

STATE OF NEW JERSEY

Statewide Transition Plan

Addendum #2

January 6, 2022

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 the submission of New Jersey's [Statewide Transition Plan \(STP\)](#), the Centers for Medicare & Medicaid Services (CMS) sent a communication to the New Jersey Department of Human Services requesting supplemental information to its [Statewide Transition Plan Addendum](#). This second addendum responds to the CMS technical questions.

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 issued a [letter to the State Medicaid Directors](#) 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 a new compliance date for the Home and Community Based Services (HCBS) Final Rule of March 17, 2022.
- 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.

Response to CMS inquiry related to Statewide Transition Plan submission

Public Notice and Comment

a. Please verify and provide details for non-electronic public notice.

New Jersey Response:

In January 2015, non-electronic notice of public input sessions was published in three newspapers: the Camden Courier Post, the Star Ledger and the Bergen Record/Herald News (See Appendix B - Full Text of Non-Electronic Public Notice).

The NJ Department of Human Services (DHS) engaged in dialogue and feedback with individuals, families, caregivers, providers and stakeholders. Communication included in-person presentations, webinars, conference calls, as well as meetings with consumer groups, family groups, and provider groups. Members of the community provided feedback at these venues, as well as through a dedicated email linked on the Division of Developmental Disabilities (DDD) webpage.

In the spring of 2015, DHS provided public notice through a varied process for stakeholders and other members of the public to review, comment and provide input on the Statewide Transition Plan Addendum (Addendum). A [YouTube video](#) by the Assistant Commissioner in DDD was posted on the DHS website to address the next steps in the STP and particularly address the DDD community. The video – *Statewide Transition Plan: Update and Next Steps* – received over 1,500 hits according to the DHS tracking system.

Additional public input was solicited on July 1, 2016 through an email letter sent by DHS Acting Commissioner Connolly (See Appendix B – Communication From Acting Commissioner). It was sent to known stakeholders through a listserv, though the timeframe to send in comments was ultimately extended from what was originally announced by a week. Those individuals who were interested could send in their comments via email, via postal mail, or they could attend one of the three listening sessions held in Newark, Hamilton and Sewell. The dates for the listening sessions were also posted on the DHS website.

The first listening session was held at Seton Hall University in Newark on August 3, 2016. Stakeholders in attendance commented on parts of the Addendum. Their concerns covered a wide variety of topics, including housing density, the Density Review requirements, integration within the greater community, freedom of choice, individual needs, day programs, and day services. Funding and staffing of settings were frequent topics of comment as well. Additionally, stakeholders brought up specific issues relating to JESPY House and the overall treatment of people with disabilities. Lastly, a number of general comments were also made.

The second listening session was held at the Division of Developmental Disabilities Central Office in Hamilton on August 10, 2016. Many of the same topics that were prevalent at the first listening session came up again, including housing density, Density Review requirements, integration within the greater community, freedom of choice, individual needs, day programs, day services, funding and the treatment of people with disabilities. However, a number of previously

unmentioned topics were brought up during this listening session, including supports, staffing and services, group homes, farmsteads, developmental centers, Medicaid and Medicare. Additionally, there were a number of very general comments as well.

The third listening session was held at Rowan College at Gloucester County in Sewell on August 11, 2016. Familiar topics, including housing density, Density Review requirements, integration within the greater community, freedom of choice, individual needs, day programs, day services, and general treatment of people with disabilities, were frequently brought up in stakeholder comments. Additionally, a number of stakeholders had comments relating to funding, supports, staffing and services, and group homes. There were also a number of requests for appendices, as well as some general comments.

Interested stakeholders who were unable to attend one of the three listening sessions were able to provide their comments and concerns via postal mail or email. Many stakeholders took advantage of these options and sent in comments related to a number of issues, including the usual topics of housing density, Density Review requirements, integration within the greater community, freedom of choice, individual needs, day programs, day services, funding and the general treatment of people with disabilities. Additionally, stakeholders sent in commentary regarding Medicaid/Medicare waivers, farmsteads and requests for/comments on appendices. Other stakeholders had technical questions, general comments, or offered recommended academic resources.

Settings Included in STP

- a. *Please confirm that the state standards for Adult Family Care (AFC) settings are included in the STP, and will also be assessed via the site-specific assessment process. The state should include AFC settings in the site-specific assessment process used for compliance with all the settings criteria for provider-owned or controlled residential settings, including written lease/residency agreements in place for each HCBS participant which provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. Settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) are considered provider-owned or controlled settings and should be evaluated as such. Please specify the changes that will be made to the regulations in order to ensure compliance with all of the settings criteria.*

New Jersey Response:

Adult Family Care settings had been governed by N.J.A.C. 8:43B – Standards for Licensure of Adult Family Care (AFC). These regulations have expired. In state fiscal year 2019 there are about 20 MLTSS members living in AFC settings. The State is currently in the process of reviewing the expired regulations to bring them into compliance with the final rule.

A crosswalk of 8:43B has been added to Appendix A and starts on page 156 of that document. Please note that citations are based on proposed regulations and may change on adoption. The State will assure that the final regulations are in compliance with the HCBS Final Rule, including

that these settings are assessed via a site-specific assessment process and that the individuals have tenancy rights.

AFC was reviewed in the same manner as the HCBS settings in NJAC 8:36 with a crosswalk, including these domains: *physical location*, *community integration*, *person-centered planning*, *choice and independence*, and *resident rights*. Since NJAC 8:43B has expired, the DHS looked at AFC in the context of a service under MLTSS.

AFC enables up to three unrelated individuals to live in the community in the primary residence of a trained caregiver who provides support and health services for the resident. AFC may provide personal care, meal preparation, transportation, laundry, errands, housekeeping, socialization and recreational activities, monitoring of participant's funds when requested by the participant, up to 24 days of supervision, and medication administration.

In a review of the CMS guidance on *physical location* and *community integration*, the state does not believe these citations apply to AFC. This HCBS setting is provided in the home of a paid caregiver—a private home located in the community. In addition, each AFC sponsor agency has a social worker whose responsibilities include contacting social services and other community resources for information, referrals and services.

Person-centered planning (PCP) is the responsibility of the NJ FamilyCare Managed Care Organizations (MCOs) for their MLTSS members in AFC. In New Jersey, the requirement for person-centered planning is found in contract language between the state and the MCOs. The Plan of Care (POC) is contractually required to be person-centered and culturally sensitive, and offer appeal rights to the MLTSS members.

AFC demonstrates compliance with the required CMS qualities for *Choice and Independence* and *Resident Rights* in the new rule. Since AFC is provided in the home of a paid caregiver, for instance, the following proof can be provided:

- Since the MLTSS members are living in private homes, for instance, there would be no posting of visitation hours and there is one kitchen in the residence and no assigned seat in a dining room.
- The kitchen, laundry and other community areas are fully accessible. While bedrooms are fully furnished, personal items such as linens, decorations, pictures and other items of interest to the resident, are allowed.
- A contractual agreement between the resident, the sponsor agency and the caregiver needs to be signed by all parties and kept on record with copies provided to all parties.

Systemic Assessment

General

- a. *Please provide hyperlinks in the STP for each of the state standards that have been assessed for compliance with the federal rule. The state cited numerous state regulations, policy manuals, state standards, etc. as supporting evidence in the systemic crosswalk, however the state did not provide the links for all of them. Please provide the hyperlinks for the following cited references from the Systemic Assessment Crosswalk.*

New Jersey Response:

The following regulations, standards, etc. have been referenced during this process:

- N.J. Stat. § 10:5:
<http://njlaw.rutgers.edu/collections/njstats/showsections.php?title=10&chapt=5>
- N.J. Stat. § 30:6D:
<http://njlaw.rutgers.edu/collections/njstats/showsections.php?title=30&chapt=6D>
- N.J. Stat. § 30:11B:
<http://njlaw.rutgers.edu/collections/njstats/showsections.php?title=30&chapt=11B>
- N.J.A.C. 5:23:
<https://casetext.com/regulation/new-jersey-administrative-code/title-5-community-affairs/chapter-23-uniform-construction-code>
- N.J.A.C. 8:33H:
<https://casetext.com/regulation/new-jersey-administrative-code/title-8-health/chapter-33h-certificate-of-need-policy-manual-for-long-term-care-services>
- N.J.A.C 8:43B:
<https://www.nj.gov/humanservices/ddd/documents/Chapter-8.43B.pdf>
N.J.A.C. 8:36
http://pharmacareinc.com/files/201711_NJAC_8_36_Assisted_Living_Facilities.pdf
- N.J.A.C. 8:85:
<https://casetext.com/regulation/new-jersey-administrative-code/title-8-health/chapter-85-long-term-care-services>
- N.J.A.C 10:40:
https://www.state.nj.us/humanservices/providers/rulefees/regs/NJAC%2010_40%20DDD%20Organizational%20Rules.pdf
- N.J.A.C. 10:41:
<https://casetext.com/regulation/new-jersey-administrative-code/title-10-human-services/chapter-41-records-confidentiality-and-access-to-client-division-and-provider-records>
- N.J.A.C. 10:44A:
https://www.state.nj.us/humanservices/providers/rulefees/regs/NJAC%2010_44A%20Standards%20for%20Community%20Residences%20for%20Individuals%20with%20Developmental%20Disabilities.pdf

- N.J.A.C. 10:44B:
https://www.state.nj.us/humanservices/providers/rulefees/regs/NJAC%2010_44B%20Manual%20of%20Standards%20for%20Community%20Care%20Residences.pdf
- N.J.A.C. 10:44C:
https://www.state.nj.us/humanservices/providers/rulefees/regs/NJAC%2010_44C%20Standards%20for%20Community%20Residences%20for%20Persons%20with%20Head%20Injuries.pdf
- N.J.A.C. 10:48:
<https://casetext.com/regulation/new-jersey-administrative-code/title-10-human-services/chapter-48-appeal-procedure>
- Community Care Program Manual:
www.nj.gov/humanservices/ddd/documents/community-care-program-policy-manual.pdf
- Supports Program Manual:
www.nj.gov/humanservices/ddd/documents/supports-program-policy-manual.pdf
- Participant Statement of Rights and Responsibilities:
www.nj.gov/humanservices/ddd/documents/participant-rights-responsibilities-english.pdf
- Residency agreement (Sample – The Division provided a standard template that agencies can use. They have the option to adapt but cannot remove content):
www.nj.gov/humanservices/ddd/documents/sample-residency-agreement.pdf
- Division Circular #4:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C4.pdf
- Division Circular #5:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C5.pdf
- Division Circular #18:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C18.pdf
- Division Circular #34:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C34_1999.pdf;
www.nj.gov/humanservices/ddd/documents/Documents%20for%20Web/DC34ExplanationLtr_1.2010.pdf
- Division Circular #35:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C35.pdf
- Division Circular #36:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C36.pdf

- Division Circular #37:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C37.pdf
 - Division Circular # 41:
www.nj.gov/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/D C41.pdf
 - Division of Developmental Disabilities Mission Statement:
<https://nj.gov/humanservices/ddd/home/about/mission/index.html>
 - Guidance on Division Funding and Individual Funds Charged/Collected by Residential Providers:
www.nj.gov/humanservices/ddd/documents/guidance-on-ddd-funding-and-residential-provider-charges.pdf
 - Community Care Residence Provider Agreement:
www.nj.gov/humanservices/ddd/documents/CCR-Provider-Agreement.pdf
 - MCO Contract:
<https://www.state.nj.us/humanservices/dmahs/info/resources/care/hmo-contract.pdf>
 - HIPAA Notice of Privacy Practices:
<https://www.state.nj.us/humanservices/documents/NPP%20Website%202018.pdf>
 - MLTSS Services Dictionary:
https://www.state.nj.us/humanservices/dmahs/home/MLTSS_Service_Dictionary.pdf
- b. *Please ensure the state addresses the federal setting criteria of freedom from restraint, as well as access to personal resources and competitive integrated employment for all settings throughout the systemic assessment crosswalk. Additionally, please address the right to have access to food at any time, the right to have visitors of the individual's choosing at any time, that only appropriate staff have keys to unit doors, and physical accessibility for all provider owned and controlled settings throughout the crosswalk. Please clarify where these items are located in the state's existing standards or provide a remediation strategy in the STP's crosswalks. As identified in the System Assessment Spot Check below, the state should assure consistency in applying all of the federal settings criteria across all settings.*
- a. New Jersey Response:**
- i. New Jersey addressed these topics in the crosswalk.
- c. *CMS requested that New Jersey identify the settings to which pages 23-47 of the crosswalk apply within the STP (Appendix A).*
- a. New Jersey Response:**
- i. Pages 23-47 of the crosswalk apply to Community Residences for Individuals with Developmental Disabilities. The crosswalk has been updated to more clearly reflect this.

Systemic Assessment Spot Check

CMS noted the issues below in its feedback after completing a spot check of a portion of the state standards assessed for compliance in the STP's Systemic Assessment Crosswalk appendices. New Jersey addressed the issues below within the framework of the crosswalks in the "remediation approach" column and also ensured that compliance is achieved for all settings criteria—as CMS requested. The crosswalks will be reposted on the DHS website with this additional information.

The following are CMS comments which are answered within the revised New Jersey crosswalks:

- a. *Upon review, it appears that N.J.A.C. 8:36 is silent with regard to providing access to competitive integrated employment for assisted living residents. Please provide the language from an applicable state standard showing compliance or provide a remediation strategy in the crosswalk (page 4, Appendix A). The state indicates that the regulation will be reauthorized in December 2020 to address competitive integrated employment. The state should remove the statement "NOT APPLICABLE TO THIS POPULATION."*

a. New Jersey Response

- i. Appendix A, page four has been updated.

- b. *For the criterion that individuals are able to have visitors of their choosing at any time, it appears that N.J.A.C. 8:36-4.1(a) conflicts with the rule. It allows facilities to develop a visitor policy that can potentially restrict an individual's access to visitors. Please note individuals must have access to visitors at any time. Additionally, the federal settings regulations require that a setting comply with the requirements in 42 CFR 441.301(c)(4)(vi)(F) before modifying the individual's right to visitors. Please also include language in the STP indicating that any restrictions to an individual's access to visitors will be documented through the person-centered planning process (page 6, Appendix A). The state indicates that the regulation will be reauthorized in December 2020 to address facilities' visitor policies that can potentially restrict an individual's access to visitors. The state should clarify that any restrictions to an individual's access to visitors will be documented through the person-centered planning process.*

a. New Jersey Response

- i. Appendix A, page six has been updated.

- c. *Upon review, it appears that N.J.A.C. 8:36 is silent with regard to the ability to choose a roommate(s). Please provide language from an applicable state standard showing compliance or provide a remediation strategy in the crosswalk (page 12, Appendix A). The state indicates that the regulation will be reauthorized in December 2020. The State will incorporate the HCBS final rule regarding the ability to choose a roommate(s). The state should remove "unless it is medically inadvisable, at that time." The state should include language in the STP indicating that any restrictions to an individual's ability to choose a roommate(s) should be documented in the person-centered planning process.*

a. New Jersey Response

- i. Appendix A, page twelve has been updated.

- d. *The crosswalk in Appendix A (page 16) indicates that in assisted living facilities with Alzheimer/Dementia units, controlled ingress and egress are necessary for the residents' protection. Please ensure that individuals have full access to the setting unless restrictions*

are documented via the person-centered planning process. Please provide language from an applicable state standard showing compliance or provide a remediation strategy in the crosswalk.

a. New Jersey Response

i. Appendix A, page 16 has been updated.

e. *It appears that N.J.A.C. 8:36 is silent with regard to physical accessibility for assisted living facilities. Please provide a remediation plan within the systemic assessment crosswalk (page 17, Appendix A).*

a. New Jersey Response

i. Appendix A, page 17 has been updated.

f. *Upon review, it appears that N.J.A.C. 10:44A-3.2(a) allows residents and the program manager to develop house rules identifying visiting hours and curfew in Community Residences for people with developmental disabilities. Please provide a remediation strategy in the crosswalk (page 30, Appendix A). N.J.A.C. 10:44-3.2(a) remains in conflict with the settings requirements, please provide a remediation strategy.*

a. New Jersey Response

i. Appendix A, page 30 has been updated.

g. *Upon review, it appears that N.J.A.C. 10:44 is silent in regards to ensuring individuals have access to food at any time. Please provide a remediation strategy in the crosswalk (page 37, Appendix A)*

a. New Jersey Response

i. Appendix A, page 37 has been updated.

h. *Please include remediation language indicating that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed for N.J.A.C. 10:44A (page 41, Appendix A). CMS was unable to locate remediation language in N.J.A.C. 10:44A indicating that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed. Please provide a remediation strategy or direct CMS to where this language can be found.*

a. New Jersey Response

i. Appendix A, page 41 has been updated.

i. *Upon review, it appears the N.J.A.C. 10:44B is silent with regard to access to competitive integrated employment for Community Care Residences. Please provide a remediation plan in the crosswalk (page 52, Appendix A). The language in N.J.A.C. 10:44B has been updated to reference Community Employment, but does not specifically define or address access to competitive integrated employment, please address.*

a. New Jersey Response

i. Appendix A, page 52 has been updated.

j. *Upon review, it appears that N.J.A.C. 10:44B-3.1 allows residents to have “visitors of their choice during reasonable set times.” This conflicts with the settings rule which indicates that residents should have access to visitors at any time. Please provide a remediation strategy in the crosswalk (page 54, Appendix A). NJAC 10:44B remains in conflict with*

the federal settings rule. The STP should reflect that restrictions must be covered through the person-centered planning process, not in provider policies.

a. New Jersey Response

- i. Appendix A, page 54 has been updated.
- k. *The crosswalk in Appendix A indicates that residents in Community Care Residence may set house rules. Please note that the house rules may not conflict with the federal settings rule. Please include language in the applicable state standard ensuring that these policies do not conflict with the federal rule and explain how the state will monitor house rules to ensure they do not conflict with the federal criteria in the settings rule. Please include this information in the crosswalk (page 54, Appendix A). It does not appear that the language in the applicable state standards ensuring that these policies do not conflict with the federal rule has been remediated. Although not a complete list, here are examples of regulations that allow for restrictions based on provider policy that must be remediated:*
 - i. *Make or receive private phone calls during set times;*
 - ii. *Have visitors of their choice during reasonable set times;*
 - iii. *Be free from unnecessary restraints or from being isolated;*
 - iv. *The licensee may establish reasonable house rules, which shall not infringe on the rights of the individuals;*
 - v. *These house rules shall include provisions to assure that individuals exercise their rights in such a way as to not infringe upon the rights of or endanger others;*
 - vi. *The licensee shall avoid any unreasonable schedule concerning the hours at which individuals shall rise or retire;*
 - vii. *Visiting is to be permitted during reasonable hours;*
 - viii. *Individuals shall have the right to access the community for recreation, education, shopping, employment, and to participate in social, religious, advocacy, or other groups of their choice;*
 - ix. *Individuals may be unsupervised when there is documented approval of such by the IDT in the service plan, and which details the specific amounts of time and the locations for the unsupervised time;*
 - x. *The language still allows for restrictions. Please propose a remediation strategy.*

a. New Jersey Response

- xi. Appendix A, page 54 has been updated.
- l. *Please include remediation language indicating that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed for N.J.A.C. 10:44B. Please also provide remediation language for 10:44B-6.4(g)(1), which permits bedroom door keys to be hung outside the room “in close proximity to the door for emergency entry into the room” (page 64, Appendix A). Please provide the date by when remediation language in 10:44B will be completed.*

a. New Jersey Response

- i. Appendix A, page 64 has been updated. Please note that in the context of Community Care Residences, appropriate staff are defined as the licensee and/or their alternate;
 - ii. N.J.A.C. 10:44B is subject to re-adoption and will be updated accordingly. The timeline for re-adoption has been effected by the Covid-19 pandemic. Regulatory revisions will be completed in accordance with the deadlines set forth for HCBS settings compliance.
- m. *Please ensure that any use of restraints or other restrictive practices in any setting is documented via the person-centered planning process. Please include the state standard that complies with this throughout the crosswalk for each pertinent setting type or provide a remediation strategy. Community Care Residence information in Appendix A indicates prohibition of mechanical or physical restraint. There is no indication that the use of restraints or restrictive interventions in Community Care Residences, or other settings, is documented as required in the Person-Centered Planning process. Please provide a remediation strategy.*

a. New Jersey Response

- i. Appendix A, page 68 has been updated.
- n. *Upon review, it appears that N.J.A.C. 10:44B is silent with regard to the federal criterion for settings that individuals be free from coercion. Please include the state standard that complies with this criterion or provide a remediation strategy in the crosswalk (page 68, Appendix A). The language presented in N.J.A.C. 10:44B is silent with regard to the criterion that individuals be free from coercion. Please provide a remediation strategy.*

a. New Jersey Response

- i. Appendix A, page 68 has been updated.
- o. *The crosswalk in Appendix A indicates that residents in Community Residences for persons with head injuries may set house rules. Please note that the house rules may not conflict with the federal settings rule, including the provision that individuals have access to visitors at any time. Please include language in the applicable state standard ensuring that these policies do not conflict with the federal rule and explain how the state will monitor house rules to ensure they do not conflict with the federal criteria in the settings rule. Please include this information in the crosswalk (page 54, Appendix A). It does not appear that the language in the applicable state standard ensuring that house rules policies does not conflict with the federal rule has been remediated.*

a. New Jersey Response

- i. Appendix A, page 54 has been updated.
- p. *Please ensure that any restrictions or modifications to the criteria in the settings rule is documented via the person-centered planning process for individuals residing in Community Residences for persons with head injuries. Please provide a date by when the regulations for individuals residing in Community Residences for persons with head injury will be remediated. Please note that regardless of program, any modifications to the criteria in the settings rule must be documented via the person-centered planning process.*

- a. New Jersey Response**
 - i. Appendix A, page 74 has been updated;
 - ii. N.J.A.C. 10:44C is subject to re-adoption on January 10, 2024. The State will ensure that compliance is achieved prior to March 17, 2023.
- q. *Please include remediation language indicating that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed for N.J.A.C. 10:44C.*
 - a. New Jersey Response**
 - i. Appendix A, page 85 has been updated.
- r. *Upon review, it appears that N.J.A.C. 10:44C is silent with regard to the federal criterion for settings that individuals be from coercion. Please include the state standard that complies with this criterion or provide a remediation strategy in the crosswalk.*
 - a. New Jersey Response**
 - i. Appendix A, page 88 has been updated.
- s. *Please indicate in the crosswalk that the written residency agreements in development for Community Care Residences and Community Residences for persons with head injuries will provide comparable protections from eviction and appeal rights as local landlord/tenant law. Please provide assurance that the written residency agreements in development are legally enforceable and provide comparable protections from eviction and appeal rights as local landlord/tenant law and the date by which the regulation will be remediated.*
 - a. New Jersey Response**
 - i. Appendix A, page 89 has been updated.
- t. *The state should include a column in the regulatory crosswalk which addresses the current compliance levels for the settings criteria. Please indicate whether the state statute/regulation/policy is compliant, not compliant or conflicting, or silent in comparison to the settings criteria. Based on the compliance determination, please include the state's remediation approach and the timeline by which remediation will occur. Please include the links for the cited references (8:36; 8:43, 10:5; 10:44, etc.) and other policy manuals, etc in the crosswalk. Please ensure the links lead directly to the referenced citation.*
 - a. New Jersey Response**
 - i. Appendix A, New Jersey Home and Community-Based setting crosswalk has been updated throughout the document and now describes whether the regulation is compliant, partially compliant, non-compliant, or silent. Remediation approaches are further described and the links for all references citations are included in the crosswalk.
- u. *Please provide a draft of the proposed changes that will be made as of December 2020 for N.J.A.C 8:36 and 8:43.*
 - a. New Jersey Response**
 - i. The draft proposed changes to N.J.A.C 8:36 are included in Appendix A where applicable. N.J.A.C. 8:43 was readopted in February 2019 and there are no further revisions anticipated at this time.

- v. *The state has indicated that written residency agreements are in development, which will provide for protections that address eviction processes and appeals comparable to those provided under the state’s landlord tenant law for Community Care Residences and Community Residences for persons with head injuries. N.J.A.C. 10:44C which addresses this area of concern, is not subject to re-adoption until January 10, 2024 and the state has ensured they will achieve compliance prior to March 17, 2022. Please provide details in the STP/crosswalk on how the state intends to achieve compliance which allows for stakeholder review and comment prior to March 17, 2022.*

- a. **New Jersey Response**

- i. The remediation approach is included in Appendix A, page 89.

- w. *The state added remediation strategies for making private phone calls, having visitors, and being free from coercion. However, there is no remediation related to policies that conflict with the HCBS federal criteria, the ability for the licensee to establish house rules to limit rights as to not infringe on other rights, and supervision. As indicated previously in feedback to New Jersey, the list was not a complete list, just a sample of regulations that allow for restrictions based on provider policy that must be remediated. The state must include a remediation plan, with a proposed completion date, for all of those examples provided in the prior feedback as well as assure that all policies that are in conflict with the HCBS federal criterion have remediation plans.*

- a. **New Jersey Response**

- i. Appendix A has been updated to include remediation plans with proposed completion dates for policies that are in conflict with the HCBS federal criterion.

- x. *The state should include information in the remediation approach column for the citations in the Special Terms and Conditions, MLTSS Dictionary, MCO contract (Chapter 9) sections (pgs. 81-131) where the compliance determination was identified as “silent”.*

- a. **New Jersey Response**

- i. The State has revised the compliance demonstrations from silent to compliant as the Special Terms and Conditions, MLTSS Dictionary, and MCO contract require compliance with federal and state statutes, regulations, and policies.

- y. *In several sections of the crosswalk the state includes the following language: “The timeline for remediation has been effected by the Covid-19 pandemic. Regulatory revisions will be completed in accordance with the deadlines set forth for HCBS settings compliance.” Please be more specific about the timeline for assuring statute/regulatory/policy compliance.*

- a. **New Jersey Response**

- i. Revised dates have been provided for statute/regulatory/policy compliance in all applicable sections.

- z. *The state should update links that will lead directly to the citations.*

- a. **New Jersey Response**

- i. The links have been updated to lead directly to the citations.

aa. The state indicated in the crosswalk that NJAC 8:36 is subject to reauthorization on December 23, 2020. The state's response indicates that NJAC was readopted in February 2019 and no further revisions are anticipated; however, the links in the crosswalk references the 2001 version instead of the 2019 version. Please clarify if the 2019 version was readopted without any revisions. If there were no revisions to the readopted 2019 version, it currently does not address the HCBS final rule settings criteria. Please include copies or links to the proposed changes that will be made as of December 2020 for NJAC 8:36 and 8:43.

a. New Jersey Response

- i. To provide clarification regarding N.J.A.C. 8:36 and N.J.A.C. 8:43, the State will address each regulation separately.
 - a. New regulations under Title 10 of the New Jersey Administrative Code will be proposed for adoption. The new regulations will incorporate the HCBS final rule settings criteria into 8:36 and the proposal is expected to be completed by March 31, 2022. Although draft revisions are prepared, the State must follow regulatory protocols for public release and cannot include copies or links at this time.
 - b. N.J.A.C. 8:43B references the 2001 version because this is the version of 8:43B that will be proposed for adoption by March 31, 2022, to incorporate the HCBS final rule settings criteria. N.J.A.C. 8:43 was readopted in 2019 with technical revisions, but did not incorporate 8:43B. Although draft revisions to the 2001 version of N.J.A.C. 8:43B are prepared, the State must follow regulatory protocols for public release and cannot include copies or links to the proposed changes at this time.

New regulations under Title 10 of the New Jersey Administrative Code and new regulations at 8:43B will be proposed for adoption. The new regulations will incorporate the HCBS final rule settings criteria. The proposal is expected to be completed by March 31, 2022.

bb. The state should include information in the remediation approach column for the citations in the Special Terms and Conditions, MLTSS Dictionary, MCO contract (Chapter 9) sections (pgs 81-131) where the compliance determination was identified as "silent." Currently, the documents provided are insufficient to support HCBS settings compliance. The STC does not include all settings criteria, nor does it show that provider requirements and other HCBS guiding documents specify that all HCBS providers must comply with the settings criteria found in the STC.

a. New Jersey Response

- i. Because the MLTSS Service Dictionary is part of the Managed Care Contract, as discussed with CMS during the TA call, that section was duplicative and has been removed. The compliance determinations for the Special Terms and Conditions and MCO Contract Sections have been reviewed and updated based on the clarification received from

CMS. Corresponding citations and remediation plans have been added where applicable.

cc. *The state should review each state regulation and include the proper compliance determination. Currently, the state has identified only compliant and partially compliant statuses and did not include the compliance demonstration “conflicting” where the linked regulation includes conflicting language. For all regulations, the state should assure the appropriate compliance demonstration status has been identified and include remediation information.*

a. New Jersey Response

i. The state has reviewed each state regulation and has included the proper compliance demonstration statuses based on clarification received from CMS.

dd. *In our review of the crosswalk you provided, it appears that the state is not using the settings criteria when determining compliance. I have attached a template that includes all of the HCBS settings criteria. The template is prepopulated with NJ statute/rules/policies as a reference however, this is not an exhaustive list of all statutes/rules/policies, etc. the state needs to review. The state is not required to use this template, it is being sent as an example of a template that includes the settings criteria.*

a. New Jersey Response

i. The state has utilized the sample template and has reorganized the information to clarify the state’s review of compliance with the HCBS settings criteria.

ee. *There have been significant changes to the STP since the last time the state posted it for public comment in 2015. To prevent significant concerns from stakeholders about the state’s transparency, CMS encourages the state to post the plan for a 30-day public comment period. If that is the direction you are going to take, please let us know when the STP goes out for public comment.*

a. New Jersey Response

i. The State intends to post the STP for public comment prior to submitting for final approval.

ff. *Within the crosswalk, there are sixteen (16) times where the state indicates “Pending CMS review/approval” in the Remediation Plan column related to the updates made to the MCO contract. Based upon the language the state included in the Explanation of Compliance Status Determination column, the state intends to revise the due date to 3/17/2023 when settings in the MCOs prevue are required to be in compliance by December 31, 2021. However, the state also indicates each of these statuses is Compliant.*

It is not clear what the actual compliance determination is for the MCO contracts. If the MCO contracts require remediation, the Remediation Plan column should indicate what those remediation activities are. “Pending CMS review/approval” should not be the remediation plan. Also, please explain what CMS is reviewing or approving.

a. New Jersey Response

i. The crosswalk has been updated to remove language related to pending CMS review/approval. This was included because CMS is currently in the review process for the MCO contract which has an effective date of July 1, 2021. The language noted in the Explanation of Compliance Status Determination is what CMS will be reviewing as part of the overall approval process.

The MCO Contract has been determined to be in compliance with the HCBS settings criteria.

gg. The state has updated the links in the crosswalk and page 2 of the STP addendum. The link in Appendix A to the crosswalk is from the last STP iteration and reflects issues prior to feedback and correction. Please include the correct link for Appendix A.

a. New Jersey Response

i. The link to the crosswalk in Appendix A has been corrected.

Adaptations to the Statewide Transition Plan

In response to these extensive comments, several adjustments have been made to the Statewide Transition Plan Addendum to address the concerns of stakeholders. Some examples are:

1. The “State Density Review” outlined in a previous draft was eliminated. Instead the implementation of a “Community Integration Review” will now reflect the State’s intention to look at a variety of factors – including individual experiences - in determining whether a setting is truly “home and community based.” While a setting’s size would certainly be one of the factors considered in the evaluation, it would not be the only factor.
2. The STP Addendum was revised 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.
3. Programs that will generally be approved by DDD (Please note that the below supersedes previous STP iterations around program size):
 - Settings of one to four individuals, each with their own bedroom.
 - Settings of up to five or six individuals, each with their own bedroom, shall be considered on a case-by-case basis when it is established by the requestor that it is in the best interest of the target population for the program to be of this size. It is expected that the requestor shall have diversity in their service portfolio and not operate large numbers of this size program as its primary service model.

- Settings with shared bedrooms shall not be approved outside of the express request of the individuals sharing the bedroom. When applicable, service providers will document this in the impacted individual’s record.
 - All of the above residential settings must be located in the community, not have the tendency to isolate and not have day/employment services co-located.
 - Individuals must have a lease, residency agreement, or other written agreement in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord-tenant law.
4. DDD recognizes that stakeholders have innovative ideas related to housing and services for individuals in NJ. For projects that fall outside of the standards indicated above, an additional level of review will be required for approval. To aide in that review, DDD appreciates additional guidance released by CMS on March 22, 2019 related to Heightened Scrutiny. This guidance clarifies that there are three categories of settings presumed to have the qualities of an institution. These are:
- Settings that are located in a building that is also a publicly or privately operated facility that provides in-patient institutional treatment;
 - Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and
 - Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

To further assist states, CMS also provides the following characteristics of settings that isolate HCBS beneficiaries from the broader community:

- Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities for interaction in and with the broader community, including individuals not receiving Medicaid-funded HCBS;
 - The setting restricts beneficiary choice to receive services or to engage in activities outside of the setting; or
 - The setting is physically located separate and apart from the broader community and does not facilitate beneficiary opportunity to access the broader community and participate in community services, consistent with the beneficiary’s person-centered service plan.
5. Based on the above guidance, DDD will review submissions for projects that fall outside of the generally approved sites described above if one or more of the following apply:
- The residential site is larger than six, each with their own bedroom;
 - The location has multiple residential sites in close proximity to one another;
 - The site has day/employment services co-located on the same property where residential services are provided.
 - Infrequently, the Division may consider programs with co-located day services. In these instances, approval shall only be considered if

- Participation in the co-located day/employment service does not have the tendency to isolate the individual from the greater community;
 - The individual has a true option for day/employment services outside of the residential location should they elect to participate in one;
 - Electing a day/employment option outside of the setting will not jeopardize their living arrangement or otherwise necessitate that they move to another residential setting;
 - Any admissions to the program are not be predicated on the individual agreeing to attend on-site day/employment services.
- Individuals must have a lease, residency agreement, or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord-tenant law.
6. At all times, the guidance provided by CMS will be used as the template for project approval.
7. Employment/Day Services:

- It is important that HCBS recipients avoid isolation and are offered maximum community integration/participation while accounting for their assessed needs, individual profile and preferences. This applies to all settings, including those that are facility based. As such, maximum community integration for one individual may look different from that of another individual. To ensure that employment/day services meet the maximum potential of community integration, DDD will adopt the following polices regarding day services and incorporate them into the Supports Program and Community Care Program Policies & Procedures Manuals:
 - Community experiences are included in the individual planning process. The Support Coordinator gathers information about past and current community experiences and includes this information in the “Community Experience” section of the Person-Centered Planning Tool (PCPT). In addition, the Support Coordinator includes ideas for community opportunities in the “Ideas/To Do List” section of the PCPT. This information can assist the provider in identifying community opportunities based on the individual’s interests, strengths, hopes/dreams, current activities, etc.
 - The provider will utilize information gathered through their own process of getting to know the individual as well as information provided through the PCPT to develop strategies related to community activities/experiences and document them in the Individualized Goals Form. These community opportunities such as volunteering, prevocational training, recreation, etc.

are incorporated within the Individualized Activity Schedules. To optimize staffing, the provider can link individuals with similar interests to mutual activities.

- The provider will maintain information regarding the individual’s progress toward reaching community related goals by utilizing the “location” column within the Activities Log and through the Annual Update.
- The provider will make an effort to increase community involvement for each individual, as appropriate to the individual’s needs, interests, outcomes, and health/safety, over time. This information can be gathered through the addition of the location column within the Activities Log.
- DDD’s Provider Performance and Monitoring Unit will monitor progress toward community involvement through regular monitoring and the Day Habilitation Certification process.
- The Support Coordinator monitors access to the community and the individual’s satisfaction with community participation through the Monthly Monitoring Tool.
- The provider will utilize information contained in the activity logs and annual updates to assess the individual’s level of community involvement and adjust accordingly.

Appendix A

www.nj.gov/humanservices/ddd/documents/Appendix-A-STP-Crosswalk.pdf

Appendix B

Full text of Non-Electronic Public Notice

New Jersey Department of Human Services
Notice of Public Comment
Statewide Transition Plan

The Centers for Medicare & Medicaid Services (CMS) issued a final rule on January 16, 2014 to ensure that Medicaid's home and community-based services (HCBS) programs provide full access to the benefits of community living and offer services in the most integrated settings.

Pursuant to 42 CFR §441.301(c)(4)(5) and 42 CFR §441.710(a)(1)(2), the final rule gives states until March 17, 2015 to submit a Statewide Transition Plan (Plan) and hold a 30-day public comment period as part of the state's compliance with the HCBS setting requirements. The 30-day public comment period is from January 26-February 26, 2015. New Jersey's Plan outlines the steps that it needs to take to come into full compliance by March 17, 2019 for its New Jersey 1115 Comprehensive Waiver Demonstration and the 1915 (c) Community Care Waiver.

The draft Plan for public comment is posted on the DHS' website at www.nj.gov/humanservices/dmahs/info/ along with other related information. Comments on the Plan should be submitted in writing to mahs.hcbs@dhs.state.nj.us or to HCBS Rules in care of Deputy Commissioner Lowell Arye, NJ Department of Human Services, P.O. Box 700, Trenton, NJ 08625-0700.

The State will hold input sessions for the public on the following dates and locations:

Wednesday, February 4, 2015
10:00 a.m. to noon

NJ Department of Human Services
222 South Warren Street
Trenton, NJ 08625

Thursday, February 19, 2015
10:00 a.m. to noon

DCF Training Facility
30 Van Dyke Avenue
New Brunswick, NJ 08901

Individuals interested in attending and or providing written testimony or letters should register with the DHS by calling Diane Flynn at 609.689.6714 or emailing to Diane.Flynn@dhs.state.nj.us Testimony at the hearings will be limited to three minutes per speaker and only one speaker per organization will be allowed due to time constraints. Special accommodations can be provided upon request.

Appendix B

Communication from Acting Commissioner

On behalf of acting Commissioner Elizabeth Connolly...

Dear Stakeholder:

Today the Department released for public comment an Addendum to the Statewide Transition Plan (STP) that was submitted to the federal Centers for Medicare and Medicaid Services (CMS) in April 2015.

The [addendum](#) is a **DRAFT** response to an October 2015 [letter](#) from CMS requesting supplemental information and clarifications to the proposed plan. With input from affected residents, providers and partner state agencies, the Department has made revisions for which it will be accepting **public comment from July 1 – August 31, 2016**.

I've already spoken with some of you about our proposals and I'm encouraged from the feedback. I think that together we've struck a balance of interests that has resulted in a workable, reasonable blueprint for transition, with policies that comply with the HCBS rules and a level of flexibility and openness to reviewing innovative operations under certain circumstances.

The Department will host three STP Addendum Listening Sessions for individuals interested in sharing their constructive input in person. Those dates and locations are listed below. There also is a Webinar posted [online](#).

Many of the topics covered in the Addendum address issues that were raised during the STP public comment period and that have remained areas of interest to the DD community, in particular.

Specifically, it:

- Formalizes a state process for **Density Review** of residential settings that don't meet the HCBS criteria but can show how individuals living there will be meaningfully integrated in their communities. Provider will have to meet a high bar to prove that true and meaningful integration is occurring. Developers/Providers will not be able to apply for state density review until the setting is operational and occupied. The state will not provide funding until the density review process is completed and approved.
- Adds a **Heightened Scrutiny Review** for residential settings presumed to have institution-like qualities. Developers/Providers cannot apply for CMS' Heightened Scrutiny review until the setting is operational and occupied. The state then can submit to CMS evidence demonstrating that the setting does have the qualities of a HCBS. Until the review is completed and approved by CMS, the state will not provide funding to support the residents.
- Changes **day-program settings** requirement to allow for a more individualized approach to integration. Community experiences and ideas for community opportunities will be included in each individual's PCPT. Providers also will: identify community opportunities and areas of interest along with potential barriers, solutions, and support needs related to community integration strategies; track individual progress to achieving community integration goals, and; conduct community outreach and maintain lists of connections, events, and ongoing opportunities to be posted and reviewed with individuals regularly when developing activity schedules.

As always, we welcome your feedback. The public comment period for the STP Addendum is from **July 1 – August 31, 2016**. Submissions can be sent by email to mahs.hcbs@dhs.state.nj.us or by USPS to:

Statewide Transition Plan
NJ Department of Human Service
P.O. Box 700
Trenton, NJ 08625-0700

[DHS Listening Sessions:](#)

Date	Time	Location
August 3	1 p.m. to 3:30 p.m.	Seton Hall University Google Map Address: 1109 Raymond Blvd. Room 273

		<p>Newark, NJ 07102</p> <p>Parking at One Newark Center - adjacent to Seton Hall Law. Proceed past the Law School on Raymond Boulevard and turn right onto Mulberry St. Then turn right onto the Laz Parking Garage. After parking, use the exit on Level C to get to the Law School More address</p>
August 10	6 p.m. to 8:30 p.m.	<p>DDD Central Office 195 Gateway Center 5 Commerce Way, Suite 100 Hamilton, NJ 08691 Parking in front or back, but guests are required to enter through the front door and sign in.</p>
August 11	9:30 a.m. to noon	<p>Rowan College at Gloucester County (formerly Gloucester County College) Nursing and Allied Health Building (no room number) 1400 Tanyard Rd. Sewell, NJ 08080 There will be signage indicating "DHS Hearing".</p>