

# West Virginia Department of Health and Human Services

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Recommendations from the HCBS Regulatory  
Review

11/25/2014

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## INTRODUCTION

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (CMS-2249-F and CMS 2296-F) to ensure that individuals receiving long term services and supports (LTSS) through home and community based services (HCBS) programs under 1915(c) and 1915(i) have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as individuals not receiving Medicaid HCBS.

West Virginia contracted with The Lewin Group to guide development of a transition plan pursuant to 42 CFR 441.301(c)(6) that contains the actions the state will take to bring all West Virginia waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5). West Virginia intends to work with the various providers, participants, guardians, and other stakeholders engaged in HCBS to implement this proposed transition plan ([Appendix A](#)).

This report documents one component of the methodology and approach used to develop the transition plan, to conduct a regulatory review of the HCBS system. This report covers the methodology and the findings from the regulatory review process.

## REGULATORY REVIEW METHODOLOGY AND SOURCE DOCUMENTS

The development of a matrix of West Virginia waivers and supporting documentation provided a systematic method to assess areas of compliance and non-compliance with the new rule. The Lewin Group developed the matrix through a series of steps.

### STEP 1: FRAMING OF KEY ELEMENTS TO ASSESS COMPLIANCE AND NON-COMPLIANCE

Lewin completed a comprehensive review of the new federal regulations and all supporting guidance released by CMS as contained in the Settings Requirements Compliance Toolkit<sup>1</sup>. Based on this review, the "[Summary of Regulatory Requirements for Home and Community Based Settings](#)" guided our analysis.

### STEP 2: COMPREHENSIVE INVENTORY OF WAIVER SERVICES AND PROVIDER TYPES ACROSS ALL POPULATIONS

We conducted a basic review of waiver applications and amendments for all three of West Virginia's waivers (see [Appendix B](#)) and created an inventory of relevant services and provider types for inclusion in the analysis. The three waivers and proposed services/settings types to include in our analysis are listed in the table below.

HCBS Waiver	Services/Setting Type	Original Approval Date	Effective Date	Expiration Date
<b>Aged and Disabled Waiver Program (ADW)</b>	<ul style="list-style-type: none"><li>Case Management</li><li>Personal Assistance/Homemaker Service</li></ul>	07/01/1985	07/01/2010	06/30/2015

<sup>1</sup> <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

<b>Intellectual/Developmental Disabilities Waiver (IDD)</b>	<ul style="list-style-type: none"> <li>• Facility Based Day Habilitation</li> <li>• Participant -Centered Support</li> <li>• Respite</li> <li>• Service Coordination</li> <li>• Supported Employment</li> <li>• Electronic Monitoring/Surveillance System and On-Site Response</li> <li>• Skilled Nursing - Nursing Services by a Licensed Practical Nurse</li> </ul>	07/01/1985	07/01/2010	06/30/2015
<b>Traumatic Brain Injury Waiver Services (TBI)</b>	<ul style="list-style-type: none"> <li>• Case Management</li> <li>• Personal Attendant Services</li> </ul>	12/23/2011	02/01/2012	01/31/2015

### STEP 3: CREATION OF A QUALITATIVE DATA SET

Using the inventory, Lewin created a comprehensive qualitative data set that captured all relevant language from waiver applications, state regulatory documents, surveys and checklists on compliance and quality, and provider trainings. The data was cleaned for consistency and accuracy. The Lewin Group conducted a review across waivers globally, as well as settings/services that may be impacted by the rule across the categories listed in the table below.

Types of source documents	Relevant categories by source
<ul style="list-style-type: none"> <li>• Waiver applications</li> <li>• Authorizing Legislation</li> <li>• State Rules and Operations</li> <li>• Provider training and manuals</li> <li>• Member handbooks</li> <li>• Setting-specific survey and certification review criteria</li> </ul>	<ul style="list-style-type: none"> <li>• Definitions of services and settings</li> <li>• Certification and licensing (as applicable)</li> <li>• Participant rights</li> <li>• Participant choice of provider</li> <li>• Care planning processes including conflict of interest provisions</li> <li>• Enrollment procedures</li> <li>• Environmental standards</li> <li>• Restrictive interventions</li> <li>• Staff training</li> <li>• Support coordination/case management</li> <li>• (Others as appropriate)</li> </ul>

### STEP 4: ANALYSIS OF SOURCE LANGUAGE AGAINST FEDERAL REGULATORY REQUIREMENTS

Using the "[Summary of Regulatory Requirements for Home and Community Based Settings](#)" as a guide, Lewin then synthesized the qualitative data for each setting and compiled areas of compliance and non-compliance. Settings that may potentially isolate individuals and support coordination activities considered in potential violation of the new federal rules are included within the list of recommendations for potential change. In addition to the data set, Lewin drew upon interviews of key West Virginia staff, as well as years of Lewin experience in the LTSS field, to identify strengths and areas for potential growth for the state for inclusion within the report and transition plan.

### RESULTS AND RECOMMENDATIONS

The Lewin Group presents recommendations across all waivers (Aged and Disabled Waiver Program, Intellectual/Developmental Disabilities and Traumatic Brain Injury Waiver Services) included in the review and

when specific to a particular waiver, references are made. The information is organized by sections under the regulatory requirements for home and community based settings:

- CMS Descriptions for Institutional Settings and Qualities and Guidance on Settings that May Isolate Individuals
- Provider Controlled Setting Elements to Assess per New Federal Requirements
- Plan of Care Requirements for Modifications or Restrictions of a Participant’s Rights; and
- Conflict of Interest Standards.

## **CMS DESCRIPTIONS FOR INSTITUTIONAL SETTINGS AND QUALITIES AND GUIDANCE ON SETTINGS THAT MAY ISOLATE INDIVIDUALS**

Lewin reviewed the waiver source documents against CMS guidance and descriptions for institutional settings and qualities. Settings under this category are not home and community-based and include: a nursing facility; an institution for mental diseases; an intermediate care facility for individuals with intellectual disabilities; a hospital; or any other locations that have qualities of an institutional setting, as determined by the Secretary. Those settings that are presumed to have qualities of an institution include:

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

CMS also provided guidance on settings that may isolate individuals and Lewin applied this guidance during our review of the source documents. Settings with the following two characteristics may, but will not necessarily, meet CMS criteria for having the effect of isolating individuals: the setting is designed specifically for people with disabilities, and often even for people with a certain type of disability; and the individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them. Settings that may isolate individuals receiving HCBS from the broader community may have any of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

Lewin’s findings from the analysis are provided below.

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### *POSITIVE FINDINGS/AREAS OF COMPLIANCE*

- The following IDD services are compliant with, or not subject to, the regulation as it relates to settings within the IDD waiver: Service Coordination and Patient-Centered Support. Additionally, the Respite: Agency service clearly specifies that it is not available in medical hospitals, nursing homes, psychiatric

hospitals or rehabilitative facilities located either within or outside of a medical hospital which is in full support of the characteristics outlined in rule.

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## RECOMMENDATIONS / AREAS OF POTENTIAL NON-COMPLIANCE

The following settings with the IDD waiver are meant to deliver and/or support community integration to waiver participants, although one or more items found in the language for each may need to be revised and updated to specifically comply with the CMS regulations.

- **Facility Based Day Habilitation-** The facility-based nature of the service implies that participating individuals are isolated from the community. Additionally, the documents reviewed do not show that this service provides for meaningful community integration.
- **Supported employment-** The documents reviewed say the supported employment must be offered in “an integrated community work setting,” however there is no specification as to what the state does and does not classify as such a setting. Specific clarifying language surrounding this may be helpful.
- **Skilled Nursing (Nursing Services by a Licensed Practical Nurse)** – In addition to private homes, this service is allowable in: licensed group home, any ISS (Intensively Supported Setting), a licensed day program facility, and/or crisis sites. While the service and its related document do not appear to isolate the individual, the setting in which the service takes place may not comply with the regulations.
- **Electronic Monitoring/Surveillance System and On-Site Response-** This service is allowable in: licensed group home, any ISS, a licensed day program facility, and/or crisis sites. While the service and its related document do not appear to isolate the individual, the setting in which the service takes place may not comply with the regulations.

Services offered in both the ADW and TBI waiver appear to be offered in non-institutional settings compliant with the regulation.

The exact setting(s) of services across the three waivers cannot be fully known without a provider survey. Lewin recommends that the state use results from the upcoming provider survey to determine compliance with the regulation.

## PROVIDER CONTROLLED SETTING ELEMENTS TO ASSESS PER NEW FEDERAL REQUIREMENTS

Under the new HCBS rule, particular elements of provider controlled settings will be assessed. Lewin reviewed the state’s source documents and applied the CMS guidance on provider controlled settings. This guidance includes that the participant receiving services shall have the following rights and freedoms:

- Settings that are integrated within the community
- A choice in where to live with as much independence as possible
- Exercise informed choice
- A setting that ensures the one’s rights and protections; and
- A setting that optimizes personal autonomy.

Lewin’s findings from the analysis are provided below.

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## *POSITIVE FINDINGS/AREAS OF COMPLIANCE*

- The state code for the IDD waiver provides clear guidance surrounding bedroom size, furnishings and quality and goes beyond what is typical for similar regulation found in other states.
- The state code for the IDD waiver also requires licensed behavioral health centers to be accessible and compliant with Title III of the Americans with Disabilities Act.
- Supported Employment Services within the IDD waiver “are services that enable individuals to engage in paid, competitive employment, in integrated community settings. The services are for individuals who have barriers to obtaining employment due to the nature and complexity of their disabilities. The services are designed to assist individuals for whom competitive employment at or above the minimum wage is unlikely without such support and services and need ongoing support based upon the member’s level of need.” This service is fully compliant with community integration standards outlined in the requirements.

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## *RECOMMENDATIONS / AREAS OF POTENTIAL NON-COMPLIANCE*

- For the IDD waiver, the behavioral health center regulation makes no reference to a limit on the number of beds in any given location. This could mean that subject settings could have more bedrooms than allowed by the CMS regulations and thus be considered as institutional settings. To amend this, the state could implement a cap on bedrooms per location in the regulations.
- Chapter 513 of the Provider Manual defines an ISS as a “residential home setting that is not licensed by the Office of Health Facility and Licensure with one to 3 adults living in the home. The member’s name is either on the lease or the member pays rent. No biological, adoptive or other family members reside in the home setting with the member.” To comply fully with characteristics outlined for provider controlled settings, it may be beneficial to modify the definition of ISS to require a lease or written agreement with tenant/landlord protection to document protections that address eviction processes and appeals similar to those provided under West Virginia Tenancy law.
- Given that the Administrative Services Organization (ASO) is responsible for provider education, it may be beneficial to request that the ASO include the characteristics of community as well as steps to reach compliance within training content.
- The state code for the IDD waiver nor any other document reviewed mentions that participants living in licensed behavioral health centers have access to the following elements required in the HCBS regulation:
  - Entrance doors lockable by the individual, with only appropriate staff having keys to doors- not addressed in waiver documents. The state may need to add language addressing keys and locks to the behavioral health center regulation.
  - Roommate choice- not addressed in waiver documents. The state may need to add language addressing roommate choice to the behavioral health center regulation.
  - Freedom to furnish or decorate sleeping or living units- pg. 18 of the latest behavioral licensure regulation states: “6.6.e. Furnishings shall be homelike and personalized.” It may benefit the state to add language giving discretion on furnishing to the participant.
  - Access to visitors- The regulation calls for 24/7 access to visitors. The state may need to add language addressing visitors to the behavioral health center regulation.
  - Access to food- The regulation calls for 24/7 access to food. The behavioral licensure regulation says 6.6.n. Food services, when provided, shall: 6.6.n.1. Meet or exceed national nutritional standards; 6.6.n.2. Be planned with regularly documented assistance of a dietitian; and 6.6.n.3. Provide well-balanced meals and snacks (pg. 19). It does not guarantee around the clock access to food.

- Control over schedules and activities- The service definition of facility-based day habilitation does not appear to grant participants control over schedules and activities (e.g. “carry out assigned duties”, “attendance to work activity”). The other service offerings do not appear to be relevant to this section of the regulation.

## PLAN OF CARE REQUIREMENTS FOR MODIFICATIONS OR RESTRICTIONS OF A PARTICIPANT’S RIGHTS

Under the new federal regulations, CMS provides guidance on plan of care requirements for modifications or restrictions of an individual’s rights. For Lewin’s analysis of the source documents, we applied the CMS guidance to our review. The guidance notes if a right or freedom is modified or restricted, the following requirements must be documented in the person-centered service plan:

- A specific assessed need which requires a modification or restriction of a specific right or freedom.
- Positive interventions and supports used prior to any modifications to the person-centered service plan.
- Less intrusive methods of meeting the need that were tried but did not work.
- A clear description of the modification or restriction that is directly proportionate to the specific assessed need.
- Regular collection and review of data to measure ongoing effectiveness of restricted right.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

Any modification or restriction of the participant’s rights and freedoms must be supported by a specific assessed need and be approved by the participant or a legally authorized representative, who has the authority to restrict the specific right.

Lewin’s findings from the analysis are provided below.

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### *POSITIVE FINDINGS/AREAS OF COMPLIANCE*

- The ADW has participant-directed goods and services that align with CMS HCBS guidelines and address person centered requirements.
- The IDD system has a broad and very easy to understand member handbook that can be used to build upon West Virginia person-centered practices.
- The IDD waiver manual provides a broad list of rights granted to waiver participants. These address more general, program-wide protections rather than rights associated with or pertaining to any particular service.
- The TBI waiver manual provides a broad list of rights granted to waiver participants. These address more general, program-wide protections rather than rights associated with or pertaining to any particular service. Additionally, Chapter 512 of the Provider Manual indicates that goals and objectives are “focused on providing services that are person-centered, that promote choice, independence, participant-direction, respect, and dignity and community integration.”

- For all three waiver programs, the role of the Human Rights Committee (HRC) appears to provide a firm foundation to the overall protection of basic rights and any restrictions needed to ensure health and welfare.
- The Service Coordination service supports the requirements of the HCBS rule in principle given that the definition specifies that along with the member, service coordination is “a life-long, person-centered, goal-oriented process for coordinating the supports (both natural and paid), range of services, instruction and assistance needed by persons with developmental disabilities...designed to ensure accessibility, accountability and continuity of support and services.... also ensures that the maximum potential and productivity of a member is utilized in making meaningful choices with regard to their life and their inclusion in the community”.

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### RECOMMENDATIONS / AREAS OF POTENTIAL NON-COMPLIANCE

- Consider shifting from “member” and “participant” over to “person”. “Person (or people) who receives services” or “person who uses services” is most acceptable. These kinds of language changes will move West Virginia toward person-centered thinking and full person-centered planning. Additionally, consider changing “direct care worker” to “direct support professional”. There is significant advocacy and structured processes nationally to professionalize the direct service workforce.
- Throughout each waiver person-centered planning policy and practices, consider changing the word “goal” to “outcomes” or adding the word “outcomes” to the description. The HCBS rule uses the language of “goals and outcomes”. To further advance the culture change toward person-centered thinking, training providers on the meaning of “outcomes” will prove critical.
- For all three waivers, consider shifting from a starting point on “needs” (which focuses on what is “wrong” or seen as “problematic”) to what matters TO the person – wishes, desires and interests; then move onto needs. Additionally, consider changing language that requires attendance of key staff to requiring contributions even if key staff are unable to be present or not present at the request of the individual.
- The ADW program indicates that “the primary purpose of the meeting is to evaluate health and safety. All identified concerns with member health and safety must be addressed and reported using the IMS, and as appropriate, referred to APS”. Recommend that the language be revised to ensure that the meeting ensures that services and supports continue to meet the person’s needs AND review any concerns for health or safety. Further, recommend expanding the description of concerns to include risk in levels such as the health and safety concern is worrisome to the team but generally okay with the person; very worrisome and requires some kind of response plan that everyone can agree upon, etc.
- For the IDD waiver, interdisciplinary teams (IDTs) are historically different than a person-centered planning team and routinely come from a medical model approach, not a person-centered and person-directed approach. The current IDT process does not fully meet the HCBS regulations on person-centered planning. For example, the HCBS rule requires that the planning process is clear that the person can request an update and revision at any time, the plan must reflect risk factors and measures in place to minimize them, and the plan must address when a member does not want a “required” IDT participant. To more fully address the requirement that person-centered planning “includes strategies for solving conflict or disagreement within the process”, West Virginia could add language in policy and operations such as;

*Service coordinators must work with the person who receives services and their legal/non-legal representatives and/or family members to choose a time and location that is convenient to them. Service coordination agencies must support service coordinators to facilitate and/or participate in*

*person centered planning meetings that are not held during the traditional working hours of 8am to 5pm, Monday through Friday. The person who receives services and/or their legal/non-legal representative may indicate they do not wish to “attend” their person centered planning meeting in person; and/or they may also indicate that they do not wish for someone else to attend in person. As the person in charge of the meeting process, it is the decision of the person who uses services regarding who actually attends the planning meeting. Should the person request that one of the “required” team members not be in attendance, the Service Coordinator is required to:*

- 1) Find out from the person receiving services why they have requested the individual not attend; and see if any mutually agreeable resolution regarding their attendance can be reached;*
- 2) If a mutually agreeable resolution cannot be reached in time for the person centered planning meeting, the Service Coordinator is required to gather information ahead of time so that the individual being requested to not attend can still contribute necessary information. 3) Document as part of the planning process who the person did not wish to have in attendance and why; what steps were taken to resolve any existing conflict and what steps will be taken going forward to address the situation.*

- Cultural considerations should also be included in all three waiver person-centered planning processes. For example, West Virginia could add to policy the following:  
*The entire planning meeting process must take into consideration the culture of the person receiving services and their legal/non-legal representatives. Cultural considerations could include: Accessibility for people with disabilities and others with limited English proficiency, Time and location of meeting, Methods by which others are invited to the meeting, Clothing worn to the meeting, Language used during the meeting, Refreshments served during the meeting, Process for the meeting and Roles of each person in the meeting.*
- Based on the reviewed documents, West Virginia’s ADW lacks surveys and/or quality documents that address the rights of individuals. Updating the ADW Participant Experience Survey is one potential way to address this area of non-compliance.
- The participant rights language within the IDD waiver may not provide depth as required by the HCBS regulation. Specifically, there is no language that includes the rights of participants within each service to ensure full community integration across the waiver. For example, Chapter 513 specifies the member’s right to have a choice of provider, address dissatisfaction, and to be free from abuse, neglect and financial exploitation. They also have a right to choose who attends their IDT meeting, but the “outcomes-oriented” right to receive services in a community integrated setting, to visit and choose setting options, to control personal resources and furnish and decorate living space, to name a few, is not evident and therefore not likely consistently applied across provider controlled settings.
- The IDD Member handbook specifies that regardless of Service Delivery Model, members are assigned a Service Coordinator. Chapter 513 of the provider manual implies that the member can choose the service coordinator. Some clarity in the Member handbook may be helpful.
- The provided quality and review tools are similarly broad for the IDD waiver and only collect high-level data surrounding participant rights. With these tools, there is no way to fully and adequately measure whether participants are able to meaningfully act upon their rights. The state may need to update their participant rights section of the provider manual to reflect this, as well as update the IPP components to ensure rights are adequately conveyed and implemented.
- Based on the reviewed documents, West Virginia’s TBI waiver lacks comprehensive quality and/or review tools that address the rights of individuals. A participant and/or provider survey(s) is one potential way to address this area of non-compliance. A crosswalk between the provider review tool and person-centered planning requirements outlined in rule may be beneficial to identifying areas to strengthen. Similarly,

working with APS to modify, as appropriate, the self-review tool to collect outcomes associated with rights may prove useful to providing an overall picture of the quality of services.

- While the Human Rights Committee role is critical to ensuring protection, it may benefit West Virginia to strengthen provider training and quality provisions to clearly specify the characteristics outlined within the HCBS rule for inclusion in a person-centered plan (e.g. clearly articulating the assessed need which requires a modification or restriction, the interventions used prior to the modification or restriction, a clear description of the modification or restriction as proportionate with the need, and periodic review and collection of data to monitor).
- Consider updating the member handbooks for the ADW and TBI waiver programs to match new CMS person centered requirements.

## CONFLICT OF INTEREST STANDARDS

Under the new HCBS rule, the conflict of interest standards apply to all individuals and entities, public or private. Lewin reviewed the West Virginia source documents applying the CMS guidance that at a minimum, the agents must not be any of the following:

- Related by blood or marriage to the individual, or to any paid caregiver of the individual.
- Financially responsible for the individual.
- Empowered to make financial or health-related decisions on behalf of the individual.
- Have a financial relationship, compensation, and ownership or investment interest<sup>2</sup> in any entity that is paid to provide care for the individual.

Conflict of interest standards must be defined in a manner that ensures the independence of individual and agency agents who conduct (whether as a service or an administrative activity) the independent evaluation of eligibility for State plan HCBS, who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan.

Lewin's findings from the analysis are provided below.

### *POSITIVE FINDINGS/AREAS OF COMPLIANCE*

- The ADW and TBI waiver program includes guidance that prevents entities and/or individuals that have responsibility for service plan development from providing other direct waiver services to the participant.

### *RECOMMENDATIONS / AREAS OF POTENTIAL NON-COMPLIANCE*

- The IDD waiver manual does not appear to include language that explicitly prohibits conflict of interest and/or provides guidance on "firewalls" and other conflict mitigation techniques for providers offering both case management and direct services. To comply with CMS regulation, the state may wish to adopt language found in the TBI and/or ADW programs to include conflict of interest guidance for IDD providers.
- Chapter 501 of the Provider Manual indicates that an agency may provide both Case Management (CM) and Personal Assistance/Homemaker Services for members of the ADW program. There are

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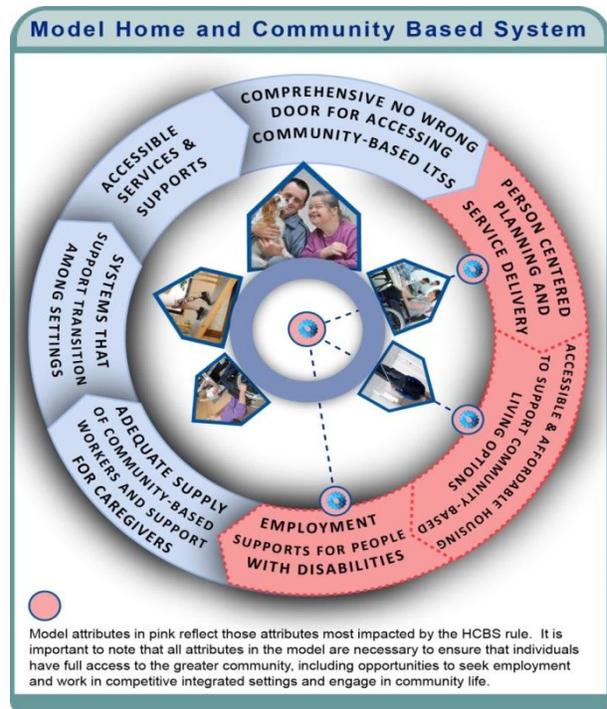
<sup>2</sup> As defined in § 411.354 found at <https://www.kirschenbaumesq.com/article/pdf/001838-42-cfr-411354-financial-relationship-compensation-and-ownership-or-investment-interest.pdf>

requirements around the need for the provider to have a separate certification and provider number and separate staffing. Additionally, it is stated that “Conflicts of interest and self-referral are prohibited.” The provider must have written policies and procedures that protect the rights of members to request a transfer to a different agency, address dissatisfaction, and maintain confidentiality to name a few. The ADW program monitors conflict of interest by monitoring providers initially and on an ongoing basis in the Continuing Certification process. There is separation of agency types: Case Management and PA/Homemaker. Case Management agencies are certified and monitored separately and PA/Homemaker agencies are monitored separately. The ADW Monitoring tool could be strengthened to monitor conflict of interest more closely. The CM Monitoring tool does not appear to include a review of conflict of interest. The same may be true for the TBI waiver as well given that the TBI waiver does allow case management and direct services as long as similar provisions are in place.

The current language for the TBI and ADW waiver programs appear to meet the requirements of CMS but could be strengthened, while there is no indication of conflict of interest prevention or mitigation in any IDD waiver document. The state should consider amending the provider manual and other appropriate policies and/or guidelines to strengthen conflict of interest standards.

## CONCLUSION

The passage of the final HCBS rule adds value to the regulatory nature of HCBS by establishing characteristics of residential and non-residential settings and further promoting opportunities for individuals to have access to the benefits of community living available to all U.S. citizens. The changes to the HCBS regulation essentially establish an outcomes-oriented foundation to Medicaid funded HCBS and further solidifies the individual as the center of the system in a position of choice and control. The new rule supports and builds upon the longstanding CMS vision to “create a sustainable, person-driven long-term support system in which people with disabilities and chronic conditions have choice, control and access to a full array of quality services that assure optimal outcomes, such as independence, health and quality of life”. West Virginia can use the new rule as another tool in the toolbox (along with other federal opportunities such as the ACL No Wrong Door Planning Grants and existing Money Follows the Person Demonstrations) to meet state desired goals for Medicaid HCBS. A model home and community based system is driven by a state’s vision and infrastructure and developed through strong stakeholder involvement. The final HCBS rule has direct impact on person-centered planning, housing and employment and associated state infrastructure. This regulatory review provides a foundation to changes that will strengthen the home and community based service delivery system. Blended with the provider survey process, a component of the state’s environmental scan, West Virginia will have a solid plan to transform the delivery system to fully include all individuals regardless of need, within their communities in a meaningful way.



The remainder of this report includes several appendices as noted below:

[Appendix A](#): Statewide Transition Plan: This transition plan is the initial statewide plan that can be adapted to meet West Virginia needs during the assessment phase. Prior to posting, the plan can be reduced or expanded as determined appropriate.

[Appendix B](#): West Virginia HCBS Settings Data Sources Table: This table reflects the data sources used through the regulatory review.

[Appendix C](#): Draft Public Notice: This draft public notice provides some background and includes open fields for West Virginia details including the potential for a public meeting to collect feedback on the draft transition plan.

[Appendix D](#): Draft Website Language: This draft language could be developed on a transition specific webpage and used to collect materials as West Virginia implements the transition plan.

# West Virginia Bureau for Medical Services: Statewide Transition Plan

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (CMS-2249-F and CMS 2296-F) to ensure that individuals receiving long term services and supports (LTSS) through home and community based services (HCBS) programs under 1915(c) of the Social Security Act have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as individuals not receiving Medicaid HCBS.

West Virginia developed a transition plan pursuant to 42 CFR 441.301(c)(6) that contains the actions the State will take to bring all West Virginia waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5).

West Virginia’s approach to an environmental scan and subsequent transition plan is based on core values to help individuals to access care at the right time and right place and improve West Virginia’s ability to work effectively within and across systems to ensure person-centered care. The transition plan includes action steps West Virginia intends to take over the course of the next five years across the three (3) waivers outlined in Table 1.

**Table 1. West Virginia Programs with Residential and Non-Residential Components**

HCBS Waiver	Services/Setting Type	Original Approval Date	Effective Date	Expiration Date
<b>Aged and Disabled Waiver Program</b>	<ul style="list-style-type: none"> <li>• Case Management</li> <li>• Personal Assistance/Homemaker Service</li> </ul>	07/01/1985	07/01/2010	06/30/2015
<b>Intellectual/Developmental Disabilities Waiver</b>	<ul style="list-style-type: none"> <li>• Facility Based Day Habilitation</li> <li>• Participant -Centered Support</li> <li>• Respite</li> <li>• Service Coordination</li> <li>• Supported Employment</li> <li>• Electronic Monitoring/Surveillance System and On-Site Response</li> <li>• Skilled Nursing - Nursing Services by a Licensed Practical Nurse</li> </ul>	07/01/1985	07/01/2010	06/30/2015
<b>Traumatic Brain Injury Waiver Services</b>	<ul style="list-style-type: none"> <li>• Case Management</li> <li>• Personal Attendant Services</li> </ul>	12/23/2011	02/01/2012	01/31/2015

The plan is organized by program component. Click the hyperlink to go to the action steps that pertain to the component of interest.

- A. [Assessment](#)
- B. [Remedial Actions](#)
- C. [Public Input, Stakeholder Engagement and Oversight](#)

**ASSESSMENT**

<b>Applicable Waiver</b>	<b>Compliance Area</b>	<b>Action Item</b>	<b>Start Date</b>	<b>End Date</b>	<b>Person Responsible</b>
<b>ADW, TBI, IDD</b>	General	1. Conduct a review of West Virginia regulations and supporting documents across the 3 waiver programs with residential and non-residential settings.	10/20/14	11/10/14	Bureau for Medical Services
<b>ADW, TBI, IDD</b>	General	2. Develop and conduct a provider self-assessment survey across all three waivers; residential and non-residential.	10/20/14	6/30/15	Bureau for Medical Services
<b>ADW, TBI, IDD</b>	General	3. Develop a survey for individuals and families to provide input on settings by type and location; residential and non-residential.	10/20/14	12/30/15	Bureau for Medical Services
<b>ADW, TBI, IDD</b>	General	4. Prepare a list of settings that do not meet the residential and non-residential requirements, may meet the requirements with changes, and settings West Virginia chooses to submit under CMS heightened scrutiny. The list will be distributed to provider agencies and posted to the website.	10/24/14	12/30/15	Bureau for Medical Services

**REMEDIAL ACTIONS**

<b>Applicable Waiver</b>	<b>Compliance Area</b>	<b>Action Item</b>	<b>Start Date</b>	<b>End Date</b>	<b>Person Responsible</b>
<b>ADW, TBI, IDD</b>	Provider Remediation - Residential	1. Incorporate the outcomes of the assessment of settings within existing licensure and certification processes to identify existing settings as well as potential new settings in development that may not meet the requirements of the rule.	1/2/16	6/30/16	Bureau for Medical Services with assistance from individual Waiver Quality Councils
<b>ADW, TBI, IDD</b>	Outreach and Education	2. Provide training to licensure/certification staff on new settings requirements.	7/1/15	6/30/20	Bureau for Medical Services and the appropriate Waiver's Administrative Services Organization (ASO)
<b>ADW, TBI, IDD</b>	Provider Remediation	3. Strengthen enrollment and re-enrollment procedures to identify settings that may have indicators of non-compliance and require more thorough review.	10/20/14	6/30/20	Bureau for Medical Services and the appropriate Waiver's Administrative Services Organization (ASO)

<b>ADW, TBI, IDD</b>	Outreach and Education	4. Conduct a webinar series to highlight the settings requirements (residential, non-residential including principles of person-centered planning).	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver QIA and ASO
<b>ADW, TBI, IDD</b>	Outreach and Education	5. Provide strategic technical assistance by issuing fact sheets, FAQ's and responding to questions related to the implementation of the transition plan (action steps, timelines, and available technical assistance).	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver QIA and ASO
<b>ADW, TBI, IDD</b>	Outreach and Education	6. Provide training to enrollment staff to heighten scrutiny of new providers/facilities.	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver ASO and Office of Health Facility and Licensure (OHFLAC), if applicable
<b>ADW, TBI, IDD</b>	Outreach and Education	7. Develop and include ongoing provider training on rights, protections, person-centered thinking, and community inclusion.	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver QIA and ASO
<b>ADW, TBI, IDD</b>	Outreach and Education	8. Provide training to quality improvement system on new settings outcomes measures and update applicable Member Handbooks to strengthen person centered HCBS requirements.	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver QIA and ASO
<b>ADW, TBI, IDD</b>	Quality	9. Quality Measures <ul style="list-style-type: none"> <li>a. Develop or revise on-site monitoring tools to meet compliance (e.g. opportunities for "informed" choice, choice of roommate and setting, freedom from coercion).</li> <li>b. Include outcomes measures on settings within the current 1915c waiver quality improvement system.</li> <li>c. Build community character indicators within the 6 CMS Quality Assurances reviewed through the provider self-review process.</li> </ul>	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver QIA and ASO
<b>ADW, TBI, IDD</b>	Quality	10. Expand upon the QIA council to include responsibility to monitor data associated with meeting transition plan action items and outcomes data. Establish a baseline of outcomes data and measure throughout transition plan implementation.	7/1/15	6/30/20	Bureau for Medical Services, appropriate Waiver QIA and ASO
<b>ADW, TBI, IDD</b>	Quality	11. Crosswalk quality assurance tools against settings characteristics and person-centered planning requirements to	7/1/15	6/30/20	Bureau for Medical Services,

		identify areas of potential enhancement to the quality improvement system.			appropriate Waiver QIA and ASO
<b>IDD</b>	Policies and Procedures	12. Modify regulations to ensure community characteristics are reflected across IDD waiver services with particular attention on ISS, group homes and specialized family care homes as well as facility based day habilitation.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO
<b>IDD</b>	Provider Remediation	13. Develop a transition plan approval process which requires the provider to submit progress reports on the implementation of the specific setting identified.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO
<b>IDD</b>	Provider Remediation	14. Prepare a formal letter indicating the need for the provider to develop a transition plan for EACH setting. Include guidance and a template transition plan that requires action steps and timelines for compliance.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO
<b>IDD</b>	Provider Remediation	15. Develop a plan to manage non-compliance with the transition plans submitted by providers (e.g. disenrollment, sanctions). Include a decision flow and timeline within the management plan. Connect the plan with the quality improvement system. Assist providers in either becoming compliant or being terminated as a provider of HCBS because they are unable to become compliant.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO
<b>IDD</b>	Provider Remediation	16. Using lessons learned from the state's MFP program, develop a process for helping individuals to transition to new settings as appropriate.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO and WV MFP
<b>IDD</b>	Provider Remediation	17. Building upon the MFP program, develop a housing strategic plan to address the potential need for transition to new housing as well as prepare the LTSS system for future need.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO and WV MFP
<b>IDD</b>	Provider Remediation	18. Work with the stakeholder group to a) identify challenges and potential solutions to support provider changes that may be necessary. b) develop a toolkit for provider use that includes housing resources and person-centered planning strategies.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO and WV MFP
<b>IDD</b>	Provider Remediation	19. Require provider owned or controlled residences to ensure residents rights are protected by legally binding agreements (lease or other).	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO and WV MFP

<b>IDD</b>	Provider Remediation	20. Develop template leases, written agreements or addendums to support providers in documenting protections and appeals comparable to those provided under West Virginia landlord tenant law. Ensure that written language describes the required environment to comply such as locked doors and use of common areas.	7/1/15	6/30/20	Bureau for Medical Services, IDD Waiver QIA and ASO and WV MFP
<b>IDD</b>	Provider Remediation- Non-Residential	21. Develop strategies for moving away from more congregate employment to naturally occurring learning environments and access to community activities and events. Build upon the supported employment model by including more person-centered and inclusionary supports including access to a variety of settings for participants to interact with non-disabled individuals (other than those individuals who are providing services to the participant) to the same extent that individuals employed in comparable positions would interact.	7/1/15	6/30/20	Bureau for Medical Services, IDDDW QIA, ASO and WV Employment First through WV Developmental Disabilities Council

#### PUBLIC INPUT, STAKEHOLDER ENGAGEMENT AND OVERSIGHT

<b>Applicable Waiver</b>	<b>Compliance Area</b>	<b>Action Item</b>	<b>Start Date</b>	<b>End Date</b>	<b>Person Responsible</b>
<b>ADW, TBI, IDD</b>	Oversight	1. Convene a subcommittee across the WV Bureau for Medical Services to monitor the implementation of the transition plan.	10/20/14	6/30/20	Bureau for Medical Services
<b>ADW, TBI, IDD</b>	Oversight	2. Develop a communication strategy to manage the public input required by the rule as well as ongoing communication on the implementation of the transition plan. Adapt the strategy to different audiences including state legislators.	10/20/14	6/30/20	Bureau for Medical Services
<b>ADW, TBI, IDD</b>	Stakeholder Engagement	3. Reach out to providers and provider associations to increase the understanding of the rule and maintain open lines of communication.	10/20/14	6/30/20	Bureau for Medical Services and other stakeholder associations
<b>ADW, TBI, IDD</b>	Stakeholder Engagement	4. Create a space on an existing state website to post materials related to settings and person-centered planning.	10/20/14	6/30/20	Bureau for Medical Services
<b>ADW, TBI, IDD</b>	Stakeholder Engagement	5. Develop and issue required public notices. Collect comments and summarize for incorporation in the transition plan and within communication tools (e.g. FAQs).	10/20/14	6/30/20	Bureau for Medical Services



## APPENDIX B. WEST VIRGINIA HCBS SETTINGS DATA SOURCES TABLE

### General Source Documents:

WV Revised Code: <http://www.legis.state.wv.us/wvcode/Code.cfm?chap=09&art=6#06> – Chapter 9

Medicaid Provider Manual: <http://www.dhhr.wv.gov/bms/Pages/ProviderManuals.aspx> - Chapter 200, 300, 800

Agency	Waiver	Services/Settings Types	Case Management	Source Documents
WVDHHR Bureau for Medical Services	Aged and Disabled Waiver (ADW) Program	<ul style="list-style-type: none"> <li>• Case Management</li> <li>• Personal Assistance/Homemaker Service</li> </ul>	Case management services must be provided by an individual licensed in West Virginia as a social worker, counselor or registered nurse and certified by the operating agency.	<p><a href="#">Waiver application, manuals and forms</a></p> <p><a href="#">Medicaid Provider Manual</a> - chapter 501</p> <p><a href="#">Transition Plan</a></p> <p>Participant Experience Survey</p> <p><a href="#">WV Medicaid Aged and Disabled Waiver “Waiver at a Glance” A Handbook for Members</a></p> <p><a href="#">Aged and Disabled Waiver Member Use Guide</a></p> <p><a href="#">West Virginia Aged and Disabled Waiver Program Brochure</a></p> <p><a href="#">Aged and Disabled Waiver Continuing Certification Affidavit</a> and Continuing Certification Yes &amp; No Questions</p>
WVDHHR Bureau for Medical Services	Intellectual/ Developmental Disabilities (IDD) Waiver	<ul style="list-style-type: none"> <li>• Facility Based Day Habilitation</li> <li>• Participant -Centered Support</li> <li>• Respite</li> <li>• Service Coordination</li> <li>• Supported Employment</li> <li>• Electronic Monitoring/Surveillance System and On-Site Response</li> <li>• Skilled Nursing - Nursing Services by a Licensed Practical Nurse</li> </ul>	Licensed behavioral health provider.	<p><a href="#">Waiver application, manual and forms</a></p> <p><a href="#">Medicaid Provider Manual</a></p> <p><a href="#">Behavioral Health Provider Regulation (64 CSR 11)</a>(select the Word document listed under “Final File”)</p>
WVDHHR Bureau for Medical Services	Traumatic Brain Injury (TBI) Waiver Services	<ul style="list-style-type: none"> <li>• Case Management</li> <li>• Personal Attendant Services</li> </ul>	Case Management services must be provided by an individual licensed in West Virginia as a Social Worker, Counselor or Registered Nurse employed by a certified TBI Waiver Case Management Agency and certified by the ASO.	<p><a href="#">Waiver application, manual and forms</a></p> <p><a href="#">Medicaid Provider Manual</a>- chapter 512</p> <p><a href="#">Traumatic Brain Injury (TBI) Waiver: A Handbook for TBI Waiver Participants</a></p>

## PUBLIC NOTICE

### Availability of West Virginia’s Statewide Transition Plan for Home and Community Based (HCBS) Settings: Public Comment

On January 16, 2014, the Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community based settings amending Medicaid regulations to provide requirements for full access to benefits of community living and offer services in integrated settings for individuals receiving services and supports through Medicaid waivers. This includes opportunities to seek employment and work in competitive settings, engage in community life, control personal resources and participate in the community the same as people who do not receive Medicaid funded home and community services. The new rule sets forth [expectations](#) <upload document so that a person can click on this word to see the regulatory requirements currently contained at the end of this document> for “community-like” settings defined by the nature and quality of the experiences of the individual receiving services.

The rule which became effective on March 17, 2014 , requires the state to submit a transition plan to achieve compliance with the new setting requirements for 1915(c) home and community based waivers. The transition plan must describe the process by which the state will ensure that service settings used in each of its home and community based waivers meet community-like expectations. States may be granted a maximum of five years to transition settings that are not compliant.

The West Virginia Department of Health and Human Resources Bureau for Medical Services (BMS) has initiated a comprehensive review of HCBS waivers and related regulations, policy and procedures to assess and identify changes necessary to comply with the new rule. Pursuant to 42 CFR 441.301(c)(6), West Virginia’s proposed Statewide Transition Plan for Home and CommunityBased Settings contains the actions the state will take to bring all West Virginia waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5). Therefore, BMS is making the Statewide Transition Plan available for public review and comment. The following three 1915(c) waivers are included in the proposed Statewide Transition Plan:

- Aged and Disability Waiver (<http://www.dhhr.wv.gov/bms/hcbs/ADW/Pages/default.aspx>)
- Intellectual/Developmental Disabilities Waiver (<http://www.dhhr.wv.gov/bms/hcbs/IDD/Pages/default.aspx>)
- Traumatic Brain Injury Waiver (<http://www.dhhr.wv.gov/bms/hcbs/TBIWS/Pages/TBIWS.aspx>)

The Bureau for Medical Services has created a comprehensive Statewide Transition Plan that:

- Identifies waiver program areas for further analysis;
- Engages system stakeholders in evaluation of those areas; and
- Establishes time frames for assessment and remediation of areas that do not meet the expectation of “community-like.”

The Statewide Transition Plan may be separated into waiver specific transition plans to ensure timely implementation. Delay may be caused by BMS determination that substantive changes are needed to a specific waiver due to public comment, new guidance from CMS, or other reasons as determined by each waiver program manager. For this reason, and to simplify review of the plan for stakeholders, the plan is presented in both a combined comprehensive table with references to all three waivers as well as the individual waiver specific tables.

A public notice and open comment period of at least 30 days is required for the proposed transition plan. Comments on this notice will be used to formulate West Virginia's Final Statewide Transition Plan that will be submitted to the Centers for Medicare & Medicaid Services (CMS).

This public notice, the proposed Statewide Transition Plan and Waiver specific Plans are available for review and/or download on the West Virginia Bureau for Medical Services site at: [\[insert link\]](#). Hard copies of the Statewide Transition Plan will be made available to any participant or applicant upon request. To request a hard copy, [\[insert directions\]](#).

During the comment period of [\[date\]](#) to **January 5, 2015**, comments may be submitted to the designated email address: [\[insert email address\]](#) or mailed to:

Bureau for Medical Services  
ATTN: WV Transition Plan  
*(Indicate the waiver(s) to which the comments pertain)*  
350 Capitol Street, Room 251  
Charleston, WV 25301

**For all comment submissions, please be sure to note to which waiver(s) your comments pertain.** All comments will be tracked and summarized. The summary of comments in addition to the summary of modifications made in response to the public comments will be added to the Final Statewide Transition Plan and any Waiver specific Transition Plans.

Additionally, the Bureau for Medical Services will host a public meeting to provide an overview of the new rule and receive public comments on the Statewide Transition Plan.

[\[Location\]](#)

[\[Date/Time\]](#)

Additional background resources on the final rule are listed below:

- [CMS Fact sheets on Home and Community Based Services](#)
- [HCBS Advocacy \(Information for advocates about new HCBS rules\)](#)

**NOTICE IS HEREBY GIVEN THIS [\[date\]](#) DAY OF [\[month\]](#), 2014.**

## Summary of Regulatory Requirements for Home and Community Based Settings

### CMS DESCRIPTIONS FOR INSTITUTIONAL SETTINGS AND QUALITIES

**Settings that are Not Home and Community-Based include** a nursing facility; an institution for mental diseases; an intermediate care facility for individuals with intellectual disabilities; a hospital; or any other locations that have qualities of an institutional setting, as determined by the Secretary.

#### **Settings that are Presumed to have the Qualities of an Institution:**

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

### CMS GUIDANCE ON SETTINGS THAT MAY ISOLATE INDIVIDUALS

**Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:**

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

**Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:**

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

### PROVIDER CONTROLLED SETTING ELEMENTS TO ASSESS PER NEW FEDERAL REQUIREMENTS

For each service setting within a provider facility, the participant receiving services shall have these rights and freedoms.

**Settings that are integrated within the community so the participant can:**

- Receive services in the community to the same degree as those not receiving HCBS.
- Receive services in a setting that is not segregated from people receiving services without disabilities.
- Receive services in a location among other private residences and retail businesses, in an area with consistent traffic patterns and where visitors are present and visiting regularly.

**A choice in where to live with as much independence as possible, in the least restrictive environment, and:**

- Be given opportunities to visit other settings options, such as an apartment, smaller home, fewer roommates, private bedroom.
- Choose a specific roommate or opt for a private unit.

- Have a unit with entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Access to the typical facilities in a home, such as the kitchen, dining area, laundry, and comfortable seating/lounging areas.
- Have a signed lease or written agreement with tenant/landlord protection to document protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Have a setting physically accessible to the individual.
- Have unrestricted access in the setting to roam to common areas.

#### **Exercise Informed Choice and be able to:**

- Choose the living environment, services, providers and types of supports based on one's needs and preferences.
- Optimize one's initiative, autonomy, and independence in making life choices, in such activities as daily activities, physical environment, and with whom to interact.
- Design a schedule that meets one's wishes and is reflected in a person-centered plan.
- Participate in unscheduled and scheduled access to the community, can come and go at any time, and not have a regimented routine.

#### **A setting that ensures the one's rights and protections so the participant can:**

- Actively participate in the development of a person-centered plan of care.
- Have dignity and respect, where people communicate and interact respectfully. Staff greet and converse with participants without talking down to them or acting as though the person is not present and talking around them to other staff.
- Expect privacy with protected health information and know that personal care is conducted privately, with help only as needed.
- Control personal resources.
- Be free from coercion and restraint.
- Have visitors of their choosing at any time and access to a private area for visitors.
- Have access to make private calls, text, email at their preference or convenience.
- Choose when and what to eat and have access to food at any time, and chooses with whom to eat or to eat alone.
- Have appropriate clothes for their preferences and the weather and activities performed.
- Furnish and decorate their sleeping or living units within the lease or other agreement.

#### **A setting that optimizes personal autonomy so the participant can:**

- Engage in community life.
- Engage with friends and family.
- Have support to control their own schedules and activities, and access to activities of his/her choosing in the larger community.
- Make money by accessing and seeking employment.
- Work in a competitive integrated setting.

### **PLAN OF CARE REQUIREMENTS FOR MODIFICATIONS OR RESTRICTIONS OF A PARTICIPANT'S RIGHTS**

\*\*Any modification or restriction of the participant's rights and freedoms must be supported by a specific assessed need and be approved by the participant or a legally authorized representative, who has the authority to restrict the specific right.

**If a right or freedom is modified or restricted, the following requirements must be documented in the person-centered service plan:**

- A specific assessed need which requires a modification or restriction of a specific right or freedom.
- Positive interventions and supports used prior to any modifications to the person-centered service plan.
- Less intrusive methods of meeting the need that were tried but did not work.
- A clear description of the modification or restriction that is directly proportionate to the specific assessed need.
- Regular collection and review of data to measure ongoing effectiveness of restricted right.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

## Home and Community-based Services – Information about the New Rule

The Centers for Medicare & Medicaid Services (CMS) recently released new regulations and guidance on the delivery of home and community-based services (HCBS) offered through Medicaid waiver programs. Through this new rule, CMS intends to ensure that individuals receiving HCBS through Medicaid waivers have full access to integrated, community living including receiving services in the most integrated setting possible. To increase understanding of the rule for individuals receiving services, family members and providers, the West Virginia Bureau for Medical Services will post information and relevant materials on this webpage.

To fully implement the new rule from CMS, West Virginia must submit a transition plan for each Medicaid waiver offering HCBS to ensure compliance of the new rule. The Bureau for Medical Services is soliciting comments on the draft Transition Plans until **January 5, 2015**. There is one transition plan for each waiver. The transition plans will be combined into one Statewide Transition Plan. Comments from the public will be used to inform the final Statewide Transition Plan to submit to CMS.

Please email [[insert email address](#)] to submit comments and indicate to which waiver(s) your comments pertain or mail comments to:

Bureau for Medical Services  
ATTN: WV Transition Plan  
*(Indicate the waiver(s) to which the comments pertain)*  
350 Capitol Street, Room 251  
Charleston, WV 25301

Links to the draft Statewide Transition Plan, waiver-specific transition plans and other supporting documents for review are provided in the links below.

### Draft Transition Plans

- [[Link to public notice](#)]
- [[Link to statewide transition plan](#)]
- [[Link to ADW waiver transition plan](#)]
- [[Link to I/DD waiver transition plan](#)]
- [[Link to TBI waiver transition plan](#)]

### Current waivers

- Aged and Disability Waiver (<http://www.dhhr.wv.gov/bms/hcbs/ADW/Pages/default.aspx>)
- Intellectual/Developmental Disabilities Waiver (<http://www.dhhr.wv.gov/bms/hcbs/IDD/Pages/default.aspx>)
- Traumatic Brain Injury Waiver (<http://www.dhhr.wv.gov/bms/hcbs/TBIWS/Pages/TBIWS.aspx>)

## General Background Information

- [CMS Fact sheets on Home and Community Based Services](#)
- [HCBS Advocacy \(Information for advocates about new HCBS rules\)](#)

If you have any questions or comments, please email the West Virginia Bureau for Medical Services at [\[insert email address\]](#) or call [\[insert phone number\]](#).