

PURPOSE:

In January 2014, the Center for Medicaid and Medicare Services (CMS) finalized regulations that require Medicaid-funded Home and Community Based Services (HCBS) possess particular qualities in residential and nonresidential settings. All states are required to demonstrate how their HCBS programs comply with the new federal HCBS rules. The purpose of this draft Transition Framework is to ensure that in New Hampshire individuals receiving HCBS are integrated in and have access to supports in the community, including opportunities to seek employment, work in competitive integrated settings, engage in community life, and control personal resources. Overall, the Transition Plan provides a roadmap for how the State will assure that individuals receiving HCBS have the same degree of access as individuals not receiving Medicaid HCBS. This Transition Plan outlines the proposed process that New Hampshire will be utilizing to ensure alignment with the HCBS requirements. Stakeholders were asked to provide public input and comment in order to allow New Hampshire to develop a comprehensive assessment plan. New Hampshire has created an Advisory Taskforce to ensure stakeholder input is obtained throughout the transition planning process.

OVERVIEW:

New Hampshire must submit an HCBS transition plan to CMS by March 14, 2015 because it operates four 1915(c) waivers: Choices for Independence, Developmental Disabilities, Acquired Brain Disorder, and In Home Supports.

The high level transition plan (draft framework) to CMS will include:

1. An inventory plan to review applicable state standards, rules, regulations and policies;
2. A preliminary assessment plan for assessing HCBS settings;
3. A 30-day public comment period of the draft transition plan;
4. A response summary of public comment received;
5. A time frame for the assessment of HCBS setting;
6. A time frame for remediation including a summary of how each setting meets or does not meet the federal HCBS setting requirements and a time frame for the development of a comprehensive transition plan and process for bringing all HCBS settings into compliance; and ultimately a plan for ensuring the health and safety of participants who reside in locations that need to meet corrective action requirements for the setting to come into compliance during the states specified transition time.

PUBLIC NOTICE:

New Hampshire's 30 day public notice and comment period ran from January 11th to February 16th. Notice was published in two statewide newspapers ; the links to the public notices published are here: [..\Public Notice\telegraph mon jan 12 2015 HCBS transition framework.pdf](#); [..\Public Notice\union leader sun jan 11 2015 HCBS transition framework.pdf](#). Notice was also published on a designated DHHS webpage found at <http://www.dhhs.nh.gov/ombp/medicaid/draft-transition-framework.htm> Two public hearings were held, one on January 20th at the Brown Building Auditorium in Concord and the other on February 10th at the New Hampshire Hospital Association in Concord. Phone and webinar participation were available at the first hearing; due to technical difficulties, the second hearing had only in-person attendance. Two additional webinars were conducted on February 19th and 25th to provide additional remote attendance opportunities. Staff from New Hampshire Department of Health and Human Services and the Institute on Disability also attended informal meetings regarding the HCBS transition planning work throughout the public process. The details of formal and informal hearings are below.

DATE/TIME	LOCATION	ORGANIZATION	# ATTENDEES	EVENT DESCRIPTION
1/17/15	Walker Building	People First	17	Informational meeting and input
1/21/15	Community Bridges, Concord	Service coordinator Supervisors	10	Presentation and feed-back
1/21/15	DD Council	Quality Council	24	Presentation at bi-monthly meeting
1/20/2015 6:00-8:00 PM	Brown Building Concord	General Public	3 in person, 3 online	Public Hearing - live and webinar
2/10/15 2:30-4:30PM	NH Hospital Assoc.	General Public	20-25	Public Hearing – live; webinar failed
2/10/2015 12:45 - 1:30	ARCH Offices	ARCH Board of Directors	10	Informational meeting and input
2/19/2015 10:00 a.m.	Online	General public	0	Phone and webinar
2/25/2015 11:00 a.m.	Online	General public	0	Phone and webinar

An advisory taskforce has been created to ensure stakeholder input is solicited throughout the planning process. The advisory taskforce will meet on the second Wednesday of each month going forward.

Transition Framework for Establishing HCBS Settings Compliance New Hampshire Department of Health and Human Services			
Action Item	Description	High-Level Strategies	Target Timeline
Public Comment: Draft Transition Framework: Transition Plan Framework			
<i>Public comment for Draft Transition Framework for establishing Home and Community Based Settings compliance</i>	30 day public comment period for review of Draft Transition Framework	Statewide notice published in two statewide newspapers on January 11 and 12. MMIS sent notice in an all provider communication; NH DHHS constructed webpage which hosts the notice and draft framework; 2 public hearings held: Jan 20 th and Feb 10 th . Additional webinars on Feb 19 and Feb 25 held. State conducted informal meetings during and after public notice and comment period.	1-11-15 – 2-16-15
<i>Submit Draft Transition Framework for assessing Home and Community Based Settings compliance to Centers for Medicare and Medicaid Services [CMS].</i>	State finalizes and submits Draft Transition Framework to CMS	-Design NH Transition Plan Framework around successful state models.	2-27-15

1. Inventory			
<i>State standards inventory</i>	Establish comprehensive list of state rules, regulations, policies, and standards to be reviewed and validated with respect to whether existing state standards conform to Home and Community Based Settings rule.	-Members of Transition Framework team submit lists of regulations for review. Compile submissions based on relevant waiver.	12-12-14
<i>Collect and review current state standards (rules and regulations) as they relate to new Home and Community Based Settings rule.</i>	Transition Framework team will collect regulations, standards and policies including rules and related policies, licensing and certification requirements, training and enrollment materials.	-Seek external legal counsel for thorough review.	1-12-15
<i>Obtain active Home and Community Based Settings provider breakdown by site</i>	NH will identify the relevant Home and Community Based service providers and establish a list that includes category of service, address and contact information.	-Members of Transition Framework team submit provider lists.	12-12-14
<i>Develop and refine assessment tools</i>	Develop and refine assessment tools to evaluate conformity and compliance with Home and Community Based Settings rules; assessment tools are reviewed and tested to ensure they adequately capture needed elements. Develop provider self-assessment tool and assessment tools for participants.	-Transition Framework team to review tools known to have worked successfully in other states. Develop assessment tools for providers and participants. Solicit feedback on assessment tools, the plans to deploy them, and by whom,	4-30-15

		with Advisory Taskforce.	
<i>Incorporation of assessment tool into provider enrollment process and application</i>	State incorporates self-assessment requirement into provider enrollment process and application	- Transition Framework team reviews language and instructions after soliciting feedback from Advisory Taskforce.	7-31-15
2. Assessment			
<i>Assess NH state standards' current level of compliance</i>	Assess what changes are required to update provider qualification standards, licensure regulations, enrollment, training, and all other related standards, rules regulations and policies to conform to Home and Community Based Settings rules	-Contract third party for thorough legal review; identify areas of potential non-compliance. Share initial review with Advisory Taskforce. After soliciting feedback from Advisory Taskforce, determine which requirements will be amended.	2-27-15 – 4-30-15
<i>Establish advisory taskforce comprised of advocates, consumers, and HCBS providers.</i>	Convene regularly scheduled meetings to review assessment activities and findings, assist in the development of the remediation and compliance plan based on assessment results.	-Institute on Disability together with Department of Health and Human Services to coordinate; initial invitations sent on 2/20; additional invitations sent on 3/6; first meeting scheduled for 3/11/15	2-15-15
<i>Providers and Participants Complete Assessments</i>	Via assessment tools developed after soliciting feedback from Advisory Taskforce	After soliciting feedback from Advisory Taskforce on Assessment Work Plan, (including development of	6-30-15

		assessment tools) Transition Framework team coordinate provider and participant outreach. Transition Framework team will coordinate schedule for provider follow-up and assessment completion.	
<i>Data compiled and analyzed</i>	Data compiled to determine those Home and Community Based Settings providers who meet, do not meet and could come into compliance with Home and Community Based Settings guidance.	-Upon completion of assessment, build list of providers for sample validation. Solicit feedback on sample validation plan with Advisory Taskforce .	7-31-15
<i>Selected entities validate sample of assessments</i>	Selected entities, validate a state determined percentage of provider assessments	-Transition Framework team to identify and coordinate with providers for field validation, after soliciting feedback from Advisory Taskforce. Utilize multiple validation avenues.	9-30-15
<i>Assessment Report; Comprehensive Transition Plan</i>	State formally presents results of both assessments to Advisory Taskforce;	-Summarize results of both self- and validated assessment for Advisory Taskforce. Distribute results to Advisory Taskforce.	10-30-15

3. Remediation and Compliance			
<i>Based on assessment results, develop comprehensive transition plan to bring NH Home and Community Based Settings into compliance</i>	Institute on Disability and Department of Health and Human Services together with the Advisory Taskforce develop a comprehensive statewide Transition Plan which establishes a path for comprehensively addressing all components of compliance with Home and Community Based Settings rule.	-Draft and finalize narrative white paper summarizing the level of compliance within NH at the end of the assessment period, and establishing a plan for comprehensively addressing all components of compliance with Home and Community Based Settings rules, using advice from the Advisory Taskforce.	10-30-15 to 3-31-16
<i>Submit Waiver Amendment to CMS</i>	Department of Health and Human Services will submit waiver amendments as needed to CMS to ensure provider and setting requirements are met.	-Department of Health and Human Services will submit.	3-31-16
<i>Policy Development</i>	State will develop revised policies and procedures to address ongoing monitoring and compliance.	-Policy partners within Department of Health and Human Services, Bureau of Developmental Services, Bureau of Elderly and Adult Services with Advisory Taskforce	3-31-16

<i>Remediation Strategies</i>	Design, adopt, and implement plan for achieving comprehensive compliance of provider standards with Home and Community Based Settings rules (credentialing, licensing and policies).	-Transition Framework Team together with Advisory Taskforce develops revised policies and procedures to address ongoing monitoring and compliance.	3-31-16
<i>Provider Training and Education</i>	Design and implement plan for incorporating necessary training and education into provider enrollment, orientation, and training on transition plan to providers	-Utilize Advisory Taskforce and other key stakeholder input and existing provider standards specific to particular provider groups.	3-31-16
<i>Monitoring of Compliance</i>	State, with feedback from the Advisory Taskforce, will develop surveys and/or incorporate policy and consumer satisfaction surveys to identify areas of non-compliance	-Rely on existing policy documents and key stakeholder input.	3-31-16 and ongoing
4. Outreach and Transparency			
<i>Public Comment and Stakeholder Input</i>	Department of Health and Human Services provides opportunities for formal public comment according to federal standards and multiple opportunities and modalities for informal stakeholder input	-2 statewide public statements of notice -Direct provider outreach by Bureau of Developmental Services/Bureau of Elderly and Adult Services; Webinar, Website; E-mail for feedback; Two public hearings; Multiple meetings	1-17-15 to 2-17-15

<i>Public Comment and Stakeholder Input</i>	Department of Health and Human Services collects public comment and stakeholder input through multiple methods and makes appropriate changes to Transition Framework.	-Comments will be taken via email, in person or by written submission.	1-17-15 to 2-17-15
<i>Public Comment- collection and plan revisions</i>	Department of Health and Human Services incorporates appropriate changes to initial transition plan based on public comments	-Transition Framework team review feedback -Edit Draft Transition Framework as needed.	2-17-15 to 2-27-15
<i>Public Comment - retention</i>	Department of Health and Human Services will safely store public comments and state responses for CMS and the public	-Department of Health and Human Services to record and store according to internal protocol.	2-17-15 - ongoing
<i>Posting of revisions to initial document</i>	Department of Health and Human Services will post the rationale behind any substantive change to the comprehensive transition plan	-Department of Health and Human Services to make changes available to public.	2-17-15 - ongoing
<i>Stakeholder training and education</i>	Design, schedule and conduct training for individual recipients of waiver services, their families and similarly situated stakeholders on waiver compliance, including changes they can expect to see and which will affect their services	-Institute on Disability with Department of Health Human Services to coordinate.	ongoing
<i>Public Comment - ongoing input</i>	State will leverage various stakeholder groups to periodically present feedback to Comprehensive Transition Plan development in preparation for comprehensive plan submission	-Advisory Taskforce to meet monthly -Organize groups according to waiver as needed.	2-17-15

5. Public Comment: Draft Comprehensive Transition Plan			
<i>Public comment for draft Comprehensive Transition Plan</i>	30 day public comment period for review of Draft Comprehensive Transition Plan	<ul style="list-style-type: none"> -State will follow same public notice and comment period including 2 statewide public statements of notice -Direct provider outreach by Bureau of Developmental Services/Bureau of Elderly and Adult Services -Webinar -Website -E-mail for feedback -Two public hearings; multiple public presentations 	1-31-16
<i>Submit Comprehensive Transition Plan to CMS</i>	State finalizes and submits Comprehensive Transition Plan to CMS	-Department of Health and Human Services with Institute on Disability and Advisory Taskforce	3-31-16

March 10, 2015

Transparency and Stakeholder Engagement

Comment 1: Several commenters expressed concern that the process for determining membership in the Advisory Taskforce was opaque and that it did not sufficiently represent the external stakeholders who are knowledgeable and relevant to this process, including direct support workers, people living with developmental or intellectual disabilities, and those with acquired brain disorders.

Response 1: The State is sensitive to the concern that the Advisory Taskforce, as the body who will be consulted for feedback throughout the assessment and remediation processes, will be representative of the people whose lives will be impacted by these regulatory requirements and any changes made to establish compliance with them. The State has taken steps to mitigate that risk. First, New Hampshire has outlined that at least four of the seats on the Advisory Taskforce need be held by people who are receiving services who will be impacted by these regulations and has asked three external organizations, Granite State Independent Living, The Office of the Long-Term Care Ombudsman, and the federally required Medical Care Advisory Committee (MCAC) to help select those consumers. In response to concerns raised about membership, the State will extend additional invitations as needed to assure that the interests of people who are served by the Waivers that will be affected by these regulations are represented well within the Advisory Taskforce.

Comment 2: Commenters expressed concern that that the work plan offered limited opportunity for stakeholder engagement.

Response 2: In response to concerns that stakeholder input into the comprehensive statewide plan appears to be very limited, the State has edited the work plan to reflect the junctures at which the State anticipates that the Advisory Taskforce will provide feedback: in reviewing the summary of the regulatory landscape, assisting in the development of the assessment tools, assisting in development of plans to deploy the assessment tools, reviewing the results of the assessments, and assisting in the development of the formal remediation plan which will establish for New Hampshire what changes need to be made to in order to establish the State's compliance with the settings requirement. Finally, the work plan also notes that the State will put the final comprehensive transition plan, when developed, out for a statewide, thirty day public notice and comment period. The State recognizes that inclusion of key stakeholders is central to an effective HCBS transition planning process.

Comment 3: Commenters expressed concern that Direct Support Professionals are underpaid in general and are crucial to the HCBS transition planning process.

Response 3: The State is sensitive to the need for Direct Support Professional to be involved in the HCBS transition planning process and will assure their participation.

Draft Transition Plan

Comment 4: Commenters expressed concern that the draft transition plan was vague and lacked details about each step of the process and that significant work relating to the policy review at the State level was being conducted without the inclusion of key stakeholders.

Response 4: The State recognizes that at this initial stage, the work plan is very high level. This is a reflection of the need to solicit feedback from stakeholders throughout the inventory, assessment and remediation processes. Moreover, it does provide for the time frames for conducting inventory, assessment and remediation tasks that are necessary as well as a description of the parties to be involved in those steps. As the work progresses in each phase, in consultation with the Advisory Taskforce, more details regarding each additional step will be developed and communicated. Regarding the concern about the State's reliance on a third party for review of state compliance without inclusion of key stakeholders, the State has clarified in the work plan that the summary of the third party's work, which is a review and summary of the regulatory landscape relating to each of the State's four waivers, has been prepared in order to be shared with the Advisory Taskforce to solicit the Advisory Taskforce's feedback. The summary of the regulatory landscape that has been conducted, while thorough, is preliminary and not final.

Comment 5: One commenter noted that the settings requirements do not only apply to residential services and that therefore the title of the document, "Draft Transition Framework for Establishing Home and Community Based Services Residential Settings Compliance" was confusing.

Response 5: The State has deleted the term "residential" from the title of the document.

Comment 6: One commenter encouraged the state to seek clarification as to how the rules are intended to apply to people living in their own homes and encouraged the state to expand the transition planning process to include assessing supports provided to people living in their own homes or with family and that day programs should be included as well.

Response 6: Subregulatory guidance indicates that the regulations allow states to presume the enrollee's private home or the relative's home in which the enrollee resides meet the requirements of HCBS settings. Person-centered planning remains an important protection to assure that individuals have opportunities for full access to the greater community to the same degree as individuals not receiving Medicaid HCBS when they live in their own or a relative's private home. The State will work with CMS to clarify how non-residential home and community based settings should be addressed.

Assessment Phase

Comment 7: Commenters expressed concern that there is a lack of clarity about which entities will conduct the assessments and about the level of expertise and training of those entities and individuals who will conduct the assessments, and encouraged the State to assess as many people as possible. One commenter encouraged the State to ensure that those conducting the assessments be trained in Social Role Valorization or other comparable values-based training.

Response 7: The State is in the process of developing an initial approach to assessment that has not yet been reviewed with the Advisory Taskforce. As a result, the details regarding who will conduct the assessment and how the assessments will be deployed and what the requirements are for those assessments in terms of skill and training are not yet finalized. As noted above, the State will be soliciting feedback from the Advisory Taskforce about its initial approach to assessment to ensure that the assessment tasks are deployed in an effective way.

Comment 8: Commenters expressed concern that the draft transition plan did not contain sufficient detail about a variety of issues related to assessment and remediation phases including how to protect people who will need to be transitioned, whether there will be accessible methods for participants to voice complaints about a setting, how the State will establish what the current array of compliant settings are, and the absence of a plan to evaluate capacity or increase the home and community based service capacity to fulfill the requirements of this regulation.

Response 8: These concerns will be addressed based on the results of the assessments the State needs to complete. Assessment will include, by necessity, an evaluation of current capacity; and the State assures that participants will be able to voice complaints. When the results of the assessments are completed, the State will be able to address whether plans to increase capacity are needed, when and how participants would have to be transitioned, and how to transition participants safely. The State will provide the assurances that are required under sub-regulatory guidance from the Centers for Medicare and Medicaid Services, should relocation of beneficiaries be part of the State’s remedial strategy, which include the following: an assurance that the State will provide reasonable notice to beneficiaries and due process to those individuals; a description of the timelines for the relocation process; the number of beneficiaries impacted, and a description of the State’s process to assure that beneficiaries, through the person-centered planning process, are given the opportunity, information and supports to make an informed choice of an alternate setting that aligns or will align with the regulation and that critical services/supports are in place in advance of the individual’s transition.

Comment 9: One commenter noted that in the assessment phase that personal experience of participants is central and that provider input should supplement, but not replace, first hand reports of people receiving services.

Response 9: The State recognizes the importance of assessing participants as well as providers and is committed to ensuring that both are effectively assessed.

Broad application of 42 CFR 441.301(c)(4)

Comment 10: Several commenters expressed concern that implementing the new federal regulations in a one-size-fits-all manner, especially with respect to lockable doors, forcing people to be engaged in community even if they don’t want to be, making food available at all times, and choice of roommate are impractical, will require additional funding to providers to make needed modifications and may disrupt the lives of residents, who like their current residences.

Response 10: 42 CFR 441.301(c)(4) requirements are based “on the needs of the individual as indicated in their person-centered service plan.” That qualification provides some flexibility to ensure a balance between safety and well-being of the individual and the required qualities of Home and Community Based Services outlined in the regulation. Moreover, it requires that the individual’s person-centered service plan indicate his or her preferences and needs.

Finally, modifications of some of the qualities required in provider-owned or controlled settings are allowed if those modifications are sufficiently supported and justified through the participant's person-centered service plan.

Comment 11: Several commenters expressed concern that residents being allowed to lock doors for privacy is unnecessary, may prevent providers from adequately monitoring or caring for residents, or encourage residents to isolate behind locked doors in an unhealthy manner.

Response 11: The federal requirement regarding doors at 441.301(c)(4)(vi)(B)(1) applies within a provider-owned or controlled setting and requires that the sleeping or living unit has entrance doors that are lockable; the rule also specifically allows for appropriate staff to have keys to any lockable doors. This would allow providers to safeguard and tend to the needs of their residents while allowing the resident to control, to some extent, access to their private living space.

Comment 12: One commenter requested clarification as to what it means to give a resident a choice of roommate and whether a Medicaid-funded waiver participant can thereby refuse a roommate in a setting. The commenter further requested clarification about whether Medicaid-funded waiver residents would then be allowed to reject a roommate when a non-Medicaid-funded participant in the same setting would not have that right.

Response 12: The Department of Health and Human Services will work with the Centers for Medicare and Medicaid Services to clarify choice of roommate provisions.

Comment 13: Several commenters expressed concerns that broad application of general rules will prevent providers from being able to focus on the individual needs of participants.

Response 13: The State notes that the new settings requirements are bounded in the federal regulation by "the needs of the individual as indicated in the person centered service plan" thus allowing individuals' needs to be addressed within the federal requirements.

Comment 14: One commenter expressed concern that the HCBS transition will mean that the Area Agencies will be replaced by managed care organizations.

Response 14: The federal HCBS settings requirements apply to Medicaid-funded HCBS settings provided under Medicaid waiver authorities regardless of the mechanism used to deliver waiver HCBS services.

Comment 15: One commenter requested that the transition plan take into account the positive benefits that assisted living has for residents and that residents not be thrust out into the community where they would receive services at a lower level.

Response 15: The new federal requirements prioritize participant needs and preferences driving which services the participant receives and from whom.

Comment 16: More than one commenter expressed concern that broad application of the new regulations would effectively limit the choices of participants who receive Waiver services, expressing that all people want to be able to choose how they spend their time and with whom they spend it and with whom they do not spend it; others wanted to know how the term isolation would be applied, indicating that some people do not want to be mandated to be included but rather want to be left alone.

Response 16: The regulation presumes that settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community are not desirable. It is a general standard that applies to the setting; it is not a mandate in and of itself requiring participants to be engaged in a way they do not wish to be.

Comment 17: One commenter asserted that one characteristic of a setting that is isolating - “the individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides services to them” would apply to every residential care home in the state and wondered if it was CMS’ intention to defund every such site.

Response 17: CMS has stated that, when coupled with other characteristics, the above characteristic might meet the criteria for having the effect of isolating individuals receiving Medicaid-funded HCBS, but not necessarily. A setting that, after assessment, is found to not meet home and community based requirements, can request that the State pursue the heightened scrutiny process and request CMS review evidence presented by the State and other stakeholders as to whether that setting can meet HCBS characteristics. However, the heightened scrutiny review process can only be pursued with the State’s agreement.

Comment 18: Many commenters requested clarification regarding whether particular requirements, i.e., the opportunity to seek employment and work in a competitive environment was a mandate that applied to all participants in all contexts.

Response 18: The regulations at issue require that the settings possess a number of qualities and opportunities that the participants may or may not access based on the needs of the participants as indicated in their person-centered service plans.

Miscellaneous

Comment 19: One commenter asked that the State consider future program changes in light of the new federal HCBS rule and to adopt a specific process for using the new rule as a benchmark any time a change is made in state rule or policy that would impact a waiver program, including budget directives.

Response 19: New Hampshire is required to comply with federal regulatory requirements and will consider its federal requirements whenever policy decisions are made at the state level.

Comment 20: One commenter asked where the federal requirements can be accessed.

Response 20: The federal requirements are found at 42 CFR 441.301(c)(4)(5) which can be accessed here:

<https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

Comment 21: One commenter asked whether the four waivers which will be impacted by HCBS settings requirements are new or existing.

Response 21: Four 1915(c) waivers are currently operating in New Hampshire: Choices for Independence, Acquired Brain Disorder, Developmental Disabilities, and In-Home Supports.

Comment 22: One commenter asked how many adults in New Hampshire are receiving services through the developmental disabilities waiver.

Response 22: The client counts for each waiver are approximately:

DD waiver: 4, 494

CFI waiver: 2,876

ABD waiver: 243

IHS waiver: 323

Comment 23: One commenter asked who will be responsible for person centered planning, how the State will ensure that each individual has a person centered plan and how the State will fund the development of these plans.

Response 23: The principle of person-centered planning is embedded within 441.301(c)(4)(5) and throughout state regulatory instruments governing home and community based service provision. The state will continue to use its regulatory and contracting processes to ensure these obligations are fulfilled.

Comment 24: One commenter asked how the State will define settings being integrated into the greater community.

Response 24: The State, with feedback from the Advisory Taskforce, will be assembling the examples provided by CMS and analyzing them in order to have a comprehensive understanding of federal definitions and thus have a functional definition in accordance with CMS' expectations and guidance.

Comment 25: One commenter asked how the State will define institutional settings given that the new CMS regulations indicate that HCBS funds cannot be used for these settings.

Response 25: After the assessment phase of the draft transition framework is complete and based on those results, the State will align services within the definitions provided by CMS to ensure that federal financial participation can be guaranteed.

Comment 26: With regard to staffed residences, one commenter asked how the State will support an individual's choice of staff member(s).

Response 26: The new federal requirements prioritize participant needs and preferences driving which services the participant receives and from whom. The State, together with the Advisory Taskforce, will explore through the inventory and assessment phases of the transition plan, how best to animate the requirement to support an individual's choice in the services received and the provider elected to provide them.