



Virginia Department of
Behavioral Health &
Developmental Services



Virginia's Statewide Transition Plan Compliance & Monitoring Team WebEx

June 25, 2015

Goals of the WebEx:

- Educate stakeholders on the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) final regulation's settings requirements;
- Develop a collective understanding and consistent interpretation of requirements;
- Review the Statewide Transition Plan including milestones and status by waiver;
- Ensure a cohesive and broadly represented approach toward compliance, monitoring and capacity issues; and,
- To gather information about potential barriers to success and how Virginia might address those barriers.

Agenda

- Introduction & Background
- Overview of the CMS HCBS final regulation settings requirements
- Review of Virginia's Statewide Transition Plan including milestones and status:
 - DMAS: Technology Assisted Waiver; Alzheimer Assisted Living Waiver; Elderly or Disabled with Consumer Direction (EDCD) Waiver
 - DBHDS: Intellectual Disability (ID) Waiver; Developmental Disability (DD) Waiver; Day Support (DS) Waiver
- Available Information and Resources
- Request for Feedback and Recommendations
- Closing Comments

Public Policy:

Laws, regulations and rules that reflect societal values.

Public Policy exists to solve challenges (problems) affecting people in society (Coplin and O'Leary, 1998)

HCBS Final Regulations is public policy that reflects societal values of equality, community integration, and self-determination

Introduction & Background

Goal and purpose of the regulations:

- To “ensure that individuals receiving services through HCBS programs have full access to the benefits of community living” (1-14 Informational Bulletin)
- To “further expand the opportunities for meaningful community integration in support of the goals of the Americans with Disabilities Act and the Supreme Court’s decision in *Olmstead v. L.C.*” (IB)
- “To be a tool to assist states with adhering to the *Olmstead* mandate and the requirements of the ADA” (rule’s preamble)

Public Policy: Preceded the HCBS Regulations

- The Americans with Disabilities Act (ADA): 1990
- The Supreme Court's *Olmstead* Decision: 1999

On June 22, 1999, the United States Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes discrimination in violation of title II of the Americans with Disabilities Act.

Public Policy: Preceded the HCBS Regulations

The Supreme Court explained that its holding "reflects two evident judgments."

- First, "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life."
- Second, "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

Public Policy: Preceded the HCBS Regulations

The community integration mandate of the ADA and the *Olmstead* decision led to two federal initiatives that further promoted integration:

- President Bush's 2001 ***New Freedom Initiative***, and
- President Obama's 2009 proclamation of the ***Year of Community Living*** in recognition of the tenth anniversary of the Supreme Court *Olmstead* decision

Public Policy: Preceded the HCBS Regulations

In 2009, the Department of Justice (DOJ) Civil Rights Division launched an aggressive effort to enforce *Olmstead*.

Over the next several years, the division was involved in more than 40 matters in 25 states. Through a series of system-wide settlement agreements, DOJ has expanded the understanding of *Olmstead* obligations from getting people out of institutions to **assisting people to engage in community life.**

CMS Final HCBS Regulations

The public policy activities just discussed led us directly to where we are today with the HCBS final regulations.

Background regarding the final HCBS regulations

HCBS Settings Regulations

The regulation moved away from trying to define what was not community to focusing on what is community. It focuses on people's actual experience in settings, not the name or type of settings/service.

Settings that Are NOT Home and Community Based

- Nursing facility
- Institution for mental disease (IMD)
- Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- Hospital

Settings CMS Presumes NOT to be HCB

- Settings in a public or privately owned facility providing inpatient treatment
- Settings on the grounds of, or adjacent to, a public institution
- Settings that have the effect of isolating individuals receiving HCBS from the broader community

Setting CMS Presumes NOT to be HCB

These settings may not be included in a states HCBS programs unless:

- The state submits evidence (including public input) demonstrating that the setting has the qualities of a HCBS setting and NOT that of an institution; And,
- The U.S. Secretary of HHS finds, based on a heightened review of the evidence, that the setting meets the requirements of a home and community based setting
- This process is referred to as ***Heightened Scrutiny***

CMS HCBS regulation's settings requirements

This new CMS HCBS regulation impacts:

- Individuals receiving HCBS
- People involved in developing HCBS person-centered support plans
- Non-residential settings where HCBS are provided
- Residential settings where individuals receiving HCBS live
- How person-centered support plans are developed
- The documentation HCBS support plans must contain

Characteristics: Home and Community Based Settings

An **outcome-oriented definition** that focuses on the nature and quality of individuals' experiences, including that the setting:

- Is integrated in and support access to the greater community;
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources;

Characteristics: Home and Community Based Settings

- Is selected by the individual from among setting options, including non-disability specific settings;
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services;
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint;

Characteristics: Home and Community Based Settings

- Optimizes individual initiative, autonomy, and independence in making life choices;
- Facilitates individual choice regarding services & supports and who provides them.

Provider-Owned or Controlled Residential Settings

Additional Requirements:

- A lease or other legally enforceable agreement
- Privacy in his/her unit and lockable doors
- Choice of roommates
- Freedom to furnish and decorate the unit
- Freedom and support to control his/her schedules and activities and have access to food any time
- Right to have visitors at any time
- Setting is physically accessible to the individual

Provider-Owned or Controlled Residential Settings (cont'd)

- Any modifications of these conditions must be supported by a specific assessed need and justified in the person-centered plan.

Settings that Isolate

Examples of characteristics of settings that isolate:

- Designed specifically for people with disabilities of specific disabilities
- Comprised primarily of people with disabilities and staff providing services
- Individuals receiving services are provided multiple types of services onsite
- Individuals receiving services have limited interaction with the broader community
- Use restrictive interventions

Settings that Isolate (cont'd)

CMS has provided specific examples of residential settings that isolate, including:

- Disability-specific farms
- Gated disability communities
- Residential schools
- Congregate, disability-specific settings that are co-located and operationally related

What is an Integrated Setting?

Integrated settings provide people receiving HCBS the opportunity to live, work and receive services in the greater community:

- Located in mainstream society
- Offer access to community activities when and with whom the person chooses
- Choice in daily life activities
- Ability to interact with people without disabilities to the fullest extent possible

CMS examples include: Scattered site supportive housing, supported employment in a mainstream job

Disability Policy Precept

“Disability is a natural and normal part of the human experience that in no way diminishes a person’s right to fully participate in all aspects of society.”

*Developmental Disabilities Bill of Rights Act
(DD ACT)*

Virginia's Statewide Transition Plan

- Submitted to CMS on March 17, 2015
- States have until March of 2019 to come into compliance

1915 (c) HCBS Waivers

Waivers Operationalized by DMAS:

- Technology Assisted Waiver (Tech Waiver)
- Elderly or Disabled with Consumer Direction Waiver (EDCD Waiver)
- Alzheimer's Assisted Living Waiver (AAL Waiver)

Assessment of Compliance

Activities:

- Review of the types of settings where services take place
- Systemic review of standards, regulations, policies, provider requirements and any other licensing or monitoring and review processes for residential and non-residential setting
- Provider self-assessments
- Individual site assessments

Technology Assisted Waiver

DMAS reviewed the characteristics of settings in which individuals receiving Tech waiver services reside.

The state has determined that all individuals reside in settings that are fully compliant with the settings requirements of the HCBS final regulation. Individuals receiving Technology Assisted Waiver services reside in their own home or family home. Services are not provided in a provider owned or operated setting and the settings fully comport with CMS requirements.

EDCD Waiver

- Consumer and Agency Directed Personal Care Services comply

The state has determined that all individuals reside in settings that are fully compliant with the settings requirements of the HCBS final regulation. Individuals receiving EDCD waiver personal care services reside in their own home or family home. Services are not provided in a provider owned or operated setting and the settings fully comport with CMS requirements.

EDCD Waiver: Adult Day Health Care Service

- DMAS identified ADHC service settings by site to include address, number of individuals receiving EDCD ADHC waiver services and contact information
- As of the date of the assessment, the state identified 50 unique providers of ADHC services and approximately 56 settings. Of the 56 settings, 53 are located in settings that are generally compliant with the regulation

EDCD Waiver: Adult Day Health Care Service

- Three settings serving approximately 30 of the 572 individuals receiving ADHC services are located in settings **presumed to be institutional** because the settings are located on the grounds of a nursing facility or hospital

EDCD Waiver: Adult Day Health Care Service

- Telephone interviews were conducted with staff at the three ADHC sites presumed to be institutional
- DMAS will conduct on-site assessments of the three sites to determine if they are in fact HCB settings. The on-site assessment will be complete by March 2016
- The information from the assessments will be used to determine if the settings comply, or can comply with remediation, and the need to request heightened scrutiny

EDCD Waiver: Adult Day Health Care Service

- Additionally, during the systemic assessment of regulations and policies DMAS found that there is general support for the settings requirements. However, there are areas for improvement. A remediation action to develop, propose, and implement regulatory and policy changes to better align with HCBS settings requirements has been included in the transition plan.

Alzheimer's Assisted Living Waiver

Completed assessment activities include:

- Review of the types of settings where services take place
- A systemic review of standards, regulations, policies, provider requirements and any other licensing or monitoring and review processes for residential and non-residential setting
- Provider self-assessments

Alzheimer's Assisted Living Waiver

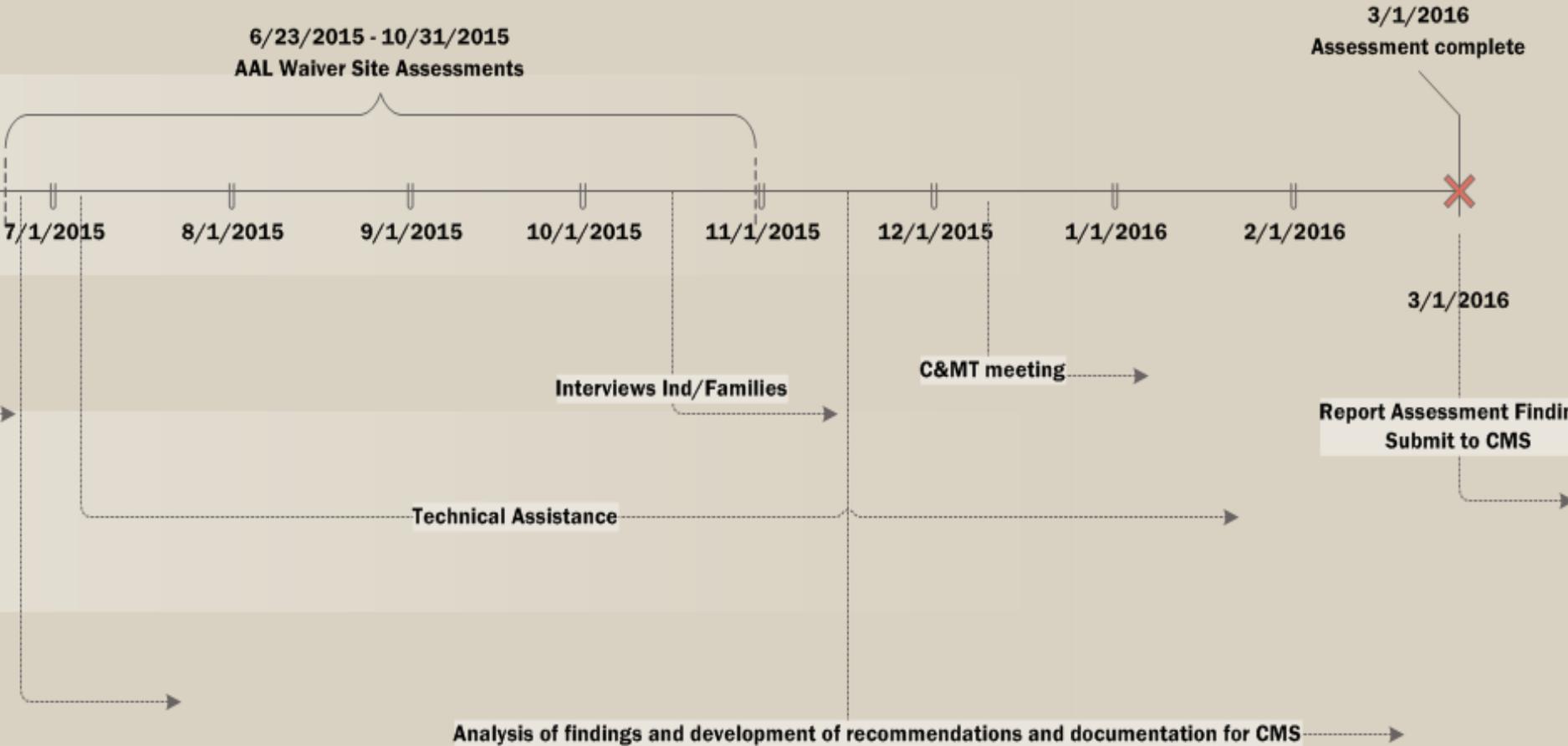
The assessment results:

- Indicate a need for AAL waiver providers to strengthen person centered planning and documentation practices
- Areas for improvement in policy and regulations were identified. A remediation action to develop, propose, and implement regulatory and policy changes to better align with HCBS settings requirements has been included in the transition plan

Alzheimer's Assisted Living Waiver

- There was a need for additional assessment, including on-site reviews, for each AAL waiver site prior to determining compliance status
- Additionally, interviews with individuals and family members to determine the quality of experience of individuals who receive AAL waiver services

Alzheimer's Assisted Living Waiver





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What's In My Plan? Statewide Assessment of ID, DD, and DS Settings

Deanna L. Parker, MPA
DBHDS DD Policy Analyst



What's in My I/DD Plan?

- Snapshot of ID, DD, and DS Settings in VA
- Review of Waiver Regulations and Related Policies
- Provider Self Assessment Process
- Update on DBHDS Licensing Site Visits
- Update on Revised Licensing Regulations
- Upcoming Transition Plan Activities
- Information on reporting technical assistance needs



Snapshot of ID, DD, and DS Services

Settings/Services We Reviewed

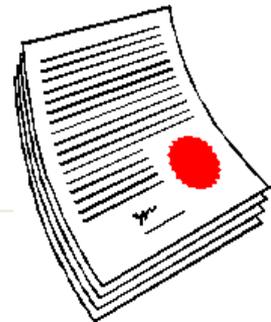
- Residential
 - Group Homes
 - Sponsored Homes
 - Supervised Apartments
- Day Support
 - Prevocational -Day Support
 - Group Supported Employment – Community Based Work crew or enclaves



Snapshot of ID, DD, and DS Settings in VA

What Did We Find?

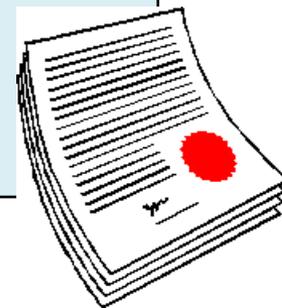
- All ID, DD, DS waiver services provided in family homes meet requirements.
- Most settings *could* meet requirements with some modifications
- Some settings will require additional analysis to determine if they do not and cannot meet requirements or would require *heightened scrutiny*.



Review of ID Waiver Regulations and Related Policies

The following are **not** present in all settings:

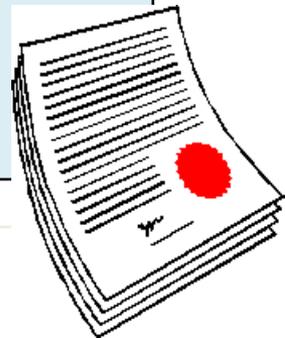
- Options for a private room/apartment in a residential setting.
- Lease, residency agreement, etc. in place to provide protections against eviction.
- Privacy in sleeping/living units, including lockable entrance doors and choice of roommates.
- Freedom and support to control own schedules/activities.
- Access to food and visitors at any time.
- Process for modifying the rules or documenting individual-specific restrictions.
- Emphasizing that individuals receiving HCBS have the same degree of access to an integrated community life as individuals not receiving Medicaid HCBS.



Review of **DD** and **DS** Waiver Regulations and Related Policies

The following are **not** present in all settings:

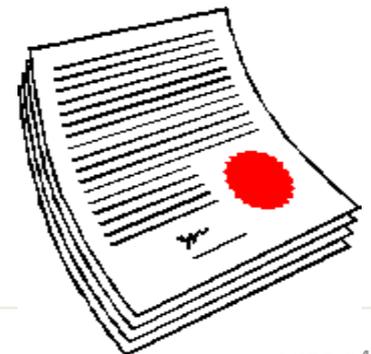
- Process for modifying the requirements or documenting individual-specific restrictions.
- Individual services received in the community with the same degree of access as individuals not receiving Medicaid home and community-based services.
- Services are able to be selected by the individual from among setting options, including non-disability specific settings.
- Services integrated in and accessible to the greater community.
- Emphasizing ensuring that individuals receiving HCBS have the same degree of access to an integrated community life as individuals not receiving Medicaid HCBS.



Provider Self-Assessment

We asked providers to tell us how well they thought they met requirements

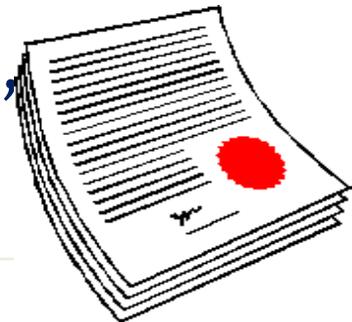
- Settings checklist distributed to all DBHDS-licensed providers of ID, DD, and DS waiver services, as well as day support and group supported employment services.
- Background information on HCBS regulation and instructional guidance distributed



Provider Self-Assessment

We sent a link to an online survey via e-mail to ID, DD, DS providers

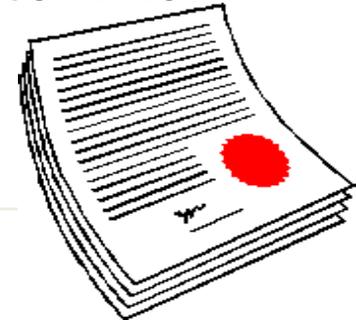
- Sent via Survey Monkey to providers to document their level of compliance with requirements
- 321 completed surveys received via Survey Monkey
- Most responding were Residential and Day Support providers; some providing Prevocational and Group Supported Employment services.
- All areas of the state were represented in responses
- Providers were asked whether their setting “fully meets,” “could meet with adjustments,” or “does not meet requirements.”



Provider Self-Assessment

What did the survey results show?

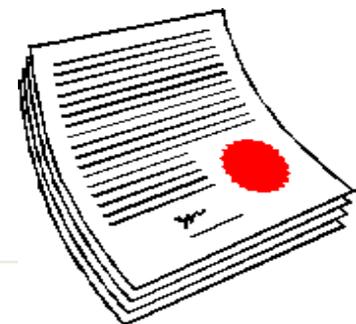
- Majority of providers indicated their setting “fully meets” setting requirements across all categories surveyed.
- Areas most frequently reported “not meeting” or “could meet” include:
 - Lease agreement w/ eviction protections, appeals
 - Lockable living units with access to keys
 - Greater community integration
 - Indiv. control of schedule activities
 - Access to food anytime
- Requirement for individual choice of settings, providers, and services demonstrated via signed forms.
- Protection of right to privacy, dignity, respect, and freedom from coercion and restraint referenced by completed staff training/posting of human rights information, etc. in common areas.



Provider Self-Assessment

What are some areas of challenge highlighted by survey responses?

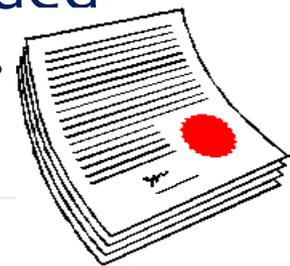
- Considerable misunderstanding and misinterpretation of requirements
- Uncertainty regarding availability of meaningful choices
- Somewhat paternalistic approach to service delivery; some rules in conflict with person centeredness, presumed competence



Provider Self-Assessment

What have we learned so far?

- Additional education and guidance is needed regarding specific requirements to address areas of misinformation/misinterpretation
- Additional education needed to help providers distinguish between an individual's *presence* in the community and *full integration/interaction*.
- Application of thoughtful and creative approaches to adjust service models to support person-centeredness
- Site visits and targeted training and technical assistance will help to achieve understanding of broader purpose and context of regulation; aided by stakeholder engagement and collaboration.



DBHDS Licensing Site Visits

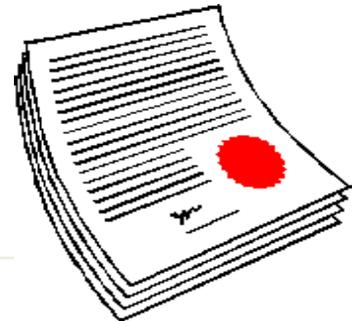
- Assessment phase includes DBHDS site visits scheduled during routine inspections, license renewals, etc.
 - Verify accuracy of information reported in provider self-assessments
 - Assist in documenting technical assistance needs
 - Assist with provider follow-up
 - » Providers to regularly report on status of their non-compliance
- Using multiple sources of data will assist in developing more accurate timelines for system-wide compliance.



DBHDS Licensing Site Visits

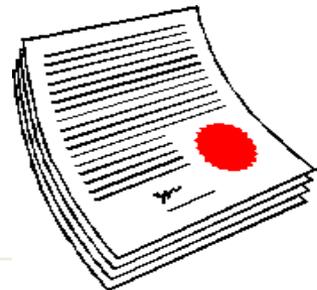
What do preliminary results of site visits show?

- Data being reported slowly
- Data seems to be capturing providers who have not completed their self-assessments
- Similar areas of non-compliance noted as captured in provider self-assessments
- Data assisting in provider follow-up



Emergency Licensing Regulations

- Review of waiver regulations indicated a need to update DBHDS licensing regulations.
- Workgroup of multiple DBHDS departments met over 10-12 months to develop a strategy for timely updating of regulations.
- Proposed to submit most critical information for inclusion in emergency revisions to Licensing Regulations.
- Specific language added to regulations to strengthen the expectation of compliance with the settings requirements.



Update on Emergency Licensing Regulations

Where are we now?

- Final draft completed by workgroup for submission to the VA Office of the Attorney General.
- Permanent regulations to follow using standard regulatory process.
- Implementation hoped for March 2017.



Upcoming Transition Plan Activities

- Letter to family members via CSBs about HCBS final regulation and reporting technical assistance request mechanisms.
- Targeted mailings to individuals on DD waiting list
- Delivery of provider training and technical assistance following site inspections.
- DBHDS work with the VACSB Developmental Services Council to develop a plan for transitioning of dislocated individuals.
- Ongoing stakeholder engagement



DBHDS HCBS Confidential Reporting

Report provider non-compliance and
needed technical assistance to DBHDS

In Richmond: 804-774-4474

Toll Free: 844-419-1575



Questions & Concerns

To date the majority of question/concerns about compliance have been about 3 new requirements in provider owned or operated residential settings:

- A lease or other legally enforceable agreement
- Privacy in his/her unit and **lockable doors**
- Right to have visitors at any time

Feedback & Recommendations

- Request # 1: Providers, please share with DBHDS and DMAS your approach to compliance with the settings requirements and any sample documents or forms that can be shared with the broader provider community.

Information & Resources

DMAS Website:

http://www.dmas.virginia.gov/Content_pgs/HCBS.aspx

- Statewide Transition Plan
- CMS Fact Sheets
- PowerPoint for advocacy organizations & self-advocates
- Minimum requirements for person-centered service plans
- Overview of settings requirements
- FAQs
- Site Assessment Tool

Feedback & Recommendations

Question # 1: What resources and tools are needed to support the education of individuals, families, providers and other stakeholders about the settings requirements and the statewide transition plan?

Question # 2: Please share your recommendations on how the state can best support these efforts.

Feedback & Recommendations

Question # 3) We are very interested in thoughts from stakeholders on the approach to use for the C&MT moving forward.

For example: Would a WebEx format that opens up the opportunity for greater participation across Virginia be an approach you would consider helpful and inclusive.

Feedback & Recommendations

Question #3, Cont'd:

- Or, would a meeting at a location with designated members of a C&MT to discuss progress, issues, barriers etc... be the approach you would prefer; or,
- A meeting at a location that is open to the public that would include an update on the transition plan and compliance and a time for public comment and input be an effective approach.

Feedback & Recommendations

- Do you have other suggestions on how to best organize this very important activity of monitoring and advising on compliance? We are very interested in hearing from stakeholders regarding the C&MT.

Feedback & Recommendations

Please submit comments, feedback, recommendations and/or questions to:
HCBSComments@dmas.virginia.gov OR
MyLifeMyCommunity@dbhds.virginia.gov

Or call and leave a recorded message at:

In Richmond: 804-774-4474

Toll Free: 844-419-1575

Closing Comments

- Virginia's Statewide Transition Plan can be located at:

http://www.dmas.virginia.gov/Content_pgs/HCBS.aspx

- OR

<http://www.dbhds.virginia.gov/professionals-and-service-providers/developmental-disability-services-for-providers>

Closing Comments

Thank you for your attendance today!

Please submit comments, recommendations and questions and please check the DMAS and DBHDS websites for updates, responses to questions and for resources and materials.