

STATE OF NEW JERSEY

Statewide Transition Plan

Addendum #3

January 11, 2023

The Statewide Transition Plan outlines to the Centers for Medicare & Medicaid Services (CMS) how New Jersey will meet compliance with federal Home and Community Based Settings regulations by 2023. The Statewide Transition Plan sets forth the determination of New Jersey's compliance with the regulation requirements for home and community-based settings and person-centered planning at 42 CFR §441.301, 42 CFR §441.710 and 42 CFR §441.530.

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Introduction

In response to [New Jersey's Statewide Transition Plan \(STP\) submission](#), the Centers for Medicare & Medicaid Services (CMS) confirmed initial approval of the plan and sent a [communication](#) to the New Jersey Department of Human Services that outlined the approval and provided feedback requesting supplemental information to its [Statewide Transition Plan Addendum #2](#). This third addendum responds to the CMS feedback and provides the remaining information required for final approval.

Since initial submission of the STP, there have been some changes on both the Federal and State level that have impacted this addendum. A summary of these changes is as follows:

Federal Changes

- [CMS announced the opportunity](#) for states to submit time-limited corrective action plans (CAPS) to authorize additional time to achieve compliance with settings criteria that are directly impacted by the public health emergency.
- CMS issued a [State Medicaid Director Letter](#) on July 14, 2020 indicating that the transition period for compliance with home and community based settings criteria is extended until March 17, 2023.
- CMS issued [additional guidance](#) on March 22, 2019 related to the Heightened Scrutiny aspect of the HCBS Final Rule.

State Changes

- The Division of Developmental Disabilities (DDD) no longer operates its Community Care Waiver under 1915c authority. In November of 2017, the authority was moved to the 1115 Comprehensive Medicaid Waiver.
- DDD has substantially shifted its service delivery system to a Fee-for-Service reimbursement model.
- DDD changed the method by which it funds housing for those individuals it serves, from a contract based reimbursement model to one that more closely comports with programs operated by the New Jersey Department of Community Affairs. This necessitated the migration to a lease, residency agreement, or other written agreement that provides individuals protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law.

Summary of Site-Specific Assessments and Aggregate Outcomes

The New Jersey Department of Human Services (DHS) conducted site-specific assessments and analysis in 2015. The results of those evaluations for Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs can be found in [Appendix B](#). The results for the DDD Residential Assessment can be found in [Appendix E](#) and the non-residential assessment can be found in [Appendix G](#).

Through efforts to ensure HCBS compliance, the DHS reviewed the 2015 surveys and in 2021 determined it to be necessary to issue updated surveys to HCBS settings to ensure that remediation efforts would be supported by the most current information.

Based on a review of the 2015 site specific data, 2021 updated assessments, and verification reviews, it was found that 87% of NJ HCBS settings demonstrate full compliance with the settings rule. 11% of sites are not currently but will achieve compliance with modifications, and 2% of settings were presumptively institutional requiring a heightened scrutiny review.

Remediation Strategies and Timeline

Remediation efforts commenced at the time of the initial STP submission. Further details on the system remediation efforts are found in the [Statewide Transition Plan Crosswalk](#). Systemic remediation efforts, including regulatory and policy updates are projected to be completed by December 2022. These strategies include promulgating new rules and updated regulations for Assisted Living Residences, Comprehensive Personal Care Homes, Adult Family Care Homes, Community Residences for Individuals with Developmental Disabilities, Community Care Residences, and Community Residences for Persons with Head Injuries.

Setting specific remediation efforts were supported by the updated assessment data and verification reviews conducted across all settings. The verification reviews were completed in September 2022 and the remediation for settings that demonstrated non-compliance are projected to be completed by December 2022.

In addition to regulatory and site specific remediation, the DHS has also met with each HCBS provider required to comply with the settings rule and have reviewed their programs, policies, and site specific characteristics to ensure there is a clear understanding of the settings requirements and what is needed to achieve and maintain compliance.

Identification of Sites Presumed Institutional and Communication with Beneficiaries

As defined by CMS, the three categories of settings that are presumed to have the qualities of an institution are:

1. Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient treatment;
2. Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution;

3. Any other settings that have the effect of isolating individuals receiving Medicaid home and community based services from the broader community of individuals not receiving Medicaid HCBS.

DHS completed reviews of Medicaid HCBS settings to determine which locations have the qualities of an institution. Settings that the State identified as non-compliant with the HCBS Settings Rule through a provider self-assessment evaluation and State review were required to cooperate with a Heightened Scrutiny assessment.

If a setting is presumed institutional and unable to achieve compliance by the March 2023 deadline, the provider and beneficiary will be notified of this finding. Both the provider and impacted beneficiary will be contacted by a State staff and will receive a written correspondence notifying them of the determination.

All notifications of non-compliant settings will be distributed to beneficiaries in December 2022. These notifications will include contact information for an assigned State staff who will provide options counseling to offer either an alternate service or discuss non-HCBS funding availability. Should an alternate provider be needed, the state assures that there will be no disruption in services to beneficiaries.

Ongoing Monitoring and Quality Assurance

DHS will ensure continued compliance with the HCBS Settings Final Rule by infusing its tenets and person centered practices throughout the service system.

Through systemic remediation activities, the State has updated regulations to incorporate HCBS requirements. By doing this, the respective licensing entities will monitor these requirements through their regular licensing reviews. Regulatory changes are further defined in the [system assessment remediation grid](#).

Various quality review measures and monitoring tools for HCBS beneficiaries across all setting types have been reviewed and updates have been identified. Examples of these include: use of monitoring tools for use by care managers and support coordinators; regulatory requirements for licensing inspection; and auditing tools utilized by State staff and Care Management Organizations.

Specialized trainings have been developed that are focused for individuals, families, and professionals. The availability of information and the infusion of HCBS into staff training requirements will support quality outcomes to support individuals in living the life they choose, and will support ongoing compliance with the settings rule.

Trainings and informational material will continue to be developed to ensure that people who receive HCBS understand their rights, options, and are supported to have full access to the community in the same manner as individuals who do not receive HCBS.

Response to CMS Feedback

New Jersey received initial approval for the Statewide Transition Plan on February 14, 2022. In the [communication](#) that granted initial approval, CMS provided feedback advising the state of what is needed for final approval and provided specific areas for which clarification is needed. This section outlines the feedback provided by CMS and the responses from the state to address this feedback.

CMS advised that in order to receive final approval, all STPs should include:

- *A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;*
- *Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2023);*
- *A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;*
- *A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings criteria by March 17, 2023; and*
- *A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.*

In addition to these requirements, CMS has requested feedback on the areas described below.

CMS Feedback on Public Comment: *New Jersey's most recent public comment period occurred in 2015. Prior to submission for final approval, the state should post the Statewide Transition Plan in its entirety including all amendments for public comment. The state's public notice should include two forms of notification, one of which may be electronic. Additionally, a summary of public comments received along with the state's responses should be included in the STP that is submitted to CMS for review. It should be noted in the STP when revisions are a result of public comments.*

a. New Jersey Response

In addition to the public comment period in 2015, New Jersey posted the updated STP in its entirety for public comment on October 3, 2022. This public notice included electronic posting and posting in newspapers throughout the state, including the Bergen Record, Trenton Times, Camden Courier Post, Atlantic City Press, and the Newark Star Ledger.

CMS feedback on Site-specific Assessment, Validation, and Classification of Results:

- *Individual, Privately-Owned Homes:* *In the New Jersey STP, the state may make the presumption that privately-owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive home and*

*community-based services also reside. A state will generally not be required to verify this presumption. However, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and the state determines that presumption is overcome, the state should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. **Note, with regard to settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual), these settings are considered provider-owned or -controlled settings and should be evaluated as such.***

a. New Jersey Response

The State has included settings where a beneficiary lives in a private residence owned by an unrelated caregiver who is paid for providing HCBS services in the site-specific assessment and validation activities. Programs that are operated in a private residences, such as Community Care Residences, are required to comply with the home and community based services final settings rule.

• **Group Settings:** *As a reminder, any setting in which individuals are clustered or grouped together for the purposes of receiving HCBS must be assessed and validated by the state for compliance with the rule. This includes all group residential and non-residential settings (including but not limited to prevocational services, group supported employment and group day habilitation activities). The state may presume that any setting where individualized services are being provided in typical community settings comport with the rule. **Please confirm that the STP accurately includes all group residential and non-residential settings.***

a. New Jersey Response

NJ has assessed and validated both residential and non-residential settings where individuals are receiving congregate (i.e. grouped together) HCBS. This includes:

- Licensed Assisted Living Residences (ALR), Comprehensive Personal Care Homes (CPCH) and Adult Family Care (AFC) providers who accept Medicaid beneficiaries;
- Licensed Group Homes, Supervised Apartments, and Community Care Residences that support individuals with Intellectual and Developmental Disabilities (I/DD);
- Licensed Community Residences for Individuals Persons with Head Injuries;
- Congregate day, prevocational programs, and group supported employment.

• **Site-Specific Assessment Process:** *Please include a description of the methods used by the state that assessed and validated each home and community-based setting for compliance. The description should include the following:*

- *Descriptive details about each assessment method, including forms that will be used for data collection;*
- *The entity responsible for completing the assessment;*
- *The timeline for completing assessments; and,*
- *The number and setting types for which each assessment method was used.*

a. New Jersey Response

The State conducted initial site-specific assessments using the methods described in the initial 2015 Statewide Transition Plan submission. Upon review of the data and actions needed to ensure that settings achieve compliance with the settings rule, it was determined that updated site-specific assessments were needed for some settings to assess the current level of compliance in order to engage in meaningful remediation activities. The settings assessed using updated surveys include:

- Licensed Assisted Living Residences (ALR), Comprehensive Personal Care Homes (CPCH) and Adult Family Care (AFC) providers who accept Medicaid beneficiaries.
- Licensed Group Homes, Supervised Apartments, and Community Care Residences that support individuals with Intellectual and Developmental Disabilities (I/DD).
- Congregate day, prevocational programs, and group supported employment.

Licensed residences for persons with head injuries were not reassessed, as it was determined that remediation activities had been ongoing since the initial survey. These residences participated in validation reviews in the same manner as other setting types.

The site-specific assessments and analysis from the 2015 surveys can be found in the 2015 [Statewide Transition Plan](#) submission. The results of those evaluations for Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs can be found in [Appendix B](#). The results for the DDD Residential Assessment can be found in [Appendix E](#) and the non-residential assessment can be found in [Appendix G](#).

Provider self-assessments were utilized for the updated assessments in 2021. Licensed Assisted Living Residences (ALR), Comprehensive Personal Care Homes (CPCH) and Adult Family Care (AFC) providers who accept Medicaid beneficiaries utilized the provider self-assessment that can be found [here](#).

The provider self-assessment for Licensed Group Homes, Supervised Apartments, and Community Care Residences that support individuals with Intellectual and Developmental Disabilities (I/DD), congregate day, prevocational programs, and group supported employment can be found [here](#).

Upon completion of the self-assessments, the information was reviewed by State staff and providers were required to submit corrective action plans for areas in need of remediation to meet the criteria for compliance. Templates for corrective action plans for both residential and non-residential settings can be found [here](#).

The State entities responsible for the review of the completed the assessments and corrective action plans are the respective State Divisions that oversee the programs. The Division of Aging Services reviewed assessments completed by licensed Assisted Living Residences, Comprehensive Personal Care Homes, and Adult Family Care providers. The Division of Developmental Disabilities reviewed assessments

completed by Group Homes, Supervised Apartments, Community Care Residences, and congregate day habilitation, pre-vocational, and supported employment programs.

These updated assessments were released to providers in July 2021 and were completed by providers through December 2021. The number of updated 2021 assessments completed and verified through **desk review** is as follows:

<u>Setting Type</u>	<u>Number of Assessments</u>
Assisted Living Residence	176
CPCH	26
AFC	1
TBI homes	9
DDD residential (Group Home, SA, CCR)	2,560
Non-residential (Day habilitation, Pre-vocational, Group Supported Employment)	333

The number of settings for which an **on-site** verification review was completed in addition to the state staff desk review utilizing the [Home and Community Based Settings Verification Tool](#) are as follows:

<u>Setting Type</u>	<u>Number of On-Site Verification Reviews</u>
Assisted Living Residence	176
CPCH	26
AFC	1
TBI homes	45
DDD residential (Group Home, SA, CCR)	273
Non-residential (Day habilitation, Pre-vocational, Group Supported Employment)	140

• **Provider Self-Assessment Surveys:** *A provider self-assessment was utilized to establish a baseline for compliance for residential settings licensed under New Jersey Administrative Code (N.J.A.C.) 8:36 (1115a Comprehensive Waiver Demonstration Program Assisted Living Residences (ALRs) and Comprehensive Personal Care Homes (CPCHs) and 10:44C (Community Residential Programs for Individuals with Traumatic Brain Injury). Please provide the following information about the assessment process:*

- *Appendix B, Analysis Results for Residential Settings under N.J.A.C. 8:36 with the HCBS Final Rule, indicates that a result of 90% or greater in each section of the self-assessment survey is considered evidence of compliance with that HCBS Settings criterion. Please note that settings must be fully compliant with all of the settings criteria described in the settings rule, not just a certain percentage level of compliance. Please indicate in the STP that all settings must be fully compliant with all criteria in the settings rule in order to be deemed as fully compliant.*

- *Appendix C, Community Residential Provider Self-Assessment Survey, indicates that the Provider “completes one self-assessment on behalf of their setting(s)”. The STP indicates that this residential category includes the following programs: group homes; supervised apartments (11); and supported living (5). Please confirm in the STP that providers completed a distinct self-assessment for each individual setting providing Medicaid-funded HCBS, including group supported employment.*

a. New Jersey Response

The State recognizes that all settings must be fully compliant with all criteria in the settings rule in order to be deemed fully compliant. The analysis from Appendix B was from a previous assessment completed in 2015. While the information received at that time was valuable, setting assessments were updated in 2021.

The Community Residential Provider Self-Assessment survey in Appendix B was replaced with an updated survey in 2021. Each individual setting providing Medicaid – funded HCBS, including group supported employment completed an updated survey.

- **Validation of Settings:** *States are responsible for assuring that all HCBS settings comply with the settings criteria. States may use a combination of strategies to assure each setting is properly validated. See below for additional information needed in the STP.*

a. New Jersey Response

The State has validated the provider responses for the site-specific assessments through the methods described below.

State Staff Review

Upon receipt of the updated provider self-assessments, State staff reviewed the survey responses and corrective action plans submitted by providers. If areas of non-compliance were identified, but a corrective action plan was not submitted, State staff contacted the providers to request corrective action plans. Corrective Action Plans were then submitted and monitored to confirm that the corrective actions were completed.

Use of the HCBS Verification Tool

State staff utilized the [Home and Community Based Settings Verification Tool](#) to verify the responses of the provider self-assessments submitted by each provider throughout the service system. On-site reviews included individual interviews, staff interviews, observation, and record or policy review.

Monitoring Tools

The monthly and quarterly monitoring tools for HCBS settings are being updated to include criteria that monitors ongoing compliance with the HCBS settings rule. Monitoring tools are utilized for all beneficiaries that reside in HCBS settings.

Licensing and Certification

Licensing and certification processes have been reviewed and actions to update them have been taken to include HCBS compliance requirements. The settings subject to N.J.A.C.

10:44A, 10:44B, 10:44C, N.J.A.C. 8:36, and N.J.A.C 8:43 are included in this review and action to update the regulations and subsequent rules.

MCO Oversight

The MCO contract is also being updated to include HCBS criteria with provider certifications. Further discussion on the specific regulatory changes for HCBS compliance can be found on the [Systemic Assessment Crosswalk](#).

Case Management and Support Coordination Monitoring

Case Managers and Support Coordinators will utilize updated monitoring tools to further validate the compliance of settings where HCBS is delivered. Implementation of these tools will not only support the validation of the settings, but will also ensure ongoing compliance through routine monitoring post March 17, 2023.

- *Appendix B of the STP indicates the state will conduct a proportional random sample reflecting the geographic breakdown of settings licensed under N.J.A.C. 8:36 (Assisted Living Residences and Comprehensive Personal Care Homes) to verify results documented by provider self-surveys. The state further indicates the HCBS Settings criteria will be incorporated into licensing and inspection standards. Finally, the state indicates a percentage of those settings with “Advanced Standing” will also undergo an inspection to validate provider self-surveys of settings in that category (p. 13). CMS requests that the state:*
 - *Include additional details in the STP about how the state will assure that each Advanced Standing setting providing Medicaid-funded HCBS will be assessed and validated, using at least one independent validation strategy.*
 - *Please provide the date by which all N.J.A.C. 8:36 settings will be validated through routine state inspections.*

a. New Jersey Response

The Advanced Standing term was previously used to describe facilities that were assessed to meet the criteria for presumptive institutional settings. The State now refers to these settings as sites that require heightened scrutiny.

In addition to provider self-assessments and desk reviews, each setting that required heightened scrutiny was also assessed using the [HCBS Verification Tool](#) and the [Heightened Scrutiny Assessment Tool](#). Stakeholder input was also received for the settings through both individual interviews and public comment.

During the on-site visits, a state reviewer conducted interviews with residents and staff, reviewed provider policies, and individual records to confirm whether the site met the HCBS settings requirements.

The state has validated all N.J.A.C 8:36 settings through on-site verification paired with desk reviews. The validation was completed September 15, 2022. Ongoing monitoring will occur through routine state inspections and monitoring through the care manager.

- ***State Options for Validating Provider Assessments:*** *States may use a combination of various strategies to assure that each setting is properly validated (including but not limited to state onsite visits; data collection on beneficiary experiences and consumer feedback; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to Developmental Disability and Aging networks; and state review of data from operational entities, such as managed care organizations (MCOs) or regional boards/entities, provider policies, consumer surveys, and feedback from external stakeholders), so long as compliance with each individual setting is validated by at least one methodology beyond the provider self-assessment.*

a. New Jersey Response

As previously addressed related to settings validation, the State has validated provider assessments through a combination of strategies including: onsite reviews, interviews with residents, policy reviews, case management and support coordination monitoring, and licensing and certification reviews, and a public comment period related to heightened scrutiny where stakeholders were asked to identify locations they felt may be problematic.

The State also has a dedicated helpdesk to for questions and feedback from stakeholders and has engaged in ongoing communication with Developmental Disability and Aging Networks.

• ***Case Management Surveys:*** *The Department of Human Services/Division of Developmental Disabilities (DHS/DDD) completed site-specific assessments of residential and non-residential settings via case management agencies. The survey tool contained a number of questions with Likert scale response options.*

- *Provide in the STP the methodology by which the state will categorize settings as being fully compliant; could become compliant with modifications; cannot comply; or is presumptively institutional in nature with regard to the federal HCBS criteria.*
- *Verify that all residential settings have been assessed for compliance with all the settings rule criteria.*

a. New Jersey Response

The Division of Developmental Disabilities completed updated site-specific assessments of residential and non-residential settings in 2021. Through a combination of state survey review and on-site state review, the following categories have been applied:

1. “Fully compliant” meaning that the setting meets all HCBS requirements;
2. “Could become compliant with modifications” meaning that the setting demonstrates some HCBS qualities but requires corrective action to be fully compliant;
3. “Cannot comply” meaning that the setting cannot comply with the settings rule, regardless of corrective actions or setting modifications;

4. “Presumptively institutional in nature” meaning that the setting meets one of the below categories:
 - a. Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
 - b. Setting is in a building located on the grounds of, or immediately adjacent to, a public institution; or
 - c. The setting has the effect of isolating individuals receiving Medicaid home and community based services.

The State confirms that both residential and non-residential settings subject to the HCBS final rule have been assessed for compliance with all settings rule criteria.

• **Assisted Living Program:** *The state has made the presumption that the Assisted Living Program (ALP) under the 1115a Comprehensive Waiver Demonstration is not subject to the HCBS Settings Rule. CMS notes that any setting where individuals receive Medicaid HCBS is required to comply with the settings criteria, including through the 1115 authority. The state can presume compliance with the settings criteria for individuals’ own private homes as noted above. In addition to the requests below, please clarify the reason for state’s determination that these settings are not subject to the settings criteria. Are all settings in the ALP the individual’s own private home?*

- *Please clarify whether the ALP is only made available to individuals who reside in specific subsidized public housing or senior housing settings.*
- *Please also explain if individuals who reside in these settings are limited to a single ALP provider (associated with the setting) for the delivery of HCBS.*

a. New Jersey Response

Participation in the services of an Assisted Living Program (ALP) is voluntary on the part of any tenant of any ALP contracted publicly subsidized housing building.

The State has determined that ALP settings are required to maintain compliance with HCBS settings regulatory criteria but are not subject to the additional HCBS settings criteria applicable to provider controlled settings because these services are provided to a person living in a subsidized apartment. An ALP provider enters the privately rented apartment unit to provide assistance with personal care, nursing, pharmaceutical, dietary, and social work services to meet the individual needs of each resident in their privately rented apartment.

ALP is available in some subsidized public housing or senior housing settings that have entered into an agreement to have a contracted ALP on site. However, residents in the building are under no obligation to use that provider for their Medicaid-covered services. If a person who resides in a building where ALP services are offered prefers to receive services from a different provider, they may choose any provider participating in their MCO network.

Privately owned homes (privately-owned or rented homes and apartments in which the individual receiving Medicaid-funded home and community-based services lives independently or with family members, friends, or roommates) are presumed to be in

compliance with the regulatory criteria of a home and community based setting. These setting types, including Assisted Living Programs, are included in the state's overall quality assurance framework and ongoing monitoring.

• **Caution Regarding Reverse Integration Strategies:** *CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS beneficiaries into the facility-based setting is not considered by CMS by itself to be a sufficient strategy for complying with the community integration criteria in the regulation.*

a. New Jersey Response

The State recognizes that reverse integration is not a sufficient strategy for complying with the community integration criteria in the regulation. To ensure that individuals are provided with full access to the community, residential and non-residential HCBS providers offer opportunities for community activities based on an individual's person centered preferences as documented in their service plan. Quality assurance and monitoring tools ensure community opportunities are planned based on an individual's interests and preferences, and activities in the community are available based on individual choice.

• **Aggregation/Reporting of Final Validation Results:** *Please include the initial findings of setting compliance across the respective programs with final results once all validation activities are completed.*

• *At a minimum, please make sure to confirm the number of settings in each category of HCBS that the state found to be:*

- *Fully compliant with the federal HCBS requirements;*
- *Could come into full compliance with modifications;*
- *Cannot comply with the federal HCBS requirements; or*
- *Are presumptively institutional in nature.*

a. New Jersey Response

The following charts confirm the number of settings in each category of HCBS that the state found to be: Fully compliant with the federal HCBS requirements; Could come into full compliance with modifications; Cannot comply with the federal HCBS requirements; or Are presumptively institutional in nature. The data is arranged by setting category (residential and non-residential) and the setting types within each category.

Residential Home and Community Based Settings

Setting Type	Total	Fully Compliant	Could come into compliance with modifications	Cannot comply with the HCBS requirements	Are presumptively institutional in nature
DDD Residential	2,560	2,265 (88%)	272 (11%)	0 (0%)	23 (1%)
Group Home	1,690	1,500 (89%)	167 (10%)	0 (0%)	23 (1%)
Supervised Apartment	609	550 (90%)	59 (10%)	0 (0%)	0 (0%)
Community Care Residence	196	156 (80%)	40 (20%)	0 (0%)	0 (0%)
Supported Living	65	59 (91%)	6 (9%)	0 (0%)	0 (0%)
Assisted Living Residences	176	148 (84%)	5 (3%)	0 (0%)	23 (13%)
Comprehensive Personal Care Homes	26	12 (46%)	2 (8%)	0 (0%)	12 (46%)
Adult Family Care	4	1 (25%)	0 (0%)	3 (75%)	0 (0%)
Traumatic Brain Injury Residences	54	0 (0%)	54 (100%)	0 (0%)	0 (0%)
Total	2,820	2,426	333	3	58

Non-Residential Home and Community Based Settings

Setting Type	Total	Fully Compliant	Could come into compliance with modifications	Cannot comply with the HCBS requirements	Are presumptively institutional in nature
Non-Residential	333	297 (89%)	31 (9%)	0 (0%)	5 (2%)
Prevocational	205	182 (89%)	20 (10%)	0 (0%)	3 (1%)
Day Habilitation	307	274 (89%)	28 (9%)	0 (0%)	5 (2%)
Group Supported Employment	139	121 (87%)	15 (11%)	0 (0%)	3 (2%)

Note: Each non-residential setting type could provide more than one program or service. As a result, the sum of the program type will exceed the number of total sites. There were a total of 333 non-residential sites that provided a total of 651 programs or services.

Site-specific Remediation:

• ***Non-disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase non-disability specific setting options across home and community-based services.

a. New Jersey Response

Beneficiaries have access to services in non-disability specific settings among their service options for both residential and nonresidential settings through the development of their individual person centered plan of care. Options for non-disability specific settings are discussed with each beneficiary at least annually during review of the person centered plan of care.

The State is continuously working to build capacity among providers to increase non-disability specific setting options for individuals with I/DD through availability of housing subsidies, the development of set aside units in multi-family housing developments through a partnership with the NJ Housing and Mortgage Finance Agency, and use of the Housing Resource Center to communicate the opportunities for available non-disability specific housing opportunities in New Jersey.

The state is utilizing funding through the American Rescue plan to fund the production of affordable housing units in collaboration with the Department of Community Affairs. Eligibility for these units will be based on criteria including but not limited to Medicaid enrollment and housing status related to the risk of homelessness and/or behavioral health concerns. The state is also including tenancy support services in its 1115a Comprehensive Demonstration Waiver proposal to CMS.

In addition to residential capacity building, the state also continues its open enrollment for willing service providers of non-residential home and community based services. Through this effort, new service opportunities are made available to beneficiaries.

Non-disability specific setting options for individuals with I/DD are available to individuals through use of their individual budget and selection of services through planning team meetings. Since DDD transitioned to a fee for service system, individuals have even greater opportunity to choose service providers, the types of services they receive, and whether they prefer to engage in provider managed or self-directed services.

Some examples of services are individual supports, day habilitation, community inclusion, classes also available to the public, transportation, and many others based on individual preferences.

Further efforts that impact beneficiaries include the expansion of managed care network options available in non-disability specific settings. Medicaid is proposing to

add a nursing home diversion and transition program to its 1115a demonstration. This program will include housing, caregiver, and nutritional supports.

• ***Timelines, Milestones and Description of Process:*** *The STP indicates that a Corrective Action Plan (CAP) will be required for non-compliant settings that will be monitored by the state for all setting types. CMS requests the state provide the following additional information be included in the next submission of its STP:*

- *Describe the process that the state will take to assure that any discrepancies between the validation strategies and provider self-assessments are adequately addressed.*
- *Explain in more detail what state strategies will be employed to support site-specific remediation.*
- *Describe the process the state will employ to track progress with site-specific CAPs to ensure HCBS settings will achieve compliance by the March 17, 2023 deadline.*
- *Estimate the number of beneficiaries who are in settings that the state anticipates will not be compliant by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.*
- *Explain how the state will ensure that needed services and supports are in place in advance of the individual's transition.*

a. New Jersey Response

The State requires corrective action plans for any settings that demonstrate non-compliant characteristics identified through the site-specific assessments and validation activities. Each respective Division ensures that the provider follows through with the actions identified in the corrective action plan. Division staff also work with the provider on any discrepancies between the validation strategies and self-assessments. If a discrepancy is identified, the Division will engage the provider to resolve and advise whether a corrective action plan is warranted.

To support site specific remediation, the State will provide technical assistance to providers, opportunities for training, and focused assistance based on the provider's needs and identified area of non-compliance.

New Jersey supported the movement of individuals who previously resided in settings that could not achieve HCBS compliance. Specifically, the residences subject to the HCBS final rule that were on the grounds of state operated institutional settings (ICF/IIDs) were closed and the individuals were relocated to community programs based on their individual preferences. The remaining settings that have been presumed institutional in nature will be further evaluated through the heightened scrutiny process.

Settings that are determined to be non-compliant with the HCBS Settings Final Rule and cannot come into compliance by March 17, 2023 will be ineligible for Medicaid participation. Residents in this circumstance will be notified by the State to allow a discussion on next steps. This will include assistance to secure an HCBS compliant setting and/or consider alternate funding streams to allow person can remain in their community home.

• ***Communication with Beneficiaries of Options When a Setting Will Not Be Compliant by the end of the transition period:***

Please provide a detailed strategy for assisting participants receiving services from providers not willing or able to come into compliance by the end of the transition period. CMS notes that the transition period ends on March 17, 2023 therefore this strategy will be limited to the timeframe in the approved final STP. CMS asks that the state include the following details of this process in the next installation of the STP:

- *Please include a timeline and a description of the processes for assuring that beneficiaries, through the person-centered planning process, will be given the opportunity, the information and the supports necessary to make an informed choice among options for continued service provision, including in an alternate setting that aligns, or will align by the end of the transition period, with the regulation. CMS requests that this description and timeline specifically explain how the state intends to assure beneficiaries that they will be provided with sufficient communication and support including the entity responsible for assisting the individual with the process, options among compliant settings, and assurance that there will be no disruption of services during the transition period.*
- *Please provide an estimate of the number of individuals who may need to transition to compliant settings.*

a. New Jersey Response

If a beneficiary receives services from a setting that will be unable to come into compliance by March 17, 2023, the beneficiary will be contacted by a State staff and will receive a written correspondence notifying them of the determination.

All notifications of non-compliant settings will be distributed to beneficiaries by the end of December 2022. These notifications will include an assigned State staff who will provide options counseling to offer either an alternate service or discuss non-HCBS funding availability. Should an alternate provider be needed, the state assures that there will be no disruption in services.

The state estimates that no beneficiaries will need to transition to alternate settings as a result of the HCBS settings compliance requirement. Beneficiaries who once received I/DD services in non-compliant settings on the grounds of state developmental centers were transitioned to compliant settings in previous years. There are currently three non-compliant assisted living residences, but no beneficiaries reside in these settings at this time. These will be removed from MCO provider networks until such time that they demonstrate compliance with the rule. The state will ensure compliance prior to any beneficiary moving into a setting that has been initially determined not compliant. The state will ensure providers who are not compliant are not able to receive Medicaid payment for services until such time as the non-compliant setting demonstrates compliance.

Ongoing Monitoring of Settings:

CMS requests that New Jersey provide more details on the monitoring process the state intends to use to ensure continued compliance of its settings with the federal criteria, including a timeframe for each specific monitoring step listed. CMS also requests that New Jersey provide:

- *Specific detail for each HCBS program’s monitoring of settings, including the timelines that settings are subject to monitoring, the frequency of the monitoring, and the specific entity/ies responsible for monitoring program and*
- *How individual/private homes will be incorporated into the ongoing monitoring.*

a. New Jersey Response

New Jersey will ensure continued compliance of HCBS settings through ongoing monitoring. For clarity purposes, the ongoing monitoring activities for each site, the frequency, and responsible entity is described below. Privately owned homes where an unrelated caregiver is paid for providing HCBS are included in the DDD residential category.

CMS advised that individual/private homes where a “person is living in a privately owned or rented home or apartment with family members, friends or roommates; and the home is integrated in typical community neighborhoods where people not receiving HCBS reside; and the home is not owned by an unrelated caregiver who is paid for providing HCBS to the person” can be presumed to be in compliance with the settings rule. DHS considers these setting types to be presumptively compliant. Ongoing monitoring for these types of settings will be conducted through the annual service plan meeting. The plan coordinator will identify any changes to the setting that may impact setting compliance.

Setting	Monitoring Type	Frequency	Responsible Entity
DDD Residential	Licensing Inspection	Annual	Office of Licensing
	Field Safety Services Inspection	Biannual	Office of Program Integrity and Accountability
	Monthly Monitoring	Monthly	Support Coordinator or Care Manager
	Quarterly Monitoring	Quarterly	Support Coordinator or Care Manager
	Housing Subsidy Recertification – Residency Agreements	Annual	Supportive Housing Connection
	Client Rights Review	Annual	Support Coordinator or Care Manager
	Individual Service Plan	Annual	Support Coordinator or Care Manager

Non-Residential	Monthly Monitoring	Monthly	Support Coordinator or Care Manager
	Quarterly Monitoring	Quarterly	Support Coordinator or Care Manager
	Program Recertification	Annual	DDD Provider Performance and Monitoring
	Client Rights Review	Annual	Support Coordinator or Care Manager
	Individual Service Plan	Annual	Support Coordinator or Care Manager
Assisted Living Residences	Quarterly care management monitoring via MCO	Quarterly	MCO Care Management
	Licensing Inspection	Annual	Office of Licensing
	MCO Provider Credentialing	Annual	MCO
Comprehensive Personal Care Homes	Quarterly care management monitoring via MCO	Quarterly	MCO Care Management
	Licensing Inspection	Annual	Office of Licensing
	MCO Provider Credentialing	Annual	MCO
Adult Family Care	Quarterly care management monitoring via MCO	Quarterly	MCO Care Management
	MCO Provider Credentialing	Annual	MCO
	Licensing Inspection	Annual	Office of Licensing
TBI Homes	Quarterly care management monitoring via MCO	Quarterly	MCO Care Management
	MCO Provider Credentialing	Annual	MCO
	Licensing Inspection	Annual	Office of Licensing
	Individual Treatment Plan	Annual	MCO Care Management
Individual, privately-owned homes where HCBS are delivered	Individual Service Plan	Annual	Support Coordinator or Care Manager
	Individual Service Plan/ Plan of Care Monitoring	Monthly, Quarterly	Support Coordinator or Care Manager

Heightened Scrutiny:

The state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution (i.e., settings located in a building that is also a publicly or privately-operated facility providing inpatient institutional treatment; settings located in a building on the grounds of, or immediately adjacent to, a public institution; and settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS).

These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information, the institutional presumption will stand and the state must describe the process for determining next steps for the individuals involved.

Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal settings criteria. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

- *Please describe the processes the state used or will use to identify settings that fall under any of the three categories of settings presumed to have institutional characteristics.*
- *The state should provide details regarding how it intends to conduct its reviews for settings presumed to be institutional.*
- *Please clearly articulate how the final decision will be made on whether or not to move a setting to CMS for heightened scrutiny review. Please clarify the threshold and determining factors that bring the state to a yes or no for moving the packet forward.*
- *Please provide updated timelines for the heightened scrutiny process in the next STP submission.*

a. New Jersey Response

As defined by CMS, the three categories of settings that are presumed to have the qualities of an institution are:

1. Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient treatment;
2. Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution;
3. Any other settings that have the effect of isolating individuals receiving Medicaid home and community based services from the broader community of individuals not receiving Medicaid HCBS.

The NJ Department of Human Services completed reviews of Medicaid HCBS settings to determine which locations have the qualities of an institution. Settings that the State identified

through an evaluation and review as non-compliant with the HCBS Settings Rule were required to cooperate with a Heightened Scrutiny assessment.

Prior to engaging in the heightened scrutiny review, the DHS posted the process that would be utilized, the review tools, and the settings that met the institutional presumption for [public comment](#).

Providers that were required to participate in the assessment process were asked to complete the [heightened scrutiny assessment tool](#) and provide supporting evidence to the State. Some examples of provider evidence includes policies and procedures, staff schedules, summary of the area, pictures of the site, activity schedules, residency agreements, feedback from residents, etc.

Upon receipt of the heightened scrutiny submission and supporting evidence, state staff reviewed the information presented and scheduled an on-site verification review. For the verification review, state staff used the [Home and Community Based Settings Verification Tool](#) to evaluate the setting. For each setting evaluated using this tool, an individual and/or guardian (as applicable) were also surveyed to assess compliance.

Upon completion of the heightened scrutiny assessment tool, the HCBS verification on-site review, and review of evidence, the findings were summarized and presented to the DHS HCBS team for review and determination of whether the State will present the site to CMS for review. Once finalized, the summaries of the findings for each setting will be presented for public comment.

Upon completion of the public comment period, the State will submit the list of heightened scrutiny settings to CMS for review. Should CMS review a particular setting type, the findings related to that setting review will be applied to others with shared characteristics.

The State anticipates releasing this information to the public on or about October 3, 2022 for a 30 day public comment period. Following completion of the public comment period and consideration of the information received, the State will submit the list to CMS on or about November 15, 2022.

Summary of Heightened Scrutiny by Setting Type

Heightened Scrutiny	Setting Type	Number of Heightened Scrutiny Sites
Category 1 Settings	Total for all setting types	27
Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment	DDD Residential	0
	DDD Non-residential	0
	Assisted Living Residences	17
	Comprehensive Personal Care Homes	10
	Adult Family Care	0
	Traumatic Brain Injury Home	0
Category 2 Settings	Total for all setting types	7
Settings located in a building located on the grounds of, or immediately adjacent to a public institution	DDD Residential	0
	DDD Non-residential	0
	Assisted Living Residence	5
	Comprehensive Personal Care Homes	2
	Adult Family Care	0
	Traumatic Brain Injury Home	0
Category 3 Settings	Total for all setting types	29
Settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS	DDD Residential	23
	DDD Non-residential	5
	Assisted Living Residence	1
	Comprehensive Personal Care Homes	0
	Traumatic Brain Injury Homes	0

Compliance Issues and Remediation Plans for Heightened Scrutiny Settings

Following the Heightened Scrutiny Review, the DHS projects that the settings identified for Category 1, Category 2, and Category 3 have the ability to overcome the institutional presumption by the March 17, 2023 compliance deadline.

Category 1 compliance issues were primarily based on the physical site colocation with a private skilled nursing facility. The remediation plans for these sites include corrective action plans to ensure that policies, staffing, and site operation are in accordance with the settings rule.

Category 2 compliance issues also focus on concerns with the co-location of an Assisted Living setting operating on the grounds of a public institution. Remediation strategies for this category will also include corrective action plans to ensure that policies, staffing, and overall site operation is in compliance with the settings rule.

Category 3 compliance issues for DDD Residential, DDD Non-residential, and Assisted Living facilities generally involves settings that will need to have keys, ensure more personal choices in activities, and documenting restrictions in accordance with the specific requirements of the settings rule.

Milestones

A milestone template, completed by CMS, with timelines identified in the STP was sent to the state for review on June 21, 2021. Please review the information in the template and send an updated document to CMS reflecting the anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communication with beneficiaries and ongoing monitoring of compliance.

a. New Jersey Response

The state completed the milestone template and submitted an updated version as requested. The anticipated milestones requested are as follows:

- Systemic Remediation –December 2022
- Settings Assessment –September 2022
- Settings Remediation – December 2022
- Heightened Scrutiny – November 2022
- Communication with Beneficiaries – December 2022
- Ongoing Monitoring of Compliance – Ongoing

508 Compliance

The state is encouraged to assure that all materials are 508 compliant before going out for public comment. Regardless of format, all website content and communications materials produced are required to conform to applicable Section 508 standards to allow federal employees and members of the public with disabilities to access information that is comparable to information provided to persons without disabilities.

a. New Jersey Response

Materials and communications regarding the HCBS Settings Rule have been developed to ensure access to information for people with and without disabilities.

Appendix A: Summary of Heightened Scrutiny Public Comment

The following is a summary of the public comments collected in response to New Jersey's [request for public comment](#) on the Heightened Scrutiny process. The Department of Human Services (DHS) received a total of 28 comments from stakeholders during the 30 day public comment period from July 18, 2022 to August 19, 2022. This notice included both an electronic posting and posting in the following newspapers throughout the state: The Bergen Record, Trenton Times, Camden Courier, Atlantic City Press, and the Newark Star Ledger.

The comment presented did not require edits to the Heightened Scrutiny process, nor did it require substantial changes to the Statewide Transition Plan.

Of the 28 comments received, 18 of those responses provided information that supported that the institutional presumption should be overcome for specific settings due to the model of service delivery, integration in the community, and how choice and preferences are infused throughout the programs.

DHS Response: The feedback provided is appreciated and will be added to heightened scrutiny evidentiary packages as applicable.

One commenter provided feedback related to their loved one having limited opportunities in the community. The DHS has carefully reviewed the setting for which this report was provided and has initiated a planning team meeting to ensure that the resident has full access to the community and participates in community activities to the extent they choose.

DHS Response: The site where this person resides is currently engaged in a heightened scrutiny review where the state will seek evidence to demonstrate whether the resident has full access to the community. The planning team will be engaged to ensure that the resident has the opportunity to engage in community activities to the extent they choose to.

Three commenters requested general information or shared a comment related to their perspective of the settings rule. The general information included a question related to virtual services and confirming the specific settings included in the heightened scrutiny review. Another commenter questions the need for people with I/DD to have to justify their loved one's qualifications for services over and over again.

DHS Response: DHS is required to ensure compliance with the HCBS settings rule in order to continue to receive federal reimbursement. Every effort is being made to make sure that any compliance reviews are not disruptive to residents.

One commenter discussed how the settings "rule in theory is a great idea, but it must be subject to the capabilities of the resident. And the staffing of the home. And the location of the home." General intent is that the community integration must be person centered and based on the needs and preferences of the residents of the homes.

DHS Response: The final rule does consider the individual needs and preferences of the person. The DHS fully agrees that community integration must be person centered.

One commenter provided an example of how a loved one is cared for in an out of state campus based facility where their loved ones' community is both the community that is present both at the campus and the surrounding area. This commenter also expressed concern with ability to support medically fragile individuals in the community. There was suggestion to offer more options of housing, including a campus setting, DC with ICF level of care, farmstead, etc.

DHS Response: The DHS has and continues to engage in efforts to expand housing opportunities throughout the state. DHS does not have a prohibition on any of the suggested settings types and welcomes the opportunity to review proposals and community integration plans. Developmental centers and other intermediate care facilities are not Medicaid-funded HCBS settings, and as such the settings rule does not apply to those setting types.

Four comments were received related to self-direction and concerns related to payment rates for self-directed employees.

DHS Response: The Division supports self-direction as an option for service delivery. Persons who are self-directing reside in privately-owned or rented homes and apartments living either by themselves, with family members, friends, or roommates. These settings are individual/private homes and presumed compliant with the HCBS Settings Rule.

Appendix B: Summary of Heightened Scrutiny Findings

Setting Name	Code	Setting Type	Heightened Scrutiny Category	Determination
All in a Day	100	Non-residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	101	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	102	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	103	Non-residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Bancroft	104	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	105	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	106	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	107	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023

Bancroft	108	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	109	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	110	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	111	Non-Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Bancroft	112	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	113	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	114	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	115	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	116	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023

Bancroft	117	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Bancroft	118	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
CARINGHouse	119	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
CARINGHouse	120	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
CARINGHouse	121	Non-residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
ECCR	122	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
ECCR	123	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
ECCR	124	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Spectrum	125	Non-residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023

Spectrum	126	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Spectrum	127	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Brighton Gardens of Mountainside	201	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Sunrise of Marlboro	202	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Artis Senior Living	203	Residential	Category 3 - Setting has the effect of isolating individuals receiving HCBS from the broader community of those who do not receive HCBS	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
CareOne at Evesham Assisted Living	204	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Fox Trail Senior Living Deptford	205	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
CareOne at Somerset Valley Assisted Living	206	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process

Georgetown Commons Assisted Living at The Pines at Whiting	207	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Seashore Gardens Living Center-Louis Edelstein Assisted Living	208	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Carneys Point Rehabilitation and Nursing Center	209	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
The Villa at Florham Park	210	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Non-Compliant with the CMS HCBS Final Rule and is ineligible for Medicaid Participation as of March 17, 2023. There are no residents who at this location.
Brandywine Living at Howell	211	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
The House of The Good Shepherd	212	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Setting was closed prior to the state HCBS verification.
Green Hill	213	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
CareOne Parsippany	214	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process

Winchester Gardens Assisted Living Center	215	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Lions Gate	216	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
St. Joseph's Senior Home Assisted Living and Nursing Center	217	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Meadow Lakes	218	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Morris Hall Senior Care Communities/ St.Marys	219	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
United Methodist Communities at Pitman	220	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Reformed Church Home	221	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Sycamore Living (Livia)	222	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process

United Methodist Communities at Collingswood	223	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
The Baptist Home of New Jersey	224	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Cambridge Enhanced Senior Living	225	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Orchards Assisted Living	226	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
United Methodist Communities at The Shores	227	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Premier Cadbury of Cherry Hill	228	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
AristaCare at Delaire Gardens	229	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
The Resort at Oceanview	230	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process

Allendale Senior Living	231	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Chestnut Hill Residences by Complete Care	232	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Monroe Village Assisted Living	233	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process
Assisted Living at Renaissance	234	Residential	Category 1 - Setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Non-Compliant with the CMS HCBS Final Rule however, is able to remediate issues to be compliant on or before March 17, 2023
Allegria at the Fountains	235	Residential	Category 2 - Setting is located in a building on the grounds of, or immediately adjacent to a public institution.	Compliant with the CMS HCBS Final Rule, is eligible for Medicaid participation, and will be submitted to CMS Heightened Scrutiny process

Appendix C: Summary of Statewide Transition Plan Public Comment

The following is a summary of the public comments collected in response to New Jersey's [request for public comment](#) on the Statewide Transition Plan in its entirety and the State's findings for the settings identified as requiring heightened scrutiny. The Department of Human Services (DHS) received a total of 4 comments from stakeholders during the 30 day public comment period from October 4, 2022 to November 7, 2022. This notice included both an electronic posting and posting in the following newspapers throughout the state: The Bergen Record, Trenton Times, Camden Courier, Atlantic City Press, and the Newark Star Ledger.

The four commenters provided robust and thorough feedback that is both valuable and appreciated, as the DHS shares a common goal with these organizations: to ensure that people who receive HCBS services are integrated into the greater community to the same extent as others who do not receive HCBS services, that people have rights and protections, and that people are able to live their lives as they choose.

Common themes identified in the public comments include:

- Capacity building including resource availability and education/training;
- Quality and ongoing monitoring;
- Heightened scrutiny and assessment data;
- Residency agreements and rights; and
- Service provision.

Capacity Building: Resource Availability and Education/Training

Four commenters provided feedback related to capacity building. It was discussed that there are not enough residential options for people with Traumatic Brain Injury; for people with I/DD with complex co-occurring behavioral and/or medical needs; or for people who are aging and in need of community-based housing that would preserve the family unit. Additionally, it was communicated that more transportation and respite options are needed to support people who reside with their families.

DHS Response:

The DHS continues to engage in capacity building to introduce more resources into the service system. Highlights of these activities include:

- The Division of Developmental Disabilities (DDD) has, and will continue to, develop residential capacity for individuals with I/DD and acute behavioral and/or medical needs.
- DDD continues to partner with the New Jersey Housing and Mortgage Finance Agency and Department of Community Affairs to provide financing for special needs housing development through the Special Needs Housing Partnership Loan Program, the Special Needs Housing Subsidy Loan Program, and tax credit supportive housing.
- Through partnership with the Department of Community Affairs' Supportive Housing Connection, DDD provides funding for approximately 7,300 housing subsidies for individuals who reside in provider managed residential settings

and 1,000 housing subsidies for individuals who live in non-provider managed settings and/or choose to self-direct their services.

- DDD is in the final stages of development of a new stabilization program for individuals with I/DD and complex behavioral health needs. This program consists of three behavioral health stabilization homes, totaling 12 beds. The goal of this program is to create a short-term highly structured environment with professional capabilities to stabilize individuals and transition them back to their previous residential setting (whether that be to return home with their family or to a provider managed residential setting) or a new, appropriate long-term placement.
- DDD has increased Direct Support Professional wages four times since State Fiscal Year 2019. An additional increase will occur January 1, 2023 that will yield a cumulative increase of about \$4.75 per hour since State Fiscal Year 2019.
- DDD permanently increased day service rates by 19.7% on July 1, 2022.
- The Division of Medical Assistance and Health Services (DMAHS) will engage with its contracted Managed Care Organizations (MCOs) and relevant stakeholders to seek ways to strengthen the provider pool of TBI residential providers which will allow even greater choice in service provider.
- DMAHS, in partnership with the Department of Community Affairs, is investing approximately \$100 million to build housing in the community dedicated to low-income Medicaid members. These housing units will all meet the requirements of the HCBS settings rule.
- The Managed Long Term Supports and Services (MLTSS) program within DMAHS continues to offer non-medical transportation as a benefit. Any Medicaid member also enrolled in MLTSS can utilize non-medical transportation to engage in community activities. This includes members residing in TBI residences. This service is coordinated through the member's MCO. Medical transportation continues to be available through participant's Medicaid State Plan benefit.
- DDD offers non-medical Transportation as a benefit to persons enrolled in its waiver programs and continues to look at ways to further strengthen that service. Medical transportation continues to be available through participant's Medicaid State Plan benefit.
- DDD is actively engaged in assisting the New Jersey Transit Corporation on its work to implement the Paratransit Services Improvement Act. This legislation is intended to improve coordination, share best practices, advance proven models, and improve the efficiency of New Jersey's paratransit system.
- DDD and DMAHS continue to offer Respite to persons enrolled in its programs and will continue to engage in actions to further strengthen that service.

One commenter that DDD is partnering with to improve education and training of Support Coordinators thanked DDD for the work in this area while noting that more work is needed. Areas noted by the commenter relate to the skills and competency of a support coordinator and their ability to facilitate a meaningful person-centered planning process within current training requirements, and concerns about the quality of supervision across all support coordination

agencies. The DHS was encouraged to continue its efforts to develop stricter requirements for support coordination agencies, develop a clear and stringent conflict free policy, and increase training and competency assessment requirements.

DHS Response: The DHS thanks the commenter for their submission and agrees that a strong system of Support Coordination remains important to ensure that individuals receive quality services. In recognition of this, DDD's Support Coordination Unit (SCU) has engaged in work to further strengthen Support Coordinator training and competencies. Highlights of activities in this area are as follows:

- In 2021, the SCU was restructured into four distinct units: Communication, Administration and Regulation (CAR); Care Management; Evaluation, Quality and Compliance; and Education and Training. Each unit has a distinct scope that is focused strengthening the quality of work from Support Coordination Agencies.
 - The CAR Unit has, and will continue to, ensure that communications with Support Coordination Agencies are timely, relevant, and transparent. The CAR unit produces webinars, newsletters, trainings and reviews regulatory evaluation components.
 - The Care Management Unit has, and will continue to provide, ongoing oversight and support to Support Coordination agencies related to beneficiary specific questions and planning. The Care Management Unit is available for challenging situations and serves as expert in care planning issues.
 - The Evaluation, Quality and Compliance Unit has, and will continue to, engage in ongoing evaluation of agencies and the provision of technical assistance. Evaluation efforts will continue to expand to include documentation and waiver requirements.
 - The Education and Training Unit has, and will continue to, produce trainings to improve the work of Support Coordinators (SCs) by focusing on SC Monitoring Tools, Person-Centered Planning, etc. Informational material and webinars are posted on the [DDD Support Coordinator Information website](#) and disseminated via the Support Coordination Listserv. Support Coordinators are mandated to receive 12 hours of training annually, and these trainings count towards that requirement.
- In early 2023, DDD, in collaboration with The Boggs Center on Developmental Disabilities (New Jersey's University of Excellence in Developmental Disabilities) will launch a project to further strengthen Support Coordinator Competencies. Supported by funding through the Money Follows the Person Competency and Capacity Building Initiative, this will consist of a workgroup which will re-examine core competencies needed by Support Coordinators to effectively work with individuals, families, guardians, etc. Once, the competencies are established, training will be aligned with competencies to ensure effectiveness.
- Support Coordination Monitoring Tools were updated and released in November 2022. These tools were updated with a specific focus on ensuring HCBS requirements were met in Support Coordinator documentation.

Three commenters mentioned that improvements are needed to ensure that individuals are provided information to develop an understanding of opportunities available to them in the community. One commenter recommended wide dissemination of resources such as the “[Right to Community Life](#)” and the “[New Community Life](#)” video series, among other informational materials. It was also recommended that both the person centered planning tool and Individualized Service Plan are utilized together and updated often to ensure meaningful person centered plan development.

DHS Response: DDD has shared the aforementioned resources with all stakeholders and will continue to do so. These resources are available on the [DDD's HCBS website](#) along with other resources to provide information on the HCBS Settings Rule. Additionally, as outlined in the Community Care Program and Supports Program Manuals, the Person Centered Planning Tool and Individualized Service Plan are both required to be comprehensive and updated at least annually.

One commenter recommended that “DHS survey the needs of all persons who wish to receive HCBS services but are instead living in segregated institutions such as nursing home residents, psychiatric hospitals/CEPP, recent admissions to DCs, or those on the waiting list. Such a survey will identify reasons why individuals live in segregated institutions, gaps in existing services, and what new or existing resources DHS needs to allocate to fill them.”

DHS Response: The DHS is appreciative of this feedback. The DHS will further review and collaborate with State partners in this area. The DHS wishes to re-enforce that if an individual indicates their desire to move from an institutional setting to the community there are immediate transitional case management services that are deployed to support that outcome.

One commenter explained that sometimes people with I/DD only have one willing provider who will serve them, and as such they are not provided with a meaningful choice. It was further stated that DDD admitted several new residents to its developmental centers in the past year because the network of HCBS providers could not meet their needs. Additionally, it was noted that there are few TBI residential providers for individuals to choose from. The commenter further cited the closure of a nursing facility that housed a high number of Medicaid beneficiaries with mental illness, developmental disabilities, and TBI. It was stated that “due to lack of capacity, all but one resident went to other nursing facilities or institutions.”

DHS Response: DHS agrees that it is of the utmost importance to provide individuals with choice of services. As such, the DHS continues to engage in activities to expand the provider network through Managed Care Organization contractual network requirements and ongoing development efforts to introduce new resources into the service system.

Individuals admitted on an emergency respite to a developmental center are supported to seek alternate HCBS opportunities based on their individual person centered preferences. DHS also supports residents in nursing facilities to secure alternate community placements based on their person centered needs and preferences.

The DHS wishes to re-enforce that if an individual indicates their desire to move from an institutional setting to the community there are immediate transitional case management services that are deployed to support that outcome. Additionally, DHS operates the [I Choose Home NJ Program](#) to assist people to move out of nursing homes and back into the community.

Quality and Ongoing Monitoring

Two commenters raised questions related to the need for quality oversight and ongoing monitoring. Questions were raised related to whether there would be increased funding for duties associated with ongoing monitoring of the HCBS settings rule. Some questioned the ability of support coordinators to engage in monitoring oversight due to competency concerns. Additionally commenters requested an email and phone number for which HCBS compliance concerns can be reported in the future. It was further recommended that complaints should be investigated with transparency and ongoing data on setting-specific complaints, including resolution that should be made available to the public.

DHS Response: To demonstrate HCBS compliance, the DHS is in the process of finalizing systemic changes that include regulatory and policy updates while also working to improve existing quality oversight measures to ensure that HCBS compliance is maintained. These activities associated with compliance are modifications to existing practices are able to be achieved through the existing payment standards.

The DHS offers two email addresses where HCBS settings rule compliance concerns may be directed.

- DMAHS at DMAHS.HCBS-Settings-Rule@dhs.nj.gov. All DMAHS beneficiaries and care managers may contact this helpdesk should an issue related to HCBS compliance arise. Medicaid members may also discuss concerns with their MCO care manager.
- DDD also has a dedicated email for questions and concerns related to HCBS compliance at DDD.HCBShelpdesk@dhs.nj.gov. Concerns can also be reported to DDD at (800) 832-9173. Information on how to register a complaint about HCBS non-compliance is also found in both the [Community Care Program](#) and [Supports Program](#) manuals in section 11.7 titled Home and Community Based Services (HCBS) Settings Compliance.

Upon receipt of a complaint, the appropriate DHS entity will investigate and ensure corrective measures are put in place.

One commenter encouraged DDD to promote service provider utilization of the Council on Quality and Leadership's (CQL) Personal Outcome Measures as a method to identify and measure whether the components of the HCBS settings rule are achieved. The commenter further recommended that DDD investigate using CQL Accreditation as a means for providers to demonstrate compliance with the HCBS settings rule.

DHS Response: The DHS recognizes the use of CQL Accreditation, and other accreditation entities, as valuable tools for providers to demonstrate and achieve ongoing compliance. DDD will investigate how these tools can be leveraged in support of the HCBS settings rule.

One commenter expressed appreciation to DDD for its efforts to further strengthen the Support Coordination service. It was recognized that the DDD Support Coordination Unit continues in “evaluating SC agencies and requiring CAPS [Corrective Action Plans] as deemed necessary, developed optional webinars and have made them available through the college of direct support.” This commenter also recognized DDD for future work planned to create a competency based certificate through the MFP Competency and Capacity Building Initiative.”

DHS Response: The DHS is appreciative of the positive feedback and will continue to work to collaborate with stakeholders to make improvements and advancements to further strengthen the service system.

Heightened Scrutiny and Assessment Data

One commenter raised concern that the “outcomes described in the addendum provide insufficient detail on the corrective action plans of settings that DHS determined can come into compliance by March 2023. The addendum fails to provide enough detail to the public on how DHS worked with each presumptively institutional setting to achieve remediation, or in what areas each setting implemented corrective actions to achieve compliance.” It was also noted that “DHS provides a template of the verification tool and much detail on the process, but less transparency around the outcomes that determine whether the setting could come into compliance with modifications.”

DHS Response: Each of the settings determined to be presumptively institutional participated in a heightened scrutiny review at the State level prior to being submitted to CMS for further review. Upon completion of the public comment period, the list of settings will be sent to CMS so that further review efforts may commence. Each site subject to heightened scrutiny completed a heightened scrutiny self-assessment, participated in an onsite review by State staff, completed the HCBS verification tool, and interview/survey of a person served at the setting. The verification tool was utilized in updated assessment activities to determine a setting’s current HCBS settings rule compliance status. If a provider did not meet one or more of the criteria, they were determined to be non-compliant but “can come into compliance with modifications.”

Providers have been provided their survey results and developed corrective action plans (CAPs) as applicable. CAPs are submitted by providers to the Division, identifying how they intend to achieve compliance. Sample corrective action plans were also provided for use by providers and can be found on the [DDD HCBS Transition Plan website](#).

Evidentiary packages containing outcomes of these assessments and CAPs will be submitted to CMS. Upon receipt of CMS feedback of the State’s heightened scrutiny submissions, DHS will evaluate what further actions may be needed, including publication of further data.

One commenter raised concern that Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Facilities should not be subject to heightened scrutiny. This commenter stated that these settings allow residents to be closer to family members and enable them to maintain the family unit and thrive. The commenter stated that the assessment tool should reflect the need to preserve the family unit and also factor in the lack of other community based housing opportunities that would have the ability to allow families to remain intact.

DHS Response: The settings targeted for heightened scrutiny were identified either due to their physical location or because they appeared to have the effect of isolating the HCBS beneficiary. After the initial analysis was completed, DHS determined that these sites either were compliant or had the ability to achieve compliance by March 2023.

The individual experience in the setting was incorporated in the heightened scrutiny reviews. Although preserving the family unit is not listed on the assessment tool, there are other questions included in the [Heightened Scrutiny Assessment Tool](#) that apply to a person's choice and opportunities related to family involvement such as:

1. Individuals, to the extent they desire, have opportunities to participate in typical community life activities outside of the setting;
2. The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including activities, physical environment, and with whom to interact;
3. Individuals have the freedom and support to control their own schedules and activities;
4. Individuals are able to have visitors at any time.

One commenter noted that the list of heightened scrutiny sites is limited to mostly residential facilities. There was concern that “many of these settings fail to comply with exploratory questions suggested by CMS including:

- Demonstration that staff is trained specifically for home and community based support in a manner consistent with the HCBS Settings regulations;
- Procedures in place by the setting that indicate support for activities in the greater community according to the individual's preferences and interests, staff training materials that speak to the need to support individuals chosen activities, and discussion of how schedules are varied according to the typical flow of the local community;
- Documentation that the individuals selected the setting from among settings options, including non-disability specific settings;
- Description of the proximity to avenues of public transportation or an explanation of how transportation is provided where transportation is limited.”

DHS Response: DHS included both provider managed residential and day service settings in the reviews. Settings that demonstrated a need for heightened scrutiny were included in the heightened scrutiny review process. The [Heightened Scrutiny Assessment Tool](#) incorporates criteria that is also described in the sample exploratory questions provided.

One commenter raised concern indicating that “of the 2021 updated site assessments, only about 20% of the verifications were done on site (661), while the remainder were verified by a desk review (3201).” Further, concern was raised that “the information DHS provides, fails to accurately capture the number of responses obtained directly by an individual receiving services versus responses obtained from a provider answering on behalf of an individual receiving services.”

DHS Response: While the initial site-specific surveys and analysis completed in 2015 included on-site visits across settings, it is accurate that the updated assessments included various methods of validation, including both on-site visits and desk reviews. These verification reviews incorporated evidence through policies and procedures, staff report, individual report, and state staff observation. All settings, including those for which a desk review was utilized, will engage in on-site compliance checks through ongoing monitoring activities.

The State recognizes that setting compliance determinations, while important, capture only a point in time. Through robust ongoing monitoring and embedding the HCBS settings rule throughout the service system, full compliance is both achieved and maintained.

Residency Agreements and Rights

One commenter raised a concern that the residency agreements do not comply with the landlord/tenant protections in New Jersey. The commenter states that “New Jersey’s Eviction with Good Cause statute, N.J.S.A. 2A-18-61.1 et seq., sets forth the responsibilities and protections from eviction that tenants have. Specifically, a tenant can only be evicted if the landlord obtains an order for eviction and warrant for removal from the New Jersey Superior Court – Special Civil Part.”

Related, the same commenter raised a concern that “licensees that engage in self-help lockout or evict the person served (tenant) can avail themselves NJ's forcible or unlawful entry and detainer laws, NJAC 2A:39-1, to seek redress in court.” An example was provided that described a situation where a provider will not allow an individual to return after hospitalization.

DHS Response: As provided by 42 CFR 441.3019(c)(4)(vi)(A), “For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.” For example, in DDD provider managed settings where the provider functions as both the landlord and the provider of services, comparable protections are provided through the residency agreement, supported by [Division Circular #36, Transfer or Discharge from a Contracted Provider](#).

One commenter raised concern that the providers’ residency agreements do not specify all charges to its residents. Further, the commenter recommends that “the STP require providers to ensure

that licensees provide a complete list of itemized expenses so a resident can be fully informed as to the costs of each individual residence when they are choosing a specific provider.”

DHS Response: Providers are expected to review this information with individuals interested in receiving services through their admissions process. Specific guidance on inclusion of ancillary costs can be found in [“Guidance on Division Funding and Individual Funds Charge/Collected by Residential Providers.”](#)

Three commenters expressed concern that providers are not providing individuals support to pursue activities of their choosing. One commenter specifically raised concern with how the HCBS requirement to support people to pursue activities of their choosing was outlined in the sample residency agreements. The commenter recommended that “the residency agreement should be modified to match the rule and include the word “support” in the statements that “Individuals should have freedom and support to pursue activities of their own interest.” This commenter also expressed concern that lack of staff or vehicles limits the ability for residents to participate in activities of their choosing.

DHS Response: DDD agrees that individuals have the freedom and support to pursue activities of their own interest. The residency agreement includes an abbreviated summary and references the full text of the rule within the document so the lack of the term ‘support’ does not materially change the responsibility of a provider. Providers are further informed of this requirement through various additional means, including the [Community Care Program Manual](#), the [Supports Program Manual](#), and the [Provider’s Guide to the Home and Community Based Services Final Rule](#).

Providers are expected to coordinate schedules to meet the needs of all residents. That may mean that creative scheduling be considered, use of alternate transportation, or scheduling within existing resource availability. More information on this can be found in the [Provider’s Guide to the Home and Community Based Services Final Rule](#).

One commenter raised concern that use of restraints is not included in this document.

DHS Response: DHS agrees that individuals have the right to be free from coercion and restraint. This has memorialized this is in the Participant Rights document.

As it relates to the HCBS settings rule, the DHS requires that any restrictions or HCBS modifications must be based on a specific assessed need, there must be evidence that other less restrictive methods have been attempted, and there are periodic reviews to consider the continued efficacy of the modification. As appropriate, Human Rights Committees are held to review a modification. All modifications involve informed consent of the individual/guardian. Further information on documentation requirements can be found in the [Community Care Program](#) and [Supports Program manuals](#) in the section 11.7 titled Home and Community Based Services (HCBS) Settings Compliance and in the [Provider’s Guide to the Home and Community Based Services Final Rule](#).

One commenter raised concern that Danielle’s Law is not included in this document.

DHS Response: Danielle’s Law was not included in this document because there is no change or impact related to the HCBS settings rule. Danielle’s Law: [P.L.2003, c.191](#) requires that staff in facilities for individuals with developmental disabilities or traumatic brain injuries are required to call 911 in the event of a life-threatening emergency. The requirements of Danielle’s Law are further described in [Division Circular#20A: Life-Threatening Emergencies](#).

Service Provision

One commenter raised concerns with Managed Care Organizations requesting IFSPs or IEPs because they believe that it could lead to cuts in services.

DHS Response: New Jersey’s Managed Care Organizations (MCO) are charged with the responsibility of coordinating and delivering Medicaid funded services. As such, there is a requirement to avoid unnecessary duplication of services. Obtaining ISPFs and IEPs for Medicaid members allows an MCO to both ensure coordination of service delivery while avoiding duplication of service.

One commenter provided feedback related to self-direction, indicating that more flexibility is needed related to self-direction. Additionally, it was noted that individuals in the supports program have a smaller budget for day services. The commenter then explained that the supports program tiers are subjective, as any staff with qualifications over a home health aide is not sustainable and families are not permitted to supplement wages.

DHS Response: It is important to note that the settings where self-directed services are delivered are not provider controlled and, as such, are presumed compliant with the settings rule. DHS supports the opportunity for choice in services and recognizes that self-directed service provision is critical for many individuals and families throughout the State. The DHS also recognizes that self-directed settings are an important non-disability specific housing opportunity.

In an effort to further support individuals and families in the area of Self-Direction, DDD has established the Office of Education on Self-Directed Services to support people to understand options related to non-disability specific opportunities that are available through self-direction.