includes a budget request to account for the incremental costs of compliance. As providers develop their transition plans and move towards compliance with the HCBS Rule, additional technical assistance is available to them from the Association for Developmental Disability Providers (ADDP), a statewide organization that represents the vast majority of ID providers.

Specific steps in the development and implementation of providers' transition plans include the following:

- Providers developed and submitted transition plans to DDS by December 31, 2015.
- DDS reviewed each provider transition plan.
- DDS is in the process of confirming that each provider's transition plan adequately addresses necessary changes, and if it does not, DDS will work with the provider to amend its plan appropriately.

- DDS will monitor provider progress towards implementing its strategic and transition plans moving forward on a quarterly basis.
- Full implementation of changes identified in each provider's transition plan is expected by March 16, 2019.
- As each of the 14 identified residential providers completes its transition plan implementation, DDS will review 100% of waiver participants at each of the settings to determine if the setting complies with the Community Rule. This will be accomplished by DDS staff through the administration of the enhanced licensure and certification tool, which involves an on-site review utilizing interviews with individuals, staff and families, observation and documentation review.
- Once provider compliance is verified and agreed to by DDS, all related settings will be submitted to CMS to review their continued designation as a HCBS setting.
- While the 14 identified residential providers may have an out-of-cycle review of their settings based on the submission of their plans and timetable for compliance, integration of the outcomes into the routine schedule of licensure/certification reviews will ensure that all providers continue to meet the requirements of the Community Rule.

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 HCBS setting and of the implications for their MassHealth status and services, if they choose to stay in their current setting. They will also be informed of their appeal rights.

### ***Non-residential settings***

#### ***Employment (General)***

DDS has undertaken the following actions related to employment settings as noted within the Blueprint for Success: Employing Individuals with ID in Massachusetts:

- Cease referrals to sheltered workshop programs by 1/1/14 (completed);
- Phase out of center-based work/sheltered workshops by 6/30/16 (completed);
- Transition participants from sheltered workshops to other options (completed);
- Maintain stability for individuals during the transition period and non-work hours (ongoing);
- Expand CBDS programs to include career exploration and a planning component to serve as a pathway to employment (in progress);
- Phase out group-supported employment that pays less than minimum wage by 6/30/18.

Additional actions to build capacity include:

- Staff training and professional development opportunities for provider and DDS staff;
- Technical Assistance/consultation for provider agencies to facilitate organizational change and new service models, including *community-based*, as opposed to center-based day supports programs;

- Expansion of Regional Employment Collaboratives, to a total of six across the state, to facilitate and coordinate new job opportunities; and
- Outreach and communication with individuals with ID and their families/guardians to offer information, resources, and support.

Highlights of the progress to date include:

- 17 out of 31 sheltered workshop agencies received new funding in FY15 to facilitate transitions to phase out sheltered workshops by 6/30/15; 14 received funding in FY16 to facilitate movement of about 800 individuals to new integrated employment and CBDS services to complete the phase-out of sheltered workshop services by 6/30/16 (completed).
- Monthly meetings of the Employment Work Group to develop plans, address issues and identify new ways to support goals- this continues on a bi-monthly basis in FY16.
- Holding regular meetings of Regional Employment First Implementation Teams to share information, best practices, and resources.
- Development of an Employment First electronic newsletter and website, *employmentfirstma.org* (in place and ongoing).
- 19 Regional Employment Forums for families and self-advocates with a total of 1,250 participants (completed); continued information-sharing and input is sought through provider agency meetings with families and through the individual's ISP.
- 5 forums for self-advocates with a total of 100 participants (completed).
- Technical assistance provided to a total of 22 provider agencies, with active consultation ongoing with 12 agencies.
- Trainings have reached more than 500 provider staff, including through a statewide conference, a six-day comprehensive employment supports series, and one- and two-day sessions (including benefits training).
- Explore, Prepare, Act training reached more than 600 individuals/self-advocates and 200 support staff.
- Expansion of Regional Employment Collaboratives resulted in 246 new job placements for individuals served by DDS employment programs.

Next Steps:

- Provide additional trainings;
- Provide ongoing technical assistance support;
- Continued participation in an Employment Incentive Pilot Program with the Massachusetts Executive Office of Labor and Workforce Development;
- Distribute guidance on development of social enterprises; and
- Further develop programs focused on transition from school to employment.

### *Group Employment*

In addition to DDS' on-going work to fully implement the "Blueprint for Success," and in response to the site-specific assessment process and findings described above, DDS will

undertake a standardized, system-wide approach to ensuring full site-specific compliance of group supported employment settings, similar to that described for CBDS services, for two reasons. First, a system-wide approach offers a collaborative and supportive springboard from which providers can come into compliance with the requirements of the Community Rule. Second, DDS is able to leverage existing system-wide processes to implement and provide oversight and monitoring of changes that will ensure full compliance across all 106 Group Supported Employment settings. Together with the Employment Workgroup, DDS is engaged in the following specific activities designed to ensure that all settings, on a site-specific basis, support integration and access (for details, see Table 3. *Summary of Transition Plan Tasks and Timelines*):

- Establishing a clearer definition of what the components of a group supported employment setting are, including assuring integration into the workplace and access to all the same workplace amenities as non-disabled workers enjoy as well as assuring that individuals are earning at least the minimum wage,
- Establishing consistent standards that apply to all group settings,
- Development of guidelines for social enterprises,
- A fiscal package to be included in the Department's budget request to assure adequate funding and rate structure to comply with the Rule
- Technical assistance and support to providers as they implement modifications and enhancements (this includes DDS's continued partnership with the Institute for Community Integration to provide targeted trainings as well as ongoing publication of an e-newsletter; see Systemic Assessment section)
- On-going review and oversight of compliance utilizing the enhanced licensure and certification tool (see Systemic Assessment section)

On a site-specific basis, DDS licensure staff will utilize the enhanced licensure and certification tool for ongoing reviews and oversight, beginning in August 2016, to ensure that providers' implementation of policies and practices reflect full compliance with the Community Rule. Group employment settings are reviewed every two years. Therefore, DDS expects that all sites will achieve and demonstrate full compliance by December 2018. If, however, specific providers or settings are unable to achieve full compliance as determined using the enhanced evaluation tool within the licensure and certification process, then individuals served in settings that cannot meet requirements will be notified by the DDS Waiver Unit that they will no longer receive HCBS waiver services in such settings. Individuals will be informed of their right to request to receive services in another setting and of implications if they choose to stay in their current setting. They will also be informed of their appeal rights.

### **CBDS**

Given the finding that 100% of CBDS settings require some level of modification to come into full compliance, DDS is undertaking efforts to ensure that each CBDS setting implements needed changes to meet the requirements of the Community Rule.

As noted, to ensure a consistent approach to addressing compliance across non-residential programming, a DDS/provider workgroup was formed and is meeting regularly to address

specific remediation activities to bring all CBDS sites into timely compliance with the Community Rule. Such activities include reforms in provider certification requirements and/or processes, enhanced training and staff development activities, standards for meaningful community integration in the context of CBDS programs, provider technical assistance to enhance program design and operation, and contract-based incentives related to outcome goals in the Community Rule.

The workgroup's revision of certification indicators for CBDS providers connects DDS's systemic approach to its implementation of site-specific remediation activities. The revised indicators will be incorporated into a standardized guidance tool that will describe site-specific steps to address the requirements of the Community Rule. DDS will distribute the guidance tool to all CBDS providers and sites by October 2016 to ensure consistency across providers and settings as they develop strategic plans for program service development and quality enhancement that reflect compliance transition activities. All 170 CBDS providers will be required to submit by May 2017 a strategic plan that identifies specific changes to achieve full compliance with the Community Rule. DDS will review all plans, as they are received, at the Area Office, Regional Office, and Central Office levels to ensure that the proposed modifications satisfy all requirements of the Community Rule, and will work with providers to enhance their plans as necessary. Implementation of modifications will begin by July 2017, and providers will be required to report on progress towards achieving milestones in their plans on a quarterly basis utilizing a template developed by DDS. As needed, DDS will provide training and technical assistance to CBDS providers to support their development and implementation of compliance plans, including but not limited to capacity building activities such as staff training and professional development, program development activities, and regional implementation groups.

Going forward, individual CBDS provider compliance will be reviewed and validated by DDS's licensure and certification staff through deployment of the revised licensure and certification tool, which, as a result of DDS's systemic assessment of CBDS services, has been enhanced to ensure that it captures all the elements necessary to meet the requirements of the HCBS Rule. The enhancements include nine new indicators as well as strengthening certain existing indicators. Providers that fall below meeting 80 percent of the standards will be required to submit a progress report detailing how they are addressing the standards that were not met. This process will assure continuous and ongoing monitoring of compliance with the Rule, and comprehensive site-specific compliance within the timeline as noted below.

As all CBDS programs and sites will begin implementation of their strategic plans by July 2017, DDS anticipates that all sites will come into full compliance no later than December 2018 (see Table 3, Summary of Transition Plan Tasks and Timelines). If, however, specific providers or settings are unable to achieve full compliance, then individuals served in settings that cannot meet requirements will be notified by the DDS Waiver Unit that they will no longer receive HCBS waiver services in such settings. Individuals will be informed of their right to request to receive services in another setting and of implications if they choose to stay in their current setting. They will also be informed of their appeal rights.

## **B. Waivers operated by the Massachusetts Rehabilitation Commission (MRC)**

### **1. Process (See Table 3. Summary of Transition Plan Tasks and Timelines)**

#### ***Residential Settings***

MRC has contracts with providers for 42 Residential Habilitation programs located throughout Massachusetts. MRC reviewed these settings, as well as four shared living sites, by utilizing the following process, which did not include the use of provider self-assessments:

- MRC developed a residential setting assessment tool based on the exploratory questions that CMS published.
- MRC staff familiar with each residential setting through required monthly site visits completed the assessment tool for each residential setting.
- Supervisory staff of the MRC Brain Injury and Statewide Specialized Community Services program conducted additional on-site visits to evaluate any sites whose compliance with the Community Rule required further review to confirm. These on-site visits consisted of an interview of the site manager, observation, and discussion with participants. The following areas were considered and discussed:
  - Site integrated with good access to the larger community and opportunities to engage freely in community life
  - Options readily available to support the individual in engaging in work or meaningful day activities chosen by the individual
  - Freedom from coercion and restraint supported
  - The site supports treatment of all with dignity and respect; privacy is respected
  - The individual and/or his/her delegates have the opportunity to develop and update his/her person-centered plan
  - The opportunity for individual choice is widespread and a part of the culture of the site

In addition, for any provider-owned/leased facilities with more than five residents, particular attention was given to the following elements:

- To determine the community character of the site;
- To ensure that policy and practice support full community integration;
- To ensure that the provider is engaged in making the changes supported by the new MRC policies that clarify requirements to comply with the Community Rule (see below);
- To ensure that the number of unrelated individuals living in the home does not create anything other than a comfortable home; and
- To ensure that the individual is comfortable and wishes to remain in what he/she considers his/her home.

Following review in these domains, the sites were determined to be substantially in compliance with the revised MRC policies designed to support the Community Rule, other than with regard to locks on bedroom doors and participant leases (see Section IV.B, above, describing MRC's systemic assessment).

## ***Non-residential settings***

### ***Day Services***

Concurrent with the systemic review delineated Section IV.B, DDS sent the Day Services survey to the 26 MRC-contracted providers of day services who also contract with DDS. MRC sent out the same survey tool to its seven Day Services providers who have been qualified either by MRC or by UMMS-PNA. This survey tool incorporated questions that enabled providers to assess where they fell on the continuum of outcomes necessary to meet the requirements of the Community Rule.

Survey responses were received from all seven providers. MRC staff validated the survey responses based on extensive knowledge of each provider gained through annual on-site visits. Where necessary, providers were contacted to clarify responses.

### ***Supported Employment***

Of the 37 qualified supported employment providers, all but 8 are licensed or certified by DDS. The assessment process for the 29 providers licensed or certified by DDS is described in the DDS site-specific assessment section, above. For the eight employment providers that are not licensed or certified by DDS, MRC reviewed the credentialing information gathered by UMMS-PNA to ensure each setting's fidelity to the service model of individualized supported employment in integrated community settings.

## **2. Findings**

### ***Residential settings***

#### ***Residential Habilitation***

A total of 42 Residential Habilitation sites were reviewed. All sites are in compliance regarding physical accessibility: MRC's residential settings assessment tool and on-site evaluation process confirmed that adaptations have been made as needed to participants' homes in order to ensure full accessibility. Hoyer lifts, roll-in showers, accessible kitchens, roll-out beds, ramps and lifts are available to all participants who require them. New-construction homes are all fully accessible in order for participants to remain in their homes should their needs change.

MRC staff found that 37 of the 42 residential habilitation sites are in full compliance with all the areas of review (described above). Participants confirmed in conversation that they felt engaged in activities of their choosing, and were supported in learning about their community and have opportunities for community membership and participation.

Questions regarding five sites were addressed through on-site visits conducted by MRC staff. These on-site reviews provided an opportunity to further evaluate compliance with the Community Rule, including with respect to community access and integration as well as individual choice. For each site, the visits, through discussion and observation concluded that the site:

- Is integrated with good access to the larger community, with opportunities to engage freely in community life;
- Has options readily available to support the individual in engaging in work or meaningful day activities chosen by the individual;
- Is supportive of the right to freedom from coercion and restraint;
- Is respectful of the right of individuals to privacy and their right to be treated with dignity;
- Actively engages the individual and/or their delegates in development and updating the individual's person-centered plan;
- Maintains a culture that supports individual choice and decision-making.

The on-site reviews of these five sites confirm that they are in compliance with all aspects of the Community Rule.

### *Shared Living 24-Hour Supports*

The four shared living sites were found to be in full compliance with accessibility, community engagement, right to privacy, choice, and support for individuals to make independent decisions. All participants confirmed that they felt supported to engage in activities of their choosing, were fully engaged in developing services and in the service planning process, felt that supports were available to assist them as needed, and felt fully supported in making choices for their lives. Homes were accessible as needed for the participant.

### ***Non-residential settings***

#### *Day Services*

Consistent with DDS's findings, all 26 of the day services providers that contract with both DDS and MRC will require some level of modification to come into full compliance with the rule. Of the seven day providers referenced above that contract with MRC only, four returned surveys that were consistent with observations from annual visits, and that indicate that the providers are aware of the HCBS Community Rule and are engaging participants in services in a manner that comply with the HCBS Community Rule.

Questions regarding the survey content for the remaining three providers were clarified by telephone interview conducted by MRC staff. The clarification provided through the telephone interviews indicate that all of these providers understand the service changes and approaches necessitated by the implementation of the HCBS Community Rule. Two of the agencies are providing services and engaging participants in a manner that is compliant with the HCBS Community Rule. The final provider is not fully compliant. This provider is not currently utilized by MRC to serve waiver participants, and will not be utilized unless settings and services come into full compliance with the Community Rule.

#### *Supported Employment*

All 29 providers that are licensed or certified by DDS require some level of modification to achieve full compliance with the Community Rule (see discussion of DDS's site-specific assessment above). Of the remaining eight providers that are not licensed or certified by DDS, review of these services for compliance with the Community Rule determined that seven



providers are in compliance. The final provider is not currently utilized by MRC to serve waiver participants, and was determined to not be in compliance with the Community Rule. This provider was notified that in order to work with TBI recipients, services would need to change to meet the requirements of the Community Rule.

### **3. Remedial Actions/Actions Related to Compliance** (See Table 3. Summary of Transition Plan Tasks and Timelines)

#### ***Residential settings***

As noted in the Systemic Assessment section, changes to be made across all sites include development of written tenancy agreements and locks on bedroom doors when this is not prohibited by state law; i.e., if the bedroom contains an emergency egress. In these cases, the modification as well as the available privacy protocols will be discussed through the participant's person-centered planning process, and the participant's agreement to accept the non-lockable bedroom will be documented.. Other changes include an emphasis within the participant's person-centered plan on community engagement and compliance with the policy changes noted elsewhere.

#### ***Non-residential settings***

The remediation strategy for both day services and employment settings will be fully aligned with the approach described above in the DDS site-specific assessment section for all providers that are contracted with, or are licensed or certified by DDS. Of the seven day services and eight employment settings that are not DDS-contracted, -licensed, or -certified, all but one of each type were determined to comply fully with the Community Rule, and therefore require no remediation. One day services provider was determined to be unable to comply and will not serve waiver participants going forward. The one employment provider identified as not compliant currently does not serve any waiver participants. MRC determined that this setting is unable to comply; this setting will not serve waiver participants going forward.

Any individuals served in settings that cannot meet requirements will be notified by the Waiver Unit that they will no longer be receiving services in these settings through an HCBS Waiver. Individuals will be informed of their right and supported around their interest to receive services in another setting or through another qualified provider. Additionally, if they choose to stay in their current setting, they will be informed of the implications of that decision for their continued waiver participation as well as the potential impact on their MassHealth eligibility. All such participants will also be notified of their appeal rights.

## **C. Waiver operated by the Executive Office of Elder Affairs (EOEA)**

The nature of the Frail Elder Waiver (FEW) is to keep participants in their homes in the communities that they have chosen. When the CMS Community Rule was issued, EOEA undertook a systemic review to evaluate where and how FEW participants reside and receive waiver services. This review identified two types of settings that EOEA determined should be further examined in order to ensure full compliance with the HCBS Community Rule:

- settings in which the FEW service of Supportive Day Care is delivered; and
- congregate housing settings in which a small number of FEW participants have chosen to live.

### **1. Process (See Table 3. Summary of Transition Plan Tasks and Timelines)**

#### *Supportive Day Programs*

A FEW participant may chose, during his/her person-centered service planning process, to include Supportive Day services in his/her service plan. Supportive Day services provide an opportunity for socialization with peers and include activities geared to ensuring participants' integration into the wider community.

In September 2015, EOEA conducted, through its agents (ASAPs), a comprehensive review of all Supportive Day settings. Fifty-six (56) Supportive Day providers contract with one or more of the 26 ASAPs throughout the commonwealth, making Supportive Day services available to many elders, including FEW participants. In fact, 12 of these sites were utilized by 87 FEW participants. To ensure that all FEW participants have access to the available Supportive Day services and sites, all 56 contracted Supportive Day providers were reviewed.

A survey was developed by EOEA and completed by its agents in order to determine compliance of each Supportive Day Program potentially available to HCBS consumers. The survey supplemented EOEA's systemic assessment of existing policies, including the Supportive Day Program service specifications that outline the minimum requirements each program must meet in order to become and remain a contracted provider of this service. EOEA's agents ensure that providers maintain compliance with such requirements through the regular and ongoing contract management process described in Section IV.C., Systemic Assessment. Where EOEA identified, through its systemic assessment process, that the physical location requirements of the Community Rule were not included in the service specifications for contracted providers in terms of physical location, the survey required submission of information about Supportive Day Program locations and physical settings. For sites that reported being located in the same building as, adjacent to, or on the grounds of a campus with a medical facility or other service site, the survey was designed to elicit additional information about the design of the program, comprehensiveness of the programs' approach to ensuring participants' integration in and with the community, as well as staff knowledge of participants' preferences, capabilities, and interests and how they are integrated in care planning and the programming provided. Together, the survey and the program specifications address all aspects of the Community Rule. The survey responses thus enabled the ASAPs to fully evaluate each setting's compliance with the Community Rule.

ASAPs completed the surveys for each contracted Supportive Day Program site based on on-site monitoring and specific knowledge of each program. EOEa reviewed and analyzed survey results for all 56 Supportive Day programs, gathering additional information as needed from the agent that performed the primary review. EOEa staff subsequently conducted on-site visits at four sites identified as potentially out of compliance. On-site visits included review of the setting, discussion with participants and staff regarding the setting's relationship with nearby medical, nursing, or assisted living facilities, ability to meet consumer's needs and desires, freedom from coercion and restraint, access to food, person centered care planning processes, participants' freedom to choose activities important to them, and inclusion in the community.

### *Congregate Housing*

In Massachusetts, certain elders have chosen to live in congregate housing. Within the state of Massachusetts, there are 44 congregate housing sites that encompass 572 individual units. Congregate housing is not a waiver service, nor is it a 24/7 staffed residence. Rather, congregate housing is a shared living environment designed to integrate housing and certain services needed by elders and younger disabled individuals who choose this environment as their home. Congregate housing settings are located in the community within neighborhoods or housing developments. The goal of congregate housing is to increase self-sufficiency through the provision of supports in a shared setting. Congregate housing is neither a nursing home nor a medical facility. It does not offer 24-hour care or supervision. Congregate housing provides housing in a supportive, communal—but not custodial—environment. Services are not inherent to the congregate setting, nor are residents required to receive services in order to reside in congregate housing. As for any FEW participant, a participant who resides in congregate housing will develop with their case manager a person-centered individual care plan to identify and authorize the specific waiver services they may need and want. These services are delivered separately and independent of any supports available within the congregate housing setting. Within the setting, each resident has a private bedroom, but may share one or more of the following: kitchen facilities, dining facilities, and/or bathing facilities. Throughout the state, there are many variations in size and design of congregate housing.

As noted, congregate housing is not a waiver service. A small number of FEW participants have chosen to reside in congregate housing, and may have waiver services delivered in their home consistent with their person-centered plan of care. In October 2014, EOEa developed and, through its agents (Aging Services Access Points, or ASAPs), conducted a survey of each congregate housing setting. The survey was based on the exploratory questions that CMS published and included the following areas of review: location, leases, access to visitors, freedom from coercion and restraint, consumer choice, consumer integration in the community, and occupant privacy and access. This compliance survey was completed for all 44 congregate housing sites within the state, including sites in which no FEW participants reside.

ASAP staff, based on their extensive knowledge and frequent on-site visits to each of the congregate settings, completed the required survey. ASAPs are required to visit each congregate setting located within the ASAP's designated area at a minimum of monthly. During their monthly visit, the ASAPs are required to conduct whole-house meetings and visit with individual residents. Such visits typically focus on consumers' satisfaction with the congregate

setting, reassessment of needs, satisfaction with support provided and any concerns or unmet needs identified. These agents are part of a Multi-Disciplinary team comprised of housing authority representatives and other necessary agencies that supports the resident during the application, selection, and integration process into the congregate setting. EOEA analyzed survey results for each congregate setting, followed up with the ASAP as needed for clarification, and conducted site visits to any setting where survey results identified potential non-compliance with the Community Rule.

## **2. Findings (See Table 2. Analysis of Settings)**

### *Supportive Day Programs*

EOEA identified 56 Supportive Day service sites that provide, or may provide, waiver services to FEW participants. Of these 56 sites, 12 were providing waiver services to 87 FEW participants at the time the survey was completed. All 12 sites in which FEW participants are served are in full compliance with the Community Rule, as demonstrated by their confirmed compliance with EOEA program specifications that are consistent with the rule, and through their responses to the survey regarding additional physical and programmatic qualities required by the rule. Of the remaining 44 sites, none of which currently provides waiver services to FEW participants:

- Forty (40) sites were confirmed to comply fully with the Community Rule, and
- Four (4) sites were identified as requiring further review to assess their compliance status.

EOEA conducted on-site visits of the four sites that were identified as needing further review. All four of these Supportive Day Program sites reported information on the survey that could have indicated qualities presumed to be non-HCB in nature. Following are the results of EOEA's on-site visits to assess the status of each site:

- For one site, the agent reported that the location was on the campus of an assisted living residence. EOEA staff found that this Supportive Day Program setting and the assisted living residence occupied rear-abutting properties, but that they were in fact located on different streets in a general area characterized by both residential and commercial properties, and had no physical or programmatic relationship to one another. Based on the actual physical site characteristics and programmatic qualities of this Supportive Day Program, and that the survey response inaccurately described the setting's location relative to an assisted living residence, EOEA determined that this site in fact does not have qualities presumed to be non-HCB in nature, and that it is fully compliant with the requirements of the Community Rule.
- For one site, the agent reported on the survey that the location was on a campus with elder housing. EOEA staff found that this Supportive Day Program setting's property was not appropriately described as a campus. Based on the actual physical site characteristics and programmatic qualities of this Supportive Day Program, and that the survey response inaccurately described the settings' location relative to certain types of housing units, EOEA determined that this site in fact does not have qualities presumed to be non-HCB in nature, and is fully compliant with the requirements of the Community Rule.

- For one site, the agent reported that it was co-located with a medical facility. This Supportive Day Program subsequently closed altogether.
- For the last of these four sites, the agent reported on the survey that its location was in or on the grounds of a nursing facility. EOEA determined that this site in fact does have qualities presumed to be non-HCB in nature due to its location. EOEA further concluded that this site cannot come into compliance with the Community Rule. This site currently does not serve any FEW participants, and as a result of EOEA's determination, this Supportive Day Program provider will be precluded from serving FEW participants going forward.

### *Congregate Housing*

Following a review of all site-specific survey results, EOEA determined that 40 out of 44 congregate housing settings fully comply with the Community Rule. Specifically, these settings' locations, physical accessibility characteristics, and programmatic qualities fully support community integration and individual choice. Four congregate settings were not related to physical sites, rather were identified to be in need of further review. Identified concerns were programmatic in nature. Only three FEW participants reside in two of these four identified settings.

EOEA staff conducted on-site visits to these four congregate housing settings. Following are the results:

- All four settings were flagged by the ASAPs in their reviews as having policies regarding visitors that were potentially inconsistent with the Community Rule requirement. EOEA found that in all four cases, the settings' policies do in fact allow residents to have visitors of their choosing at any time. EOEA's site visits further determined that three of these congregate settings comply fully with the Community Rule in all respects.
- EOEA determined during its on-site visits, that one of the four settings was not compliant due to a lack of locks on bedroom doors as well as lack of adequate protections for privacy during personal care (specifically, it lacked locks or other privacy mechanism on a bathroom door). EOEA determined that this setting can, with minor modification, achieve compliance. The ASAP will monitor the setting's compliance against the site-specific plan and confirm that bedroom door locks and adequate privacy protections for personal care activities are in place no later than January 2017.

## **3. Remedial Actions/Actions Related to Compliance (See Table 3. Summary of Transition Plan Tasks and Timelines)**

### *Supportive Day Programs*

Based on the results of EOEA's site-specific reviews of the four Supportive Day Programs identified as potentially out of compliance, no remedial actions are required.

### *Congregate Housing*

EOEA has directed the congregate housing setting described above as requiring minor modifications to make the necessary modifications no later than January 2017. The ASAP will

monitor the setting's remediation implementation, and EOEa staff will confirm their full compliance. Concomitantly, EOEa's housing director will conduct site visits to a sample of congregate housing settings through May 2017 to verify compliance with the Community Rule. If any setting is unable to achieve compliance, EOEa and its agent will work with the congregate setting to relocate FEW participants to another setting that has met the requirements of the Community Rule or, after ensuring the participant is fully informed, determine whether the participant wishes to discontinue their waiver enrollment.

In addition, EOEa is in the process of revising its HCBS Waiver Program Guidelines to provide standards and guidance to its agents of the appropriate settings for waiver participants, including congregate housing to ensure compliance with the Community Rule. This policy will be completed no later than March 2017 and will include a new review tool that explicitly addresses the exploratory questions published by CMS. (see Ongoing Monitoring section)

## **VI. Ongoing Monitoring**

MassHealth will continue to monitor and oversee compliance with the STP on an agency-by-agency basis, as each agency monitors and oversees compliance across its provider network.

In addition, the MassHealth-convened STP Cross-Agency Workgroup will serve as a locus for ongoing collaboration as the agency-level plans are implemented, as well as a vehicle to share best practices and monitor accountability. Moreover, as MassHealth and the waiver-operating agencies look to the future, the MassHealth Community Waiver Unit will identify initiatives and potential waiver changes and will utilize the Cross-Agency Workgroup to review plans for any possible compliance issues.

### **A. Waivers operated by the Department of Developmental Services (DDS)**

For all settings in which changes will be required, DDS will institute a process to ensure 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 DDS staff to ensure provider adherence to transition plans and processes.

In addition, the quality management systems outlined in the discussion of DDS's systemic assessment in Section IV above are the mechanisms through which DDS will monitor providers' and settings' compliance with the spirit and intent of the HCBS Rule. While providers are expected to have robust internal quality management and improvement processes, DDS does not rely on provider assessment as a measure of compliance with the Community Rule. All reviews and monitoring processes are conducted by an array of DDS staff including licensure and certification surveyors, program monitors, and Area and Regional staff, none of whom have any direct service responsibility.

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

### **B. Waivers operated by the Massachusetts Rehabilitation Commission (MRC)**

MRC intends to continue to monitor all residential settings through use of state agency staff (Residential Coordinators) who do not provide direct services to participants. This creates a conflict-free monitoring system. In addition, MRC staff conduct annual on-site compliance evaluations.

MRC conducts annual site visits of non-residential day service settings not licensed or certified by DDS. For all such day services, MRC will utilize a monitoring tool to review each site and the activities/services provided for all day programs, to monitor ongoing Community Rule compliance. Supported employment provider qualifications are reviewed every two years or as specified in the waiver application, to ensure continued compliance with requirements. In

addition, MRC case managers monitor provider compliance, through annual meetings with participants as part of the person-centered planning process.

If any of the ongoing monitoring indicates a need for a substantive change in the transition Plan, MRC along with MassHealth will revise the Transition Plan, complete public input activities, and resubmit the Transition Plan for CMS approval.

### **C. Waiver operated by the Executive Office of Elder Affairs (EOEA)**

#### *Supportive Day Programs*

EOEA has updated the service provider monitoring tool used to conduct on-going monitoring of Supportive Day Programs to include revised standards. All ASAPs will conduct monitoring of Supportive Day Programs utilizing this monitoring tool on an on-going basis, as well as utilize the tool in the process of evaluating any new Supportive Day Program providers. Provider monitoring, conducted every two years, and ongoing Case Management oversight will ensure that all Supportive Day Program providers maintain compliance, and will assist the ASAPs and EOEA to identify any programs that are not in compliance. EOEA will discontinue or preclude utilizing any program that does not maintain compliance with the Community Rule.

#### *Congregate Settings*

Going forward, EOEA's agents will play a two-fold role to ensure that all congregate settings in which FEW participants reside maintain long-term compliance with the Community Rule. First, the ASAPs work closely with waiver participants who are seeking a congregate unit during the process of applying for residence in, and moving into a congregate housing setting. Applicants will be informed that they will not be eligible to receive FEW services should they choose to reside in any setting that is not compliant with the Community Rule. ASAPs will not authorize FEW services for individuals who reside in a non-compliant setting. Second, EOEA's agents are required to visit each congregate housing setting in their designated area on a monthly (minimum) basis. The ASAPs will use information obtained through these on-site visits to identify any required compliance updates or changes related to physical plant, programming, or resident rights over time. In addition, for each congregate housing setting, the ASAPs will update the congregate housing setting survey (described above under Site Specific Assessment Process) every two years as an additional tool to verify the settings' continued compliance.

In addition, EOEA conducts case record reviews for a statistically significant sample of waiver participants. Cases are chosen at random, and may include FEW participants residing in congregate settings or receiving Supportive Day Program services. These reviews include an assessment of the consumer's environment and functioning within their environment, and serve as an additional layer of ongoing monitoring and oversight to ensure compliance of Supportive Day Programs and congregate settings with the Community Rule.



## VII. Heightened Scrutiny

Based on the results of our systemic and site-specific assessments, Massachusetts has not identified any waiver service settings that would need to be put forward for heightened scrutiny at this time. We are working with providers through the implementation of their transition plans, including state monitoring and on-site verification of progress, to ensure full compliance with the Rule by March 2019. Should the state identify any residential or non-residential settings that are presumed to have the qualities of an institution, but which the state has determined through its review are in fact HCBS in nature and therefore in compliance, the state will put such providers/settings forward for heightened scrutiny:

For all settings the state identifies as presumed to have the qualities of an institution:		
Step	Settings/providers determined to have characteristics of an institution	Settings/providers determined to be HCBS in nature
1	Receive each provider's transition plan and work with each provider to determine the responsiveness of its plan to the Community Rule. Where submitted provider plans do not appear to comply fully within the appropriate timeframe, the relevant agency will work with the provider to bring the plan to timely compliance.	Document information clarifying the outcomes experienced by HCBS waiver participants.
2	Monitor progress toward the goals and objectives as identified in specific provider transition plans.	Ensure that such outcomes reflect and demonstrate true community integration for such participants.
3	Identify issues with provider progress and work with the provider to improve performance.	Produce clear information that documents practical, achievable and verifiable demonstration of on-going community integration for such participants in the settings in question.
For all settings identified above:		
4	Prepare documentation and explanatory information for presentation to CMS related to those providers/settings that may require heightened scrutiny.	
5	Post such documentation from Step 4 for public notice and comment.	
6	Submit such documentation to CMS.	
7	Work with CMS to develop/plan for conducting heightened scrutiny for each such provider/setting and carry out the plan with CMS collaboration.	

## **VIII. Participant Relocation**

Massachusetts does not expect, after February 2019, to have remaining waiver participants receiving services in non-compliant settings. However, should the state identify residential or non-residential settings that will not be compliant with the Community Rule in the appropriate time frame, the state intends to discontinue use of such settings within its HCBS waivers, in the following manner.

### ***Residential Settings***

All existing residential settings that eventually may be identified to be unable to become compliant are within existing waivers for which the state currently also operates state supported programming. Therefore, any waiver participants (beneficiaries) who may be served in such settings would be notified that they may continue to reside in the setting if they so choose, but if so, their participation in the waiver would be discontinued.

State supported-programming could be continued until such time as the individual chooses to move to a compliant setting, at which point he/she may choose to reenroll in the waiver, assuming appropriate eligibility is met at that time and there is sufficient available capacity.

Each waiver operating agency that may have the need to relocate individuals will work with each individual to clarify options for moving as well as support the individual and their family to make choices about potential new living situations, bring the individual to visit the potential options, work out the timing of a move, plan and execute the individual's move to the new environment, and help acclimate him/her to the new surroundings.

### ***Non-Residential Settings***

All existing non-residential settings that eventually may be identified to be unable to become compliant are within existing waivers for which the state currently also operates state-supported programming.

Specific non-residential settings unable to meet compliance will be discontinued as waiver service providers. Individuals served in such settings will have a choice of different options to continue to receive services, including switching to other compliant settings that deliver the same/comparable waiver services. Alternatively, as described above, a waiver participant may opt to continue to receive services in the non-compliant setting, supported by state funding only, while remaining a participant in the waiver for receipt of other, compliant waiver services.

The participant may also continue receiving a non-compliant non-residential service at his/her discretion, until such time as he/she can switch into a compliant waiver service, when the state identifies and, through the person-centered planning process, arranges for transition to a program/setting the participant finds acceptable. Each waiver-operating agency that may have the need to transition individuals to new programs/settings will work with each individual to clarify program/setting options, support the individual and their family to consider such options and make choices, work out the timing of the change, and help acclimate him/her to the new program/setting.

## **IX. Further Revisions to Statewide Transition Plan, Ongoing Public Input**

MassHealth and the waiver-operating agencies are committed to transparency during both the planning phase and the implementation phase of the Statewide Transition Plan (STP) to comply with the HCBS Community Rule. 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. If, in the course of monitoring activities, MassHealth and/or the waiver-operating agencies determine substantive changes to the STP are necessary, we 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; and
- Review and comment on all input received by email, mail and in the public forums.

MassHealth will collaborate with the waiver-operating agencies as described below to engage stakeholders throughout implementation of the STP.

### ***Department of Developmental Services (DDS)***

Information and updates on the implementation of the STP will be posted on the DDS website. In addition, updates will be provided to DDS' Statewide Advisory Council, the Statewide Quality 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 Disability Law Center, 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 compliance.

### ***Massachusetts Rehabilitation Commission (MRC)***

MRC's implementation of the finalized STP will be subject to periodic updates with stakeholders to gather continued feedback and keep stakeholders apprised of progress toward full implementation. Stakeholders will include the DDS stakeholders listed above, as well as the Brain Injury Association of Massachusetts and the MFP/ABI/TBI Stakeholders Advisory Committee.

### ***Executive Office of Elder Affairs (EOEA)***

EOEA's implementation of the finalized STP will be subject to periodic updates with stakeholders to gather continued feedback and keep stakeholders apprised of progress toward full implementation. Stakeholders will include those listed above, as well as the Massachusetts Association of Older Americans, AARP, Councils on Aging, the EOEA Advisory Committee, and others.

## Table 1. Regulatory Crosswalk

CMS Regulatory Citation	Massachusetts Regulatory/Policy/Practice/Citation	Compliance Status
<b>Department of Developmental Services</b>		
<b>441.301(c)(4)(i):</b> The setting is integrated in and supports full access to the community	<u><b>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</b></u> <u><b>115 CMR 7.03:</b></u> Outcomes for Individuals <ul style="list-style-type: none"> <li>a) Rights and Dignity</li> <li>b) Individual Control</li> <li>c) Community Membership</li> <li>d) Relationships</li> <li>e) Growth and Accomplishments</li> <li>f) Personal Well-Being</li> </ul> <a href="#">Policy #2014-1-HCBS settings</a>	<b>State standards are compliant with the HCBS Settings Rule.</b> To meet the requirements of the cited DDS regulations and policy instrument, a setting must be integrated in and support full access to the community.
<b>441.301(c)(4)(ii):</b> The setting is selected by the individual from among setting options	<u><b>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</b></u> <u><b>115 CMR 7.03 (b):</b></u> Individual Control  <u><b>MA.0826, MA.0827, MA.0828:</b></u> 115 CMR 6.20(2)(a)(3): Self Determination  <u><b>MA.40701, MA.1028:</b></u> ABI/MFP policy manual and member handbook (currently in development)	<b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulations establish the right of the individual exercise control and choice in all aspects of life, a fundamental aspect of which is choice of where to reside.

## Department of Developmental Services (continued)

<p><b>441.301(c)(4)(iii):</b> Privacy, dignity, respect, freedom from coercion and restraint</p>	<p><b><u>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</u></b> <a href="#">115 CMR 7.03</a>: Outcomes for Individuals</p> <p><b><u>MA.0826, MA.0827, MA.0828:</u></b> <a href="#">115 CMR 5.03</a>: General Principles <a href="#">115 CMR 5.04</a>: Other Rights <a href="#">115 CMR 5.08</a>: Informed Consent</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulations provide for rights of privacy, dignity and respect, and freedom from coercion and restraint. State standards will be strengthened further with implementation of Positive Behavioral Supports and subsequent revisions to the cited DDS regulations (anticipated effective date December 2016), as well as through issuance of a policy manual and member handbook for MA.40701 and MA.1028 (anticipated Oct. 2016).</p>
<p><b>441.301(c)(4)(iv):</b> Optimizes, but does not regiment, individual initiative, autonomy and independence</p>	<p><b><u>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</u></b> <a href="#">115 CMR 7.03</a>: Outcomes for Individuals</p> <p><b><u>MA.0826, MA.0827, MA.0828:</u></b> <a href="#">115 CMR 5.03</a>: General Principles <a href="#">115 CMR 5.04</a>: Other Rights</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> To meet the requirements of the cited DDS regulations, a setting must optimize, but not regiment, individual initiative, autonomy, and independence. State standards will be strengthened further with issuance of a policy manual and member handbook for MA.40701 and MA.1028 (anticipated Oct. 2016).</p>

## Department of Developmental Services (continued)

<p><b>441.301(c)(4)(v):</b> Facilitates individual choice regarding services and supports</p>	<p><b><u>MA.0826, MA.0827, MA.0828:</u></b> <a href="#">115 CMR 6.20(2)</a>: Principles governing individual support planning <a href="#">115 CMR 5.04(6)</a>: Right to decline any service</p> <p><b><u>MA.40701, MA.1028:</u></b> Person-centered planning tools</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulations and tools describe and ensure deployment of person-centered planning principles that facilitate individual choice regarding services and supports, and set out an individual's right to decline any service or support. State standards will be strengthened further with issuance of a policy manual and member handbook for MA.40701 and MA.1028 (anticipated Oct. 2016).</p>
<p><b>441.301(c)(4)(vi)(A):</b> Unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement</p>	<p><b><u>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</u></b> Revised Licensure Tool with guidelines</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> Where state standards did not previously address this aspect of the Rule, a sub-regulatory change that incorporates this requirement into the licensure and certification process was made; effective 8/1/2016.</p>
<p><b>441.301(c)(4)(vi)(B):</b> Each individual has privacy in their sleeping or living unit</p>	<p><b><u>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</u></b> <a href="#">115 CMR 7.07(5)(6)(7)</a>: Environmental requirements</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulations provide for individual privacy. State standards will be strengthened further with promulgation of revised regulations (anticipated effective date December 2016) as well as through issuance of a policy manual and member handbook for MA.40701 and MA.1028 (anticipated Oct. 2016).</p>

## Department of Developmental Services (continued)

<p><b>441.301(c)(4)(vi)(C):</b> Individuals have freedom to control their own schedules and activities and have access to food at any time</p>	<p><b><u>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</u></b> <a href="#">115 CMR 7.03(b)(c)(f)</a>: Individual Control, Community Membership, Right to choose food</p> <p><b><u>MA.0826, MA.0827, MA.0828:</u></b> <a href="#">115 CMR 5.03(2)</a>: Freedom of choice</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulations and subregulatory standards establish freedom of individual choice in all aspects of community living, including the right and freedom to choose food, schedules, and activities. Revisions to 115 CMR 5.00 will further clarify that any modification must be addressed in the Individual Service Plan (anticipated effective date December 2016). State standards will be strengthened further with issuance of a policy manual and member handbook for MA.40701 and MA.1028 (anticipated Oct. 2016).</p>
<p><b>441.301(c)(4)(vi)(D):</b> Individuals are able to have visitors of their choosing at any time</p>	<p><b><u>MA.0826, MA.0827, MA.0828:</u></b> <a href="#">115 CMR 5.04(3)</a>: Right to be visited and to visit others</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards partially comply with the HCBS Settings Rule.</b> The DDS regulation establishes individuals' right to have visitors of their choosing at any time, and are being revised to clarify that any modification must be addressed in the Individual Service Plan (anticipated effective date December 2016). State standards will be strengthened further with issuance of a policy manual and member handbook for MA.40701 and MA.1028 (anticipated Oct. 2016).</p>

## Department of Developmental Services (continued)

<p><b>441.301(c)(4)(vi)(E):</b> The setting is physically accessible to the individual</p>	<p><b><u>MA.0826, MA.0827, MA.0828, MA.40701, MA.1028:</u></b> <a href="#">115 CMR 7.07(4)(5)</a>: Environmental requirements – barrier free</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulation requires settings to be physically accessible to accommodate the needs of the individual.</p>
<p><b>441.301(c)(4)(vi)(F):</b> Modifications must be supported by a specific assessed need and justified in PCP</p>	<p><b><u>MA.0826, MA.0827, MA.0828:</u></b> <a href="#">115 CMR 5.14</a>: Behavior modification/proposed positive behavioral supports regulations</p> <p><b><u>MA.40701, MA.1028:</u></b> ABI/MFP policy manual and member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited DDS regulations require that modifications to individual rights must be supported by a specific assessed need and justified in the PCP. State standards will be strengthened further with implementation of Positive Behavioral Supports and subsequent revisions to the cited DDS regulations (anticipated effective date December 2016).</p>



## Massachusetts Rehabilitation Commission

<p><b>441.301(c)(4)(i):</b> The setting is integrated in and supports full access to the community</p>	<p><b><u>MA.0359, MA.40702, MA.1027:</u></b> <a href="#">130 CMR 630.404(A)(2)</a>: Provider Eligibility</p> <p><a href="#">MRC Community Living Division Providers Manual</a>,<sup>1</sup></p> <ul style="list-style-type: none"> <li>○ <i>Home and Community-Based Settings (General)</i>; and</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i></li> </ul>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> To meet the requirements of the cited MRC policy, a setting must be integrated in and support full access to the community.</p>
<p><b>441.301(c)(4)(ii):</b> The setting is selected by the individual from among setting options</p>	<p><b><u>MA.0359, MA.40702, MA.1027:</u></b> <a href="#">130 CMR 630.404(A)(2)</a>: Provider Eligibility</p> <p><a href="#">MRC Community Living Division Providers Manual</a>,</p> <ul style="list-style-type: none"> <li>○ <i>Home and Community-Based Settings (General)</i>;</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i>;</li> <li>○ <i>Person-Centered Planning Principles</i>; and</li> <li>○ <i>Person-Centered Service Plan</i></li> </ul>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy ensures that the individual selects from among settings options as part of the person centered planning process.</p>
<p><b>441.301(c)(4)(iii):</b> Privacy, dignity, respect, freedom from coercion and restraint</p>	<p><b><u>MA.0359, MA.40702, MA.1027:</u></b> <a href="#">130 CMR 630.404(A)(2)</a>: Provider Eligibility</p> <p><a href="#">MRC Community Living Division Providers Manual</a>,</p> <ul style="list-style-type: none"> <li>○ <i>Guiding Principles</i>;</li> <li>○ <i>Home and Community-Based Settings (General)</i>;</li> <li>○ <i>Alcohol Use and Drug Abstinence</i>; and</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i></li> </ul>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy provides for rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>

<sup>1</sup> The requirements of the MRC Community Living Division Providers Manual apply to MA.40702 and MA.1027 pursuant to MassHealth waiver provider eligibility requirements in 103 CMR 630.404(A)(2), as well as through incorporation in the [MRC Provider Standards for Acquired Brain Injury \(ABI\) and Money Follows the Person \(MFP\) Waiver Service Providers](#) policy, section I(B).

## Massachusetts Rehabilitation Commission (continued)

<p><b>441.301(c)(4)(iv):</b> Optimizes, but does not regiment, individual initiative, autonomy and independence</p>	<p><b><u>MA.0359, MA.40702, MA.1027:</u></b> <a href="#"><u>130 CMR 630.404(A)(2)</u></a>: Provider Eligibility</p> <p><a href="#"><u>MRC Community Living Division Providers Manual</u></a>,</p> <ul style="list-style-type: none"> <li>○ <i>Home and Community-Based Settings (General)</i>;</li> <li>○ <i>Person-Centered Planning Principles</i>; and</li> <li>○ <i>Additional Policies for Group Living Residential Program Providers Only</i></li> </ul> <p><b><u>MA.40702, MA.1027:</u></b> ABI/MFP member handbook (currently in development)</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> Under the cited MRC policy, settings must optimize, but not regiment, individual initiative, autonomy, and independence.</p>
<p><b>441.301(c)(4)(v):</b> Facilitates individual choice regarding services and supports</p>	<p><b><u>MA.0359, MA.40702, MA.1027:</u></b> <a href="#"><u>130 CMR 630.404(A)(2)</u></a>: Provider Eligibility</p> <p><a href="#"><u>MRC Community Living Division Providers Manual</u></a>,</p> <ul style="list-style-type: none"> <li>○ <i>Guiding Principles</i>;</li> <li>○ <i>Home and Community-Based Settings (General)</i>;</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i>;</li> <li>○ <i>Person-Centered Planning Principles</i>; and</li> <li>○ <i>Person-Centered Service Plan</i></li> </ul> <p><b><u>MA.40702, MA.1027:</u></b> ABI/MFP member handbook (currently under development) Person-centered planning tools</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy and tools describe and ensure deployment of person-centered planning principles that facilitate individual choice regarding services and supports.</p>

## Massachusetts Rehabilitation Commission (continued)

<p><b>441.301(c)(4)(vi)(A):</b> Unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement</p>	<p><b>MA.0359:</b> <a href="#">MRC Community Living Division Providers Manual</a>,  <ul style="list-style-type: none"> <li>○ <i>Home and Community-Based Settings For Residential Homes</i>; and</li> <li>○ <i>Leases</i></li> </ul></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> For provider-owned or controlled residential settings, the cited MRC policy sets out requirements consistent with this part of the HCBS Settings Rule.</p> <p><b>This criterion is inapplicable for MA.40702 and MA.1027.</b> These waivers do not serve people living in provider operated settings.</p>
<p><b>441.301(c)(4)(vi)(B):</b> Each individual has privacy in their sleeping or living unit</p>	<p><b>MA.0359:</b> <a href="#">MRC Community Living Division Providers Manual</a>,  <ul style="list-style-type: none"> <li>○ <i>Guiding Principles</i>; and</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i></li> </ul></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy requires that each individual has privacy in their sleeping or living unit.</p> <p><b>This criterion is inapplicable for MA.40702 and MA.1027.</b> These waivers do not serve people living in provider operated settings.</p>
<p><b>441.301(c)(4)(vi)(C):</b> Individuals have freedom to control their own schedules and activities and have access to food at any time</p>	<p><b>MA.0359, MA.40702, MA.1027:</b> <a href="#">130 CMR 630.404(A)(2)</a>: Provider Eligibility  <a href="#">MRC Community Living Division Providers Manual</a>,  <ul style="list-style-type: none"> <li>○ <i>Person-Centered Planning Principles</i>; and</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i></li> </ul></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy establishes that individuals have the right and freedom to control their own access to food, schedules, and activities.</p> <p><b>This criterion is inapplicable for MA.40702 and MA.1027.</b> These waivers do not serve people living in provider operated settings. Nonetheless, the MRC policy applies.</p>

## Massachusetts Rehabilitation Commission (continued)

<p><b>441.301(c)(4)(vi)(D):</b> Individuals are able to have visitors of their choosing at any time</p>	<p><b>MA.0359:</b> <a href="#">MRC Community Living Division Providers Manual</a>,</p> <ul style="list-style-type: none"> <li>○ <i>Guiding Principles</i>;</li> <li>○ <i>Home and Community-Based Settings (General)</i>;</li> <li>○ <i>Home and Community-Based Settings For Residential Homes</i>;</li> <li>○ <i>Person-Centered Planning Principles</i>; and</li> <li>○ <i>Person-Centered Service Plan</i></li> </ul>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy establishes that individuals have the right and freedom to have visitors of their choosing at any time.</p> <p><b>This criterion is inapplicable for MA.40702 and MA.1027.</b> These waivers do not serve people living in provider operated settings.</p>
<p><b>441.301(c)(4)(vi)(E):</b> The setting is physically accessible to the individual</p>	<p><b>MA.0359, MA.40702, MA.1027:</b> <a href="#">130 CMR 630.404(A)(2)</a>: Provider Eligibility</p> <p><a href="#">MRC Community Living Division Providers Manual</a>,</p> <ul style="list-style-type: none"> <li>○ <i>Home and Community-Based Settings (General)</i></li> </ul> <p><b>MA.40702, MA.1027:</b> <a href="#">130 CMR 630.436</a>: Location Requirements for HCBS Waiver Providers</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited policy and regulation require settings to be physically accessible to accommodate the needs of the individual.</p> <p><b>This criterion is inapplicable for MA.40702 and MA.1027.</b> These waivers do not serve people living in provider operated settings. Nonetheless, the MRC policy applies, and MassHealth regulations require all HCBS waiver providers to meet accessibility standards consistent with the HCBS Settings Rule.</p>

## Massachusetts Rehabilitation Commission (continued)

<p><b>441.301(c)(4)(vi)(F):</b> Modifications must be supported by a specific assessed need and justified in PCP</p>	<p><b><u>MA.0359, MA.40702, MA.1027:</u></b> <a href="#">130 CMR 630.404(A)(2)</a>: Provider Eligibility</p> <p><a href="#">MRC Community Living Division Providers Manual</a>,</p> <ul style="list-style-type: none"> <li>○ <i>Home and Community-Based Settings For Residential Homes;</i></li> <li>○ <i>Behavioral Assessment, Management, and Supports in Site-Based Programs;</i></li> <li>○ <i>Person-Centered Planning Principles; and</i></li> <li>○ <i>Person-Centered Service Plan</i></li> </ul>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited MRC policy requires that modifications to individual rights must be supported by a specific assessed need and justified in the PCP.</p> <p><b>This criterion is inapplicable for MA.40702 and MA.1027.</b> These waivers do not serve people living in provider operated settings. Nonetheless, the MRC policy applies.</p>
--	---	--

## Executive Office of Elder Affairs

<p><b>441.301(c)(4)(i):</b> The setting is integrated in and supports full access to the community</p>	<p><b><u>MA.0059:</u></b> <a href="#">651 CMR 3.03(2)(b)</a> Residential settings</p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited EOEA regulation provides that services shall not be delivered to an individual residing in an inpatient setting, group home or assisted living residence. EOEA will be further strengthening the state standards through updates to its HCBS Program Guidelines, anticipated to be finalized in March 2017.</p>
--	---	--

## Executive Office of Elder Affairs (cont'd)

<p><b>441.301(c)(4)(ii):</b> The setting is selected by the individual from among setting options</p>	<p><b>MA.0059:</b> PI-09-20 – Service Plans – State issued person-centered planning guidance. <a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-20.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-20.pdf</a></p> <p><a href="#">2010 RFR: Choice of providers 9.1.4(15), 9.1.6 (1)e</a></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited EOEa Program Instruction (PI) and RFR ensure that participants have a free choice of providers and are supported in their decision-making through the person-centered planning process.</p>
<p><b>441.301(c)(4)(iii):</b> Privacy, dignity, respect, freedom from coercion and restraint</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.01</a> – Purpose and Scope</p> <p><a href="#">Frail Elder Wavier Application, Appendix G-2</a></p> <p>PI-09-13, Attachment A Provider Agreement – Mandated reporting <a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-13.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-13.pdf</a></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The overarching purpose of the Home Care program and the Frail Elder Waiver is to ensure elders' dignity and independence in the community. Use of restraints is not authorized in the Home Care program, as stated in Frail Elder Waiver application. The other EOEa policies cited as well as the 2010 RFR, set forth standards regarding privacy and the mandatory reporting of elder abuse, neglect, and mistreatment. EOEa will be further strengthening the state standards through updates to its HCBS Program Guidelines, anticipated to be finalized in March 2017.</p>

## Executive Office of Elder Affairs (cont'd)

<p><b>441.301(c)(4)(iv):</b> Optimizes, but does not regiment, individual initiative, autonomy and independence</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.02(1)</a>: Functions and Responsibilities</p> <p>PI-09-13, Attachment A – I. Program goals, and VI. Program services (Supportive Day Program) <a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-13.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-13.pdf</a></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> As set out in the cited EOE regulation, participants' dignity and independence are the cornerstone of the planning and delivery of services in the waiver. The cited Program Instruction (PI) emphasizes participants' independence, self-determination, and choice, as well as structured yet flexible service settings.</p>
<p><b>441.301(c)(4)(v):</b> Facilitates individual choice regarding services and supports</p>	<p><b>MA.0059:</b> PI 97-31 (Medicaid Waiver Manual Clarification) – Attachment D (Recipient Choice Form) <a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-97-31.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-97-31.pdf</a></p> <p>PI-09-13, Attachment A – VI. Program services <a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-13.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/program-instruction-09-13.pdf</a></p> <p>2010 RFR: Choice of providers 9.1.4(15), 9.1.6(1)e: <a href="https://www.commbuys.com/bsi/external/bidDetail.sdo?docId=S119797-vCurrent&amp;external=true&amp;parentUrl=bid">https://www.commbuys.com/bsi/external/bidDetail.sdo?docId=S119797-vCurrent&amp;external=true&amp;parentUrl=bid</a></p>	<p><b>State standards are compliant with the HCBS Settings Rule.</b> The cited policies and procurement document establish that individuals have choice regarding services and supports, as well as free choice of providers.</p>

## Executive Office of Elder Affairs (cont'd)

<p><b>441.301(c)(4)(vi)(A):</b> Unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.03 (2)(b)</a>: Waiver services are provided to consumers living in community settings that are not waiver service provider owned or controlled.</p>	<p><b>This criterion is inapplicable for MA.0059.</b> Nonetheless, EOEa is in the process of updating and revising its HCBS Program Guidelines to clarify this requirement for congregate housing settings, anticipated to be finalized March 2017.<sup>2</sup></p>
<p><b>441.301(c)(4)(vi)(B):</b> Each individual has privacy in their sleeping or living unit</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.03 (2)(b)</a>: Waiver services are provided to consumers living in community settings that are not waiver service provider owned or controlled.</p>	<p><b>This criterion is inapplicable for MA.0059.</b> Nonetheless, EOEa is in the process of updating and revising its HCBS Program Guidelines to clarify this requirement for congregate housing settings, anticipated to be finalized March 2017.</p>
<p><b>441.301(c)(4)(vi)(C):</b> Individuals have freedom to control their own schedules and activities and have access to food at any time</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.03 (2)(b)</a>: Waiver services are provided to consumers living in community settings that are not waiver service provider owned or controlled.</p>	<p><b>This criterion is inapplicable for MA.0059.</b> Nonetheless, EOEa is in the process of updating and revising its HCBS Program Guidelines to clarify this requirement for congregate housing settings, anticipated to be finalized March 2017.</p>

<sup>2</sup> Even though congregate housing is not a HCB service and is not a provider-controlled setting, we have chosen to treat it consistent with standards for such settings, and applied the Rule in that spirit, because some Frail Elder Waiver participants have chosen to reside, and in some cases receive waiver services, in congregate housing settings.



## Executive Office of Elder Affairs (cont'd)

<p><b>441.301(c)(4)(vi)(D):</b> Individuals are able to have visitors of their choosing at any time</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.03 (2)(b)</a>: Waiver services are provided to consumers living in community settings that are not waiver service provider owned or controlled.</p>	<p><b>This criterion is inapplicable for MA.0059.</b> Nonetheless, EOEА is in the process of updating and revising its HCBS Program Guidelines to clarify this requirement for congregate housing settings, anticipated to be finalized December 2016.</p>
<p><b>441.301(c)(4)(vi)(E):</b> The setting is physically accessible to the individual</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.03 (2)(b)</a>: Waiver services are provided to consumers living in community settings that are not waiver service provider owned or controlled.</p>	<p><b>This criterion is inapplicable for MA.0059.</b> Nonetheless, EOEА is in the process of updating and revising its HCBS Program Guidelines to clarify this requirement for congregate housing settings, anticipated to be finalized March 2017.</p>
<p><b>441.301(c)(4)(vi)(F):</b> Modifications must be supported by a specific assessed need and justified in PCP</p>	<p><b>MA.0059:</b> <a href="#">651 CMR 3.03 (2)(b)</a>: Waiver services are provided to consumers living in community settings that are not waiver service provider owned or controlled.</p>	<p><b>This criterion is inapplicable for MA.0059.</b> Nonetheless, EOEА is in the process of updating and revising its HCBS Program Guidelines to clarify this requirement for congregate housing settings, anticipated to be finalized March 2017.</p>

## Table 2. Analysis of Settings

Waiver(s)	Service	Type of Setting	Number of Settings	Meets HCBS	Not yet; but could with Minor Changes	Not yet; but could with Substantive Changes	No; Cannot Meet
<b>Department of Developmental Services</b>							
<b>RESIDENTIAL SETTINGS</b>							
• Intensive Supports (MA.0827)	Residential Habilitation	Private Provider Owned or Leased	1,981	0	1,938	10 Providers/ 43 Sites	0
		State Operated	259	0	245	4 Providers/ 14 Sites	0
		Placement Service Settings	1,012	1,012	0	0	0
• Acquired Brain Injury (ABI) - Residential Habilitation (MA.40701) • Money Follows the Person (MFP) - Residential Supports (MA.1028)	Residential Habilitation	Private Provider Owned or Leased	70	70	0	0	0
	Assisted Living	Assisted Living	4	4	0	0	0
	Shared Living 24-Hour Supports	Placement Service Settings	5	5	0	0	0

Waiver(s)	Service	Type of Setting	Number of Settings	Meets HCBS	Not yet; but could with Minor Changes	Not yet; but could with Substantive Changes	No; Cannot Meet
Department of Developmental Services (continued)							
NON-RESIDENTIAL SETTINGS							
<ul style="list-style-type: none"><li>• Intensive Supports (MA.0827)</li><li>• Community Living (MA.0826)</li><li>• Adult Supports (MA.0828)</li></ul>	Center Based Day Supports	Sheltered workshops	14	0	All Remaining Closed by 6/16		
	Community Based Day Supports	Community Based Day Supports	170	0	170		0
	Group Supported Employment	Group Supported Employment	106	0	106	0	0
	Individual Supported Employment	Employment Supports	151	151	0	0	0
		Competitive Integrated Employment	43	43	0	0	0
Massachusetts Rehabilitation Commission							
RESIDENTIAL SETTINGS							
<ul style="list-style-type: none"><li>• Traumatic Brain Injury Waiver (MA.0359)</li></ul>	Residential Habilitation	Private Provider Owned or Leased	42	0	42	0	0
	Shared Living 24-Hour Supports	Private Provider Owned or Leased	4	4	0	0	0

Waiver(s)	Service	Type of Setting	Number of Settings	Meets HCBS	Not yet; but could with Minor Changes	Not yet; but could with Substantive Changes	No; Cannot Meet
<b>Massachusetts Rehabilitation Commission (continued)</b>							
<b>NON-RESIDENTIAL SETTINGS</b>							
<ul style="list-style-type: none"> <li>Traumatic Brain Injury Waiver (MA.0359)</li> <li>Acquired Brain Injury (ABI) - Non-Residential Habilitation (MA.40702)</li> <li>Money Follows the Person (MFP) - Community Living (MA.1027)</li> </ul>	Day Services	Community-Based Day Services	7	6	1	0	0
	Supported Employment	Supported Employment	8	7	0	1	0
<b>Executive Office of Elder Affairs</b>							
<b>RESIDENTIAL SETTINGS</b>							
<ul style="list-style-type: none"> <li>Frail Elder Waiver (MA.0059)</li> </ul>	N/A – a variety of waiver services can be provided in congregate housing settings	Congregate Housing Settings	44	43	1	0	0
<b>NON-RESIDENTIAL SETTINGS</b>							
<ul style="list-style-type: none"> <li>Frail Elder Waiver (MA.0059)</li> </ul>	Supportive Day	Supportive Day Programs	56	54	0	0	2 <ul style="list-style-type: none"> <li>1 closed Dec. 2015;</li> <li>1 will be precluded from serving FEW participants going forward</li> </ul>

### Table 3. Summary of Transition Plan Tasks and Timelines

Transition Category	Specific Task	Timeframe	Comments
<b>Department of Developmental Services (DDS)</b>			
<b>Systemic Changes</b>	Create, conduct, and analyze survey of Community Based Day Supports (CBDS) providers to determine specific compliance challenges	November 2015	Complete
	Revise DDS regulations 115 CMR 5.00	Nov. 2016	In process
	Revise DDS regulations 115 CMR 7.00, 8.00	Dec. 2016	
	Issue guidance on requirement for locks on bedroom doors	March 2016	Complete
	Incorporation of requirements for locks on bedroom doors into Licensure and Certification tool	August 2016	<ul style="list-style-type: none"> <li>• Revisions complete</li> <li>• Pilot test complete</li> <li>• Training in process</li> </ul>
	Incorporation of requirements for residency agreements into Licensure and Certification tool	August 2016	<ul style="list-style-type: none"> <li>• Revisions complete</li> <li>• Pilot test complete</li> <li>• Training in process</li> </ul>
	Full Implementation of Positive Behavior Supports, including regulatory changes and continued training	All components for full compliance complete by March 2019; other efforts ongoing	In process
	Full Implementation of Blueprint for Employment	June 2016	Complete
	Develop plan to enhance and build capacity of CBDS programs, including clear programmatic standards, training and technical assistance, and fiscal support	July 2016 and ongoing	In process
	Develop and distribute clear definitions, standards, and criteria of integration for group employment	December 2016	In process
	Develop and distribute guidelines for social enterprises	August 2016	In process
<b>Oversight of Systemic Changes</b>	Revise Licensure and Certification tool to facilitate stronger monitoring of systemic changes in residential, CBDS, and employment services	August 2016	In process

Transition Category	Specific Task	Timeframe	Comments
<b>Department of Developmental Services (DDS), continued</b>			
<b>Oversight of Systemic Changes, continued</b>	Full implementation of Blueprint for Success (Employment Supports)	All components for full compliance complete by March 2019; other efforts ongoing	In process
	Develop and distribute standardized guidance tool to all CBDS providers	October 2016	In process
<b>Specific Setting Changes</b>	14 residential providers challenged to meet the Community Rule submit transition plans to DDS for review	December 2015	Complete
	All CBDS providers submit strategic compliance plans to DDS for review	May 2017	
<b>Oversight of Specific Setting Changes</b>	Develop specific mechanism to monitor progress toward system-wide milestones (Residential settings)	December 2015	Complete
	Review Year 1 quarterly milestones within setting-specific transition plans (Residential settings)	December 2016	
	50% of milestones across statewide system are met (Residential settings)	June 2017	If 50% of milestones are not met, determine if change to DDS transition plan is needed
	Review Year 2 quarterly milestones within setting-specific transition plans	December 2017	
	75% of milestones across statewide system are met	June 2018	If 75% of milestones are not met, determine if change to DDS transition plan is needed
	On-site verification of completion of site-specific transition plans for 14 residential providers	Beginning in 2017; complete by Sept. 2018	As residential providers complete implementation of plans, DDS will verify

Transition Category	Specific Task	Timeframe	Comments
<b>Department of Developmental Services (DDS), continued</b>			
<b>Oversight of Specific Setting Changes (continued)</b>	Full implementation of compliance across all group employment settings	December 2018	Compliance verified using enhanced licensure and certification tool
	Full implementation of CBDS compliance through on-site verification of completion of setting-specific transition plans	December 2018	As CBDS providers complete implementation of their plans, DDS will verify
<b>Massachusetts Rehabilitation Commission (MRC)</b>			
<b>Systemic Changes</b>	Policy workgroup reviews Policies and Procedures and incorporates stakeholder feedback	March 2015	Complete
	MRC staff trained in 10 key revised policies	April 2015	Complete
	Provider staff trained in 10 key revised policies	June 2015	Complete
	Develop policy to require locks on bedroom doors	January 2016	Complete
	Update MRC Provider Policy Manual	April 2016	Complete
	Train MRC staff on new policies and procedures delineated in the final 2016 MRC Provider Policy Manual	April 2016	Complete
	Train providers on new policies and procedures delineated in the final 2016 MRC Provider Policy Manual	May 2016	Complete
	Develop guidance for residency agreements	June 2016	Complete
	System-wide implementation of locks on bedroom doors	September 2016	In process
	Implementation of requirement of residency agreements for all participants in provider-operated residences	December 2016	
	Create, conduct, and analyze survey of day service providers to determine specific compliance challenges	February 2016	Complete
	Develop plan to enhance and build capacity of day services programs, including clear programmatic standards, training and technical assistance, and fiscal support	Beginning in March 2016; complete by March 2017	In process

<b>Transition Category</b>	<b>Specific Task</b>	<b>Timeframe</b>	<b>Comments</b>
<b>Massachusetts Rehabilitation Commission (MRC), continued</b>			
<b>Oversight of Systemic Changes</b>	Revise MRC monitoring tools for day services and employment settings to facilitate monitoring of ongoing compliance	September 2015	Complete
	Revise UMMS-PNA employment provider credentialing tool to reflect all Community Rule requirements	May 2017	In process
<b>Specific Setting Changes</b>	Develop and implement plan for each participant with any modifications documented in individual service plan	November 2015	Complete
<b>Executive Office of Elder Affairs (EOEA)</b>			
<b>Systemic Changes</b>	Revise Supportive Day Program monitoring/review tool	January 2016	Complete
	Develop congregate housing setting policy guidance and review/monitoring tool	January 2016	Complete
	Revise HCBS Program Guidelines	March 2017	In process
<b>Specific Setting Changes</b>	EOEA agents assess each congregate housing setting	September 2014	Complete
<b>Specific Setting Changes, continued</b>	EOEA conducts congregate housing site visits as needed	June 2016	Complete
	Congregate housing providers implement required modifications	January 2017	In process
	EOEA agents assess each Supportive Day Program setting	November 2015	Complete
	EOEA conducts Supportive Day Program site visits as needed	June 2016	Complete
<b>Oversight of Specific Setting Changes</b>	EOEA reviews congregate housing site-specific assessment results	November 2014	Complete
	EOEA reviews Supportive Day Program site-specific assessment results	November 2015	Complete
	EOEA agents verify full compliance of all congregate housing settings	January 2017	



## Table 4. Links to Related Documents

Document	URL
DDS Blueprint for Success (Employment Supports)	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/hcbs-dds-app-b-dds-blueprint-for-success-employment-supports.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/hcbs-dds-app-b-dds-blueprint-for-success-employment-supports.pdf</a>
DDS Employment Progress Report	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/dds-appendix-d-employment-progress-report.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/dds-appendix-d-employment-progress-report.pdf</a>
DDS Revised Guidance Criteria to Assist Providers in Compliance with HCB Settings Requirements	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/dds-appendix-e-revised-guidance-criteria-to-assist-providers-in-compliance-with-hcb-setting-requirements.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/dds-appendix-e-revised-guidance-criteria-to-assist-providers-in-compliance-with-hcb-setting-requirements.pdf</a>
DDS Survey of Community Based Day Services	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/dds-appendix-f-survey-of-community-based-day-services.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/dds-appendix-f-survey-of-community-based-day-services.pdf</a>
DDS Positive Behavioral Supports Policy and Guidelines	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/hcbs-dds-app-c-dds-positive-behavioral-supports-policy-guidelines.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/hcbs-dds-app-c-dds-positive-behavioral-supports-policy-guidelines.pdf</a>
Responses to Comments Received on the Massachusetts Transition Plan (October 15 – November 15, 2014)	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/statewide-comments-responses.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/statewide-comments-responses.pdf</a>
Responses to Comments Received on the Addendum for Non-residential Services (May 18 – June 18, 2015)	<a href="http://www.mass.gov/eohhs/docs/masshealth/provider-services/hcbs-addendum-to-transition-plan-attachment-d-responses-to-comments-received.pdf">http://www.mass.gov/eohhs/docs/masshealth/provider-services/hcbs-addendum-to-transition-plan-attachment-d-responses-to-comments-received.pdf</a>
MA.0059.R06.00 Frail Elder Waiver application	<a href="https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/waivers_faceted.html">https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/waivers_faceted.html</a>