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

Independent. Integrated. Individual.

Revised: August 2019

Prepared by:

South Carolina Department of Health and Human Services (SCDHHS)

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

1 Introduction

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

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

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

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

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

- Individuals can furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals have freedom and support to control their schedules and activities.
- Individuals have access to appropriate food any time.
- Individuals may have visitors at any time.
- The setting is physically accessible to the individual.
- Any modification of the additional conditions for HCB residential settings listed above must be supported by a specific assessed need and justified in the person-centered service plan.

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

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

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

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

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

SCDHHS recognizes that there will be challenges in implementing these requirements, but ultimately recognizes these changes are to better the lives of the individuals served through our waiver programs. SCDHHS is focused on the quality of the experience of people receiving home and community-based services, and as such will work with our providers to help them successfully make these changes.

1.1 Statewide Plan Development

CMS required that each state submit a "Statewide Transition Plan" by March 17, 2015. The Statewide Transition Plan outlines how the state will come into conformance and compliance with the HCBS Rule settings requirements. States must come into full compliance with the HCBS Rule requirements by March 17, 2022, as detailed in the Informational Bulletin released on May 9, 2017, extending the transition period an additional three years from the original date of March 17, 2019.

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

- Community Choices (CC) waiver (0405.R03.00)
  - Provides services to adults ages 65 and over and adults with physical disabilities, ages 18-64
  - Services offered by setting type
- Community Supports waiver (CS) (0676.R02.00)
  - Provides services to individuals with an intellectual disability and/or a related disability of all ages within an annual cost limit
  - Services offered by setting type
- Head and Spinal Cord Injury waiver (HASCI) (0284.R05.00)
  - Provides services to individuals, ages 0-64, who have a traumatic brain injury, a spinal cord injury, or both, or a similar disability
  - Services offered by setting type
- HIV/AIDS waiver (0186.R06.00)
  - Provides services to individuals who have HIV/AIDs of all ages and are at risk for hospitalization
  - Services offered by setting type
- Intellectually Disabled and Related Disabilities waiver (ID/RD) (0237.R05.00)
  - Provides services to individuals with an intellectual disability and/or a related disability of all ages
  - Services offered by setting type
- Mechanical Ventilator Dependent waiver (40181.R05.00)
  - Provides services to individuals, ages 21 and older, who are dependent on a mechanical ventilator
  - Services offered by setting type

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- Medically Complex Children waiver (MCC) (0675.R02.00)
    - Provides services to children, ages 0-18, who are medically fragile
    - Services offered by setting type

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

Since the initial writing of this document, two waivers have ended. The Psychiatric Residential Treatment Facility (PRTF) Alternative/Children's Health Access in Community Environments (CHANCE) waiver was a demonstration waiver and its services ended in 2016 as the final beneficiaries no longer required the intensity of waiver services. The Pervasive Developmental Disorder waiver (PDD) transitioned to state plan services in December of 2017.

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

- SC Department of Health and Human Services (29%)
- SC Department of Disabilities and Special Needs (8%)
- SC Vocational Rehabilitation Department (1%)
- SC Department of Mental Health (2%)
- Other governmental partners (2%)
- Advocacy groups (20%):
    - AARP South Carolina
    - Family Connection of South Carolina
    - SC Developmental Disabilities Council
    - Center for Disability Resources
    - Protection & Advocacy for People with Disabilities, Inc.
    - Able South Carolina
    - AccessAbility
    - Walton Options
- Providers (30%):
    - Local Disabilities and Special Needs Boards
    - Housing providers for the mentally ill population
    - Adult Day Health Care Providers
    - Private providers of Medicaid and HCBS services
- Beneficiaries and family members (8%)

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

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

Revisions to Statewide Transition Plan

Date of Revision	Reason
Sept. 25, 2015	CMS first review of Statewide Transition Plan requiring revisions
Feb. 4, 2016	CMS review of STP draft before public notice
Feb. 24, 2016	Public notice and comment period of STP due to substantive changes
March 31, 2016	Revised STP submitted to CMS with updates to completed systemic assessment
Aug. 17, 2016	Public notice and comment period of STP due to substantive changes per CMS feedback
Oct. 28, 2016	Revised STP submitted to CMS based on public comments and technical changes from CMS
Aug. 12, 2019	Revised STP to update systemic changes completed, update dates when other systemic changes will be done; detailed the settings onsite assessment process, results of settings site assessments included; state level review for heightened scrutiny process detailed

2 Communications and Outreach – Public Notice Process

2.1 Public Notice and Comment on Statewide Transition Plan

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

- Eight statewide public informational meetings were held that provided an overview of the HCBS Rule and the Statewide Transition Plan. Those dates and locations were:
    - Sept. 3, 2014 Aiken, SC

- Sept. 11, 2014 Orangeburg, SC
- Sept. 16, 2014 Anderson, SC
- Sept. 25, 2014 Lyman, SC
- Oct. 2, 2014 Myrtle Beach, SC
- Oct. 9, 2014 Greenwood, SC
- Oct. 16, 2014 Beaufort, SC
- Oct. 21, 2014 Rock Hill, SC

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

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

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- Comments were gathered from the public meetings listed above (the eight in September and October as well as those in November and December), from electronic communications sent to SCDHHS and from communications mailed to SCDHHS.
- SCDHHS reviewed the comments and incorporated any appropriate changes to the Statewide Transition Plan. A summary of the public comments is included with this Statewide Transition Plan submitted to CMS in February 2015 (Appendix A-1).
- South Carolina's HCBS Statewide Transition Plan, as submitted to CMS on February 26, 2015, was posted in the following locations:
    - SCDHHS Public Notices
    - msp.scdhhs.gov/hcbs/site-page/statewide-transition-plan

2.2 Communication during the Implementation of the Statewide Transition Plan

SCDHHS continues to hold monthly HCBS workgroup meetings and/or communicate to the workgroup monthly via email. This communication keeps stakeholders informed of the progress made during the implementation of the Statewide Transition Plan. Minutes and updates from the HCBS workgroup meeting can be found on the SCDHHS HCBS website on the HCBS Workgroup page.

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

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

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

2.3 Update February – March 2016

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

- Sept. 25, 2015
- Feb. 3, 2016
- Feb. 23, 2016

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

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- Public notice printed in the following newspapers:
    - The State (Columbia and midlands area) – Feb. 23, 2016
    - The Post and Courier (Charleston and lowcountry area) – Feb. 24, 2016
    - The Greenville News (Greenville and the upstate) – Feb. 23, 2016
- On the SCDHHS HCBS website
- On the SCDHHS website under "Public Notice"
- On the SCDDSN website
- On the Family Connection of SC website
- On the Able South Carolina website
- On the SC Developmental Disabilities Council website
- On the AARP South Carolina website
- On the Protection & Advocacy (SC) website
- Sent out via the SCDHHS listserv
- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all Healthy Connections Medicaid County Offices
- Available in print form at all Community Long Term Care (CLTC) Regional Offices
- Tribal notification was provided via email Feb. 22, 2016. A Tribal notification conference call for the Statewide Transition Plan was held Feb. 24, 2016.
- The Medical Care Advisory Committee (MCAC) was provided an advisory on the Statewide Transition Plan Feb. 9, 2016.
- A live webinar was held Wednesday, Feb. 24, 2016. This meeting was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website.
- Written comments on the Statewide Transition Plan were sent to:
  Long Term Care and Behavioral Health
  ATTN: Kelly Eifert, Ph.D.
  South Carolina Department Health and Human Services
  P.O. Box 8206
  Columbia, South Carolina 29202-8206
- Comments were submitted to https://msp.scdhhs.gov/hcbs/webform/comments-questions. The deadline for comments was March 25, 2016.
- Comments were gathered Feb. 24, 2016, from the webinar and from communications mailed to SCDHHS. SCDHHS reviewed the comments and provided a written summary and response found in Appendix A-2.

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

- scdhhs.gov/hcbs/site-page/statewide-transition-plan
- SCDHHS Public Notices
- Available in print form at all Healthy Connections Medicaid County Offices
- Available in print form at all Community Long Term Care (CLTC) Regional Offices

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2.4 Update August – October 2016

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

- Public notice printed in the following newspapers:
  - The State (Columbia and midlands area) - Aug. 19, 2016
  - The Post and Courier (Charleston and lowcountry area) – Aug. 19, 2016
- On the SCDHHS HCBS website
- On the SCDHHS website under "Public Notice"
- On the SCDDSN website
- On the Family Connection of SC website
- On the Able South Carolina website and Facebook page
- On the SC Developmental Disabilities Council website
- On the AARP South Carolina website
- On the Protection & Advocacy (SC) website and Facebook page
- On the IMPACT South Carolina Facebook page
- Sent out via the SCDHHS listserv
- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all Healthy Connections Medicaid County Offices
- Available in print form at all Community Long Term Care (CLTC) Regional Offices
- Tribal notification was provided via email July 25, 2016. A Tribal notification conference call for the Statewide Transition Plan was held Aug. 9, 2016.
- The Medical Care Advisory Committee (MCAC) was provided an advisory on the revised Statewide Transition Plan Aug. 16, 2016.
- Nine public meetings were held August–October of 2016 to discuss the statewide transition plan. These meetings were held in the following cities:
  - Aug. 23, 2016 Anderson, SC
  - Sept. 8, 2016 Fort Mill, SC
  - Sept. 13, 2016 Charleston, SC
  - Sept. 15, 2016 Greenville, SC
  - Sept. 20, 2016 Myrtle Beach, SC
  - Sept. 22, 2016 Florence, SC
  - Sept. 27, 2016 Aiken, SC
  - Sept. 29, 2016 Beaufort, SC
  - Oct. 4, 2016 Columbia, SC
- For those unable to attend a public meeting, a live webinar was held Tuesday, Aug. 23, 2016. This meeting was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website. Registration was online here: http://www.familyconnectionsc.org/training-events//sc-home-and-community-based-services-statewide-transition-plan

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    - The webinar presentation, along with the transcript, is available at: https://msp.scdhhs.gov/hcbs/site-page/presentations
- Written comments on the Statewide Transition Plan were sent to:
  Long Term Care and Behavioral Health
  ATTN: Kelly Eifert, Ph.D.
  South Carolina Department Health and Human Services
  P.O. Box 8206
  Columbia, South Carolina 29202-8206
- Comments could be submitted to https://msp.scdhhs.gov/hcbs/webform/comments-questions. The deadline for comments was Oct. 7, 2016.
- Comments were gathered from the webinar, the public meetings, and from communications emailed and mailed to SCDHHS. SCDHHS reviewed the comments and provided a written summary and response found in Appendix A-3.

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

- scdhhs.gov/hcbs/site-page/statewide-transition-plan
- SCDHHS Public Notice
- Available in print form at all Healthy Connections Medicaid County Offices
- Available in print form at all Community Long Term Care (CLTC) Regional Offices

2.5 Update August 2019

This Statewide Transition Plan is on its first revision since it received Initial Approval on Nov. 3, 2016. It is its seventh revision overall. The version dated Aug. 12, 2019, is out for public notice and comment through Sept. 13, 2019. It is available through the following methods:

- Public notice printed in the following newspapers:
    - The State (Columbia and midlands area)
    - The Post and Courier (Charleston and lowcountry area)
    - The Greenville News (Greenville and the upstate)
- On the SCDHHS HCBS Website
- On the SCDHHS website under "Public Notice"
- On the SCDDSN website
- On the Family Connection of SC website
- On the AccessAbility website
- On the Walton Options website
- On SC Developmental Disabilities Council website
- On the AARP South Carolina website
- On the Protection & Advocacy (SC) website and Facebook page
- On the IMPACT South Carolina Facebook page
- Sent out via the SCDHHS public notice electronic distribution and other email distribution

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- Available in print form at the SCDHHS main office lobby (Jefferson Square, 1801 Main Street, Columbia, SC)
- Available in print form at all Healthy Connections Medicaid County Offices
- Available in print form at all Community Long Term Care (CLTC) Regional Offices
- Tribal notification was provided via email July 30, 2019. A Tribal notification conference call for the Statewide Transition Plan was held July 31, 2019.
- The Medical Care Advisory Committee (MCAC) will be provided an advisory on the revised Statewide Transition Plan Aug. 13, 2019.
- Three public meetings will be held in August 2019 to discuss the statewide transition plan. These meetings will be held in the following cities:
    - Aug. 13, 2019 Simpsonville, SC
    - Aug. 15, 2019 North Charleston, SC
    - Aug. 22, 2019 Columbia, SC
- For those unable to attend a public meeting, a live webinar will be held Tuesday, Aug. 20, 2019. This meeting will be recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website.
    - Registration is available at: https://zoom.us/webinar/register/0cbfe4c5f6f40f2e7c24e00bf0acd2b8
- Written comments on the Statewide Transition Plan can be sent to:
  Long Term Living
  ATTN: Kelly Eifert, Ph.D.
  South Carolina Department Health and Human Services
  P.O. Box 8206
  Columbia, South Carolina 29202-8206
- Comments can be submitted to https://msp.scdhhs.gov/hcbs/webform/comments-questions. All comments are to be received by Sept. 13, 2019
- Comments will be gathered from the webinar, the public meetings and from communications emailed and mailed to SCDHHS. SCDHHS will review the comments and provide a written summary and response which will be in Appendix A-4.
- The South Carolina HCBS Statewide Transition Plan will be submitted to CMS on Sept. 27, 2019.

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

3.1 Process of System-Wide Review

SCDHHS compiled a list of the laws, regulations, policies, standards and directives that directly impact home and community-based settings. The list was vetted through the appropriate

leadership at SCDHHS, the South Carolina Department of Disabilities and Special Needs (SCDDSN) and other stakeholders to ensure that it was complete.

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

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

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

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

3.2 Outcomes of System-Wide Review

Based on feedback from CMS, SCDHHS reformatted the below information. The information and results have not changed, but the full analysis is now included indicating where our system

complies with or conflicts with the HCB setting requirements, the remediation needed, and the timeframe within which the remediation occurred or will occur. The charts give the overview of the HCBS system in South Carolina, and the narrative below provides the details for any changes that need to take place.

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

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

individuals will make the choices for the services and supports they receive rather than having those choices made for them.

c. Additionally, through CMS feedback, the concern was also raised that this statute may mean that "the state/provider must serve as the employer of record or supervisor of individuals in their employment situations."

d. Currently, individuals served by SCDDSN have a variety of employment options which include, in some cases, where the provider is the employer of record, but many individuals also have fully integrated employment within the community with an employer who is not their service provider. Additionally, SCDDSN directive 510-01-DD Supervision of People Receiving Services states that, "People should live and work in the most natural and normal environments that support and respect their dignity and rights. Any support system that enables the person to be in those environments must be structured to manage the risks while facilitating self-determination, personal choice and responsibility […]. Supervision that is more restrictive than warranted is a violation of the person's right to freedom of movement." However, the State will seek to further define and explain the meaning of "supervision" as it applies to employment through sub-regulatory guidance which will clarify that individuals are not mandated to have the provider serve as their employer of record or supervisor.

e. Update: The SCDDSN Directive 510-01-DD was revised Aug. 31, 2017.

3. **S.C. Code Reg. 61-84-103:** "Facilities shall comply with applicable local, state, and federal laws, codes, and regulations. R. 61-84-103(c)(1): Compliance with structural standards: [Existing facilities]…shall be allowed to continue utilizing the previously-licensed structure without modification."

   a. This regulation is not fully compliant with 42 C.F.R. 441.301(c)(4)(vi). This regulation may allow for a CRCF to not be compliant with ADA regulations if it falls under the grandfather clause of this regulations.

   b. Ameliorated by SCDDSN Residential Habilitation standards (updated 6/2016) which require compliance with all federal statutes and regulations which includes federal ADA regulations. Also ameliorated by SCDDSN Directive 700-02-DD (updated 1/2014) which requires all SCDDSN settings, which would include any CRCF in which residential habilitation service is received, to comply with the federal ADA regulations.

4. **SCDDSN Directive 200-01-DD, Personal Funds Maintained at the Residential Level:** "A locking cash box shall be maintained in a secure location at each residence for the sole purpose of securing cash for the people living there. Access to the cashbox shall be limited to a minimum level of staff."

   a. This directive is not fully compliant with 42 C.F.R. 441.301(c)(4)(i) and is not fully compliant with 42 C.F.R. 441.301(c)(4)(iv). Storing an individual's personal cash in a cash box collectively with other residents' money, and that cash box is only accessible by a limited number of staff, does not optimize an individual's autonomy and does not allow an individual to control personal resources. This places a barrier on an individual's free use of their own money and may create a

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situation where an individual has to justify the use of their own money to a staff member to gain access to it.

b. Remediated on March 2, 2016, by SCDDSN, and approved by SCDHHS, with the removal of the above language which was replaced with the following: "Residential service providers must manage residents' personal funds in accordance with individualized financial plans established for each resident."

5. **SCDDSN Directive 200-12-DD, Management of Funds for People Participating in Community Residential Programs**: "Personal funds should be managed under the direction of the provider except in the following situations: 1) A different representative payee has already been established for a person, or 2) An assessment of the person's abilities clearly demonstrates that he/she has the cognitive ability and financial skills to manage his/her funds."
    a. This directive is not fully compliant with 42 C.F.R. 441.301(c)(4)(i) and is not fully compliant with 42 C.F.R. 441.301(c)(4)(iv). Having the default protocol to put an individual's personal funds under the control of the provider does not optimize an individual's autonomy and does not allow an individual to control personal resources.
    b. Remediated on March 2, 2016 by SCDDSN, and approved by SCDHHS, with the removal of the above language which was replaced with the following: "Residents […] have the right to manage his/her own personal funds. However, when the resident needs assistance to manage their funds and does not have a willing representative to serve as his/her payee, the residents funds should be managed under the direction of the residential service provider."
6. **SCDDSN Directive 533-02-DD, Sexual Assault Prevention, and Incident Procedure Follow-up:** "The family/guardians/family representative of both alleged perpetrator and victim should be notified of the incident as soon as possible by the Facility Administrator/Executive Director (or designee)."
    a. This directive is not fully compliant with 42 C.F.R. 441.301(c)(4)(iii) and it is not fully compliant with 42 C.F.R. 441.301(c)(4)(iv). Mandating that a beneficiary's family/guardians/family representative be notified if an incident occurs may violate a beneficiary's right to privacy if that beneficiary does not want their family/guardian/family representative to be notified.
    b. To be remediated by SCDDSN, and subject to approval by SCDHHS, by removing the above language and replacing it with the following: "If the alleged perpetrator or the victim has a legal guardian, the legal guardian will be notified of the incident by the Facility Administrator/Executive Director (or designee) as soon as possible following the incident. If the alleged perpetrator and/or victim is an adult who does not have a legal guardian, with consent, those chosen by the service recipient to be informed of the incident will be notified by the Facility Administrator/Executive Director." This directive is currently under review with anticipated changes to be made by Dec. 31, 2016.
    c. Update: The SCDDSN Directive 533-02-DD was revised Dec. 8, 2016.
7. **SCDHHS Policy: Leave of Absence from the State/CLTC Region of a Waiver Participant:** *"Individuals enrolled in Medicaid home and community-based waivers who travel out of*

state may retain a waiver slot under the following conditions: the trip out-of-state is a planned, temporary stay, not to exceed 90 consecutive days which is authorized prior to departure; the individual continues to receive a waiver service; waivered services are limited to the frequency of services currently approved in the participant's plan of service; waivered services must be rendered by South Carolina Medicaid providers; the individual must remain Medicaid eligible in the State of South Carolina."

SCDDSN Medicaid Waiver Policy Manuals <u>Medicaid HCB Waiver Policy Regarding Waiver Services Provided while Clients Travel Out-of-State:</u> *"[…] Waiver participants may travel out of state and retain a waiver slot under the following conditions: the trip is planned and will not exceed 90 consecutive days; the participant continues to receive a waiver service consistent with SCDDSN policy; the waiver service received is provided by a South Carolina Medicaid provider; South Carolina Medicaid eligibility is maintained. During travel, waiver services will be limited to the frequency of service currently approved in the participant's plan. Services must be monitored according to SCDDSN policy. The parameters of this policy are established by SCDHHS for all HCB Waiver participants."*

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

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

- "The state found all of its day service setting standards to be fully compliant with 42 CFR 441.301(c)(4)(iv), which requires a setting to not regiment an individual's schedule and provide independence in life choices (p. 64). South Carolina's standards for Adult Activity Centers, Work Activity Centers, Sheltered Workshops, and "Unclassified" Day Programs, however, require staffing ratios – including administrative staff, not just direct support staff – of 7:1, 7:1, 10:1, and 10:1, respectively. These types of fixed staffing ratios raise concerns about whether a setting can support individualized activities and full access of individuals to the greater community. The standards also require the posting of program schedules at these facilities with defined start times, break times, and meals. Please describe within the STP how the state determined that these standards for a regimented schedule demonstrate full compliance with federal requirements or explain how these issues will be remediated."
  - **SCDHHS Response:** The standards for the fixed staffing ratios and the posting of a program schedule are dictated by the SC Code of Regulations [SC Code of Regulations 88-410 (B 1 a-d) and 88-435 (C 1-3)]. Because they are included in the regulation, they

are included in the SCDDSN Standards for Licensing Day Facilities. These staffing requirements reflect the minimally required staffing ratios and in no way pose an absolute requirement. In an effort to support individualized activities and full access to the greater community, the SCDDSN Standards for Licensing Day Facilities provide guidance to explain the standard. The guidance instructs that SCDDSN Directive 510-01-DD entitled "Supervision of People" be used as the method through which the most appropriate level of supervision and support for the each person supported is to be determined, including each person's need for independent functioning. The guidance will be revised by December 2016.

- Update: The SCDDSN Directive 510-01-DD was revised Aug. 31, 2017.
- In an effort to support individualized activities and full access to the greater community, the SCDDSN Standards for Licensing Day Facilities provide guidance to explain the standard. For the requirement that program schedules be posted, the guidance instructs that the "schedules of activities should reflect the general schedule for the program. It is not necessary to specify the discrete activities that will occur with each service or program area. It is acceptable to identify the program start time, break times, lunch times, etc." The guidance will be revised by December 2016.
- Update: SCDDSN Standards for Licensing Day Facilities were revised Oct. 1, 2017.

- "It does not appear that the citations provided by the state for Community Training Homes, Supportive Living Programs and the CLOUD are fully compliant with ensuring individuals are choosing from setting options that include non-disability specific options, ensuring only appropriate staff have access to keys for lockable doors, and ensuring individuals have access to visitors and food at any time. Please explain how the state will remediate these issues in the STP."
  - **SCDHHS Response:** SCDHHS is currently receiving technical assistance from CMS sponsored subject matter experts on the issue of non-disability specific settings options. The other issues raised have already been remediated through SCDDSN Residential Habilitation Standards (updated 6/2016) which now include all HCBS requirements.
    - Update: SCDDSN Residential Habilitation Standards (pg. 5) note that Community Training Home- I Models (CTH I) are homes owned by private citizens who contract with DDSN to provide the residential habilitation service. These homes are non-disability specific as they are not owned by a provider agency, but still must adhere to HCBS requirements. Community Integrated Residential Services (CIRS – formerly CLOUD) settings, as defined in SCDDSN Residential Habilitation Standards (pg. 5-6), state that "Participants are responsible for selecting support providers, house mates, and housing." Residents are not restricted to provider-owned or controlled housing. The CIRS Manual also states that the person is the focus, choosing where they live (page 1). Supported Living Model – I (SLP I) settings are found in the community and not licensed by SCDDSN (see SCDDSN Directive 104-01-DD), but are still subject to HCBS requirements in the provision of Residential Habilitation Services as provided in those settings.

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- CMS also pointed out various regulations within SC Code of Regulations. 61-84 (standards for licensing Community Residential Care Facilities) that seemed to be conflicting with the HCBS settings requirements.
  - **SCDHHS Response:** These regulations are licensing regulations promulgated by the South Carolina Department of Health and Environmental Control (SCDHEC). They apply to all CRCFs, or assisted living facilities, across the state, and not just to the provider owned and/or controlled CRCFs. DSN Board/Qualified provider owned and/or controlled CRCFs are contracted to provide residential habilitation services under the administration of SCDDSN. SCDDSN residential habilitation standards apply on top of the SCDHEC licensing regulations.

    As noted above, the SCDDSN residential habilitation standards now include all of the HCBS settings requirements for residential settings as they were updated in June of 2016. CRCFs that are not operated by SCDDSN providers do not have the same level of heightened protections and responsibilities to serve clients in accordance with the HCBS rule. As noted below, there are many gaps within SC Code of Regulation 61-84 that make these settings not fully compliant with the requirements of 42 CFR 441.301(c)(4). To ensure waiver beneficiaries are truly living in home and community-based settings, and not settings with institutional qualities, SCDHHS is currently drafting a new policy which would designate these beneficiaries as "Tier 3 CRCF clients." A Tier 3 client is a waiver beneficiary who resides in a non-SCDDSN operated CRCF. To serve a Tier 3 client, providers must comply with all of the requirements of 42 CFR 441.301(c)(4)(i-vi) and would be compensated at a higher rate. This new SCDHHS program and policy development is expected to be finalized by June 30, 2017, with an expected implementation date of June 30, 2018. This deadline reflects the SC Fiscal Year (ex. July 1, 2017 to June 30, 2018) since this program will likely include a fiscal request for the SC General Assembly to approve.

    - Update: The Tier 3 policy evolved into a new waiver service called "Residential Personal Care II (RPC II)." This service is offered in the Community Choices waiver and is for eligible participants who live in CRCFs. The policy was added to the OSS/OSCAP provider manual, Section 2, pages 2-31 through 2-35, April 24, 2017, and went live as a service June 1, 2017. This service is also listed in CLTC Provider manual, Section 6, pages 6-124 through 6-132. A CRCF provider was identified as being willing to participate in the pilot implementation of this new policy. SCDHHS will work with the provider to enroll as a Medicaid Waiver provider and the eligible residents in the Community Choices Waiver (where Residential Personal Care II is offered) to begin the pilot. It is estimated that this will begin Sept. 1, 2019. Progress and outcomes of the pilot will be monitored through the Division of Long Term Living Compliance.
    - Per CMS guidance issued March 22, 2019, SCDHHS will not address HCBS compliance for CRCF settings in which a waiver participant resides and the waiver participant only receives non-residential HCBS paid for by Medicaid.

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- R. 61-84-2605(F), the regulation states, "If resident doors are lockable, there shall be provisions for emergency entry. There shall not be locks that cannot be unlocked and operated from inside the room."
  - SCDDSN-operated CRCFs: This is ameliorated by SCDDSN Residential Habilitation Standard 2.5 and SCDDSN Residential Habilitation Standards 2.4
  - Non-SCDDSN operated CRCFs: This will be ameliorated by the new SCDHHS Tier payment system policy described above by June 30, 2018.
    - Update: The Tier 3 policy is now "Residential Personal Care II (RPC II)," a waiver service offered in the Community Choices waiver and for eligible participants who live in CRCFs. It was effective June 1, 2017.
- S.C. Code of Regulations 61-84-904 requires only that Community Residential Care Facilities provide transportation only to local physician and medical services. The regulation includes no mention of facilitating access to other supports. The state's systemic assessment provides no explanation for how this *"supports full access of individuals receiving Medicaid HCBS to the greater community."*
  - SCDDSN-operated CRCFs have their own house transportation which is used by beneficiaries if they do not own their own vehicle. These vehicles are used in the same manner as any other private residence with private transportation (i.e. to run errands, take someone to appointments, go out to eat, participate in community events, etc.).
  - Non-SCDDSN operated CRCFs: This will be ameliorated by the new SCDHHS Tier payment system policy described above by June 30, 2018.
    - Update: The Tier 3 policy is now "Residential Personal Care II (RPC II)," a waiver service offered in the Community Choices waiver and for eligible participants who live in CRCFs. It was effective June 1, 2017.
- S.C. Code of Regulations 61-84-1001(E) permits the development of "house rules" for Community Residential Care Facilities so long as these rules do not contradict the resident's "Bill of Rights For Residents of Long-Term Care Facilities." This resident's bill of rights does not address all of the areas required by the federal rule. Please explain how the state will ensure that house rules are not more restrictive than the settings rule permits.
  - House rules are developed by the consent of the residents in the home as an agreement of how they want to live together as roommates and therefore would not be restrictive on an individual who chooses to abide by those house rules. See S.C. Code of Regulations. 61-84-1001(F) (residents shall have input into the development of any house rules).
  - SCDDSN is currently drafting a model lease for its providers to utilize which incorporates all of the HCBS rule requirements within the lease, signed by both the beneficiary (and/or personal representative) and the provider. As such, house rules would not be permitted to be more restrictive than the contractual rights each resident has within their lease.

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        - Update: A model lease was made available Nov. 1, 2017, via SCDDSN Directive 250-09-DD, Attachment C
    - Non-SCDDSN operated CRCFs: This will be ameliorated by the new SCDHHS Tier payment system policy described above by June 30, 2018.
        - Update: The Tier 3 policy is now "Residential Personal Care II (RPC II)," a waiver service offered in the Community Choices waiver and for eligible participants who live in CRCFs. It was effective June 1, 2017.
- S.C. Regs. 61-84-1001(L) allows access to telephones only during business hours and "*other times when appropriate*." However, 42 CFR 441.301(c)(4)(vi)(C) addresses beneficiaries' ability to control their own schedules and 42 CFR 441.301(c)(4)(vi)(D) allowing residents' visitor access at times of their choosing.
    - SCDDSN-operated CRCFs: This regulation is ameliorated by SCDDSN Residential Habilitation Standards RH 2.0
    - Non-SCDDSN operated CRCFs: This will be ameliorated by the new SCDHHS Tier payment system policy described above by June 30, 2018.
        - Update: The Tier 3 policy is now "Residential Personal Care II (RPC II)," a waiver service offered in the Community Choices waiver and for eligible participants who live in CRCFs. It was effective June 1, 2017.

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

Chart 1 – Day Care Settings

Chart 1 details the laws, regulations, and policies that are used to regulate an adult day health care center and a pediatric medical day care center. These settings are utilized in South Carolina for individuals who need the specific service provided in the setting, regardless of payor source. Therefore, the experience of individuals receiving HCBS in these settings are consistent with how those settings would be experienced by individuals who are not HCBS service recipients.

HCBS Regulation	Adult Day Health Care Centers	Pediatric Medical Day Care Center	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(i): The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community	A person choosing to receive services in an Adult Day Health Care is choosing to participate in activities and therapies designed to activate, motivate and/or retrain participants to enable them to sustain or regain functional independence. Each facility has to make available social, group, individual, educational, recreational, and other activities. These activities take place in the facility, normally, but there must be opportunities for excursions or outings to points of interest of participants, assistance with community and personal referral	Licensed the same as any other child care facility in the state. See SC Code Ann.§§ 63-13-10.	None	None

HCBS Regulation	Adult Day Health Care Centers	Pediatric Medical Day Care Center	Conflicting/Action Required	Timeline
	activities, and planned indoor and outdoor recreation. Additionally, the setting is licensed the same as any other Adult Day Health Care facility in the state. S.C. Code. Regs. 61-75 (D).			
42 CFR 441.301(c)(4)(i): include[es] opportunities to seek employment and work in competitive integrated settings	The number of days a participant attends each week is determined through the Medicaid Home and Community-Based waiver service plan and indicated on the current service authorization. This plan is updated when a change needs to be made which would include adjustments for an individual seeking employment. See Scope of Services for ADHCs. SC Code of Regs. 61-75-501; "Each facility shall make available […] 4. Assistance with community and personal referral activities."	N/A as this setting provides services to minors under the age of 6.	None	None
42 CFR 441.301(c)(4)(i): engage in community life	SC Code of Regs. 61-75-501; "Each facility shall make available […] 4. Assistance with community and personal referral activities. 6. Excursions or outings to points of interest; 7. Planned indoor and outdoor recreation."	N/A as this setting provides services to minors under the age of 6, but licensed the same as any other child care facility in the state. See SC Code Ann.§§ 63-13-10.	None	None

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HCBS Regulation	Adult Day Health Care Centers	Pediatric Medical Day Care Center	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(i): control personal resources	Silent	N/A as this setting provides services to minors under the age of 6.	ADHC Scope of Service in Provider Contracts will be updated to include that "participants have the right to control their personal resources while under the care of the center."	Completed 7/24/2017
42 CFR 441.301(c)(4)(i): receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS	These settings are utilized in South Carolina for individuals who need the specific service provided in the setting, regardless of payor source. See SC Code Regs 61-75-101: (For adults 18 years of age or older, [with a] program directed toward providing community-based day care services for those adults in need of a supportive setting [.])	These settings are utilized in South Carolina for individuals who need the specific service provided in the setting, regardless of payor source. See SC Code Regs. 114-500 (These regulations apply equally to profit, not for profit and private child care centers)	SCDHHS will issue a policy statement to providers reinforcing that "the experience of individuals receiving Medicaid HCBS in non-residential settings should be consistent with how those settings would be experienced by individuals who are not Medicaid HCBS service recipients."	Completed 6/4/2018
42 CFR 441.301(c)(4)(ii): The setting is selected by the individual from among setting options including non-disability specific settings [and] The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences[.]	Beneficiaries have an array of services and supports to choose from and offered to them during the development of their person-centered service plan. Beneficiaries must be given freedom of choice when selecting services and providers which is documented in their Support plan. See CLTC provider manual Section 2	Beneficiaries have an array of services and supports to choose from and offered to them during the development of their person-centered service plan. Beneficiaries must be given freedom of choice when selecting services and providers which is documented in their Support plan. See TCM provider manual Section 2	None	None

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HCBS Regulation	Adult Day Health Care Centers	Pediatric Medical Day Care Center	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(iii): Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	S.C. Code Ann. 44-26-10 et. seq.:"Rights of Clients with Intellectual Disability"; S.C. Code Ann.43-35-5 et seq. "Adult Protections" A statement of Rights of Adult Day Care Participants must be posted in each facility. The rights, including but not limited to, privacy, dignity, respect, and the freedom from coercion and restrain can be found in S.C. Code Regs. 61-75-901	**Compliant**: Each facility must have a statement on behavior management that includes the prohibition of emotional and physical abuse, of the use of threats and of chemical or physical restraint (SC Code Regs 114-506 (B)). Additionally, the facility must maintain the confidentiality of the attending children's records (SC Code Regs 114-503(I)).	None	None
42 CFR 441.301(c)(4)(iv): 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.	S.C. Code. Regs. 61-75 -901(3): Individual have "The right to self-determination within the day care setting, including the opportunity to: a. Participate in developing one's plan for services and any changes therein. b. Decide whether or not to participate in any given activity. c. Be involved to the extent possible in program planning and operation. d. Refuse treatment, if applicable, and be informed of the consequences of such refusal. e. End participation in the adult day care center at any time."	Each facility must develop a daily planned program of activities for the children attending the center that are age appropriate and designed to promote developmental growth, including opportunities for alone time in quiet areas (SC Code Regs 114-506 (A))	None	None

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HCBS Regulation	Adult Day Health Care Centers	Pediatric Medical Day Care Center	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(v): Facilitates individual choice regarding services and supports, and who provides them.	Beneficiaries are offered freedom of choice of providers within the geographic location in which they live. See CLTC provider manual Section 2.	Beneficiaries are offered freedom of choice of providers within the geographic location in which they live. See TCM provider manual Section 2	None	None

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

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

It is important to note that these laws, regulations, and policies apply to all non-residential and residential settings operated by SCDDSN whether the individuals being served in that setting receives Medicaid HCBS. Therefore, the experience of individuals receiving HCBS in non-residential settings and residential are consistent with how those settings would be experienced by individuals who are not HCBS service recipients. See SC Code 44-20-20.

HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(i): The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community	**SC Code Ann. 44-20-20[2]:** It is the purpose of [all DDSN services] to assist persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries by providing services to enable them to participate as valued members of their communities to the maximum extent practical and to live with their families or in family settings in the community in the least restrictive environment available. SCDDSN Residential Habilitation Standards 3.1, People are supported to maintain and enhance links with families, friends, or other support networks.	None	None

[2] This applies to all clients served by SCDDSN, regardless of payor source and regardless of setting.

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HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(i): include[es] opportunities to seek employment and work in competitive integrated settings	**SCDDSN Directive 700-07-DD** "Employment Services-Individual, provided in integrated settings, is the first and preferred Day Service option to be offered to working age youth and adults [.]"	None	None
42 CFR 441.301(c)(4)(i): engage in community life	**SC Code Ann 44-26-90**[3]**.** Rights of client not to be denied. Unless a client has been adjudicated incompetent, he must not be denied the right to: (6) marry or divorce; (7) be a qualified elector if otherwise qualified. The county board of voter registration in counties with department facilities reasonably shall assist clients who express a desire to vote to: (a) obtain voter registration forms, applications for absentee ballots, and absentee ballots; (b) comply with other requirements which are prerequisite for voting; (c) vote by absentee ballot if necessary; (8) exercise rights of citizenship in the same manner as a person without intellectual disability or a related disability. SCDDSN Residential Habilitation Standards 3.0, People are supported and encouraged to participate and be involved in the life of the community	None	None
42 CFR 441.301(c)(4)(i): control personal resources	**SC Code Ann. 44-26-90**[4]**.** Rights of client not to be denied. Unless a client has been adjudicated incompetent, he must not be denied the right to: (1) dispose of property, real and personal; (2) execute instruments; (3) make purchases; (4) enter into contractual relationships (5) hold a driver's license	None	None

[3] This applies to all clients served by SCDDSN, regardless of payor source and regardless of setting.
[4] This applies to all clients served by SCDDSN, regardless of payor source and regardless of setting.

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HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
	SCDDSN Day Standard 14: "Individuals are expected to manage their own funds to the extent of their capability." SCDDSN Residential Habilitation Standard 2.0: "People are supported to manage their own funds to the extent of their capability."		
42 CFR 441.301(c)(4)(i): receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	SCDDSN Day Services Standards (All services): Community Services provides individuals the opportunity to maximize their exposure, experience and participation within their local community. Through this process, the individual will gain access to inclusive citizenship and social capital. SCDDSN Residential Habilitation Services: People should be present in the community and actively participate using the same resources and doing the same activities as other citizens.	SCDHHS will issue a policy statement to providers reinforcing that "the experience of individuals receiving Medicaid HCBS in non-residential settings should be consistent with how those settings would be experienced by individuals who are not Medicaid HCBS service recipients."	Completed 6/4/2018
42 CFR 441.301(c)(4)(ii): The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.	Beneficiaries have an array of services and supports to choose from and offered to them during the development of their person-centered service plan See SCDDSN Case Management Standards.[5]	SCDDSN will provide TA to providers on Employment First Directive 700-07, emphasizing competitive, integrated employment as the first and preferred outcome for working age adults. SCDDSN will also guide providers to utilize the community provision option when providing day services. SCDDSN will work with providers to ensure residents are continually progressing to the least restrictive home environment, as stated in SCDDSN Residential Habilitation Standard 1.2, "Individuals choose where they live	May 2018 and ongoing

[5] This applies to all clients served by SCDDSN, regardless of payor source and regardless of setting.

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HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
		from a variety of options," and following the guidance for that standard which states that a "person's preferences must be actively solicited on an ongoing basis."	
42 CFR 441.301(c)(4)(ii): The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Beneficiaries must be given freedom of choice when selecting services and providers which is documented in their Support plan. See SCDDSN Case Management Standards[6] SCDDSN Residential Habilitation Standard RH4.2 "Within the residential service plan the preferences of individuals must be identified."	None	None

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[6] This applies to all clients served by SCDDSN, regardless of payor source and regardless of setting.

HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(iii): Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	**SECTION 44-26-160[7].** (A) No client residing in an intellectual disability facility may be subjected to chemical or mechanical restraint or a form of physical coercion or restraint unless the action is authorized in writing by an intellectual disability professional or attending physician as being required by the habilitation or medical needs of the client and it is the least restrictive alternative possible to meet the needs of the client. (B) Each use of a restraint and justification for it must be entered into the client's record [.] (C) No form of restraint may be used for the convenience of staff, as punishment, as a substitute for a habilitation program or in a manner that interferes with the client's habilitation program. [...] (F) The appropriate human rights committees must be notified of the use of emergency restraints. (G) Documentation of less restrictive methods that have failed must be entered into the client's record when applicable. SCDDSN Day Standard 13: "Individuals receiving a DDSN Day Service are free from abuse, neglect and exploitation." SCDDSN Day Standard 14: "Each individual's right to privacy, dignity and confidentiality in all aspects of life is recognized, respected and promoted. Personal freedoms are not restricted without due process." SCDDSN Residential Habilitation Standards: "Despite the presence of disabilities, people retain the same	SCDDSN Directive 600-05-DD and/or the SCDDSN Day Standards will be updated to include the freedom from coercion and restraint.	Completed 10/27/2017

[7] This applies to all clients served by SCDDSN, regardless of payor source and regardless of setting.

	human, civil and constitutional rights as any citizen. People receiving Residential Habilitation Services rely on their services for support and encouragement to grow and develop, to gain autonomy, become self-governing and pursue their own interests and goals. Effective Residential Habilitation programs take positive steps to protect and promote the dignity, privacy, legal rights, autonomy and individuality of each person who receives services."		
HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(iv): 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.	SCDDSN Day Standard 18: "Individuals receiving DDSN Day Service are supported to make decisions and exercise choice regarding the specific DDSN Day services provided." - SCDDSN Day Services Standards SCDDSN Residential Habilitation Standards: RH2.1 People are supported to make decisions and exercise choices regarding their daily activities	SC Code Ann. § 44-20-420: "The director or his designee may designate the service or program in which a client is placed. The appropriate services and programs must be determined by the evaluation and assessment of the needs, interests, and goals of the client." AND SC Code Ann. § 44-20-490: (A) When the department determines that a client may benefit from being placed in an employment situation, the department shall regulate the terms and conditions of employment, shall supervise persons with intellectual disability, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served. **Action Required:** Remediate conflicting statutes through sub-policy guidance on person-centered service planning	Completed 07/2015

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HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(v): Facilitates individual choice regarding services and supports, and who provides them.	SCDDSN Day Standard 18: "Individuals receiving DDSN Day Service are supported to make decisions and exercise choice regarding the specific DDSN Day services provided." - SCDDSN Day Services Standards SCDDSN Residential Habilitation Standards 1.2: People's preferences/wishes/desires for how, where, and with whom they live are learned from the person: prior to entry into a residential setting; and continuously; DDSN Waiver Policy.	None	None
42 CFR 441.301(c)(4)(vi)(A): The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State[.]	SCDDSN Residential Habilitation Standard 2.6: "A legally enforceable agreement (lease, residency agreement, or other form of written agreement) is in place for each person in the home setting within which he/she resides. The document provides protections that address eviction process and appeals comparable to those provided under South Carolina's Landlord Tenant Law, (S.C. Code Ann. § 27-40-10 et. seq.)"	None	None
42 CFR 441.301(c)(4)(vi)(B): Each individual has privacy in their sleeping or living unit	SCDDSN Residential Licensing Standard 2.7: "When occupied by more than one (1) resident the setting must afford each resident sufficient space and opportunity for privacy including bathing/toileting facilities behind a lockable door, lockable doors on bedroom/sleeping quarters and lockable storage."; SCDDSN Residential Habilitation Standard 2.5 "Each	None	None

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	resident must be provided with a key to his/her home."		
HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(vi)(B)(1): Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	SCDDSN Residential Habilitation Standards 2.4: "Each resident must be provided with a key to his/her bedroom. Only appropriate staff on duty should have access to keys. " SCDDSN Residential Habilitation Standards 2.5: "Any reason a provider believes a resident should not receive a key must go through the Human Rights Committee before withholding a key."	None	None
42 CFR 441.301(c)(4)(vi)(B)(2): Individuals sharing units have a choice of roommates in that setting.	SCDDSN Residential Habilitation Standards 2.7 " People who share a bedroom, have a choice of roommates in that setting." SCDDSN Residential Habilitation Standards 2.8 " People sharing apartments have a choice of roommates in that setting."	None	None
42 CFR 441.301(c)(4)(vi)(B)(3): Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	SCDDSN Residential Habilitation Standard 2.9: "People have the freedom to furnish and decorate their sleeping or living units within the lease/other agreement."	None	None
42 CFR 441.301(c)(4)(vi)(C): Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	SCDDSN Residential Habilitation Standards RH2.1 "People are supported to make decisions and exercise choices regarding their daily activities." SCDDSN Residential Habilitation Standard 2.10 "Individuals have access to food at all times."	None	None

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HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(vi)(D): Individuals are able to have visitors of their choosing at any time.	SCDDSN Residential Habilitation Standards RH 2.0: " Personal freedoms, such as the right to make a phone call in private, to decide to have a friend visit, choices as to what to have for a snack, etc. are not restricted without due process." **SC Code Ann 44-26-100.** General rights of clients; limitations on rights. (2) receive visitors. A facility must have a designated area where clients and visitors may speak privately	None	None
42 CFR 441.301(c)(4)(vi)(E): The setting is physically accessible to the individual	SCDDSN Residential Habilitation Standards, "Residential Habilitation services demonstrate due regard for the health, safety and well-being of each person when they: Meet or exceed applicable federal, state and local fire, health and safety regulations, policies and procedures." See also SCDDSN Directive 700-02-DD Compliance with the ADA	None	None
42 CFR 441.301(c)(4)(vi)(F): Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.	SCDDSN Directive 535-02-DD: "The Human Rights Committee is to safeguard and protect the rights of individuals receiving services to ensure that they are treated with dignity and respect in full recognition of theirs rights as citizens as opposed to their rights as consumers."	State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017
42 CFR 441.301(c)(4)(vi)(F)(1): Identify a specific and individualized assessed need.		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017

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HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(vi)(F)(2): Document the positive interventions and supports used prior to any modifications to the person-centered service plan.		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017
42 CFR 441.301(c)(4)(vi)(F)(3): Document less intrusive methods of meeting the need that have been tried but did not work.		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017
42 CFR 441.301(c)(4)(vi)(F)(4): Include a clear description of the condition that is directly proportionate to the specific assessed need.		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017
42 CFR 441.301(c)(4)(vi)(F)(5): Include regular collection and review of data to measure the ongoing effectiveness of the modification.		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017
42 CFR 441.301(c)(4)(vi)(F)(6): Include established time limits for periodic reviews to determine if the		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017

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modification is still necessary or can be terminated			
HCBS Regulation	Supporting	Conflicting/Action Required	Timeline
42 CFR 441.301(c)(4)(vi)(F)(7): Include the informed consent of the individual		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017
42 CFR 441.301(c)(4)(vi)(F)(8): Include an assurance that interventions and supports will cause no harm to the individual.		State will include this specific requirement in documentation requirements.	Revised in the Residential Habilitation standards in October 2017

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3.3 Actions to Bring System into Compliance

For those policies, procedures, standards and directives that need modification as indicated in the previous section, SCDHHS will work with the appropriate internal staff and external agencies to make necessary changes. Small teams of key personnel began meeting in the fall of 2015 to review these policies and procedures to determine where changes needed to be made to bring waiver policies and procedures in line with the HCBS requirements. See Section 3.2 (pages 12-16) for full details on those changes.

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

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

- Community Choices (CC) waiver (0405.R03.00)
- HIV/AIDS waiver (0186.R06.00)
- Mechanical Ventilator Dependent waiver (40181.R05.00)

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

- Elements of the assessment tool used for Adult Day Health Care (ADHC) setting site visits will be incorporated into LTL's application process for potential providers. This will include the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings.
    - Update: The LTL provider application process was updated and implemented in October 2017.
- The scope of services for the Adult Day Health Care service was revised in the CLTC Provider Manual, Section 6, pages 6-5 through 6-17, July 24, 2017, to reflect the HCBS requirements. Additional scope edits were vetted to ensure all HCBS requirements to be measured by the Compliance team are clearly articulated in policy. Those additional edits were completed and effective Aug. 1, 2019.

- The assessment tool used for Adult Day Health Care (ADHC) setting site visits will be incorporated into LTL's regular compliance reviews of ADHC's[8]. This tool covers the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings. These compliance reviews occur every 18-24 months.
    - Update: The Compliance team initially assessed HCBS compliance changes for ADHCs based on their approved Compliance Action Plan (CAP) and the revised scope of services via a supplemental paper survey during compliance site visits. This began in March 2018. The electronic compliance system has been revised to incorporate the HCBS elements into the overall compliance review for ADHCs. This was completed and operational May 15, 2019.
- The language in the Community Choices waiver document was changed in the following areas:
    - The language for the ADHC service definition was revised to indicate that the service may *originate* from the ADHC, thus allowing providers flexibility to incorporate community access as part of its program.
    - The ADHC provider qualifications "other standard" was revised to include HCBS requirements.

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

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

- Update: As noted above, the CLTC Provider manual was updated with the additional requirements for the Adult Day Health Care service scope of services July 24, 2017.

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

- Intellectually Disabled and Related Disabilities waiver (ID/RD) (0237.R05.00)
- Community Supports waiver (CS) (0676.R02.00)
- Head and Spinal Cord Injury waiver (HASCI) (0284.R05.00)
- Medically Complex Children waiver (MCC) (0675.R02.00)

Community Options operates the MCC waiver, which was submitted to CMS for renewal in September 2016. Included in the waiver document were changes to meet the HCBS standards, which includes Appendix C-5 and Appendix D. Once approved, the appropriate changes will be

[8] LTL is the program area responsible for contracting with ADHCs, however please note that participants in the ID/RD and CS waivers may also use this setting.

made to corresponding waiver policies and procedures. The entire MCC waiver policy manual is currently under review and revision to include appropriate person-centered language with specific focus on the Care Coordination chapter, along with any other appropriate HCBS changes. Due to extensive Request for Additional Information (RAI) questions from CMS on the waiver renewal, these changes are anticipated to be completed by April 2017, pending CMS approval of the waiver renewal.

- Update: The MCC Waiver was renewed effective Jan. 1, 2017. The MCC waiver manual was revised and completed June 15, 2018.

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

- The ID/RD waiver was submitted to CMS for renewal on Dec. 17, 2015, and is currently under review by CMS. Changes to the waiver document to meet the HCBS standards were included and once approved, the appropriate changes will be made to corresponding waiver policies and procedures.
    - Update: The ID/RD waiver was renewed May 22, 2017. The ID/RD Waiver Manual was updated Nov. 15, 2017.
- The CS waiver is up for renewal effective July 1, 2017. SCDHHS and SCDDSN began waiver renewal activities in June 2016. SCDHHS expects to present the proposed CS renewal plan to the Medical Care Advisory Committee in November 2016 and to begin the first required Tribal Notification starting in December 2016. Changes to the waiver document to meet the HCBS standards will be included and once approved by CMS, the appropriate changes will be made to corresponding waiver policies and procedures. SCDHHS anticipates these changes to be completed no later than March 2018.
    - Update: The CS waiver was renewed June 21, 2017. The CS Waiver Manual was updated Nov. 15, 2017.
- The HASCI waiver is up for renewal effective July 1, 2018. The Community Options Division of SCDHHS is scheduled to begin the Renewal process in approximately March 2017. They are currently completing the HASCI Evidentiary Project in advance of the renewal. Changes to the waiver document to meet the HCBS standards will be included and once approved by CMS, the appropriate changes will be made to corresponding waiver policies and procedures. SCDHHS anticipates these changes to be completed by February 2019.

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- Update: The HASCI waiver was renewed Sept. 14, 2018, with an effective date July 1, 2018. The HASCI Waiver Manual changes were completed and approved Nov. 15, 2018.

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

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

- Update: Systemic changes are completed, except as noted in Chart 3.2. SCDDSN Case Management Standards and Employment Standards are scheduled to be revised by July 1, 2019.

3.4 Ongoing Compliance of System

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

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

3.4.1. LTL Ongoing Compliance. The LTL division of SCDHHS has waiver review as part of the overall LTL Quality Assurance (QA) Plan. SCDHHS Central Office has a QA Task Force committee to review all data accumulated. The QA Task Force meets bi-monthly throughout the year to identify and pursue action plans for making improvements in the waiver programs, including any issues related to HCBS settings requirements, as well as in the quality management

framework and strategy. This process allows a thorough assessment of areas needing improvement and areas of best practice. Systems improvement for statewide problems can be addressed through different measures, including revision of policy and procedures, thereby allowing SCDHHS to ensure compliance with the new HCBS standards. Additionally, staff members of LTL have received and will continue to participate in in-depth training from CMS on HCBS requirements. Any new employees will receive training from knowledgeable staff members on the HCBS requirements.

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

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

SCDHHS also uses a Quality Improvement Organization (QIO), an additional contracted entity, quality assurance staff, and other agency staff to continuously evaluate the operating agency's (SCDDSN) quality management processes to ensure compliance. The QIO conducts validation reviews of a representative sample of initial level of care determinations performed by the operating agency (SCDDSN) as well as reviews all adverse level of care determinations. SCDHHS Quality Assurance (QA) staff conduct periodic quality assurance reviews that focus on the CMS quality assurance indicators and performance measures. To ensure compliance of quality and general operating effectiveness, SCDHHS will conduct reviews of the operating agency (SCDDSN). SCDHHS also utilizes its Division of Program Integrity, who works cooperatively with QA and Waiver staff, to investigate complaints and allegations of suspected abuse or fraud that may impact the system. Program Integrity also maintains a good working relationship with the

Medicaid Fraud Control Unit at the Attorney General's office to investigate suspected fraud or initiate criminal investigations. Statewide problems can be addressed through different measures, including revisions of policy and/or procedures. These processes allow the state to take the necessary action to ensure compliance with the new HCBS standards.

It is through these established systems of quality assurance review that ongoing compliance of HCBS standards will be monitored after the transition period ends March 17, 2022.

3.5 Residential Systemic Review

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

There are six types of residential settings with approximately 1800 individual residential settings in total. Most of these settings are utilized by participants in the ID/RD and HASCI waivers, with some settings utilized by participants in the Community Supports, Community Choices and HIV/AIDS waivers. The description of the settings is listed in the "Assessment of Settings" section, page 46.

3.6 Process of Residential Systemic Review

The residential systemic review process, at the provider level, was accomplished through the C4 Individual Facilities/Settings self-assessment process, named for the regulation, 42 CFR 441.301 (c)(4) ("C4 Assessment").

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

***Development of the assessment tool and criteria*.** An assessment tool was developed for residential facilities utilizing the criteria outlined in the 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. This tool was developed collaboratively with various stakeholders including providers, advocacy groups, and other state agencies. The assessment tool was used by providers to complete the self-assessment of their residential setting types (listed on pages 47-48). The assessment was an

online tool. For providers who did not have internet access, SCDHHS made available paper copies.

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

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

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

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

Assessment review. SCDHHS published a global analysis document detailing the areas of concern systemically for all residential providers Nov. 23, 2015, on the HCBS website at https://msp.scdhhs.gov/hcbs/site-page/c4-settings-assessment. The results were also announced at the Nov. 5, 2015, HCBS Rule Workgroup meeting, with highlights of the findings provided. Residential providers will receive individual written feedback from SCDHHS after review of the self-assessments. Included in this written feedback will be SCDHHS' expectation that providers self-assess all of their settings to determine each setting's level of compliance with the new standards and establish any steps needed to come into compliance for any deficiencies. The individual feedback to all residential providers is anticipated to be completed before the independent site visits begin in January 2017.

- Update: Residential providers were not provided individual feedback on their self-assessments. SCDHHS staff instead attended a provider association meeting Feb. 2, 2016, to discuss the global analysis of the self-assessments and address questions. Additionally,

SCDHHS staff presented at the annual provider association conference March 10, 2016, to again discuss the global analysis, address questions and offer resources that included individual, informal technical assistance for providers. SCDHHS staff referenced the SCDDSN state office directives changes and standards changes that could be adapted at the agency level for compliant program policies and procedures.

3.7 Outcomes of Residential Systemic Review

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

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

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

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

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

3.8 Actions to Bring the Residential System into Compliance

SCDHHS is developing initial individualized responses by provider for their residential setting types based upon their self-assessment results. The agency will leverage responses from the self-assessment to identify any global policy or programmatic changes that are necessary for the provider to comport with the new HCBS standards. Progress towards these changes will be noted as independent site visits are conducted at individual residential settings. A final response to providers will be provided once the independent site visits are completed and that data is reviewed. For providers who still have corrective actions to make to come into compliance with the new standards after the site visit is completed, they will be required to create an action plan for their facility(ies) and indicate how they will bring it(them) into compliance with the requirements. That process is further detailed under "Assessment of Settings: Actions for Facilities Deemed not in Compliance" (page 62).

- Update: As noted above, residential providers were not provided individual feedback on their self-assessments. SCDHHS staff instead attended a provider association meeting Feb. 2, 2016, to discuss the global analysis of the self-assessments and address questions. Additionally, SCDHHS staff presented at the annual provider association conference March 10, 2016, to again discuss the global analysis, address questions and offer resources that included individual, informal technical assistance for providers. SCDHHS staff referenced the SCDDSN state office directives changes and standards changes that could be adapted at the agency level for compliant program policies and procedures.

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

- Update: A model lease was made available Nov. 1, 2017, via SCDDSN Directive 250-09-DD, Attachment C.

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

3.9 Ongoing Compliance of Residential System

Ongoing compliance of the residential system will be accomplished in two ways. First, the ongoing compliance actions described above in Section 3.4 for the overall system encompass any needed changes to and monitoring of residential policies, procedures, standards and directives. Second, residential providers will be subject to regular licensing reviews and compliance reviews as described in the "Assessment of Settings: Ongoing Compliance" section (page 71).

4 Assessment of Settings

4.1 Setting Types

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

4.1.1 Day Services Facilities. There are 88 Day Services Facilities that were subject to assessment for HCBS compliance. These settings are licensed as an Adult Activity Center (AAC), a Work Activity Center (WAC), an Unclassified Program or as any combination of those three designations. The ID/RD, CS and HASCI waivers offer the following services in these settings:

- Day Activity: Activities and services provided in therapeutic settings to enable participants to achieve, maintain, improve or decelerate the loss of personal care, social or adaptive skills.
- Career Preparation Services: services aimed at preparing participants for paid or unpaid employment through exposure to and experience with various careers. Also teaches concepts such as compliance, attendance, task completion, problem solving, safety, self-determination and self-advocacy.
- Employment Services: intensive, on-going supports for participants for whom competitive employment at or above minimum wage is unlikely absent the provision of supports and who need supports to perform in a regular work setting.

The ID/RD and CS waivers offer these additional services in these settings:

- Community Services: services aimed at developing one's awareness of, interaction with and/or participation in his/her community.
- Support Center Services: non-medical care, supervision and assistance provided in a non-institutional, group setting.

4.1.2 Adult Day Health Cares (ADHC). There are 81 Adult Day Health Care settings that were subject to assessment for HCBS compliance. The following services are provided in AHDCs:

- Adult Day Health Care service: services that restore, maintain and promote the health status of participants through the provision of ambulatory health care and health-related supportive services in an ADHC center.
- ADHC Transportation: service for ADHC participants who reside within 15 miles of the center to provide transportation from the participant's residence to the center and back.
- ADHC Nursing: services for ADHC participants as ordered by a physician for certain skilled procedures.

These services are offered in the following waivers: Community Choices (CC), Community Supports (CS) and Intellectual Disability/Related disabilities (ID/RD).

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

4.1.4 Residential Homes. The residential habilitation service is provided in approximately 1,800 individual residential settings available through the ID/RD waiver and the HASCI waiver. There are five types of residential settings operated under SCDDSN policies, standards and directives that are utilized to provide the residential habilitation service.

Supervised Living Program II (SLP II). This model is for individuals who need intermittent supervision and supports. They can handle most daily activities independently but may need periodic advice, support and supervision. It is typically offered in an apartment setting that has staff available on-site or in a location from which they may get to the site within 15 minutes of being called, 24 hours daily.[9]

Supported Living Program I (SLP I). This model is similar to the Supervised Living Model II; however, people generally require only occasional support. It is offered in an apartment setting and staff are available 24 hours a day by phone.[10]

Community Training Home I (CTH I). In the Community Training Home I Model, personalized care, supervision and individualized training are provided, in accordance with a service plan, to a maximum of two people living in a support provider's home where they essentially become one of the family. Support providers are qualified and trained private citizens.[11]

Community Training Home II (CTH II). The Community Training Home II Model offers the opportunity to live in a homelike environment in the community under the supervision of qualified and trained staff. Care, supervision and skills training are provided according to individualized needs as reflected in the service plan. No more than four people live in each residence.[12]

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[9] SCDDSN (October 2016). *Residential Habilitation Standards*, p. 4.
[10] SCDDSN (October 2016). *Residential Habilitation Standards*, p. 4.
[11] SCDDSN (October 2016). *Residential Habilitation Standards*, p. 4.
[12] SCDDSN (October 2016). *Residential Habilitation Standards*, p. 4.

DSN Board/Qualified Provider Community Residential Care Facility (SCDDSN CRCF). For SCDDSN Residential Habilitation providers who offer the option of CRCF settings, this model, like the Community Training Home II Model, offers the opportunity to live in the community in a homelike environment under the supervision of qualified, trained caregivers. Care, supervision and skills training are provided according to identified needs as reflected in the service plan[13]. These CRCFs are licensed by SC Department of Health and Environmental Control (SCDHEC) but must meet the SCDDSN Residential Habilitation standards which are above and beyond SCDHEC regulatory requirements.

4.1.5 Other Residential Homes. There are other residential settings in South Carolina that may be utilized by waiver participants as their primary residence that are also utilized by individuals not receiving Medicaid HCBS in the community. Waiver participants are not receiving residential HCB services in these settings through their waiver.

Community Inclusive Residential Supports (CIRS). This model, previously named Customized Living Options Uniquely Designed (CLOUD), was created to promote personal development and independence in people with disabilities by creating a customized transition from 24 hour supervised living to a semi-independent living arrangement. Participants are responsible for selecting support providers, house mates, and housing.[14]

The CIRS model is not yet recognized as a waiver setting in which residential habilitation waiver services can be delivered since this was a SCDDSN state-pilot program. However, waiver beneficiaries may reside in these settings. The CIRS model is required to abide by all SCDDSN standards and directives, including the SCDDSN Residential Habilitation standards which include the requirements of 42 CFR 441.301(c)(4). These settings were included in the settings assessment process, and specifically as part of the CTH II category for the independent site visits (see Section 4.2). For a review of applicable law, regulations and policies that meet the HCBS requirements for the CIRS model, please review Section 3.2.2, Chart 2 above.

Community Residential Care Facility (CRCF). Licensed by SCDHEC, CRCFs are residential settings that offer room and board and provide/coordinate a degree of personal care for a resident. They are designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence and safety, and encourage family and community involvement.[15] Waiver participants in the Community Choices waiver,

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[13] SCDDSN (October 2016). *Residential Habilitation Standards*, p. 4.
[14] SCDDSN (October 2016). *Residential Habilitation Standards*, p. 4.
[15] SCDHEC (June 26, 2016). *R.61-84, Standards for Licensing Community Residential Care Facilities*, p. 6

HIV/AIDS waiver, ID/RD waiver, Community Supports waiver and/or the HASCI waiver may choose to live in CRCFs. These CRCFs are not Medicaid waiver providers and room and board is either paid out of individuals' private funds or may be derived from 100% state funds through the Optional State Supplementation (OSS) program. Currently, there are 68 waiver participants living in these settings, but this number can fluctuate.

CRCFs that are not operated by SCDDSN providers do not have the same level of heightened protections and responsibilities to serve clients in accordance with the HCBS rule. As such, and noted in Section 3.2.1, there are many gaps within SC Code Reg. 61-84 that make these settings not fully compliant with the requirements of 42 CFR 441.301(c)(4). To ensure waiver beneficiaries are truly living in home and community-based settings, and not settings with institutional qualities, SCDHHS is currently drafting a new policy which would designate these beneficiaries as "Tier 3 CRCF clients." A Tier 3 client is a waiver beneficiary who resides in a non-SCDDSN operated CRCF. To serve a Tier 3 client, providers must comply with all of the requirements of 42 CFR 441.301(c)(4)(i-vi) and would be compensated at a higher rate. This new SCDHHS program and policy development is expected to be finalized by June 30, 2017, with an expected implementation date of June 30, 2018. This deadline reflects the SC Fiscal Year (e.g. July 1, 2017 to June 30, 2018) since this program will likely include a fiscal request for the SC General Assembly to approve.

- Update: The Tier 3 policy evolved into a new waiver service called "Residential Personal Care II (RPC II)." This service is offered in the Community Choices waiver and is for eligible participants who live in CRCFs. The policy was added to the OSS/OSCAP provider manual, Section 2, pages 2-31 through 2-35, April 24, 2017, and went live as a service June 1, 2017. This service is also listed in CLTC Provider manual, Section 6, pages 6-124 through 6-132. A CRCF provider was identified as being willing to participate in the pilot implementation of this new policy. SCDHHS is working with the provider to enroll as a Medicaid Waiver provider and the eligible residents in the Community Choices waiver (where Residential Personal Care II is offered) to begin the pilot. It is estimated that this will begin Sept. 1, 2019. Progress and outcomes of the pilot will be monitored through the Division of Long Term Living Compliance.
- Per CMS guidance issued March 22, 2019, SCDHHS will not address HCBS compliance for CRCF settings in which a waiver participant resides and the waiver participant only receives non-residential HCBS paid for by Medicaid.
- At the request of SCDDSN, SCDHEC, the licensing agency for CRCFs, provided a technical assistance workshop for SCDDSN providers who operate CRCFs on how the current SCDHEC regulations interact with the HCBS requirements. That workshop presentation is available online at the SCDDSN Quality Management webpage under "HCBS Implementation Resources," HCBS Workshop 7. The presentation is viewable on YouTube.

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4.2 Setting Assessment Process

The setting assessment process was divided into two separate assessment phases, a provider self-assessment phase and an independent site visit phase. Additionally, a survey for waiver participants and a survey for family members of waiver participants was created to solicit feedback on their experiences in the HCB settings that they or their family members use. This survey was to collect information in between the assessment phases and supplement those findings.

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

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

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

The process of the self-assessments is described below.

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

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

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

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

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

Providers had 45 calendar days to complete and return the self-assessment for the settings they own and/or operate to SCDHHS. This is for non-residential and residential settings. The deadline of July 1, 2015, was established based on the letter's approximated day of delivery to providers.

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

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

- Update: As noted in Sections 3.6 and 3.8 above, residential providers were not provided individual feedback on their self-assessments. SCDHHS staff instead attended a provider association meeting Feb. 2, 2016, to discuss the global analysis of the self-assessments and address questions. Additionally, SCDHHS staff presented at the annual provider association conference Mar. 10, 2016, to again discuss the global analysis, address questions and offer resources that included individual, informal technical assistance for providers. SCDHHS staff referenced the SCDDSN state office directives changes and

standards changes that could be adapted at the agency level for compliant program policies and procedures.

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

Any setting, residential or non-residential, that self-identified through the initial C5 assessment or the C4 self-assessment as potentially being subject to the heightened scrutiny process will be subject to the Home and Community-Based Settings Quality Review process (see page 83).

4.2.2 Beneficiary and Family Surveys. Two separate surveys, one for waiver participants and one for families, were created to solicit feedback on their experiences in the HCB settings that they or their family members use. They can be found at:

- Beneficiary survey: https://msp.scdhhs.gov/hcbs/site-page/beneficiary-survey
- Family survey: https://msp.scdhhs.gov/hcbs/site-page/family-survey

They were designed to solicit feedback on specific settings to aid in the HCBS compliance determination as individual setting site visits were occurring. They were intended to supplement any onsite feedback gathered by participants and residents at individual settings.

Development of the survey tools and criteria. Two separate surveys were developed using Survey Monkey. The beneficiary survey was ten questions, some of which were demographic questions and some of which were program and setting experience questions based on the HCBS requirements. The family survey was seven questions, asking many of the same program and setting experience questions and less demographic questions. There was an opportunity on each survey to provide open-ended feedback. If someone wanted a paper copy of the survey, a link was provided on the website as well as an email address to contact to obtain one.

Resources to conduct the surveys. Resources to conduct the assessments came from SCDHHS personnel and financial resources.

SCDHHS posted the survey links on the SCDHHS HCBS website under the “Members & Families” tab. The links were shared in HCBS Rule Workgroup minutes June 2, 2016, and the Workgroup updates July 7, 2016, Sept. 2, 2016, Oct. 6, 2016, Dec. 1, 2016, and Jan. 5, 2017. These minutes and updates were sent via email to the stakeholder group and posted on the

HCBS website. These surveys were also mentioned at various provider agency family group meetings July 26, 2016, Aug. 10, 2016, and Aug. 11, 2016, in addition to being presented at a statewide self-advocate group meeting Oct. 13, 2016. The survey information was also shared at the nine public meetings for the Statewide Transition Plan in August and September 2016, as well as shared via the STP public notice webinar Aug. 23, 2016.

***Timeframe to conduct the surveys*.** The surveys were "open" May 12, 2016, and remained open through December 2018.

Survey review. The survey data was reviewed Feb. 11, 2019, to see what feedback was provided from both surveys that will assist providers in making specific changes to their programs and settings.

This feedback was organized by provider agency and sent to providers to assist in facility and program improvements April 3-4, 2019.

4.2.3. C4 Individual Facilities/Settings Independent Site Visits – Adult Day Health Care settings and Pediatric Medical Day Care. The C4 independent site visits evaluated individual facilities to determine compliance with the HCBS criteria outlined in 42 CFR 441.301(c)(4). These were conducted after the providers completed the self-assessments. The assessment tools that were used for the provider self-assessments were refined and revised for use on the independent site visits. SCDHHS staff conducted the site visits for the Adult Day Health Care settings and the Pediatric Medical Day Care. The process of the site visits is described below.

***Development of the assessment tools and criteria*.** The assessment tool for Adult Day Health Care settings was developed based on the tool used for the provider self-assessments. The Pediatric Medical Day Care site visit was conducted using the non-residential facility self-assessment tool, found in Appendix C. The criteria used to create these tools is outlined in 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. A copy of the ADHC assessment tool can be found in Appendix J.

***Resources to conduct assessments and site visits*.** Resources to conduct the site visits for the Adult Day Health Care settings and the Pediatric Medical Day Care came from SCDHHS personnel and financial resources.

All of the 81 Adult Day Health Care settings and the Pediatric Medical Day Care center had an independent site visit after the provider self-assessments were completed and feedback provided.

The Pediatric Medical Day Care site visit was conducted by SCDHHS staff.

The Adult Day Health Care facility site visits were conducted by SCDHHS staff.

Timeframe to conduct assessments and site visits. Each part of the assessment process had an estimated time for completion. These time frames were based on personnel and financial resources.

Independent site visits of the 81 Adult Day Health Care settings took 26 months to complete. SCDHHS started its site visits on ADHC settings in late January 2016 and completed the final site visit April 11, 2018. This extended timeframe is due to a reevaluation of the time needed for the site visit, assessment and review processes as well limited personnel resources.

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

Assessment review. SCDHHS individually reviewed all ADHC setting-specific assessments to determine if each setting was or was not in compliance with HCBS requirements. To determine the level of compliance or non-compliance, SCDHHS used the data collected during both the provider self-assessment and the independent site visit assessment. Providers received final written feedback from SCDHHS on each setting after the independent site visits were completed and both assessments were reviewed.

The Adult Day Health Care settings review was done by SCDHHS staff. The review included the self-assessment of the facility, the independent site visit of the facility which includes feedback from individual participants on the facility and its program, and the facility's policies. SCDHHS completed the final assessment review of Adult Day Health Care settings July 6, 2018. Providers were sent a full review letter for each of their settings that included whether or not they were currently compliant with HCBS requirements, and if not, what specific areas the setting had to address to reach HCBS compliance. A template Compliance Action Plan (CAP) that was pre-populated with the needed areas of change was also provided for each setting with the full review letter along with instructions on how to complete the CAP. The template CAP and the CAP instructions are also found on the ADHC provider webpage of the SCDHHS HCBS website.

The Pediatric Medical Day Care review was conducted after a secondary site visit Jan. 31, 2017. Some initial feedback was provided in advance of the second site visit, with final feedback given Jan. 31, 2017.

4.2.4. C4 Individual Facilities/Settings Independent Site Visits – SCDDSN Settings. The C4 independent site visits evaluated individual facilities to determine compliance with the HCBS criteria outlined in 42 CFR 441.301(c)(4). These were conducted after the providers completed the self-assessments. The assessment tools that were used for the provider self-assessments were refined and revised for use on the independent site visits. A contracted vendor conducted the site visits for all of the SCDDSN Day Services facilities and residential settings. The process of the site visits is described below.

***Development of the assessment tools and criteria*.** Two assessment tools were developed for SCDDSN settings based on the tools used for the provider self-assessments: one for all day services facilities licensed by SCDDSN and one for residential settings. The criteria used to create these tools is outlined in 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. SCDHHS worked with the contracted vendor to refine and finalize the assessment tools for the SCDDSN day services facilities and the SCDDSN residential settings. The assessment gathered data from observation, staff interviews and participant/resident interviews. A copy of the non-residential (day services facilities) assessment tool can be found in Appendix K. A copy of the residential assessment tool can be found in Appendix L.

***Resources to conduct assessments and site visits*.** Resources to conduct the site visits for the SCDDSN day services facilities and SCDDSN residential settings came from SCDHHS personnel and financial resources, SCDDSN personnel resources and personnel and financial resources of the contracted vendor.

SCDHHS pulled together a team of key personnel from its agency and from SCDDSN to provide oversight and guidance for the site visit process. This included communication to providers, approving the overall work plan of the contracted vendor, how to address any issues that arose during the site visit process, and up to date, accurate information on all of the settings that were included in the scope of work. A webpage on the SCDHHS HCBS website was created to be a resource to providers during this process.

To complete site visits on the SCDDSN Day Services facilities and residential settings, SCDHHS solicited proposals from qualified entities to conduct those site visits. The selected contracted vendor put together a work plan for the entire site visit process including the hiring and training of site visit surveyors, establishing a provider call center to schedule site visits and handle any provider queries during the process, and establishing a quality review process of the assessments completed by the surveyors. The vendor also developed a database specific to the South Carolina project where all completed and reviewed assessments were entered to be viewed and accessed by the SCDHHS and SCDDSN team. The vendor also established a communication protocol with the SCDHHS/SCDDSN team which included providing reports every other week on the site visit progress and addressing any issues they encountered.

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

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Site visits by the selected, contracted vendor on SCDDSN Day Services facilities and on residential settings contracted with SCDDSN began in February 2017 and were completed Oct. 5, 2017, taking approximately nine months to complete.

SCDHHS sent individual emails to all SCDDSN providers between Jan. 30, 2017, and Feb. 1, 2017, with details about the site visit process. Attached to the email was a joint letter from SCDHHS and SCDDSN regarding the process and provider expectations. SCDHHS also created a webpage about the site visit process that was live Jan. 30, 2017, and was included in the email to the providers. The HCBS site visit page had general information, contact phone numbers, and resources available to providers specific to the site visits.

The contracted vendor started the site visit process with a pilot of 52 settings assessed in February 2017. Individual assessments were completed and went through a quality assurance review by the contracted vendor within a month of the completed site visit. Site visit assessments, once completed and vetted, were entered into the vendor database for this project. Access to the database and completed assessments were available to designated SCDHHS and SCDDSN staff.

All 88 SCDDSN day services facility locations received an independent site visit after the provider self-assessments were completed and feedback provided.

All of the following SCDDSN residential setting types received an independent site visit:

- Community Residential Care Facilities (CRCF, 49)
- Community Training Home II (CTH II, 734)
  - Community Inclusive Residential Supports (CIRS, 21). These are a subset of the CTH II settings and are included in the 734 CTH II count.
- Community Training Home I (CTH I, 138)
- Supervised Living Program II (SLP II, 56)
  - SLP II settings were counted by the apartment complex in which they were located, with one complex equaling one setting. There were 56 total SLP II settings, and 529 individual SLP II apartments within those settings. All 56 settings had an independent site visit, with the contracted vendor looking at a sample of the apartments within each setting as designated by SCDHHS. The sample size was based upon the total number of SLP II individual apartments within the SLP II setting.
- Supported Living Program I (SLP I, 57)
  - SLP I settings are individual apartments typically located in apartment complexes that are not provider owned or controlled, but providers do provide residential habilitation in these settings at an hourly rate. As the people in these settings are much more independent, SCDHHS determined that only a sample of these settings

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would have an independent site visit. A sample size of 22% was utilized, for a total of 57 individual SLP I settings.

In total, 1,034 SCDDSN contracted residential settings received independent site visits and 88 day services (non-residential) facilities received independent site visits. All individual assessments were complete and submitted no later than Oct. 26, 2017.

Assessment review. Each setting assessment equally weighed all data gathered to complete it (observation, staff interview, participant/resident interview). Two levels of review were done on the settings' site visit assessments. First, SCDHHS staff completed a global review of all of the site visit findings by setting type. Second, individual settings' assessments were reviewed by SCDDSN staff with SCDHHS staff conducting an informal review on a sample of the individual assessments.

The global review of all of the site visit findings was completed in January of 2018, with the final results sent to SCDDSN Jan. 24, 2018. The results can be found on the SCDHHS HCBS website. SCDDSN shared this information with its providers via email Jan. 31, 2018. SCDHHS announced a webinar to review those findings via email to SCDDSN providers Feb. 7, 2018. The webinar was held Feb. 20, 2018.

SCDHHS and SCDDSN established a process for reviewing the individual settings' assessments and determining if settings were or were not in compliance with HCBS requirements. The day services (non-residential) setting assessment had six domains with specific questions ("indicators") in each domain. For any domain that had an area of non-compliance, the provider was to submit a Compliance Action Plan (CAP) indicating how that area of non-compliance was to be remediated for that setting. The residential setting assessment had ten domains with specific questions ("indicators") in each domain. For any domain that had an area of non-compliance, the provider was to submit a Compliance Action Plan indicating how that area of non-compliance was to be remediated for that setting. SCDDSN created CAP templates for all providers along with instructions to complete them. This information was sent out via email Jan. 31, 2018, and shared during the Feb. 20, 2018, webinar. All CAPs were to be submitted to SCDDSN for review and approval.

4.3 Outcomes

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

SCDHHS has compiled the results of all review processes to date to submit to CMS. SCDHHS details below, for each assessment process, what percentage of facilities, by type, meet the

settings criteria and what percentage do not and will need to create a plan of compliance. Beneficiary and family survey results are also included below. As noted above, the Adult Day Health Care settings independent site visits were completed April 11, 2018, with the last review sent July 6, 2018. The independent site visits for SCDDSN Day service providers and residential providers were completed Oct. 5, 2017, with reviews sent to providers Jan. 31, 2018.

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

At the time of the initial approval of this document, SCDHHS had gathered preliminary information from the Initial C5 Assessment (see page 77), the C4 provider self-assessment, and selected site visits conducted with the Technical Assistance Collaborative (TAC), Inc. (see page 80). Based on that information, SCDHHS estimated that the following number of settings fell into the following categories.

Non-residential Setting types by HCBS Compliance Category

HCBS Compliance Category	ADHC	AAC	WAC	Unclassified
Fully comply with federal requirements	0	0	0	0
Do not comply – will require modifications	0	0	0	0
Cannot meet requirements – will require removal from the program/relocation of individuals	2[16]	0	0	0
Subject to State Review for possible Heightened Scrutiny Review by CMS	74	52	30	28

[16] This number represents two adult day health care centers located in other facilities

Residential Setting types by HCBS Compliance Category

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

As indicated in the charts above, SCDHHS is subjecting all non-residential facilities to state review for possible Heightened Scrutiny review by CMS (the HCB Settings Quality Review process, see page 77). The data in the charts above will likely change once the independent site visits are completed on the settings and a full review is completed for each individual setting.

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

4.3.2 Beneficiary and Family Surveys. Responses for the Beneficiary Survey were submitted between June of 2016 and November of 2017, with 14 total responses. The respondents were 57% men and 43% women and the average age of respondents was 48 years old, with a median age of 52 years old. Respondents came from four identified counties, with four respondents not identifying a county of residence. Each of the four geographic regions of the state, Lowcountry, Pee Dee, Midlands and Upstate, had a county identified in the survey. The average length of time respondents have been receiving services is 11.5 years, with two respondents not answering. When asked, “What is the name of the facility where you receive your day/employment services?” six respondents identified provider day services facilities, three identified workplaces in the community, one indicated an Adult Day Health Care facility, and four did not respond. When asked what they thought about where they received services, most respondents indicated they liked it and it was “ok,” with one response indicating that it “was loud” and another response stating that “Sometimes it’s a pain.” Most respondents had

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positive things to say about the program structure. Only three respondents indicated they would like specific changes to the program: one stated they would like one closer to home, one indicated they would like to use computers, and one indicated it would be nice to have more counselors to have more time with them. When asked for other feedback, one person indicated that if they were receiving the level of services that they were approved for, "life would be a lot easier" for them and their parent as the other parent had recently passed. Another person indicated a need for personal care services to assist them. No other feedback was provided.

Responses for the Family Survey were submitted between May of 2016 and March of 2017, with 34 total responses and 31 viable responses. Sixteen different service providers were identified when asked, "Who is your service provider?" When asked about specific facilities that a family member attends, 17 identified provider day services facilities, three identified Adult Day Health Care facilities, one person indicated SC Vocational Rehabilitation and the remaining received services at home or in clinical settings. The average length of time at the facilities was 7.5 years. When asked what they thought about the setting where their family member received services, most respondents said it was "okay" or better, with five respondents indicating their particular facility needed more space, one indicating their particular facility needed some updates to make it more visually appealing, one indicating their space was run down, and one indicating the setting and the program needed a complete overhaul. This particular respondent indicated the setting "could be used for prison" and that the "job training needs to be reset at zero with a brand new playbook and brand new leadership." Some of the feedback provided regarding the program structure included the need to enhance the activities and/or work offered, including providing intellectually stimulating activities and changing the overall culture of the agency to push for individual, community-integrated lives of the people they support. A variety of responses were offered when asked about any other feedback they wanted to provide. They included:

- The desire for state agencies to collaborate on developing more employment training and options for adults with intellectual disabilities
- Programs to focus on individuals' likes and strengths, and not just janitorial work options
- Better pay for therapists to keep them in the field
- The need to train staff to understand brain injuries better and build programs that people with traumatic brain injury could benefit from
- Better training of direct care staff to understand the big picture of services they are being asked to deliver

4.3.3. Final HCBS Compliance determination**.** The final level of HCBS compliance of individual settings was determined after independent site visits and full reviews were completed. SCDHHS, along with SCDDSN where appropriate, developed an individualized response by

provider for each facility based upon the self-assessment and site visit. The agency leveraged responses from the self-assessment and site visit to identify gaps in compliance, as well as include any global policy or programmatic changes that are necessary for the provider to comport with the new HCBS standards as detailed in the "Assessment Review" sections, 4.2.3 and 4.2.4, above (pages 53-57).

Utilizing the previously gathered settings data and incorporating the independent site visit findings for all settings, SCDHHS lists the HCB settings into the following HCBS Compliance categories:

Non-residential Setting types by HCBS Compliance Category

HCBS Compliance Category	ADHC	AAC[17]	WAC[18]	Unclassified	AAC/WAC	AAC/WAC/ Unclassified
Fully comply with federal requirements	1	0	0	0	0	0
Do not comply – will require modifications	77	43	20	11	6	3
Cannot meet requirements – will require removal from the program/relocation of individuals	1[19]	0	0	0	0	0
Subject to State Review for possible Heightened Scrutiny Review by CMS	2[20]	3	2	0	0	0

[17] These numbers include settings that are licensed as "AAC" and as "AAC/Unclassified"
[18] These numbers include settings that are licensed as "WAC" and as "WAC/Unclassified"
[19] This number represents one adult day health care center located in an inpatient facility
[20] This number represents two Adult Day Health care centers co-located in a CRCF. One ADHC voluntarily closed before beginning the State Review Process. The other ADHC went through the State Review Process and those results are found in Section 5.7.1

Residential Setting types by HCBS Compliance Category

HCBS Compliance Category	SLP I	SLP II[21]	CTH I	CTH II	CLOUD /CIRS	CRCF
Fully comply with federal requirements	0	0	0	0	0	0
Do not comply – will require modifications	239[22]	28	138	677	6	31
Cannot meet requirements – will require removal from the program/relocation of individuals	0	0	0	0	0	0
Subject to State Review for possible Heightened Scrutiny Review by CMS	17	28	0	36	15	18

4.4 Actions for Facilities Deemed not in Compliance

Based on the outcome of the full review, providers must create a compliance action plan (CAP) for their facility(ies) and indicate how they will bring it(them) into compliance with the requirements. The action plan must include a timeframe for completion and be submitted to SCDHHS, or SCDDSN where appropriate, for approval. Each action plan will be reviewed to determine if the action plan is approved or needs revision. The process for CAP review and approval process for each setting type is provided below. Any setting that is subject to state review for possible Heightened Scrutiny review by CMS must still complete, submit and have an approved CAP in place. The state review (Home and Community-Based Settings Quality Review Process) is described in Section 5.

4.4.1 Actions for Facilities deemed Not in Compliance – ADHCs. After site visits were completed, providers were sent a full review letter for each of their settings that included whether or not they were currently compliant with HCBS requirements, and if not, what specific areas the setting had to address to reach HCBS compliance. A template Compliance Action Plan (CAP) that was pre-populated with the needed areas of change was also provided for each setting with the full review letter along with instructions on how to complete the CAP. Providers had

[21] The numbers listed are apartment complexes, as defined in Section 4.2.4, page 56

[22] While only a sample of the total SLP I settings received a site visit (57, 22%), we are assuming that based on the sample assessment results, the remaining settings will need some level of remediation.

two weeks to submit a completed CAP for review, or four weeks to submit a completed CAP for review if they included participant and family input.

Compliance Action Plans for Adult Day Health Care settings were reviewed by SCDHHS staff from the Long Term Living Compliance team and the Long Term Living Provider Relations team. The review team met approximately every two weeks to review CAPs submitted for review. Each action plan was reviewed to determine if the action plan was approved or needed revision. If a CAP needed revision, the review team provided specific feedback to the provider on areas that needed to be addressed to move towards a CAP approval. If a provider failed to respond and did not resubmit a revised CAP, they were suspended from receiving new referrals to their facility until the revised CAP was received and approved. Once a CAP was approved, SCDHHS sent providers an electronic letter indicating their action plan was approved and they could move forward with their changes. A copy of the full review letter and the approved CAP was added to the provider's record in Phoenix to aid in HCBS compliance monitoring by the LTL Compliance team.

At the writing of this version of the STP, the status of Compliance Action Plans for ADHC providers is as follows:

Total ADHC site visits	No CAP/Fully Compliant	Approved CAP in place	CAP under revision	Withdrew as Medicaid Waiver Provider
81	1	79	0	1

As ADHC settings are due for regular compliance reviews and site visits during the transition period, the SCDHHS Compliance team will also monitor the setting for progress on HCBS compliance in accordance with their approved compliance action plans. If individual technical assistance is needed for any setting, it will be provided onsite during the compliance review, or the provider can request a separate visit dedicated to training and/or technical assistance for their staff and setting. Based on the timing of CAP approvals, all ADHCs are expected to be fully compliant with HCBS requirements by June 30, 2019. Continued monitoring of compliance through established quality assurance protocols are detailed in the "Ongoing Compliance" section on page 71.

CMS provided feedback to SCDHHS about "reverse integration" as a strategy for access and integration compliance, indicating it cannot be the only method providers use to meet access and integration compliance. To address this issue, SCDHHS will provide and share technical assistance with providers to help settings ensure they facilitate full access and integration for waiver participants into their community. This will include informal information sharing as site visits are conducted or informal meetings with providers are held, presentations done at

provider association meetings, resources sent to providers and posted on the SCDHHS HCBS website, resources sent to program areas and other state agencies and formal feedback through individual responses to completed site visits to assist in this transition period. As mentioned in the "Actions to Bring System into Compliance" section (page 37), the assessment tool utilized for the ADHC site visits will be incorporated into the provider reviews that are conducted at least every 18-24 months by SCDHHS staff. This tool will cover the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings and will help measure compliance of settings providing access and integration for waiver participants into their community.

4.4.2. Actions for Facilities Deemed Not in Compliance – SCDDSN Settings. SCDDSN providers received their individual settings' site visit results and their prepopulated Compliance Action Plans (CAPs) Jan. 31, 2018. Instructions for completing the CAPs were providing during the Feb. 20, 2018, Global Setting Assessments Results webinar. Also provided in that webinar were three tiers of assistance for providers to achieve HCBS compliance. This included a variety of resources housed on the SCDDSN Quality Management website, resources listed in the Business Tools section of the SCDDSN provider portal and the ability to request individual consultation from SCDDSN. Providers were originally given until Sept. 30, 2018, to submit their CAPs for review and approval by SCDDSN.

SCDDSN held a technical assistance workshop to review the CAP completion and submission process June 25, 2018. "HCBS Workshop 6 – CAP Process" can be found on the SCDDSN Quality Management webpage under "HCBS Implementation Resources." SCDDSN held additional workshops to address some of the top issues submitted by the providers related to HCBS compliance. The workshops provided were:

- Workshop 1: Food and Visitors
- Workshop 2: Leases and Money
  - Workshop 2 video
- Workshop 3: Keys, DOL Posters, Person-Centered Planning Autonomy
  - Workshop 3 video
- Workshop 4: Day Services, Service Plans, Setting Selection, Staff Selection
  - Workshop 4 video
- Workshop 5: Visitors
  - Workshop 5 video
- Workshop 7: DHEC and CRCFs
  - Workshop 7 video
- Workshop 8: Choice and Communication (video)

In September, providers were given an extended deadline of Oct. 31, 2018, to submit their CAPs. To assist providers with CAP completion, SCDDSN held a work session Sept. 27, 2018, for all providers to provide a forum for discussion and problem-solving for the CAPs. A

second session for providers was held Oct. 24, 2018, to continue to assist providers in completing their required CAPs. For providers who attended this session, their CAPs were due to SCDDSN Nov. 15, 2018. All CAPs were submitted to SCDDSN for review and approval.

At the time of this writing, all CAPs have been submitted and are under review by SCDDSN staff. It appears that all CAPs will need some level of revision and SCDDSN staff are preparing various levels of technical assistance for providers based on their original CAP submission. This may include phone calls to providers to provide guidance on needed changes, pointing them to the resources provided on the SCDDSN Quality Management website and the Business Tools Folder on the provider portal. Other providers may receive onsite visits for more in-depth technical assistance.

The CAP instructions state that providers monitor their progress quarterly towards completion, and reports on that progress may be requested by SCDDSN at any time. SCDDSN staff and/or the contracted Quality Improvement Organization (QIO) will also monitor the progress of providers towards HCBS compliance in accordance with their approved compliance action plans through the onsite technical assistance if provided and via regularly scheduled licensing and/or compliance reviews, Day Services observations (100% of settings) and Residential observations (25% of each provider's residential settings every year). SCDDSN will monitor the results of those site visits to assist them in monitoring the progress of providers becoming compliant with HCB standards. It is expected that 50% of non-residential (day services) settings will be HCBS compliant by Dec. 31, 2020, with 100% settings compliance by March 17, 2022. It is expected that 50% of residential settings will be HCBS compliant by Dec. 31, 2019, with 100% settings compliance by March 17, 2022.

To address the issue of "reverse integration" by providers, as noted in Section 4.4.2. above, SCDDSN, as noted on page 75, plans to incorporate elements of the two assessment tools (Day and Residential) used in the independent site visits into their provider assessment so that the new HCBS requirements detailed in 42 CFR 441.301(c)(4) are captured as part of the regular review process by the QIO. This will be in addition to the resources provided by SCDHHS noted in Section 4.4.2 above, particularly on the SCDHHS HCBS website for non-residential and residential providers, and resources provided by SCDDSN.

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

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

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

As noted in the table above (Section 4.3.2) there was one adult day health care setting that could not meet HCBS standards as it was located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. The number of waiver participants who were receiving services in that setting was nine. That setting announced its closure on Oct. 18, 2017, and all participants were notified and transitioned successfully to a new setting or services in less than 30 days.

Also noted in the Final HCBS Compliance table in Section 4.3.2 were two ADHC settings that were to undergo the state HCB Settings Quality Review process to determine if they would be submitted to CMS for heightened scrutiny review. The results of the one setting are provided in Section 5 of this document. The second setting chose to close before completing the CAP process and the state review process. The setting notified SCDHHS April 24, 2018, that they would close May 25, 2018. That provider had three waiver participants. All participants were notified of the closure per standard protocol and transitioned to new services or settings by June 30, 2018.

Relocation of waiver participants in non-compliant SCDDSN Day services settings. SCDDSN would identify all participants authorized to receive services from the provider of the non-compliant setting. The appropriate SCDDSN regional representative and/or agencies would be notified by SCDHHS and/or SCDDSN of the status of the setting as non-compliant. Additionally, the participants' case managers would be informed of the status of the setting as

non-compliant so that they could reach out to their participants to inform them of the setting's status change. The appropriate SCDDSN regional representative would facilitate the relocation of participants with the case managers and any other appropriate personnel, providing the participants with a list of other available, compliant providers from which they can choose. Once a participant chooses a provider, the case manager can then make a referral and process an authorization for that participant for the new provider. SCDDSN will keep SCDHHS informed of all waiver participant relocations.

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

Relocation of waiver participants in non-compliant Residential settings. There are two types of residential settings: those that are authorized to provide the waiver service of residential habilitation (and are providers contracted with SCDDSN) and those that are not but waiver participants may choose to live in the setting (see "Other Residential homes" on page 48).

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

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

If the participant chooses not to use another residential provider, the participant's case manager may explain alternative options should the waiver participant choose to still receive

residential services from the non-compliant provider setting or still choose to live in the non-compliant residential setting.

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

Timeline. Relocation of waiver participants would be made after:

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

For waiver participants who will be relocated from a non-compliant Adult Day Health Care setting, they will be given 30 days' notice that they will need to move to a new, compliant setting. This notice is intended to minimize disruption of services for the waiver participant. Additionally, each participant's case manager will ensure an individualized approach for transitioning each waiver participant from non-compliant settings. As noted above, two settings have already successfully transitioned their participants to either new settings or services; one group moving between October and November 2017 and the second group moving between May and June 2018. The third setting subjected to state level HCB Settings Quality Review has its timeline detailed in Section 5, with the procedure for relocation of participants the same as provided here.

SCDHHS and SCDDSN anticipate that any SCDDSN non-residential settings identified as not being able to become HCBS compliant will be determined by June 1, 2020. This timeline allows for providers to work on the needed changes in their approved CAPs, receive any technical assistance to facilitate that process, and go through at least one licensing and compliance site visit by the QIO. This also allows for SCDDSN to receive information from the Day Services Observation, providing another data point to measure progress towards HCBS compliance. If it is determined that a non-residential setting will not remain as a Medicaid Waiver provider, the notification process to the provider, participants and families will begin in January of 2021, and is anticipated to be finished by April 30, 2021. The process of relocating participants to a compliant setting or a different desired service will likely also begin in January of 2021, but at the latest will begin in May of 2021, with all participants successfully transitioned by Dec. 31, 2021.

For waiver participants who will be relocated to a compliant residential setting, they will be given a minimum of 30 days' notice that they will need to move to that new, compliant

setting, adhering to the transition schedule detailed next. Additionally, each participant's case manager will ensure an individualized approach for transitioning each waiver participant from non-compliant settings. All other protocols outlined in either the "Relocation Guidelines: Community Residential Care Facility (CRCF) Residents" or the "Admissions/Discharge/Transfer of Individuals To/From DDSN Funded Community Residential Settings" will be followed as appropriate. This notice, along with the other detailed protocol, is intended to minimize disruption of services for the waiver participant.

SCDHHS and SCDDSN anticipate that any SCDDSN residential settings identified as not being able to become HCBS compliant will be determined by June 1, 2020. This timeline allows for providers to work on the needed changes in their approved CAPs, receive any technical assistance to facilitate that process, and go through at least one licensing and compliance site visit by the QIO. This also allows for SCDDSN to receive information from the Residential Observation, providing another data point to measure progress towards HCBS compliance. If it is determined that a residential setting will not remain as a Medicaid waiver provider, the notification process to the provider, participants and families will begin in January of 2021, and is anticipated to be finished by April 30, 2021. The process of relocating participants to a compliant setting or a different desired service will likely also begin in January of 2021, but at the latest will begin in May of 2021, with all participants successfully transitioned by Dec. 31, 2021.

4.4.4 Non-disability specific settings. SCDHHS has explored what methods would be best to expand the non-disability specific setting options in our waiver services array in a sustainable way. As noted in Section 3.2.1, some of the non-disability specific residential options for waiver participants are Community Training Home I (CTH I), Supported Living Program I (SLP I), and Community Integrated Residential Services (CIRS).

To expand other setting options, SCDHHS and SCDDSN will utilize the existing support of the South Carolina Employment First Initiative (SCEFI) to explore how employment services in the ID/RD, CS and HASCI waivers can be redefined or expanded, putting the emphasis on competitive, integrated employment as an outcome for waiver participants. SCDHHS and SCDDSN both participate in this initiative and have ready access to statewide support and partnerships to help make this happen. The goal would be to reduce the reliance on facility-based work. As SCDDSN states in its Employment First Directive, "…SCDDSN promotes employment outcomes (and individual employment in particular) as the most meaningful outcomes for adults of working age." To date, SCDHHS contracted with a consulting agency to do a rate review of the services in the waivers that SCDDSN operates. As the data is presented to SCDHHS, the opportunity is presented not only for rate restructuring, but also what the rates are paying for and potentially redesign some of the waiver services, particularly to incentivize

employment as a service and outcome for waiver participants. Concurrently, the SCEFI is receiving technical assistance from Workforce Innovation Technical Assistance Center (WINTAC) to see how South Carolina, as a state with all of the key agencies at the table, could implement and sustainably maintain Customized Employment as an employment service provision option. This would be in addition to the individual Supported Employment service provision option that currently exists in waiver services. These two concurrent efforts, rate restructuring and Customized Employment technical assistance, are still in the early phases as of August 2019, but are proceeding forward.

4.4.5 Individual Private Homes. Individuals not living in provider owned or controlled homes deserve the same access and integration to their community as individuals not receiving HCB services. To ensure that these individuals are not isolated in their communities in which they choose to live, SCDHHS must confirm that individual private homes were not established or purchased in a manner that isolates them from their community. The two program areas charged with this duty will be LTL Division and the Community Options Division of SCDHHS.

The LTL Division of SCDHHS is exploring appropriate ways to gather this information through the regular case manager face-to-face visits or annual re-evaluation assessments of the waiver participant. The current waiver participant assessment includes an optional "Social Isolation" section as part of the Psychosocial module that previously was only utilized based on certain participant responses during an assessment/annual re-evaluation. LTL is in the process of activating that section to be a mandatory part of the module. If the participant answers questions in the "Social Isolation" section that indicate he/she is socially isolated, it will trigger a response in the participant's service plan to ensure the social isolation is addressed in accordance with the person's needs and desires. A dedicated committee of LTL staff members will be meeting to discuss the "help text" to be provided to case managers in this portion of the assessment which aims to give guidance on how to appropriately address social isolation. The committee will also look at any specific training needed for case managers on what do to if it appears a participant is, or is becoming, isolated in their home. This committee plans to have the modifications made and implemented in Phoenix by the end of 2019. Additionally, LTL has annual Experience and Satisfaction surveys conducted for each of their waivers with a random sample of the waiver participants selected to complete the survey. A section of that survey asks specific questions about the level of social integration that a participant has. Data from the survey can be used to inform future policy changes on addressing isolation and training changes for case managers.

The Community Options Division of SCDHHS is working with SCDDSN on appropriate ways to gather this information through the regular case manager face-to-face visits or annual re-evaluation assessments of the waiver participant. An initial review of the current participant

assessment indicates that existing questions on the assessment may be a good measure for capturing isolation, or potential isolation, of a waiver participant in their home. SCDDSN is currently reviewing if any other questions need to be added and the timeframe for when changes can be made. These changes include technology changes to their assessment software, policy and procedural changes to any relevant case management directives and standards, as well as training for their case managers. After policy and process revisions and any staff and/or provider training, a process is anticipated to be implemented by March 30, 2020.

4.5 Ongoing Compliance

Ongoing compliance of settings is currently monitored through SCDHHS policies and procedures as well as SCDDSN policies, procedures, standards and directives where appropriate. The Pediatric Medical Day Care setting is monitored through SCDHHS policies and procedures in addition to regulatory compliance through SCDSS. There are established compliance systems in place at the agencies that monitor providers and their services to ensure they are compliant in providing the waiver services as stated in their contracts/enrollment agreements which are in line with the waiver documents. It is through these established systems, which are described below, that ongoing compliance of the settings with the new HCBS requirements will be monitored. As mentioned in the "Ongoing Compliance of the System" section of this document (page 40), the policies, procedures, standards and directives that direct the current compliance systems have been updated to reflect the new HCBS requirements to ensure the ongoing compliance of the settings.

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

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

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

As mentioned in the "Actions to Bring System into Compliance" section (page 37), the assessment tool utilized for the ADHC site visits was incorporated into the provider reviews that are conducted at least every 18-24 months by SCDHHS LTL staff. This tool covers the settings requirements detailed in 42 CFR 441.301(c)(4) as it relates to non-residential settings. In 2018, the LTL Compliance team added two new members. Training was provided Oct. 22, 2018, to the full LTL Compliance staff on the HCBS Rule, its requirements and how it applies specifically to ADHC settings to ensure the HCBS requirements will be monitored with fidelity.

Ongoing monitoring and compliance of ADHCs will be conducted in two ways: by a designated staff member of LTL to conduct on-site reviews and by a contracted vendor to collect participant feedback on their specific ADHC program. The reviews will begin 18-24 months after the initial assessment and compliance action period and will consist of an on-site visit to each facility to observe settings and participants' individual integration into the community. The staff member will utilize a questionnaire (finalized in March of 2018) that contains the same components of the initial assessment to complete the on-site reviews. Currently, the state has a sanctioning policy ranging from corrective action plans up to termination. During the transition period up to March 17, 2022, the state will utilize the same sanctioning policy to address noncompliance with the HCBS regulatory requirements to allow for remediation. After that date, providers face contract termination for non-compliance with HCBS requirements. Tracking of compliance results will be stored in LTL's Phoenix system for easy reporting.

The contracted vendor also utilizes a survey that contains the same components of the initial assessment to collect participant feedback via telephone surveys. Waiver participants who utilize the ADHC service will be asked a series of questions about their experience in the ADHC setting. These questions are similar to the ones asked of participants during the individual setting site visit process and reflect the revised scope requirements for ADHC settings as it relates to HCBS requirements. This ADHC-specific survey is part of the larger annual waiver participant Experience and Satisfaction survey, mentioned above. These questions were

inserted into that annual survey in 2018 and initial data was collected that year. The ADHC-specific portion of the survey will be conducted every other year moving forward and will be used to influence policy and programmatic requirements while also providing general feedback to ADHC providers.

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

In February of 2018, a group of ADHC providers requested to meet with SCDHHS in an effort to improve the overall quality of their programs for Medicaid and discuss how the providers and SCDHHS could work together in those efforts. The first meeting of the ADHC Quality Workgroup was held March 1, 2018, and has met quarterly since to discuss issues like clarifying scope requirements and training that can be provided for their direct care staff on requirements like the HCBS rule. SCDHHS continues to work on reasonable changes and creating training for this group of providers to work towards enhanced quality service provision.

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

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

4.5.3. Ongoing Compliance – SCDDSN Day services facilities and contracted residential settings. SCDHHS maintains a Memorandum of Agreement (MOA) with SCDDSN and has three service contracts with SCDDSN that outline the provider responsibilities for the following waivers: Intellectually Disabled/Related Disabilities (ID/RD), Community Supports (CS) and Head and Spinal Cord Injury (HASCI). Additionally, SCDHHS is implementing an Administrative Contract to outline responsibilities regarding SCDDSN's waiver operations for each waiver. As mentioned in the "Actions to Bring System into Compliance" section (page 37), the Community Options Division of SCDHHS created a joint workgroup with SCDDSN that began in fall of 2015 to revise SCDHHS and SCDDSN waiver specific policy, procedures, directives and standards including those related to compliance of providers and settings. Together they have made the necessary changes to waiver manuals, operating standards and corresponding directives and key indicators to bring waiver policy and procedures in line with the HCBS requirements to ensure ongoing compliance of settings.

SCDHHS uses a Quality Improvement Organization (QIO), an additional contracted entity, quality assurance staff and other agency staff to continuously evaluate the operating agency's (SCDDSN) quality management processes to ensure compliance. The QIO conducts validation reviews of a representative sample of initial level of care determinations performed by the operating agency (SCDDSN) and all adverse level of care determinations for all waivers operated by SCDDSN. The additional contracted entity provides specific quality management tasks like provider agency operational audits. SCDHHS Quality Assurance (QA) staff review all critical incident reports, ANE reports, results of QIO provider reviews and receive licensing/certification reviews upon completion and any received participant complaints. SCDHHS QA staff conduct periodic quality assurance reviews that focus on the CMS quality assurance indicators, performance measures, financial expenditures and appropriateness of services based on assessed needs. In addition, SCDHHS QA staff perform look-behind reviews of the SCDDSN QIO reports to ensure appropriateness of findings and the return of Federal Financial Participation (FFP) as warranted. SCDHHS QA staff also utilize other systems such as Medicaid Management Information Systems (MMIS) and a contracted data analytics provider to monitor quality and compliance with waiver standards. SCDHHS also utilizes its Division of Program Integrity, who works cooperatively with QA and waiver staff, to investigate complaints and allegations of suspected abuse or fraud that may impact the system. Program Integrity also maintains a good working relationship with the Medicaid Fraud Control Unit at the Attorney General's office to investigate suspected fraud or initiate criminal investigations. To ensure compliance of quality and general operating effectiveness, SCDHHS will conduct a review of the Operating Agency (SCDDSN).

SCDDSN contracts with an independent QIO to conduct assessments of service providers by making on-site visits as a part of its quality assurance process. Providers are reviewed at

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

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

SCDDSN has made other changes to its quality management process for providers.

- In February 2017, SCDDSN created and made public a Provider Dashboard. It provides current information on a provider's contract compliance review, licensing review, special certifications or accreditations, the review cycle timing of the provider and whether there are any current contract enforcement actions in place.
- The Day Service Observations and Residential Observations are now stand-alone measures of providers' service delivery and are no longer sub-components of the Contract Compliance Review process. These tools are based on the Basic Assurances®, which are aligned with HCBS requirements, and focus more on waiver participant outcomes. Day Service Observations will be completed for 100% of contracted providers' service locations and Residential Observations will be completed for 25% of contracted providers' residential service locations each year.

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

SCDDSN recognizes that the quality of the services provided is dependent upon well-trained staff. It is the intent of this directive to establish the required minimum level of staff competency so that those who support individuals with disabilities acquire the knowledge, skills and sensitivity to meet the needs of those individuals, consistent with the mission and vision of

SCDDSN. SCDDSN has included requirements for person-centered, community based services within the context of various training modules and on-going training and technical assistance available to provider agencies.

Staff whose job descriptions indicate the duty of working directly with individuals who receive services shall be trained according to the minimum requirements set forth in the Directive. Competency will be demonstrated by a combination of written tests and skills checks. All staff are also required to receive a minimum of an additional 10 hours of job-related training annually, which will continue to focus quality service delivery. Professional staff meetings, workshops and conferences related to job functions may be considered in meeting this requirement.

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

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

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

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It is through the SCDHHS QA process and the SCDDSN service provider quality management activities that day and residential settings' ongoing compliance with HCBS standards will be monitored.

5 Heightened Scrutiny

Heightened scrutiny is the process of identifying settings that are presumed to have the characteristics of an institution and therefore are subject to more intense review (scrutiny) by the state. Using the criteria in 42 CFR 441.301(c)(5) (also known as "C5"), SCDHHS will gather data on settings to determine whether the settings have home and community-based qualities. SCDHHS named this process the "HCB Settings Quality Review." After completing this review, the state will then determine if any of the settings will be submitted to CMS for final heightened scrutiny review.

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

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

The criteria that SCDHHS will use to determine which settings will be subject to HCB Settings Quality Review includes the following:

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

5.1 Initial C5 Heightened Scrutiny Assessment

This assessment was designed to gather initial data to assist SCDHHS in determining if any settings might be subject to the heightened scrutiny process detailed in 42 CFR 441.301(c)(5)(v). Providers self-reported if any of the settings they own or operate have the following qualities:

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

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

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

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

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

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

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

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

5.1.5 Outcomes. Providers completed the "C5" assessment based on their own interpretation of the regulations and materials provided by CMS on the settings that have the effect of

isolating individuals. Actual compliance or non-compliance with 42 C.F.R. 441.301(c)(5) will be determined by SCDHHS or CMS.

Initial C5 Initial Assessment Results

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

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

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

Although there was not 100% provider participation in completing the Initial C5 Heightened Scrutiny Assessment, the same questions were included as part of the C4 Individual Facilities/Settings Self-Assessment in which there was 100% provider participation. These results created a list of potential settings that could go through the HCB Settings Quality Review Process.

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5.2 C4 Individual Facilities/Settings Self-Assessment

This self-assessment asked providers a series of questions that looked at the physical qualities of the setting and programmatic qualities of the setting. This was for all non-residential and residential settings. The details of this self-assessment process begin on page 50. The assessments can be found in Appendix C and Appendix D.

The results of the self-assessment that indicated physical or programmatic characteristics that may isolate waiver participants were used to determine if the setting should be placed on the list of potential settings to go through the HCB Settings Quality Review process. These identified settings will have their independent site visit results reviewed to determine if they will go through the HCB Settings Quality Review process.

5.3 Geocode Data generation

SCDHHS had the Division of Medicaid Policy Research in the Institute of Families and Society at the University of South Carolina complete a geocode analysis of the physical locations of all HCB settings within South Carolina. It was completed in February 2015. This data broke down the proximity of each setting to public and private institutions and other HCB settings. It shows generally where HCB settings are located in comparison to the broader community of each town. The information gathered from this project was used to determine if there are geographic location concerns that indicate potential clustering of settings and therefore isolation from the community. These settings will have their independent site visit results reviewed to determine if they will be included in the HCB Settings Quality Review.

5.4 Consultation with Technical Assistance Collaborative (TAC), Inc.

Through the procurement process, SCDHHS selected TAC, Inc. to review South Carolina's HCBS residential programs.[23] TAC, Inc. conducted selected site visits around the state to get a general overview of what the waiver residential program looks like. Setting types visited included CRCFs, SLP IIs, and CTH IIs. TAC, Inc. furnished a report to SCDHHS in November 2015 with its findings. That report is included with this plan as Appendix I. The results from that report include identifying characteristics of residential settings that may not comport with the HCB standards. That information will be used to inform SCDHHS of any residential settings that should be placed under HCB Quality Settings Review because they display those characteristics.

[23]TAC, Inc. was awarded a solicitation for consulting services on supportive housing and HCBS review April 2015.

5.5 Public Input

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

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

Additionally, a live webinar was held Nov. 18, 2015, to explain to the public what SCDHHS was looking for in this public input process. The webinar was recorded and made available for viewing, along with a transcript of the recording, on the Family Connection of SC website. The slides from that webinar can be found on the SCDHHS HCBS website on the "About" tab under "Presentations."

Information provided through this public input was reviewed for inclusion on the independent site visits that occurred in 2017.

5.6 Individual settings independent site visits.

The processes for these site visits is detailed in Section 4, Assessment of Settings, with the outcomes provided in Section 4.3.2, Final HCBS Compliance Determination. The ADHC site visit and review process finished July 6, 2018, and the SCDDSN site visit and review process finished Jan. 31, 2018. The data gathered from these site visits was compared to all of the previous data gathered as described above to confirm if any of the HCB settings fell into the three categories of settings that are presumed institutional:

- Category I: Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
- Category II: Any setting in a building on the grounds of, or immediately adjacent to, a public institution, with public institution defined as an inpatient facility that is financed and operated by a county, state, municipality, or other unit of government
- Category III: Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

5.6.1 HCB Settings Quality Review category determination – ADHCs. Once the site visits were complete for ADHCs, key personnel from the Division of Long Term Living (LTL) at SCDHHS

reviewed the data gathered to date and the site visit results to determine if any ADHCs fell into any of the three categories listed above. Category III did not include any programs that potentially had the effect of isolating through programmatic structure as LTL staff committed to providing specific guidance to providers on CAP completion, individual on-site technical assistance and training to help bring those settings into compliance. Should any setting not be able to come into compliance with these additional measures, SCDHHS will remove the setting as a waiver provider and follow the procedures for participant relocation as outlined in the "Relocation of Waiver Participants" section above. The criteria utilized for Category III was:

- If a setting was co-located and operationally related, potentially isolating participants from the community

The number of ADHC settings in each category is provided below:

	Category I	Category II	Category III
ADHC	1	0	2

Both settings listed in Category III had an ADHC located within a Community Residential Care Facility (CRCF). While these settings independently are considered home and community-based, it was not clear that assumption would stand given the co-location of the two setting types. The HCB Settings Quality Review process for ADHCs is detailed in Section 5.7 below.

5.6.2. HCB Settings Quality Review category determination – SCDDSN settings. Once the site visits were complete for all of the SCDDSN non-residential and residential settings, SCDHHS staff and SCDDSN staff reviewed the data gathered to date and the site visit results to determine if any fell into any of the three categories listed above.

Review of all SCDDSN settings confirmed that none of them fell into Category I for state level or heightened scrutiny review.

Clarity was sought from SCDHHS General Counsel on whether or not local Disabilities and Special Needs Boards (DSN Boards) were considered a "unit of government" as it relates to settings in Category II. Many local DSN boards operate "community" ICFs that are institutions, but are smaller in bed size (typically eight) and are located in community settings (i.e. neighborhoods). They affirmed that DSN Boards were indeed a "unit of government," which meant that any "community" ICFs operated by a DSN Board would count as public institutions that are inpatient facilities. Therefore, any HCB residential or non-residential setting on the grounds of, or immediately adjacent to, the community ICF would be counted in Category II.

Category III includes settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS due to program design or operation, including restricting participants' ability to engage in activities outside of the setting. It did not include any programs that potentially had the effect of isolating through programmatic practices as SCDDSN staff committed to providing specific guidance to providers on CAP completion and individual on-site technical assistance and training to help bring those settings into compliance. Should any setting not be able to come into compliance with these additional measures, SCDHHS and SCDDSN will remove the setting as a waiver provider and follow the procedures for participant relocation as outlined in the "Relocation of Waiver Participants" section above. The criteria utilized for Category III was:

- Setting is a Community Residential Care Facility (CRCF) that was formerly an ICF/IID, and is physically located next to another CRCF that was also formerly an ICF/IID
- Setting is a HUD 811 apartment complex (disability specific complex)
- Setting has a locked fence around the property
- There are three (3) or more HCBS settings clustered together operated by the same provider

The number of SCDDSN settings in each category is provided below:

Setting Type	Category I	Category II	Category III	Total
Day Services/AAC	0	2	1	3
Day Services/WAC	0	1	1	2
Residential/SLP I	0	0	17	17
Residential/SLP II	0	2	26	28
Residential/CTH II	0	5	31	36
Residential/CLOUD	0	0	15	15
Residential/CRCF	0	0	18	18
TOTAL	0	10	109	119

The HCB Settings Quality Review process for SCDDSN settings is detailed in Section 5.7 below.

5.7 HCB Settings Quality Review Process

The purpose of this process is to gather information to determine if a setting can overcome its presumed institutional nature through programming, operation and/or environmental modifications. This process may also be referred to as "state-level review." The details of this process are provided below, separated into the process for ADHC settings and the process for SCDDSN settings.

5.7.1. HCB Settings Quality Review – Process for ADHCs. After the list of settings was developed that would go through state-level review, key personnel from the Division of Long Term Living (LTL) at SCDHHS finalized the following steps for this process. As noted in the "Assessment of

Settings" section, one of the two settings withdrew as a Medicaid waiver provider before the process began, so the steps described below occurred for one ADHC setting.

There were two overall steps to the process: site visit and data collection, and external review and determination. The site visit was done by SCDHHS staff from LTL Compliance, Quality Assurance and Provider Relations areas. As described below, they gathered and compiled data for state-level review. An External Stakeholder Review committee was put together for the external review and determination. The committee comprised members from the following:

- SCDHHS Long Term Living Quality Assurance Task Force
- Staff members from SCDHEC
- Staff member from South Carolina Department of Mental Health (SCDMH)
- Member of the Adult Protection Coordinating Council (APCC) - parent representative
- Long Term Care Ombudsman representative
- A Center for Independent Living (CIL) representative
- An advocacy group representative
- Two members of the ADHC provider community

These members were trained by SCDHHS HCBS Rule project staff on the HCBS Rule and heightened scrutiny requirements Nov. 8, 2018, with make-up training sessions provided Nov. 26, 2018, and Nov. 30, 2018.

Site visit and data collection. The site visit team conducted a site visit to the setting. A letter was sent electronically and via certified mail to the provider indicating the date of the site visit, the process and two SCDHHS staff to contact with any questions about the process. That letter was sent electronically Sept. 4, 2018, and was delivered Sept. 7, 2018. The site visit was scheduled for Sept. 12, 2018.

Letters were sent to all Medicaid waiver participants at that setting indicating that SCDHHS staff were coming to the ADHC and the staff would like to get their feedback on the setting and their experience. Those letters were sent via certified mail Sept. 4, 2018, and delivered within the week.

Due to Hurricane Florence's impact to the state, the site visit was rescheduled to Oct. 4, 2018. Letters were sent to the provider and the participants via certified mail Sept. 11, 2018, and sent via email to the provider Sept. 11, 2018.

The letter to the provider stated the data to be gathered included, but was not limited to:

- Service Plans of waiver participants
- Care plans of waiver participants (separate document from service plan)

- Attendance logs
- Daily documentation
- Census information
- Current licensing information
- Review of ADHC activity documentation
- Interviews with ADHC participants
- Interviews with ADHC staff
- Interviews with CRCF residents
- Photographs of the setting

The provider was invited to submit any evidence for review that indicated how the setting is home and community based, with a list of example documentation.

The site visit occurred Oct. 4, 2018, and collected the required information above. Members of the site visit team interviewed two CRCF residents and three staff members on-site, and two family members of the ADHC participants via phone. The ADHC participants did not use words to communicate and the family members contacted SCDHHS in advance of the visit to provide information on behalf of their family members who attend the ADHC. The phone interviews occurred after the site visit.

During the site visit, the site visit team asked the provider for any documentation to support how the setting is home and community based. The provider did not submit anything on-site, but was told they could mail it or email it to the site visit team contact by the end of the month. Since the presentation of the site visit data would not occur until Dec. 6, 2018, the provider was sent a letter via certified mail and email to remind them to submit any supporting documentation by Nov. 16, 2018. None was submitted.

The site visit team compiled the information from the site visit, de-identifying the information so that the setting was not named and all participant, resident and staff information was kept anonymous. The information was put into a report and presented to the External Stakeholder Review Committee Dec. 6, 2018.

External review and determination. The External Stakeholder Review Committee was tasked to review the site visit data and make the final determination for the setting: based on the evidence provided, did the setting overcome its presumed institutional nature?

At the Dec. 6, 2018, meeting, the committee members reviewed the report put together by the site visit team, saw de-identified pictures of the setting and asked informational (objective) questions of the site visit team. After that meeting, the committee members took the report with them to review and prepare for the determination meeting.

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The determination meeting was held Jan. 10, 2019. Committee members were provided a refresher on the HCBS rule and the purpose of their committee. Committee members discussed the data provided before making a final determination. Based on the information provided, the committee concluded that the setting did not overcome its presumed institutional nature and would no longer be able to provide waiver services at that location.

SCDHHS staff crafted the outcome letter to the provider for review through the external agency communications review process. Once approved, it will be sent simultaneously with the contract termination letter to the provider. The provider will have 30 days of receipt of the letters to transition its ADHC participants from the setting, with the assistance of the participants' case managers.

Communication with participants. As of July 29, 2019, the provider has three Medicaid waiver participants. As described in Section 4.4.3, the waiver participants will be contacted by their case managers to notify them of the setting's status change. The participants will be given the opportunity to determine if they want to find a new provider or explore alternative services that would provide similar supports to meet their needs. They will have 30 days to make a decision on how to best move forward.

5.7.2. HCB Settings Quality Review – Process for SCDDSN settings. Key personnel from SCDHHS and SCDDSN drafted the following steps for this process. As noted above in Section 5.6, the list of settings will be sorted into the two categories for review as no settings met Category I criteria:

- Category 2 of the HCBS Regulation: The setting is in a building located on the grounds of, or immediately adjacent to, a public institution; OR
- Category 3 of the HCBS Regulation: The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS due to program design or operation, including restricting participants' ability to engage in activities outside of the setting

Following the updated guidance issued by CMS on the heightened scrutiny process, the settings under Category 2 review must be submitted for CMS heightened scrutiny review should they be deemed to overcome the presumption that the setting has qualities of an institution.

Settings under Category 3 review will be divided further into two sub-groups based on their Compliance Action Plan quality and robustness and review of all required evidence in this process:

- Settings that can fully implement all of their HCBS remediation steps to comply with HCBS regulatory criteria by July 1, 2020. This first list of settings will not be submitted for formal

CMS heightened scrutiny review but must be listed in this document for public comment. CMS reserves the right to review any of the settings on this first list.

- Settings that can fully implement all of their HCBS remediation steps to comply with HCBS regulatory criteria, but will not be able to do so by July 1, 2020. This second list of settings will be submitted for formal CMS heightened scrutiny review and will be listed in this document for public comment.

Drafting of process. After the list of settings was developed that would go through state level review, based on the criteria provided in Section 5.6.2, key personnel from SCDHHS and SCDDSN developed a draft state-level review process to review the settings for potential submission for heightened scrutiny review by CMS. This state-level review process was presented to stakeholders for review, questions, and input for changes. The information was presented in the following ways:

1. Webinars held June 5 and 7, 2019
   a. Webinar slides, recording, and a compiled question and answer document from both webinars are posted on the SCDHHS HCBS website in the following locations:
      i. Under the "About" tab, go to "Presentations"
      ii. Under the "Provider" tab, go to "HCB Settings Review"
      iii. Under the "Members & Families" tab, about two-thirds way down the page
2. Presented at the June 13, 2019 IMPACT-SC regular meeting
   a. IMPACT-SC is statewide self-advocacy group that meets every other month with members from around the state, most representing local-level self-advocate groups. The presentation was done in person at their June meeting.

Stakeholders specifically invited to attend one of the webinars included:

- Able South Carolina (a center for independent living)
- AccessAbility (a center for independent living)
- Walton Options (a center for independent living)
- South Carolina Developmental Disabilities Council
- Center for Disability Resources (University Center for Excellence in Developmental Disabilities)
- Protection and Advocacy (SC)
- Family Connection South Carolina
- Long Term Care Ombudsman and staff
- All SCDDSN providers

Any feedback, questions, suggestions for changes or any other issues for consideration on the process were due to SCDHHS by June 28, 2019. The key personnel from SCDHHS and SCDDSN reviewed the questions and comments received during the webinars, presentations and via email to finalize the state-level review process. The process was also reviewed by SCDHHS executive leadership. The elements and process are described below.

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HCB Settings Quality Review Team. HCB Settings Quality Review Team will be composed of designated SCDHHS staff members and designated SCDDSN staff members, with other resources as indicated.

The review of settings for heightened scrutiny will be done by (at minimum) three SCDHHS staff and two SCDDSN staff ("Review Team"). The Review Team will collect the information on each setting to review and make a determination on each setting to either submit the setting to CMS for heightened scrutiny review (per the requirements listed in the introduction to this section) or remove the setting from providing waiver services. Select SCDDSN staff may also provide onsite technical assistance to providers for any of their settings going through the general remediation process and may collect data on settings that are also going through the state-level review process to aid the review team in the setting's determination.

Quality improvement organization (QIO) staff will be utilized to gather data on settings in this process while on site for regularly scheduled licensing or contract compliance reviews. QIO staff will be given specific instructions on data and information to gather for settings in this process. They will also conduct the residential observations or day observations on all settings in the state level review process. These observations include interviews with waiver participants who utilize the day services settings or live in the residential settings to obtain their direct feedback on their experiences in the places where they live or work. The review team will establish either a minimum number of participants/residents to interview per setting, or a certain percentage of participants/residents to ensure a representative number of people are interviewed.

An advisory committee of selected stakeholders will be created and trained to address setting review issues. The membership will come from self-advocates, advocacy organizations, and providers. This stakeholder advisory committee will receive training on the HCBS Rule and heightened scrutiny requirements and will meet as needed to review settings that the Review Team disagrees on regarding their status and outcome for heightened scrutiny submission. The advisory committee will review the setting and make a recommendation back to the Review Team on whether the setting should be submitted to CMS for heightened scrutiny review or not. Additionally, the Review Team will provide regular status reports to the advisory committee on the progress of the state-level review process.

Should the Review Team disagree with the recommendation of the stakeholder advisory committee, or still remain in disagreement over the setting determination, a final decision on whether to submit the setting to CMS for heightened scrutiny review will be made by a two-person team at SCDHHS, the Deputy Director of Long Term Living and the Deputy Director for Administration/Chief Compliance Officer.

Settings Review Rubric. The key personnel from SCDHHS and SCDDSN developed a review rubric for settings, based on the category of heightened scrutiny review, to guide data

gathering and the state level review process. It contains measures based on the independent site visit assessment for residential and non-residential settings and the provider settings' compliance action plans which align with HCBS requirements. The rubric will be tested by the Review Team for reliability and validity based on selected pilot sites. It will be revised as needed after the pilot.

Interview tool for participant input. The current SCDDSN residential observation tool and day observation tool are utilized as part of the overall SCDDSN quality assurance process and focus on waiver participant outcomes. The QIO staff, who conduct contract compliance and licensing reviews as part of the overall quality assurance process, will administer these tools in all of the settings subject to state-level review. QIO staff interact with and observe residents/participants in the settings in which they live and/or work to determine if compliance requirements are present. The tools have been revised for the 2019-2020 year to include HCBS requirements as part of the quality assurance process and will be utilized to gather resident/participant feedback for this state-level review. Training will be provided to QIO staff ahead of time and onsite to ensure quality data collection for this process.

Provider communication. Upon finalization of the state-level review settings list, based on criteria provided in Section 5.6.2, SCDDSN sent out a memo to all of its providers explaining the state-level review process before the heightened scrutiny submission June 21, 2019, and subsequently sent individual communication to providers with settings subject to the HCB Settings Quality Review process June 24, 2019. The affected providers were given a list of settings that they own and/or operate that were subject to this state-level review and what category of review the setting was subject to (Category 2 or Category 3).

The individual communication to providers indicated if any additional action plan information was needed on the setting(s) in question to facilitate the review process. Additionally, if the provider disagreed with the identification of any of the agency's settings for state-level review based on the criteria, they could contact the point person at SCDDSN state office.

Waiver participant communication. Communication with waiver participants who live and/or work in the affected settings will happen in two stages. First, SCDHHS in partnership with SCDDSN will create a pre-recorded webinar presentation that gives an overview of the process, who participants (and/or their families) can contact if they have questions about the process, and how they can provide feedback on the settings to the Review Team. This webinar will be posted on the SCDHHS HCBS website and linked from the SCDDSN website. The information to access the webinar will be sent to providers who have settings subject to state level review and will be instructed to share the presentation with the affected waiver participants.

Second, waiver participants who live and/or work in the affected settings will be sent letters about the process. The letter will explain what the process is about and that their input and feedback on their experiences in the setting where they live and/or work is key for this review. Waiver participants will be informed that someone will come to talk to them to get their honest feedback, and that participating in the process is not mandatory, though strongly encouraged. Included in the letter will be a link to the pre-recorded presentation explaining the process as well. Waiver participants will also be informed that if they do not wish to speak with the QIO staff member that will be on site to ask them about their experiences, they can submit any feedback they wish directly to the Review Team for consideration. While the onsite interviews are not announced, we anticipate those letters being sent out approximately two weeks in advance of that visit.

Category 2 Settings Review. For settings submitted under this category, they will be reviewed as follows. Documentation and evidence to be compiled for review of these settings includes:

- Independent site visit settings assessment
- Photographs of setting
- HCBS CAP. If onsite technical assistance will be provided to a setting to assist in that setting's CAP completion, data/information gathered from the onsite visit will be used for this review
- Recent (recent defined as FY2019) or upcoming (upcoming defined as no later than FY2020) QIO review
    - If a recent review is available within the specified timeframe, but it is not helpful to the review, the Review Team can choose to wait for an upcoming review to aid setting review or conduct a site visit
- Current residential/day observation
- Any documentation demonstrating how participants/residents are integrated into their community, how the setting supports access for the participants/residents into their community, and how the setting supports participants/residents consistent with their person-centered service plans (see suggested documentation list here)
    - The setting provider will need to submit this documentation to the Review Team. The provider will be notified in advance of this process to facilitate evidence gathering.

Once all documentation and evidence is compiled, the Review Team will meet to do a desk review of all the evidence on the setting. If no site visit was done for the setting being reviewed, the Review Team will determine if one is needed based on provided evidence. If it is determined that a site visit is needed, then that setting's review will be put on hold until a site visit is complete and that resulting documentation provided to the Review Team. If it is determined that a site visit is not needed, the Review Team will continue with review and

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determination. Results of a residential/day observation must always be provided as part of a setting's review.

The Review Team will then utilize the rubric to determine if the setting overcomes the presumption that the setting has qualities of an institution and currently is or can be compliant with HCBS requirements. If the Review Team determines that the setting does overcome the presumption, that setting will be submitted to CMS for heightened scrutiny review with a summary of how the setting has or will overcome the presumption and how the state will monitor that setting's remediation to compliance.

If the Review Team determines that the setting does not overcome the presumption that it has qualities of an institution based on the evidence provided, there are two options moving forward.

1. The Review Team may see a need for further remediation at the setting. The provider of that setting will receive technical assistance with specific feedback from Review Team about areas to remediate. The Review Team will provide a timeline for that remediation and for the provider to submit additional documentation based on the level of remediation needed. Once those specific areas have been remediated, the provider can submit evidence to support that remediation to the Review Team for a second review of the setting.
2. The Review Team may determine that either after initial review or additional remediation that the setting did not overcome the presumption that it has qualities of an institution. If so, the setting will be removed from providing waiver services. The provider will be notified of this determination and SCDDSN will start the transition process for waiver participants in the setting per the procedures detailed on pages 66-69 for SCDDSN settings.

Category 3 Settings Review. For settings submitted under this category, they will be reviewed as follows based on their sub-group described in the introduction of this section. An onsite visit is required for all settings in this category. Settings receiving onsite technical assistance for CAP completion will not need a separate, additional site visit. Settings not receiving onsite technical assistance will utilize a recent (recent defined as FY2019) or upcoming (upcoming defined as no later than FY2020) QIO review. Other documentation and evidence to be compiled for review of these settings includes:

- Independent site visit settings assessment
- Photographs of setting
- HCBS CAP
- Current residential/day observation
- Any documentation demonstrating how participants/residents are integrated into their community, how the setting supports access for the participants/residents into their

community, and how the setting supports participants/residents consistent with their person-centered service plans (see suggested documentation list here)

- The setting provider will need to submit this documentation to the Review Team. The provider will be notified in advance of this process to facilitate evidence gathering.

Once all documentation and evidence is compiled, the Review Team will meet to do a desk review of all the evidence on the setting. The Review Team will utilize the rubric to determine if the setting overcomes the presumption that the setting has qualities of an institution, specifically the effect of isolating waiver participants from the broader community, and currently is or can be compliant with HCBS requirements. If the Review Team determines that the setting does overcome the presumption, that setting will be submitted to CMS for heightened scrutiny review with a summary of how the setting has or will overcome the presumption and how the state will monitor that setting's remediation to compliance.

If the Review Team determines that the setting does not overcome the presumption that it has qualities of an institution and has the effect of isolating waiver participants from the broader community based on the evidence provided, there are two options moving forward.

1. The Review Team may see a need for further remediation at the setting. The provider of that setting will receive technical assistance with specific feedback from Review Team about areas to remediate. The Review Team will provide a timeline for that remediation and for the provider to submit additional documentation based on the level of remediation needed. Once those specific areas have been remediated, the provider can submit evidence to support that remediation to the Review Team for a second review of the setting.
2. The Review Team may determine that either after initial review or additional remediation that the setting did not overcome the presumption that it has qualities of an institution. If so, the setting will be removed from providing waiver services. The provider will be notified of this determination and SCDDSN will start the transition process for waiver participants in the setting per the procedures detailed on pages 66-69 for SCDDSN settings.

Communication of state level review outcomes. Once the review of a setting is complete, the provider of the setting and the waiver participants who live and/or work there will be notified. If the setting will be submitted to CMS for heightened scrutiny review or will be included in the Statewide Transition Plan on the list of Category 3 settings that will be compliant by July 1, 2020, the communication to the provider and the waiver participants will state that outcome and provide information about the public notice process, how they can submit any additional information in that process, and the general steps of the CMS heightened scrutiny review.

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If the setting will not be submitted to CMS for heightened scrutiny review and will not continue as a waiver setting, the communication to the provider and the waiver participants will state that outcome and provide information about how participants will need to transition to a new setting or explore alternative services that would provide similar supports to meet their needs. Waiver participants will be transitioned to new settings per the procedures detailed on pages 66-69 for SCDDSN settings.

5.7.3 Public notice and comment. After the determinations are made, SCDHHS will publish the following lists of settings per CMS guidance issued March 22, 2019[24]:

- Settings that the state believes overcome their presumed institutional nature and a summary of how each setting will do so for CMS heightened scrutiny review.
- Settings that the state believes have overcome their presumed institutional nature and demonstrated compliance with HCBS settings criteria by July 1, 2020. These settings will not be submitted for CMS heightened scrutiny review but, CMS may review these settings and they are available for public comment, per CMS guidance issued March 22, 2019. Information supporting remediation for these settings is available upon request.
- Settings the state has determined cannot overcome their presumed institutional nature and will not receive Medicaid funding for HCBS after the transition period.

These lists of settings will be added as appendices to this document for public review and comment.

- As indicated in Section 5.7.1 above, no ADHC settings will be submitted to CMS for Heightened Scrutiny review. The results of the state level review process are provided above.
- SCDHHS anticipates determinations for SCDDSN settings will be made no later than June 1, 2020. Settings should then be published for public notice no later than Sept. 14, 2020. SCDHHS may publish settings for public notice prior to this date if determinations have been made.

SCDHHS will solicit comments from the public, including beneficiaries and/or personal representatives of beneficiaries, as to the qualities of each of these settings. The public will be able to suggest the addition of any setting to the list if a member of the public determines it may meet the definition of a setting that has institutional qualities that isolate individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. SCDHHS will follow the processes described in Section 5.7.2 on any setting that is submitted. SCDHHS will take public comment under consideration, but ultimately any determination as to what settings SCDHHS will submit to CMS for its review, what settings will

[24] See questions 4 (page 2-3) and question 8 (pages 6-7)

not need to be submitted to CMS for review, and what settings will no longer be able to provide HCBS after March 17, 2022, will be made by SCDHHS.

5.7.4 Submission to CMS for Heightened Scrutiny Review. After the public notice and comment period on the Statewide Transition Plan with the included list of settings as described above in Section 5.7.3, SCDHHS will submit a final list of settings as described above in Section 5.7.3, including those settings for CMS Heightened Scrutiny Review. SCDHHS will submit the Statewide Transition Plan with these lists no later than Oct. 30, 2020, and will follow the public notice protocol described above.

For any setting that is not home and community-based and remedial actions are not sufficient enough to make the setting compliant with the home and community-based regulations, appropriate action will be taken by SCDHHS to insure continuity of care for any current waiver participants receiving home and community-based services in the setting. Procedures for participant relocation will be followed as outlined in the "Relocation of Waiver participants" section above (page 65).

6 Conclusion

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

Kelly.eifert@scdhhs.gov

or

Long Term Living and Behavioral Health
ATTN: Kelly Eifert, Ph.D.
South Carolina Department Health and Human Services
P.O. Box 8206
Columbia, South Carolina 29202-8206

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Appendix A-1
Summary of the Public Meetings and Comments for the South Carolina Department of Health and Human Services HCBS Statewide Transition Plan

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

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

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

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

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

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

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

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

Assessment of Settings

- Identification of all Home and Community-Based settings.
- Identification of any HCB settings that might be subject to the heightened scrutiny process.
- Distribution of self-assessment tool to providers for completion.

- Review of individual self-assessments; based on the results SCDHHS will provide individualized responses to providers on each setting.
- Site visits of HCBS settings will be conducted by SCDHHS after self-assessments are completed.
- Action Plans will be developed by providers and be approved by SCDHHS to bring settings into compliance with the HCBS rule.

Communication and Outreach

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

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

Summary of comments and clarifications February 2015

1. Systems Policies and Assessments

   Comments/Questions

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

2. Facilities and Assessments

   Comments/Questions

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

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

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

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

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

Comments/Questions

- How are we determining that Freedom of Choice is provided and understood?
    - This will most likely be addressed through proper training for case managers and education for beneficiaries and families.
- Most importantly, Person Centered Planning should be the basis of all plans. Supported Decision Making needs to be at the heart of this as well.
- I know much of the emphasis is on environmental issues pertaining to the physical layout of programs. I know the idea of smaller group settings is something to strive for, but the financial resources to do some of the necessary changes may be huge and difficult to achieve. I would suggest that a key focus needs to be on the issue of choice and promoting individualized services. Even in larger group settings choice and individualized services can be achieved. I

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don't want to see us (providers) using environmental factors as an excuse for not promoting the person centered services. Please make sure that you strengthen the notion of choice and individualized services in your plan.
    - We agree with the emphasis on choice for beneficiaries and will make sure to address it as SCDHHS works to examine all aspects of coming into compliance with the HCBS rule.
- The transition plan should include development of protocols for the person-centered plan and criteria for individuals who provide the assessments used in developing the plan. It should include a timeline for training participants and providers about the goals of the Final Rule and the person-centered planning process.
    - The guidelines regarding the waiver transition plans indicate that they must only address the HCBS rule settings requirements and how those will be assessed and brought into compliance. We do appreciate the commenter's suggestion and will take it under advisement as SCDHHS works to examine all aspects of coming into compliance with the HCBS rule.
- As part of the transition plan to improve meaningful choice for participants, P&A suggests review of the National Core Indicators Data on choice of home and work.
    - This review will be part of SCDHHS' work to examine all aspects of coming into compliance with the HCBS rule.
- The transition plan should include a process to clarify the appeals process for applicants and recipients of SCDDSN services and members of HMOs. SCDHHS should amend its fair hearing regulation to clarify what it covers and provide an adequate cadre of professional hearing officers to ensure thorough, fair and expeditious review of all decisions affecting Medicaid recipients.
    - Review of all processes related to HCB services will be part of the system assessment of policies as addressed in the plan.
- How much influence/impact will families have in this new Person-centered planning world if the beneficiary wants something else?
    - The case manager acts as a mediator to resolve disputes in those instances.
- Please explain conflict free case management.
    - To separate service coordination from the same entity that provides services to promote and ensure freedom of choice for the beneficiary.
- For conflict-free case management, what does the transition plan look like? Do individual providers or the state have to deal?
    - Yes, it will be part of SCDHHS' work to examine all aspects of coming into compliance with the HCBS rule.
- Are we looking at other service arenas where conflict free case management already exists?
    - Yes.
- Do you have a vision for Conflict Free Case Management?
    - It is being developed. There will be a sub-group created to review what we do now and what other states are doing, and to develop some potential models.
- Will case manager positions be cut?
    - It is unclear at this time, but SCDHHS' ultimate goal is to provide conflict free case management in compliance with the HCBS standards.

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4. Other comments

Comments/Questions

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

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

system for investigating abuse/neglect/exploitation of vulnerable adults. Data from SLED show that many cases occur in CTH IIs. As individuals move into smaller facilities there will be a need to determine the best way to protect them. P&A believes that procedures to protect individuals in the community are an essential part of person-centered planning and SCDHHS quality control. The transition plan should also consider development of an adult abuse registry as a means of protecting waiver participants.

  - Review of all processes related to HCB services will be part of the system assessment of policies.

- There were comments on how SCDHHS needs to look at how we can share resources between agencies.

5. Response

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

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

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

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

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

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

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

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

Communication and outreach

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

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

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

Assessment of settings

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

Heightened Scrutiny

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

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

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

Overall revisions

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

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

Summary of comments and clarifications February 2016

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

1. Systems Policies and Assessments

   Comments/Questions

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

2. Facilities and Assessments

   Comments/Questions

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

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

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

3. Other comments

Comments/Questions

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

We assume that was the commenter's intent. HCBS waiver participants cannot also be enrolled with Medicaid MCO's; they are typically eligible for fee-for-service state plan services instead. It is also important to note that MCO's and Medicaid waivers require appeal processes for their enrollees as stated in 42 CFR 438.400(a)(3) and 42 CFR431 Subpart E respectively. However, to address some of the commenter's concerns, SCDHHS will be updating SC Regulations 126-150 through 126-158, which address SCDHHS appeals, as appropriate this calendar year (2016). Additionally, a new "*Appeals and Hearings" webpage* was created as a resource for all Medicaid recipients.

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

Appendix A-3
Summary of the Public Notice and Comments for the South Carolina Department of Health and Human Services HCBS Statewide Transition Plan

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

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

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

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

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

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

Communication and outreach, renumbered section 2

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

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

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

Assessment of settings, renumbered section 4

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

Heightened Scrutiny, renumbered section 5

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

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

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

Overall revisions

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

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

Summary of comments and clarifications October 2016

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

1. Communication and Outreach

   Comments/Questions

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

the accompanying transcript (https://msp.scdhhs.gov/hcbs/site-page/presentations). The link to the presentation was posted in the webinar chat box during the webinar as that was easier for participants to access immediately.

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

2. Systems Policies and Assessments

Comments/Questions

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

agency. We will share these concerns with SCDDSN as we (SCDHHS) do not have authority to tell another state agency to promulgate regulations.

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

3. Facilities and Assessments

Comments/Questions

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

- Where can I get information on the 'certified property manager' required on page 36? This was not a term I was familiar with. Can you point me to some materials? (Webinar follow up question)
  - The link to the South Carolina Code of Laws, Title 40, Chapter 57, is below. https://urldefense.proofpoint.com/v2/url?u=http-3A__www.scstatehouse.gov_code_t40c057.php&d=DQICAg&c=l2yuVHfpC_9lAv0gltv6ZQ&r=-5IkRZLUI8twNLKgryBah2C6Ehg7XYuDutLl2EEF2Es&m=CvkEK7DWwo1Hbd_-qkLxCucJXticgPivRD8N1ZIeJ9s&s=bcKRkS1FMgZCTHZpPqQPO4RftDSTEcqK_Tsyfv2WMHA&e=
    Property manager is defined here.
- When everything is complete (referring to site visits), and it is determined that a particular [provider-owned or controlled] home does not meet the requirements, who is involved in coming up with an action plan to address that? Is it just SCDHHS? The provider and SCDHHS? Is SCDDSN included?
  - All three entities are included. We [SCDHHS] will include the appropriate program areas (and in this case, Community Options and also SCDDSN) in all communication regarding settings. Getting a setting to compliance will not work if all parties are not involved and included in the process.
- If a provider has some homes that are next to each other, or maybe on the same street, how many is "too many"? What is the guidance?
  - There is a not a magic number that would automatically indicate a home (or homes) would go through heightened scrutiny, or our Settings Quality Review process. We will make sure to have the context of the setting - meaning, where is it located within the broader community? What do the lives of the persons who live there look like? We will take all pieces of information to make a determination of compliance (or a setting that can get to compliance), not just rely on one single piece of information.
- What about if you have 3 or 4 waiver participants in an apartment complex, and one of them chooses an apartment that is next to their friend (who is also a waiver participant)? Is their choice taken into consideration?
  - Yes. Again, we will look at the situation, the location, in full context. Many of us like to live near friends, so it does not seem unusual that a waiver participant would want to live near friends.
- I want to share a comment that came from a presentation I did to our Board of Directors on the Statewide Transition Plan. The concern that seemed to rise to the top for them was about the issue of a waiver participant being able to lock their door (to their room). The board members had concerns about that as it relates to a participant's safety if something were to happen to the participant and their room door was locked. They wanted to be sure a plan was in place to plan for that. In general they were nervous about keys.
  - Thank you for that comment. It is important to be person-centered first and foremost and to not make any wholesale decisions on who can and cannot have keys. Start with the presumption that everyone can have a key and lock their door,

and then work through issues individually as they arise. It is making sure that no one has a right taken away without properly exploring all other least restrictive alternatives, and vetting that through your Human Rights Committee, and documenting it thoroughly in the person's service plan.

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

4. Heightened Scrutiny

Comments/Questions

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

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

  The TAC report's recommendations state:

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

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

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

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

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

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

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

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

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

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

5. Other comments

Comments/Questions

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

Appendix A-4
Summary of the Public Notice and Comments for the South Carolina Department of Health and Human Services HCBS Statewide Transition Plan