



State of New Jersey

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December 8, 2016

Dear stakeholder:

The Department of Human Services (DHS), in collaboration with its relevant state partners – the Departments of Health, and Children and Families – has responded to the federal Centers for Medicare & Medicaid Services' (CMS) review of our submitted Statewide Transition Plan (STP).

You may recall that this process began in early 2015, when the state offered its draft STP for public comment. Many thoughtful and constructive ideas and suggestions were received and incorporated into a draft, which was submitted to CMS for review and approval. Upon evaluation, CMS had questions on specific sections of the draft. After several months of stakeholder meetings and listening sessions, the document again has been amended in response to your feedback and input and has been forwarded to CMS for their review and approval or request for further clarification. The most notable changes, based on stakeholder feedback were:

- As was suggested by a number of stakeholders, the “State Density Review” that was outlined in the previous draft will be eliminated, as the implementation of a “Community Integration Review” will reflect an intention to look at a variety of factors – including individual experiences - in determining whether a setting is truly “home and community based.” While the size of a setting is certainly *one* of the factors considered in the evaluation, it will not be the only factor.
- The STP also has been amended to reflect the overwhelming feedback related to the requirement that sites be fully built and operational prior to review. The amendment clarifies that **all** sites will ultimately need to complete the Community Integration Review process to show compliance with the federal requirements, and that any site can request a community integration review at any time. The only exception is settings that are required, pursuant to federal guidance, to go through the Heightened Scrutiny process. Those settings must be operational prior to seeking approval. For settings that are not subject to the Heightened Scrutiny process, it is strongly recommended that projects that are larger than the pre-approved sizes go through the review process *before* construction to avoid uncertainty as to whether or not a project will be approved. Smaller settings, while no more guaranteed to be truly “home and community-based” than larger settings, are often easier to bring into compliance with HCBS standards, if necessary, at a later date. In any case, all settings will need to maintain all other characteristics of a home and community based setting.

- Due to the generally positive comments regarding the Heightened Scrutiny process, this will remain largely unchanged from the addendum.
- Proposed changes to the day services received near-universal support, so these changes will remain in place. These changes should, and will be implemented to, minimize paperwork and maximize quality of life for individuals with developmental disabilities.

The Department and its state partners appreciate the time, attention and input of everyone who participated in the public hearing and stakeholder meetings. The STP is better for it, and New Jersey's residents will be better served because of it.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Connolly". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

Elizabeth Connolly
Acting Commissioner

STATE OF NEW JERSEY

Statewide Transition Plan

Addendum

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 2019. 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 the submission of New Jersey's Statewide Transition Plan (STP), the Centers for Medicare & Medicaid Services (CMS) sent a letter dated October 1, 2015 to New Jersey requesting supplemental information on its site-specific assessments, remedial actions, monitoring and relocation of beneficiaries. This document and its appendices respond to each of the items summarized in the CMS letter and serves as an addendum to the STP. As prescribed by CMS, the information contained in the addendum is additive and was posted for public comment.

Each item raised by CMS is addressed in the addendum with reference made to the page in the STP where this new material provides clarification to the existing information or the corresponding appendix.

Supplemental Information to the Statewide Transition Plan

Settings

- CMS requested that New Jersey further explain and define "private residential facility" for individuals with developmental disabilities in its STP and that the state identify the authority and/or service under which this setting is used.
 - **New to STP, Page 12:** To further clarify, the DHS funds two private residential facilities: Keystone and Eastern Christian Children's Retreat – Bushman. Keystone and Bushman receive only state funding residents are not under the CCW. Both facilities may be defined as privately run congregate care settings. New Jersey is actively following a plan to depopulate these facilities and to relocate individuals into licensed settings under the CCW. As of December 2016, there are 48 individuals remaining at Bushman and 3 at Keystone. Keystone is currently developing a community based group home projected to open in March 2017, at which time the remaining 3 residents will move. Bushman currently has a plan to depopulate an additional 11 people, bringing their total current census down to 37. DHS is continuing to work with Bushman toward a total depopulation.

- CMS requested more information with regard to programs on the grounds of developmental centers.
 - **New to STP, page 31:** The DHS oversees five developmental centers, three of which have HCBS-group homes operating on their grounds. At Woodbine Developmental Center, Devereux operates two group homes with a combined capacity of nine beds, all of which are currently occupied. Oaks Integrated operates one group home on the property of Vineland Developmental Center with a capacity to serve up to six individuals

but currently serves four. At New Lisbon Developmental Center, AdvoServ supports 15 individuals in apartments, and Willow Glen operates two group homes with four beds each, currently serving seven individuals. There are no day programs run on the grounds of any of the developmental centers for recipients of the Section 1115 Demonstration or the 1915(c) waiver.

●CMS requested that New Jersey further explain whether the Section 1115 Demonstration includes non-residential settings where services are rendered, other than adult medical care service settings covered under the Medicaid State Plan.

- **New to STP, page 10:** the Section 1115 Demonstration, which includes the Supports Program, is available to individuals who are not enrolled under the CCW and live in non-licensed settings (and thus are not governed by NJAC 10:44A or 10:44B). These are individuals who are eligible for both Division of Developmental Disabilities (DDD) services and Medicaid. Individuals enrolled in the Supports Program receive employment and day services provided in a community-based setting, as well as a variety self-directed individual and family support services. All services must comply with the Supports Program Policies and Procedures Manual.

●CMS requested that New Jersey address how it will transition providers of day services to meet the HCBS Final Settings Rule. CMS has expressed concerns to the Division that bringing the community into the day services setting (known as —reverse integration) will not meet this standard.

- **New to STP, page 17:** The DHS will incorporate community integration into an Individual’s Day Services as follows:

1. Adding Community Experiences to the individual planning process. The Support Coordinator will gather information about past and current community experiences and include this information in the —Community Experience section of the Person-Centered Planning Tool (PCPT). The Support Coordinator will also include ideas for community opportunities in the —Ideas/To Do List section of the PCPT. This information can assist the provider in identifying community integration opportunities based on the individual’s interests, strengths, hopes/dreams, current activities, etc.

2. Provider will complete the —Pathway to Meaningful Day document – this document will identify previous community experiences/access, current activities, areas of interest, existing connections that can lead to community opportunities, potential barriers and solutions, and support needs related to integration in the community.

3. Provider will utilize information gathered through the Pathway to Meaningful Day document to develop strategies related to community related activities/experiences and documents them in the Individualized Goals Form.

4. Provider will incorporate these identified community opportunities within the Individualized Activity Schedules. To optimize staffing, the provider can link individuals with similar interests to mutual activities.
5. Provider will maintain information regarding individual's progress toward reaching community related goals with the addition of a column indicating —location within the Activities Log and through the Quarterly Update.
6. Provider will maintain a list of connections, events, and ongoing opportunities within their community. This list will be posted and reviewed with individuals regularly so it can be utilized when developing activity schedules. The provider will conduct general and ongoing outreach in the community in order to maintain this list and continue to

The Division will monitor as part of quality improvement, access and satisfaction through the Monthly Monitoring Tool. Additionally, providers will conduct self-assessments through the activity logs and quarterly updates. These provisions will replace the section related to day services in the STP.

Systemic Assessment:

- CMS requested that New Jersey identify state regulations or policies that will require revision to comply with the federal settings requirement.
 - **New to STP, page 18-19:** New Jersey has not changed the crosswalk review tool that was used to evaluate licensing regulations, standards and policies for compliance with the new federal rule. As determined upon submission of the STP and confirmed in preparing this addendum, New Jersey does not have any regulations or policies that are inconsistent with the HCBS final rule. In most instances, non-compliance with the HCBS final rule will impact license renewal and eligibility for reimbursement for facilities. However, New Jersey has included a new Appendix A, identifying its proposed approach for the following regulations, standards and policies to strengthen compliance with the HCBS final rule.

1. State Review of Regulations

- a. NJAC 8:36
- b. NJAC 10:44A
- c. NJAC 10:44B
- d. NJAC 10:44C

2. State Review of Standards and Policies

a. MLTSS

- i. HCBS Settings Review: NJ Comprehensive Medicaid Waiver Demonstration (NJCW): Special Terms and Conditions
- ii. HCBS Settings Review: MLTSS Service Dictionary
- iii. HCBS Settings Review: Managed Care Organization (MCO) Contract, Article 9

b. Division of Developmental Disabilities (DDD)

- i. HCBS Settings Review: Supports Program Policies and Procedures

●CMS asked for the report of the findings of the site evaluations.

- **New to STP, Appendix B:** New Jersey is reporting on the findings of the self-assessment survey that was implemented in early 2015. The new appendix is entitled Analysis Report for Residential Settings under N.J.A.C. 8:36 with the Home and Community Based Services Final Rule.
- CMS asked for New Jersey to remove discussion of person-centered planning from the STP unless it is specifically related to the settings requirements.
 - Removed from STP, page 18: The following crosswalk documents are not included in Appendix A because they focused on person-centered planning:
 - Person-Centered Planning (PCP) Review – NJ Comprehensive Waiver: Special Terms and Conditions
 - PCP Review: MLTSS Service Dictionary
 - PCP Review: MCO Contract, Article 9
 - PCP Review: Community Care Waiver (CCW) and Proposed Amendment Services
 - PCP Review: Autism Spectrum Disorder (ASD) pilot
 - PCP Review: Individuals with Intellectual/ Developmental Disabilities and a co-occurring Mental Illness (ID/DD-MI) pilot
 - PCP Review: Serious Emotional Disturbance (SED) program

Site-Specific Assessments:

Section 1115 Demonstration Settings:

●CMS requested that New Jersey identify the residential and non-residential settings that underwent assessment and the specific assessment activities conducted for each group of settings.

- The DHS is using a variety of processes to review the compliance of the provider-owned or controlled residential HCBS settings with the new federal requirements. This topic was addressed on pages 9-10, 14 and 17 of the STP and is further clarified below:

NJAC 8:36 Licensed HCBS Settings

New to STP, pages 9-10: In addition to the current information, New Jersey is submitting Appendix B that details the findings of the self-assessment survey for the NJAC 8:36 licensed HCBS settings.

NJAC 10:44A and 10:44B Licensed HCBS Settings

New to STP, page 14: New Jersey has conducted assessments using the Developmental Disabilities Residential Settings Assessment Tool (Appendix D), which was provided to DDD case managers to complete. An overview of initial findings from assessment responses is attached (Appendix E). These assessments were entered electronically into a Qualtrics web application. Through this web application, New Jersey is able to collect and review data to ensure STP compliance.

DDD case managers visit HCBS recipients, at minimum, quarterly. The case managers interviewed clients and staff at the respective residential settings and also review relevant records. Based on these visits and ongoing communication with the provider agency staff, the case managers completed the surveys. DDD's Case Management County Directors and Supervisors oversaw the process and ensure that contracted residential programs complete the survey. Their oversight will provide consistency in overall survey responses. DDD case management has been provided a list of all contracted residential providers to track survey completion.

Based upon the assessment results, the majority of residential settings appear, overall, to be in compliance with the federal rule. The DHS will work with providers at non-compliant settings to develop corrective action plans to ensure full compliance with the standards by March 2019. The state will monitor progress on the corrective action plans to ensure facilities are transitioning towards compliance.

DDD has identified an STP liaison. The liaison will provide consistent direction and communication. The statewide liaison will work with DDD administrative staff in the collection and review of survey data. The data will be used to generate reports that inform the DHS/DDD administration regarding STP compliance.

NJAC 10:44C Licensed HCBS Settings

New to STP, page 9: Since the STP's release, it was decided that the DHS would use a self-assessment survey (Appendix C) to determine compliance for the CRS providers licensed under NJAC 10:44C by the DHS. It is the same tool (with minor edits) and process that was used to

evaluate the NJAC 8:36 licensed facilities, which was detailed in the STP. The self-assessment tool for the CRS providers mirrored what was used for the Assisted Living (AL) facilities and the Comprehensive Personal Care Homes (CPCHs). The DHS issued the self-assessment survey in January 2016. The survey was mandatory for the six provider agencies and their 55 sites. The DHS will conduct site inspections on a percentage of the settings to ensure that their information was accurately self-reported.

Non-Residential HCBS Settings (CCW/Supports Programs)

New to STP, page 17: New Jersey created a survey to determine compliance of non-residential settings. There was a 100 percent response rate; a total of 305 setting assessments were conducted by case managers using the Developmental Disabilities Non-Residential Settings Assessment Tool (Appendix F). An overview of initial findings based on survey responses is also attached (Appendix G). Based upon assessment results, the HCBS non-residential settings appear overall to be in compliance with the federal rule. Under the new standards for day programs, the DHS will work with providers by offering technical assistance and support to become compliant with the standards by March 2019.

- CMS requested that New Jersey describe its methodology to identify a representative sample of settings that will undergo site inspections. CMS asked New Jersey to describe the activities such as discussions with staff, interviews with beneficiaries, etc. that will occur during the site inspections and whether these inspections are synonymous to the unannounced surveys described in the state's timeline.

- **New to STP, page 10:** Site inspections and unannounced surveys are synonymous for the settings licensed under NJAC 8:36. There will also be a similar process undertaken for the settings licensed under NJAC 10:44C. In order to validate the provider self-assessments, the DHS' Division of Aging Services (DoAS) is conducting a statistically valid sampling that is proportionally representative of the total number of settings for each type of setting—both Assisted Living Residences (ALRs) and Comprehensive Personal Care Homes (CPCHs). The DHS' Office of Program Integrity and Accountability (OPIA) is responsible for licensing and regulatory oversight for the CRS settings under NJAC 10:44C and conducts inspections of these settings every two years. DHS plans to incorporate the verification of the self-assessments as part of its routine licensing inspections for the 55 settings operated by the six CRS providers. The DHS has developed a verification tool to validate the results that is based on the self-assessment survey that the organizations have already completed. OPIA regulates programs serving persons with mental illness, developmental disabilities and traumatic brain injuries.

- CMS asked New Jersey to clarify the assessment process being used for the settings licensed under NJAC 10:44C.

- **New to STP, page 9:** As previously mentioned in this addendum, the same self-assessment survey used to assess the NJAC 8:36 settings is being used to survey settings licensed under NJAC 10:44C. See Appendix C.

1915(c) CCW Settings:

- CMS requested that New Jersey describe the data sources and type of information that will be captured by the tool in the STP.
 - New to STP, page 14: The Community Residential Service Provider Self-Assessment Survey and the Developmental Disabilities Residential and Non-Residential Settings Assessment tools are contained in Appendices C, D and F.

Ongoing Monitoring:

- CMS requested that New Jersey provide more detail describing how settings under the 1915(c) waiver will be monitored to ensure compliance with the setting requirements after the March 2019 deadline.
 - **New to STP, page 10:** The DHS, through its licensing and regulatory processes, will verify that licensed settings initially and continually meet required licensing and/or certification standards. During the course of rendering ongoing services, providers will receive ongoing oversight through the annual licensure and inspection processes. Proposed changes to licensure regulations will ensure ongoing compliance with the final rule.
- CMS requested that New Jersey further explain how the regular monitoring process for NJAC 8:36 licensed facilities will take place to ensure ongoing compliance with the federal requirements.
 - **New to STP, page 10:** While the facilities governed under NJAC 8:36 facilities are under the oversight of the DOH from a licensing and survey perspective, MLTSS was developed and implemented, and is administered and managed, at the DHS.

As outlined in Appendix B, New Jersey will take a two-fold approach to ensuring that the HCBS settings are compliant after the March 2019 deadline.

The DHS will continue working with the DOH to ensure that these new federal requirements are integrated into its licensing and survey process of the facilities as part of complaint investigations and routine inspections. The DHS will work with DOH and the Health Care Association of New Jersey Foundation (HCANJF) to ensure that the federal requirements are integrated into the Advance Standing requirements.

In addition, the DHS plans to draw upon the role of the MCOs and their care managers to ensure that MLTSS members are living in HCBS settings that are compliant with the federal requirements. MLTSS uses MCOs to coordinate all services for members: acute, behavioral and primary health care services, and their long term services and supports. It is projected that by March 2019 deadline, the MCOs will only be contracting with compliant NJ FamilyCare providers for MLTSS.

- CMS requested that New Jersey clarify in its STP whether the state intends to use the modified licensing standards and, therefore, use a licensing entity to monitor, on an ongoing basis, sites' compliance with the federal rules.

- See two preceding responses in this section that address this question.

- CMS requested that New Jersey delineate its process for ensuring ongoing monitoring of compliance.

- **New to STP, page 10:** As New Jersey transitions into the Medicaid-based fee-for-service system, its process for ensuring ongoing monitoring of non-licensed settings will follow the policies documented in the Supports Program's Policies and Procedures Manual. Day habilitation programs must be certified, which requires formal review and on-site inspections. Additionally, Support Coordinators must have frequent contact with the individuals served, including a monthly contact via phone or video, quarterly face-to-face contact, and an annual home visit to the setting. The Support Coordinator must review all changes to a person's Individualized Service Plan (ISP) or services. Further, the setting must provide comprehensive financial data to demonstrate its ability to continue providing services uninterrupted. Data is also collected from customer satisfaction measures that are reviewed annually by the DDD. Lastly, the DDD reserves the right to dis-enroll or impose sanctions upon any provider that does not meet or is in violation of any of the DDD's policies, standards, and/or requirements. Disenrollment is conducted in accordance with NJAC 10:49-11. Remediation to the Supports Program Policies and Procedures Manual will ensure ongoing compliance with the final rule.

Remedial Actions:

Systemic Remediation:

- CMS requested that New Jersey provide more detail in the STP regarding how necessary revisions to state regulations were made or will be made, including a crosswalk of the identified regulations and policies in need of remediation to comply with the relevant portions of the federal requirements.

- **New to STP, page 18:** accompanying this addendum (Appendix A) identifies New Jersey's proposed approach to compliance with the HCBS final rule.

Summary of Regulatory Changes

The DHS completed its evaluation of the licensing regulations governing MLTSS in the NJCW and the CCW in its STP. The state will advance as follows:

Managed Long Term Services and Supports (MLTSS)

The DHS, in collaboration with the DOH, has determined that amendments to NJAC 8:36 should be adopted to ensure compliance with the new federal requirements. Since NJAC 8:36 is set to expire in 2020, the state may need to move up the rulemaking process to make the proposed changes by March 17, 2019. For NJAC 8:43B, the state will need to promulgate new rules because they have expired for Adult Family Care (AFC), an HCBS service with less than 20 MLTSS members.

In NJAC 8:36, the citations for the HCBS qualities related to visitors (individuals having the ability to have visitors of their choosing at any time); dining (having access to food at any time) and choice of roommate (individuals sharing units have a choice of roommate in that setting) could be better defined to ensure compliance with 42 CFR §441.301 and 42 CFR §441.710. Although the New Jersey regulations speak to these HCBS qualities, their application is ultimately determined by the facility's policies and procedures.

Also in NJAC 8:36, the DOH recognizes that those rules may be revised to include more specific eviction processes and appeals. The DOH will take whatever steps are necessary, including potentially revising NJAC 8:36, to ensure that an agreement between an AL facility and each resident is in place and that the document provides protections that address eviction processes and appeals comparable to those provided under New Jersey's landlord tenant law.

The state anticipates about a two and one-half year period to rewrite NJAC 8:36 and issue new regulations, presuming the rulemaking process begins in 2016, it will run until the end of 2018.

To promulgate new regulations for NJAC 8:43B, however, will require a longer time frame. The state will need about three years to reissue regulations for AFC, assuming the assignment begins in 2016.

For programs licensed under NJAC10:44C (Community Residences for Persons with Head Injuries), the DHS will pursue licensing and regulatory changes to ensure compliance with regard to the area of choice and independence, to ensure that individuals participate in their roommate selection and that there are comfortable accommodations for private visits; and in the area of resident rights to ensure that individuals have a lease/residency agreement.

Any necessary regulatory changes will take up to three years to be completed.

Community Care Waiver (CCW)

For programs licensed under 10:44A – Community Residences for People with Developmental Disabilities, DDD will pursue regulatory and licensing changes to ensure compliance in the area of resident rights (to require lease-based housing).

For programs licensed under 10:44B – Community Care Residences, DDD will pursue regulatory and licensing changes to comport with current Social Security rules regarding representative payees and to ensure individuals’ rights regarding control of their personal resources are met.

DDD anticipates these changes will require three years to complete.

Summary of Changes to State Standards and Policies

The DHS completed a review and analysis of its standards and policies for compliance with the HCBS setting requirements for inclusion in its STP. Under the NJCW, the following initiatives were analyzed: MLTSS; the Supports Program; and three pilot demonstrations including the Autism Spectrum Disorder (ASD), Individuals with Intellectual/Developmental Disabilities with Co-Occurring Mental Illness Diagnoses (ID/DD-MI) pilot and the Serious Emotional Disturbance (SED) pilot. In addition, the DDD completed its review of the standards and policies for the CCW.

NJ Comprehensive Waiver Demonstration (NJCW)

The qualities of the HCBS settings are intrinsic to MLTSS. They are in the Special Terms and Conditions that were provided to the state by CMS when the NJCW was approved in October 2012.

With MLTSS, the DHS used the CMS language in its contract language with the managed care organizations (MCOs). In this managed care approach, the state holds the MCOs responsible for ensuring that the provisions under MLTSS are compliant with the new rule.

For the ASD, ID/DD-MI and SED programs, the standards and policies also are reflective of the compliance requirements of the HCBS setting requirements with services to be provided to enrolled youth in their own homes.

Community Care Waiver (CCW)

For programs licensed under 10:44A – Community Residences for People with Developmental Disabilities, and under 10:44B – Community Care Residences, DDD will revise its policies regarding placement to ensure participation in roommate selection, to require individuals to live in lease-based housing, and to prohibit the colocation of multiple programs for large numbers of people with disabilities. These policies will be enacted by July 1, 2018.

●CMS requested that New Jersey incorporate milestones into its timeline that describe the activities needed to achieve systemic remediation and compliance by March 2019.

- **New to STP, page 23:** The timeline is revised in Appendix H.

Site-Specific Remediation:

●CMS requested that New Jersey provide more detail on the specific processes for approving its remediation plans, including step-by-step remedial actions (and timeframes) that will be taken to bring settings into compliance.

- **New to STP, pages 14 and 17:** The DHS is meeting with providers to assess each case individually. Each situation is unique and, as such, the primary goal is to cause the least disruption to individuals receiving services. In situations where an individual needs to relocate, efforts focus on ensuring continuity of services.

●CMS requested New Jersey specify in the STP if remedial activities are contained within licensing standards and activities.

- **New to STP, page 18:** As mentioned earlier in this addendum, Appendix A identifies New Jersey's approach to advance compliance with the HCBS final rule.

Relocation of Beneficiaries:

●CMS requested that New Jersey develop a process to safely relocate beneficiaries supported with a timeline for each step of the process.

- **New to STP, page 4:** In the few instances for which individuals need to be relocated, the DHS intends on using a person-centered approach to determine the appropriate relocation plan for each individual. The process will be designed to ensure that services are provided continuously and any relocation is done in the least disruptive manner possible. As such, timelines will be individualized to provide a person with the opportunity to make the most informed choice. Further, the state supports the Community Living Education Project (CLEP), a program that provides comprehensive education to individuals receiving services and their family members regarding the transition into community living. CLEP assists individuals and their families in deciding which HCBS-compliant settings would be most appropriate from a full range of residential options.

●CMS requested that New Jersey clarify whether DDD intends to relocate individuals who reside in community residences on the grounds of, or immediately adjacent to developmental centers.

- **New to STP, page 31:** As explained above, there are currently 39 individuals living in five group homes and apartments on the grounds of developmental centers in New Jersey. The DHS is working with the providers to relocate these individuals by March 2019.

Heightened Scrutiny:

- CMS requested that New Jersey clearly lay out its process for identifying settings that are presumed to be institutional in nature.
 - **New to STP, page 4:** New Jersey will apply a heightened scrutiny review for settings that are presumed to have institutional-like qualities, based on CMS' heightened scrutiny process. Settings that will be reviewed under this process include settings that are presumed to have the effect of isolating individuals from the broader community, but can demonstrate qualities of a home and community based setting that is integrated in and supports full access of individuals in the greater community.

New Jersey will submit settings to CMS for application of Heightened Scrutiny only after the state has determined that the setting in fact has overcome —institutional-like qualities, and has come into compliance with home and community-based setting requirements, which may include the evaluation of the following factors:

- Evidence that the setting is integrated and supports full access to the greater community;
- Proximity to and scope of interactions with individuals not receiving HCBS;
- Policies and procedures that expressly support the setting requirements and indicate support for activities in the greater community according to a person-centered approach;
- Indication that the individuals selected that service/setting from among other options, including non-disability specific settings;
- Narrative, pictures, and/or floor plans that demonstrate evidence of the individual's right to privacy (e.g., Velcro strips, locked doors);
- Individuals' access to public transportation;
- Individuals' access to non-disability specific community activities and programs;
- Individuals' ability to furnish and decorate their living space, and choose their own schedules for meals and other activities; and
- Individuals access to individualized schedules and supports, based on their personal choices.

DDD may conduct an on-site visit to each setting prior to making a determination as to whether an application will be submitted to CMS. The intent of these visits will be to further evaluate any setting that may be institutional in nature.

Settings under development or new construction that meet the definition of a setting “presumed to have institutional-like qualities” cannot apply for CMS' Heightened Scrutiny

review until the setting is operational and occupied by individuals receiving services. This requirement ensures that the individuals residing or receiving services in the setting actually experience the setting in a manner that promotes independence and community integration. The State will not consider any payment for individuals receiving services in newly developed/constructed settings until CMS has granted its approval under the heightened scrutiny review process.

- CMS requested that New Jersey choose a date that allows adequate time for settings under the 1915 (c) waiver and 1115 demonstration to come into compliance.
 - **New to STP, Appendix B:** With regard to NJAC 8:36 licensed facilities, the DHS does not anticipate having to relocate consumers. The DHS received a 100 percent response rate from the approximately 200 HCBS residential facilities that were required to complete the self-assessment survey.

With some exceptions, the DHS found a high report of compliance in all the sections of the survey. As outlined in the STP, the DHS is conducting site inspections of a percentage of the facilities to ensure that their information was accurately self-reported and the requirements are understood by the providers.

- **New to STP, page 14:** While the DHS has not yet completed surveys of those settings licensed under the 1915(c) waiver, it is not anticipated that consumers in these settings will need to be relocated based on reports by case managers.

For settings found to be non-compliant, the state will request a corrective action plan to ensure compliance for each of the outstanding facilities by 2019. The state will also monitor the corrective action plan to ensure that the facilities are advancing the transition to compliance.

Additional Change:

- The DHS requested guidance from CMS on new project development in a letter dated November 5, 2015. With no response from CMS to date, the DHS amends the plan as follows:
 - **New to STP, page 15:** DHS has clarified in the STP that all settings, existing and new, must comply with the HCBS Final Rule. The site-specific assessments to be conducted by DDD will determine whether each existing setting complies with the HCBS Final Rule. The size of the site, in and of itself, will not be the sole determinant of compliance with the Final Rule.

If, as a result of its assessment of an existing site, DHS identifies any areas of non-compliance, DHS will work closely with housing providers and individuals living in the housing settings to develop a site-specific remediation plan to bring the setting into

compliance with the HCBS Final Rule while minimizing any disruption to individuals. Based on its preliminary system assessment, DHS anticipates that approximately 99% of residents in existing sites should not have to move.

All new settings will have to complete a Community Integration Review to ensure that the settings are consistent with CMS' guidance in regards to home and community based standards. The Community Integration Review may be completed at any time, but it is recommended that, for congregate settings serving more than 4 individuals (or 6 with DDD's approval) or non-congregate settings with more than 25% of units set aside for individuals with disabilities, the review be initiated prior to the setting being occupied. It is important to note that the size of the setting or the percentage of the population is only one of many factors that will go into the analysis to determine whether a project will be approved as a Medicaid-eligible Home and Community Based Setting or not. Among other factors, this review process will strongly take individual experiences into account. The ultimate goal is to ensure that every setting is indeed truly home and community based.

To ensure that recipients of HCBS services may choose from among a spectrum of settings that provide the maximum opportunity for community integration, the DDD will modify its regulatory and licensing requirements, where appropriate, to reflect these policies. These policies will cover both licensed settings and unlicensed, independent residential settings where individuals receive HCBS services through the Community Care Waiver (CCW) or the Supports Program.