

## AL Division of Developmental Disabilities ID Waiver Transition Plan for Ensuring HCBS Setting Compliance

**Background:** On March 17, 2014, Centers for Medicare and Medicaid Services (CMS) issued its Home and Community-Based Setting Final Rule. CMS had previously published two proposed rules (April 15, 2011 and May 3, 2012) and gathered public comment as it worked to establish basic guidelines that defined “community-based setting.” More than 2000 comments were received from states, providers, advocates, employers, insurers, associations, and other stakeholders.

**Intent of Final Rule:** To ensure that individuals receiving long-term services and supports through home and community-based services (HCBS) programs under the 1915 (c), 1915 (i), and 1915 (k), Medicaid authorities have required full access to benefits of community living and the opportunity to receive services in the most integrated setting that is appropriate.

Among many things the Final Rule does, some of the most important are: 1) establishes an outcome oriented definition that focuses on the nature and quality of individual’s experiences; 2) maximizes opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting; and 3) establishes requirements for the qualities of home and community-based settings.

**The Home and Community-Based Requirements:** The Home and Community-Based setting:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services
- 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 (with consideration being given to financial resources)
- Ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them
- Provides for, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city, or other designated entity.

Additionally, For Provider-Owned or Controlled Residential Settings, modifications to the requirements must be:

- Supported by specific assessed need

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- Justified in the person-centered service plan
- Documented in the person-centered service plan

Documentation in the person-centered service plan of modifications must include:

- Specific individualized assessed need
- Prior interventions and supports including less intrusive methods
- Description of condition proportionate to assessed need
- Ongoing data measure effectiveness of modification
- Established time limits form periodic review of modifications
- Individual informed consent
- Assurance that interventions and supports will not cause harm

**Transition Planning:** For new waivers, states must ensure that HCBS are only delivered in settings that meet the new requirements. For renewal and amendments to existing waivers submitted within a year of the effective date of the final rule (March 17, 2014):

- The state submits a plan in the renewal or amendment request detailing any actions necessary to achieve or document compliance with setting requirements for the specific waiver renewal or amendment
- Renewal or amendment approval will be contingent upon inclusion of an approved transition plan

**AL Division of Developmental Disabilities (DDD) Progress:** The DDD completed the comprehensive ID Waiver renewal and submitted it to AL Medicaid Agency at the beginning of June 2014. The proposed waiver renewal was posted to the Department's website for the 30 day public comment period. The posting of the waiver was discussed during the June 10<sup>th</sup> 2014 DD Sub-Committee (stakeholder advisory body) meeting and stakeholders were encouraged to review the waiver and submit comments. Public comments that met the 30 day close date were responded to promptly. During this time that the DDD began working on the Waiver Transition Plan. The Transition Plan outlined how the state was going to: develop a cross walk of HCBS regulations to the division's current regulations, conduct site assessments, ensure that a person-centered planning process is in place, de-conflict case management, ensure public comment, and remediate all sites that did not meet the new HCB Setting Final Rule. The Division's Waiver Transition Plan was posted on the Department's website and submitted along with the ID Waiver to CMS on July 2, 2014.

On August 12, 2014, the Associate Commissioner and AL Medicaid Agency participated in a CMS conference call that had both representatives from the regional CMS office as well as the Central Office CMS representatives. During this call CMS made it clear that the Waiver Transition Plan was not fully developed, as the division had not completed the site assessment for all certified providers, the plan did not provide results from the site assessment, and the plan did not specify target end dates for a number of items listed. Additionally, CMS asked that the sections regarding person-centered planning and de-conflicting case management be removed. Finally, CMS asked that the division “un-submit” the ID Waiver renewal until it could meet the Waiver Transition Plan requirements. CMS offered to extend the current ID Waiver while the division worked on completing the new Transition Plan.

On August 28, 2014, the division held a stakeholder workgroup meeting to review the Waiver Transition Plan, to make recommendations and to set timelines. Comments were collected and suggested start and end dates were discussed during the regular monthly DD Sub-Committee meeting held the following Tuesday, September 2, 2014.

It is these timelines, agreed upon during the DD Sub-Committee meeting that are now part of the revised Waiver Transition Plan that will be submitted to CMS.

**AL Division of Developmental Disabilities Next Steps:** One of the most critical steps in the Waiver Transition Plan is the identification of sites that are not in compliance with the CMS Final Rule. In order to accomplish this task, in a short period of time, the DDD developed a HCBS Checklist self-assessment tool which will be used by all certified providers of day and residential services. This checklist targets each of the elements in the CMS Regulation and provides probing questions to assist the provider in determining whether the regulation is currently being met or not. Provider assessments that fail to a particular regulatory requirement will require the provider to develop a Plan of Correction to come into compliance. Additionally, each DMH/DDD regional office will form a peer review committee which has the responsibility of conducting a sample of on-site reviews in each region.

Technical assistance will be offered through each regional office to assist providers that reveal failure to meet a portion or portions of the CMS Final Rule. Additionally, technical assistance will be provided to assist in Plan of Correction development if needed. Each site is expected to be in full compliance by January 1, 2018. If after this time any sites that do not meet full compliance will be provided targeted technical support by the DMH/DDD to bring the site into full compliance. No later than March 1, 2019, if the site remains out of compliance after targeted technical support, the DMH/DDD will discontinue funding the site per requirement of the CMS Final Rule.

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- 9/12/14: Information Sent to Providers from DMH/DD
- 9/15/14: Technical Assistance Webinar for HCB Setting Checklist
- 9/15/14 : Provider Self-Assessment
- 10/15/14: Provider Self-Assessment Complete
- 10/30/14: Re-post Waiver Transition Plan for Public 30 Day Comment Period
- 11/21/14: Site Assessment Analysis Complete
- 12/05/14: If necessary, resubmit ID Waiver Renewal (see note below)
- 3/1/15: Site Plan of Correction Due and Individual Site Remediation Begins
- 3/15/15: Submit ID Waiver Amendment
- 1/18/18: State Remediation Complete
- 1/18/18: Certification Assumes Responsibilities for Ensuring Compliance
- 3/1/19: No Later Than Date for DMH/DDD to Discontinue Funding for Sites out of Compliance

PLEASE NOTE: In the future should the assessment process lead to significant actions not included in this plan, we will submit an amendment.

The HCBS Checklist self-assessment tool is developed and will be available for providers to use on September 15, 2014. The assessment tool itself has been added to the ADIDIS system as a provider assessment. There will be a user guide and video instructions that give a step-by-step tutorial of how to enter the data into the system. This information will be posted on the Department's website; Division of Developmental Disabilities webpage.

**Communication:** As the Division of Developmental Disabilities moves forward with the implementation of the Waiver Transition Plan please look for communication to come in various forms. Webinars, webpage postings ([http://www.mh.alabama.gov/IDCP/?sm=c\\_b](http://www.mh.alabama.gov/IDCP/?sm=c_b)), meetings, and memos will all be used to keep everyone informed.

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Section 1: Tools and Instruments for Site Analysis							
Action Item	Description	Purpose	Start	End	Source	Players	Progress
HCBS Crosswalk	The Division of DD will develop a cross walk between the CMS Regulations and the AL Administrative Code.	Similar to Long Term Care Survey interpretive guidelines, the crosswalk will identify the Federal Regulation, the corresponding AL Administrative Code, and Guidance to Surveyor.	4/21/14	11/21/14	CMS HCBS Final Rule (March 17, 2014), AL Administrative Code	DMH/DDD	Complete
Comprehensive Matrix	The Division of DD will develop a comprehensive matrix between the CMS Regulations and the AL Administrative Code, Personal Outcome Measures survey, National Core Indicator survey, and Behavior Services Procedural Guidelines.	Working with CQL, the comprehensive matrix will identify where the Division of DD, through its various surveying instruments and regulations, ensures the characteristics of Medicaid Home and Community Based Services are present.	4/21/14	4/29/14	CMS HCBS Final Rule (March 17, 2014), AL Administrative Code: 580-5-33; POM ® Data, NCI, BSPG	DMH/DDD; CQL	Complete
Individual Site HCBS Provider Self Assessment	The Division of DD will develop a checklist to identify HCBS sites that meet CMS HCB Setting Regulations.	The purpose of the Individual Site HCBS Provider Self Assessment is to provide a tool that can easily be completed by certified providers in order to whether the characteristics of Medicaid Home and Community Based Services are present.	8/14/14	9/5/14	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014)	DMH/DDD, 5 Regional Community Offices, DMH-DD, Stakeholders	Complete
Proposal to revise AL Administrative Code	The Division of DD will present proposed changes to the AL Administrative Code to stakeholders and summarize any provider certification standards that will be modified as a result of changes to code.	The purpose of presenting proposed changes to stakeholders is to ensure adequate public comment and notification prior to submitting the revised regulation changes. Changes to the AL Administrative Code will be based on any area of the HCBS Final Rule that is not adequately targeted in the current regulations or, based on assessment results, appear to be an area of weakness. A summary of provider standards that have been added or revised and therefore have an impact on the certification process will be provided to stakeholders.	12/1/14	Ongoing	AL Administrative Code; CMS HCBS Final Rule (March 17, 2014)	DMH/DDD, 5 Regional Community Offices, DMH-DD, Stakeholders	In Process
Submission of revised AL Administrative Code	The Division of DD will submit vetted revisions to the AL Administrative Code to begin codification process.	The purpose of submitting vetted revisions to the AL Administrative Code is to align the DDD's regulations and certification standards with the CMS HCBS Final Rule.	12/1/14	9/30/15	AL Administrative Code; CMS HCBS Final Rule (March 17, 2014)	DMH/DDD, Associate Commissioner, Legal, Life Safety, Legislative Admin.	In Process

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						Code Office, Commissioner	
Section 2: Individual HCBS Site Assessment							
Action Item	Description	Purpose	Start	End	Source	Players	Progress
Informational Memo	The Division of DD will develop a Provider Memo detailing the CMS Final Rule defining HCB settings, site review process, deadlines for compliances, technical assistance available, and sanction process.	The purpose of developing an informational memo to providers is to ensure that all provider stakeholders have an understanding of the HCB setting requirements and all have the same information. This memo will outline the review process, deadlines as specified in the transition plan, process for requesting technical assistance, and outline the process for issuing sanctions in the event of non-compliance.	9/2/14	9/12/14	CMS Final Rule, AL Administrative Code	5 Regional Community Offices, DMH/DDD	Complete
Site of Service: Qualities of an Institution	The Division of DD will identify sites of service where the site has the quality of an institution.	The purpose of assessing all sites and identifying those that have the quality of an institution is to either transition of individuals to a site that meets CMS/HCBS Regulation or remediate the existing site to meet CMS/HCBS Regulation.	9/15/14	10/15/14	Individual Site HCBS Provider Self Assessment	5 Regional Community Offices, DMH/DDD, Providers	Complete
Site of Service: Residential	The Division of DD will identify residential sites of service where the site has the quality of a home and community-based setting.	The purpose of assessing all sites is to identify those that have the quality of HCBS. These sites will continue to be reviewed through the on-going certification process, but will not require action.	9/15/14	10/15/14	Individual Site HCBS Provider Self Assessment	5 Regional Community Offices, DMH/DDD, Providers	Complete
Site of Service: 6 Person or More Residential	The Division of DD will identify all sites that provide services in a residential facility (home) with more than 6 people residing in the residence and are not a certified medical or behavior health home.	The purpose of assessing these target sites is to identify those that do not have the quality of HCBS. Once identified, develop a plan, with stakeholder input, for either the transition of individuals to a site that meets CMS Regulation or reconfigure the existing site to meet CMS Regulation.	9/15/14	10/15/14	Individual Site HCBS Provider Self Assessment	5 Regional Community Offices, DMH/DDD, Providers	Complete
Site of Service: HUD Home	The Division will identify all HUD homes.	The purpose of identifying all HUD homes is to work with local housing authorities on the possible sale or lease transfer of these homes that require full occupancy and 40 year mortgage.	9/15/14	10/15/14	Provider with HUD mortgage agreements, HUD regulations,	5 Regional Community Offices, DMH/DDD, Providers, local housing authority	Complete
Site of Service: Day Habilitation	Using the Individual Site HCBS Checklist, the Division of DD will identify sites of service where the Day Habilitation site fails to meet the HCBS CMS Regulation.	The purpose of assessing these target sites is to identify those that do not have the quality of HCBS. Once identified, develop a plan, with stakeholder input, for either the transition of individuals to a site that meets CMS Regulation or restructure the Day Habilitation program to meet CMS Regulation.	9/15/14	10/15/14	Individual Site HCBS Provider Self Assessment	5 Regional Community Offices, DMH/DDD, Providers	Complete

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Site of Service: Pre-vocation	Using the Individual Site HCBS Checklist, the Division of DD will identify sites of service where the Pre-vocation site fails to meet the HCBS CMS Regulation.	The purpose of assessing these target sites is to identify those that do not have the quality of HCBS. Once identified, develop a plan, with stakeholder input, for either the transition of individuals to a site that meets CMS Regulation or restructure the Pre-vocation program to meet CMS Regulation.	9/15/14	10/15/14	Individual Site HCBS Provider Self Assessment	5 Regional Community Offices, DMH/DDD, Providers	Complete
Site of Service: Employment	Using the Individual Site HCBS Checklist, the Division of DD will identify sites of service where the Supported Employment site fails to meet the HCBS CMS Regulation.	The purpose of assessing these target sites is to identify those that do not have the quality of HCBS. Once identified, develop a plan, with stakeholder input, for either the transition of individuals to a site that meets CMS Regulation or restructure the Supported Employment program to meet CMS Regulation.	9/15/14	10/15/14	Individual Site HCBS Provider Self Assessment	5 Regional Community Offices, DMH/DDD, Providers	Complete
<b>Section 3: Individual Site Analysis</b>							
Action Item	Description	Purpose	Start	End	Source	Players	Progress
Regional Office Peer Review	Each Regional Office will review individual site assessments and conduct a peer review if necessary.	The purpose of each Regional Office reviewing the individual site results from each provider is to ensure integrity in the self-assessment process. The Regional Office monitors all providers and has the best knowledge of programs and providers. If the Regional Office wishes to follow up on a site then a peer review will be conducted. The peer review should be comprised of: Regional Office staff, provider representative, self-advocate, family member, and advocate.	10/16/14	11/14/14	Individual Site HCBS Checklist	5 Regional Community Offices, Peer Review Committee	Complete
Regional Office Findings	Each Regional Office will submit findings to Central Office.	The purpose of each Regional Office submitting their findings to the Central Office is to ensure all evidence has been provided before the state analysis.	10/30/14	11/14/14	Individual Site HCBS Checklist, Peer Review Results	5 Regional Community Offices	Complete
Site Analysis Findings Report	The Division of DD will review site assessment findings, based on the Individual Site HCBS Provider Self Assessment and the Regional Office Peer Reviews, and develop a statewide report.	The purpose of the Division reviewing site assessment findings, along with the Regional Office Peer Reviews, is to report on areas of weakness, as well as, areas that are out of compliance and do not meet the characteristics of HCB setting.	11/14/14	11/21/14	Individual Site HCBS Checklist, Peer Review Results	5 Regional Community Offices, DMH/DDD	Complete
New Provider Site Self Assessment	The Division of DD will begin requiring all new providers to conduct a self-assessment within 6 months of providing services to a waiver participant.	The purpose of the Division of DD requiring all new providers submit a site self-assessment within 6 months of providing services to a waiver participant is to ensure compliance with HCS setting requirements.	11/24/14	Ongoing	Individual Site HCBS Checklist	5 Regional Community Offices, DMH/DDD	In Process
<b>Section 4: Remediation</b>							
Action Item	Description	Purpose	Start	End	Source	Players	Progress

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Technical Assistance	The Division of DD will provide technical assistance to any provider requesting additional support	The purpose of the Division providing technical assistance to providers is to ensure that the CMS Rule is being interpreted the same and the provider is implementing any necessary changes to come into compliance.	10/20/14	Ongoing	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	5 Regional Community Offices, DMH/DDD; third party consultants	In Process
Plan of Correction Review	The Division of DD will review all Plans of Correction to ensure they meet the necessary requirements based on the HCBS Rule.	The purpose of reviewing all Plans of Correction is to ensure compliance as well as capture plan elements that need to be tracked and implemented as part of the individual remediation and DDD Certification process.	11/21/14	3/1/15	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	5 Regional Community Offices, Certification, DMH/DDD	In Process
Individual Remediation	The Division of DD will require remediation for all providers that fail the HCBS site assessment.	The purpose of requiring remediation for any provider that is found to be non-compliant is to ensure that CMS Final Rule requirements are being met throughout the state. If remediation is necessary the Division will require a Plan of Correction and will ensure remediation strategies are implemented through follow-up processes.	3/1/15	1/1/17	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	5 Regional Community Offices, DMH/DDD	Not Started
Exclusions for Future Sites	The Division of DD will not certify any new sites (expansion of existing provider agencies) that do not meet the basic HCB setting requirements.	The purpose of not certifying existing providers that do not meet the HCB setting requirements is to limit the number of providers/sites that will need to be remediated and/or have sanctions again them due to non-compliance.	1/1/17	Ongoing	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	5 Regional Community Offices, DMH/DDD; AL Medicaid Agency	In Process
State Remediation	The provider agency will no longer receive FFP for being out of	The Division of DD will afford providers ample opportunities to come into compliance with the CMS Final	1/1/17	1/1/18	AL Administrative	5 Regional Community	In Process

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Complete: Provider Sanctions	compliance with the CMS Home and Community Based Setting requirements.	Rule requirements. If a provider fails to comply then the Division must enforce sanctions.			ve Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	Offices, DMH/DDD; AL Medicaid Agency	
Certification Process	The certification process will assume responsibility for ensuring sites meet HCB setting regulations.	The current certification process is built around ensuring each site meets the characteristics of home and community based setting. With little changes to the current AL Administrative Code, the DMH/DDD certification process is the best method for ensuring full compliance.	1/1/18	Ongoing	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014)	5 Regional Community Offices, Certification, DMH/DDD	Not Started
<b>Section 5: Public Comment and Waiver Renewal Submission</b>							
Action Item	Description	Purpose	Start	End	Source	Players	Progress
Public Comment	The Division of DD will complete tasks outlined in this waiver transition plan. Once complete a Transition Plan will be developed and will be released for public comment.	The purpose of releasing the Transition Plan for public comment is to, once again, ensure that all stakeholders are aware of the Division's process for ensuring the CMS HCBS Regulations are being met. There will be a 30 day comment period. After the 30 day comment period, DDD will compile the comments, respond as appropriate, modify as necessary, and submit to CMS along with an amendment to the ID Waiver.	10/30/14	11/28/14	AL Administrative Code: 580-5-33; CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	5 Regional Community Offices, DMH/DDD; AL Medicaid Agency; Self Advocate Associations, ADAP	Complete
ID Waiver Renewal Resubmission	The Division of DD will resubmit the renewal request to CMS.	The purpose of resubmitting the ID Waiver Renewal is to ensure continued funding for the 5260 recipients served on this comprehensive HCBS waiver.	8/12/14	12/05/14	HCBS Waiver Portal; Public Comments; ID Waiver Transition Plan	DMH/DDD; AL Medicaid Agency	Complete
If necessary: ID Waiver Amendment Submission	In the future, should the assessment process lead to significant actions not included in this plan, the Division of DD will submit a waiver amendment.	The purpose of submitting the ID Waiver Amendment is to allow for compilation of all public comment, make any necessary revisions to the ID Waiver including milestones and deliverables outlined in this plan, and identify remediation strategies for providers not in compliance with HCBS setting requirements	03/1/15	03/15/15	Public Comments; ID Waiver Transition Plan; POC from providers	DMH/DDD; 5 Regional Offices; Providers; AL Medicaid Agency	Not Started
<b>Section 6: Medicaid Agency Oversight &amp; Ongoing Monitoring/Oversight of Compliance</b>							

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Action Item	Description	Purpose	Start	End	Source	Players	Progress
Validated self-assessment data is compiled and analyzed	Initial assessment data compared to validation data. State compiles the self-assessment data to determine those HCBS services providers who meet, do not meet, and could come into compliance with HCBS guidance.	The purpose of the State compiling and analyzing the assessment data is to ensure that providers are compliant with the characteristics of the HCBS settings. The data will identify those that do not meet or not in compliance with HCBS guidance. These providers will have to submit a Plan of Correction and a follow-up will be done to ensure they come into compliance.	01/15/15	Ongoing	CMS HCBS Final Rule (March 17, 2014); Individual Site HCBS Checklist	DMH/DDD; AL Medicaid Agency;	In Process
Ongoing Monitoring of Compliance	State will incorporate HCBS requirements into policy and consumer satisfaction surveys to identify areas of non-compliance including the following: who will monitor, responsibility of monitoring, staffing levels required to perform monitoring functions, training required for auditors and monitors, training process for handling concerns and other issues of non-compliance.	The purpose of incorporating HCBS requirements into policy and consumer satisfaction surveys is to ensure that settings meet the HCBS Final Rule and to address any issue of concern and other areas of non-compliance. The consumer satisfaction surveys will be revised to incorporate questions that specifically address HCBS settings.	04/15/15	Ongoing	CMS HCBS Final Rule (March 17, 2014); AL Administrative Code	DMH/DDD; AL Medicaid Agency; Providers	Not Started