



KDADS Supplemental Document to the Proposed HCBS Transition Plan for Assessing Compliance

Revised February 2015

Purpose

On March 17, 2014, the Center for Medicare and Medicaid Services (CMS) issued a final rule for home and community based services that require states to review and evaluate Home and Community-Based Services (HCBS) Settings, including residential and nonresidential settings. States are required to ensure all HCBS Settings comply with the new requirements, and analyze all setting where HCBS participants receive services to determine if current settings comply with the Final Rule. KDADS has created a Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule. The federal regulation for the new rule in 42 CFR 441.301(c)(4)-(5), and more information on the rules can be found on the CMS website at www.medicare.gov/hcbs.

This document is being submitted as supplemental to the initial **draft** HCBS Transition Plan initially posted on June 13, 2014 for public comment and feedback, and made available on KDADS website at http://www.aging.ks.gov/HCBSProvider/Documents/Transition_Plans/HCBS_Transition_Plan-CMS%20Draft.pdf. The Transition Plan was open for public comment for 30 days to allow all HCBS consumers and providers an opportunity to provide comment and feedback on the plan. In Kansas, this rule will apply to all settings where home and community based services are provided for these programs:

- Frail Elderly (65+)
- Autism (child who starts services prior to age 6)
- Intellectual and Developmental Disabilities (5+)
- Physical Disability (16-64)
- Serious Emotional Disturbance (0-18)
- Technology Assisted (0 through 21)
- Traumatic Brain Injury (16-64)

In addition to the KDADS website, the public may access non-electronic documents relating to the draft HCBS Transition Plan and relevant HCBS program proposed change documents at regional locations identified in the public notice document. The document was provided as a hand out at each session and made available online on the KDADS website: <http://www.kdads.ks.gov/docs/default-source/CSP/HCBS/Public-Comment-Sessions/proposed-changes-to-hcbs-programs-open-for-public-input.pdf?sfvrsn=0>

KDADS held in-person public comment sessions in May 2014, to inform the public about the final rule. Following the posting of the initial Transition Plan, KDADS hosted a series of in-person public meetings and listening sessions in June 2014 and repeated in October 2014. In addition, HCBS programs specific transition plan operated by Kansas was posted on the KDADS website June 2014. HCBS program specific transition plans may be accessed at the following website:

[http://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-about-page/hcbs-waivers](http://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-about-page/hcbs-waivers)

Following the initial posting and CMS guidance, the draft Transition Plans is to be amended from the original posting to include additional dates and proposed timelines for coming into compliance with the federal rule. The proposed timelines was posted on KDADS website and presented at public information sessions held in November and December 2014. During the public sessions, KDADS presented information on the final rule, IDD and TBI specific transition plan and changes to the programs for the renewal. KDADS presented Autism, TA and SED program specific transition plans at public sessions held in February 2015. Prior to each session, KDADS posted following public notices and documents for public access to review and provide comments and feedbacks:

<p>1. January and May 2014</p> <ul style="list-style-type: none"> • Tribal Notice <p>2. June 2014</p> <ul style="list-style-type: none"> • Draft HCBS Transition Plan • Draft HCBS Program Specific Transition Plan • CMS Final Rule on HCBS Setting and Assessment Survey <p>3. August 2014</p> <ul style="list-style-type: none"> • Federal Rule Impacting Changes to HCBS Programs Discussion Notice 	<p>4. November 2014</p> <ul style="list-style-type: none"> • Public Information-Save the Date • Public Notice of HCBS Renewals • Summary of Proposed Changes for Public Comments • Summary of Changes for HCBS Final Settings Rule - Transition Plan <p>5. January 2015</p> <ul style="list-style-type: none"> • HCBS Transition Plan and Proposed HCBS Program Changes
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Public Engagement Plan-Draft Transition Plan Public Input Process

Public Input Process	Start Date	End Date
Online Provider Self-Assessment Survey	May 20 th	June 15 th
Public Information Sessions	February	July
HCB Setting Transition Plan Public Comment Period	June 12 th	July 12 th
HCBS Multi-Topic Listening Sessions	August 18 th	August 22 nd
HCBS Renewals and Transition Plans	November 10 th	December 10 th

Public notice regarding the final rule was shared with HCBS participants/ family members, providers and other stakeholders during the months indicated in the table below at the following forums:

Month	Description	Date
February 2014	<ul style="list-style-type: none"> • Lunch and Learn IDD Provider Calls • Lunch and Learn IDD Consumer Calls • HCBS Provider Forum 	Mon/Fri - 11-12 pm Wed - 12 to 1 pm 3 rd Tuesday of month
March 2014	<ul style="list-style-type: none"> • Lunch and Learn IDD Provider Calls • Lunch and Learn IDD Consumer Calls • HCBS Provider Forum 	Mon/Fri - 11-12 pm Wed - 12 to 1 pm 3 rd Tuesday of month
April 2014	<ul style="list-style-type: none"> • Lunch and Learn IDD Provider Calls • Lunch and Learn IDD Consumer Calls • HCBS Provider Forum • Regional Public HCBS Information Sessions (450+ attendees) • LTC Round Table Forum (200 + attendees) 	Mon/Fri - 11-12 pm Wed - 12 to 1 pm 3 rd Tuesday of month April 23 rd April 24 – 30 th

May 2014	<ul style="list-style-type: none"> • Lunch and Learn HCBS Provider Calls • Lunch and Learn HCBS Consumer Calls (every other week) • HCBS Provider Forum • Public Notice of HCB Setting Transition Plans 	Mon - 11-12 pm Wed - 12 to 1 pm 3 rd Tuesday of month May 1, 2014
June 2014	<ul style="list-style-type: none"> • Lunch and Learn HCBS Provider Calls • Lunch and Learn HCBS Consumer Calls (every other week) • HCBS Provider Forum • Final Rule Information posted online – PowerPoint/Audio • Public Comment Public Comment sessions (dates on www.kdads.ks.gov) 	Mon - 11-12 pm Wed - 12 to 1 pm 3 rd Tuesday of month June 5 th June 16 - 19 th
July 2014	<ul style="list-style-type: none"> • Lunch and Learn HCBS Provider Calls • Lunch and Learn HCBS Consumer Calls (every other week) • HCBS Provider Forum • Summary of Public Comments posted online • Transition Plan submitted to CMS for review and approval 	Mon - 11-12 pm Wed - 12 to 1 pm 3 rd Tuesday of month July 15 th July 31 st
August 2014	<ul style="list-style-type: none"> • Public Comment Sessions (Multi-Topic Listening Sessions) 	August 18-25, 2014
November 2014	<ul style="list-style-type: none"> • Public Comment Sessions • Lunch and Learn 	November 12-14, 2014 November 17 th (11-12noon & 5:30-6:30)
December 2014	<ul style="list-style-type: none"> • Lunch and Learn 	12noon-1:00pm
February 2015	<ul style="list-style-type: none"> • Public Comment Sessions • Conferencing option 	February 4-5, 2015 February 10, 2015(11-12noon & 5:30-6:30pm)

The draft Transition Plan is available online on the KDADS website for individuals, providers and stakeholders to review. It can be found on the KDADS website at www.kdads.ks.gov or access to the documents is available in three ways:

You may access the documents three ways:

- **Online:** www.KDADS.ks.gov – on the home page
- **In Person:** At your local Community Developmental Disability Organization (CDDO), Aging and Disability Resource Center (ADRC) or Center for Independent Living (CIL).
- **By Email:** HCBS-KS@kdads.ks.gov – Please notify us if you need an accommodation

A summary of public comments and frequently asked questions is available online and upon request.

Summary of Public Comments and KDADS Action in Response to Public Comment

Kansas offered various opportunities for securing public comments regarding the proposed work plan in response to the HCBS Settings Final Rule. The draft transition plans were posted online and a 30 day comment period was open between June 14, 2014 and July 15, 2014. Opportunities were provided through statewide conference calls and in-person public information session held in (Lawrence, Topeka, Wichita) during the week of June 16-23, 2014. Additionally, the public was invited to submit comments through the HCBS general email address (HCBS-KS@kdads.ks.gov), by phone, by fax, or by mail. The purpose of the sessions was to meet two primary objectives:

1. To meet requirements for public comment period on the HCBS transition plan

2. To listen to comments from the public, record the comments, and submit a summary with the transition plan to CMS.

Format for each session: Wichita State University Center for Community Support and Research (CCSR) staff opened the meeting, logistics. KDADS state staff presented background information and draft transition work plan, including information regarding providers self-assessment surveys (due June 30). KDADS staff provided handouts on the statewide transition plan, HCBS Final Rule and FAQs relating to the final rule. The facilitator, CCSR asked the following questions in each public sessions and conference call and provided opportunities for attendees to dialogue with each other in small groups, while KDADS listened to the discussions. KDADS encouraged the public to attend in-person meetings to provide comments and feedback, in the event in-person attendance was not possible, the public should contact KDADS directly in person or by phone at the number provided in the public notice.

The following specific questions were asked by Wichita State University (WSU) Facilitators during these sessions:

- What questions or understanding or clarification do you have related to the rule you just heard about?
- What is already working in Kansas?
- Where are we already complying?
- What do you like about home and community based settings?
- Based on what you heard today, what concerns do you have?
- What might need to be changed or improved to come into compliance with the rule?
- What do you think our biggest compliance issues will be?
- What other types of settings should the state consider?
- What other questions should the state be thinking about?

Comments are grouped by date and session type. CCSR collected general comments and confirmed attendees understanding of information being presented. Comments from a single person that covered multiple issues may have been divided into categories of facilitated questions as noted above; however, written comments are included verbatim. Comments received in-person has been paraphrased by the facilitator and by confirming with the person making comments the information was captured correctly.

Kansas hosted an additional week long public information session statewide during the week of August 18-25, 2014 to recap the HCBS Setting Final Rule. The additional public comment sessions was intended to seek consumer and stakeholder feedback on the Department of Labor Rule, and proposed waiver amendments (Autism and Technology Assisted) programs; and renewals (Frail Elderly, Intellectual Developmental Disability, Physical Disability and Traumatic Brain Injury) programs to be submitted 9/30/14. In these sessions, Kansas provided a short summary of the HCBS Final Rule, the transition plan and what it means to consumers. The session was well attended by many HCBS consumers and family members, the overall message regarding the HCBS final rule and the transition plan was well received by the majority.

Consistently, Kansas heard consumer, family and provider concerns/ comments relating to the following examples summarized below:

- Will every setting receiving HCBS funding be assessed?
- Is the state expecting further guidance on person-centered planning and conflict-free case management?

- Do other settings where people go have to come under the HCBS final rule guidelines? Like the YMCA, or a cruise ship.
- Do those settings have to come into compliance?
- In a group home, does the “able to lock their own door” part apply to the whole house, or each individual?
- It might not be safe for every individual to be able to lock themselves behind a closed door. Will provision be made for those exceptions?
- Where it says that individuals should be able to access communication through text message and email, is it expected that providers would provide those tools, or that the individuals would?
- Where do we see this final ruling affecting individuals who live in group homes?
- They’ve lived there for 15-20 years; this is a family for them.
- They have a few hours of independent time during the day.
- Is this something where we’re going to have to encourage them to move?
- How vulnerable is too vulnerable to live alone in the community?
- Do all waivers have a full 5 years to get in compliance?
- Some appear to have only 12 months. Kansas will assess settings and may request 5 years for transitions. What factors will the state be looking for when assessing provider controlled setting?
- Is the tool for assessing provider setting exact same for all waivers? Are they going to be the same?

In November 2014, Kansas sought feedback from the public regarding multiple HCBS (FE, I/DD, PD and TBI) programs being submitted for renewal and recap of the Statewide Transition Plan in addition to the program specific plan. During this comment period, Kansas did not receive any comments or concerns regarding the Statewide Transition Plan or the HCBS program specific plans.

In February 2015, Kansas provided an additional public comment opportunity regarding the draft Statewide Transition Plan and the program specific transition plan during the Autism, TA and SED program specific amendments public sessions. Kansas heard the following public comments during these sessions:

- Are there current providers who will be excluded from the final rule?
 - When will that be decided? When will the state check the agencies to see if they are in compliance?
- What will self-assessment survey look like? What will we be reporting?
- Will we still have the specific manuals for different waivers or will you create one manual for all waivers?
- Some of the requirements are not realistic. How are you going to transition someone who needs so much help? Who is going to do it? Guardian? Family? Are there exceptions?
- Assessment: will it be for foster families too?
- Will the CDDO be doing the assessment?
- Are they (state) going to every individual location for assessment?
- If you send out information packets for individuals getting services to fill and send back, how many do you expect to get back?
- At what point will state establish a baseline for HCBS requirement?
- What can the guardian (IDD) do? Are they (IDD participants) going to have their guardian do the care?

The public sessions provided Kansas with valuable information as we move into the next phase of the transition plan. The majority of the comments and feedback received from the initial public

sessions centered on concerns relating to individuals preferences for HCBS settings; and health and safety risk factors that requires a setting to have controls in place that may prohibit settings from coming into compliance with the Final Rule.

The facilitator (CCSR) collected and summarized the comments and information from in-person meetings, teleconferencing, and by email and provided a themed summary. The feedbacks have been reviewed and are ready to be incorporated into the waivers for submission. Comments and feedbacks received during the public sessions unrelated to materials being presented for public comments are addressed individually as it arises.

In addition to the in-person Public Sessions and teleconference options, the public may provide comments and feedback by submitting their comments through the feedback portal that will be available to the public on the KDADS website following the close of the public information sessions at www.kdads.ks.gov or by submitting comments and feedback via KDADS direct email box at hcbs-ks@kdads.ks.gov.

Summary of Public Comments

KDADS has concluded its additional public comment period which ended February 25, 2015. In review of all comments and feedback received by Kansas, the comments received are summarized as follows:

- Kansas heard relevant concerns relating to individuals preferences for HCBS settings; and health and safety risk factors that requires a setting to have controls in place that may prohibit settings from coming into compliance with the Final Rule
- Concerns as to whether the requirements are realistic and supports an individual's choice of living arrangement or providers
- Concerns relating restrictions necessary for protecting an individual's health and safety
- Specific type of assessments to perform evaluations, applicability to certain group of consumers and provider groups
- How baseline will be established for compliance
- Inquiries as to whether assessments will be conducted onsite and who will be performing the assessments.
- Concerns relating to who will be responsible for providing care to the individual if the setting is out of compliance and the individual have to move to an alternate setting
- Concerns relating to the timeframe for coming into compliance with the final rules
- Concerns relating to requirement of provider owned settings to provide units with lockable entrance doors, this may not be possible for settings that serve individuals with health and safety risks

These comments and feedbacks are valuable and will be considered as part of the assessment design to ensure the feedback received is addressed in the transition process. As a result of the public comments and feedbacks, Kansas concludes the following:

- ✓ It is likely some settings will not comply with the HCBS settings requirement
- ✓ It will be necessary to explore possible options to allow exceptions for individuals where the HCBS setting may be assessed out of compliance with the final rule
- ✓ Moving an individual to an HCBS Final Rule compliant setting may threaten the health and welfare of the person
- ✓ Higher scrutiny may be necessary for individual choice to reside in a setting deemed out of compliance with the final rule

- ✓ Remediation and corrective plan will need to take into consideration individual choice and preferences when the individual's health and safety is not at risk

Following this conclusion and pending Kansas assessment of compliance, Kansas will assume from the comment and feedback that some HCBS settings in Kansas may not be deemed compliant with the final rule. At this time, Kansas neither agrees or disagrees with the comments and will reserve its determination of compliance with the final rule when the opportunity for conducting State assessment of compliance is concluded. Kansas anticipates the state assessment will be completed within six months of CMS approval of the proposed changes to the Transition Plan timeline as identified below.

Proposed changes to the Transition Plan - Identified in Red

By April 1, 2015, KDADS will produce an overall summary of:

- Public comments received regarding the initial **draft** Transition Plan
- Inventory and description of all HCBS settings
- How setting types meet or does not meet the federal HCBS settings requirements

By May 1, 2015, KDADS will provide a detailed assessment plan

- To complete assessments for HCBS Settings
- To identify areas of non-compliance that needs to be addressed
- To identify the number of individuals affected by the HCBS Settings Rule

By January 1, 2016, KDADS will publish a compliance plan

- To ensure the health and safety of participants who reside in locations that need to meet corrective action requirements for setting to come into compliance during the State's specified transition timeline
- To move individuals to compliant settings, if necessary

From May 2015 through October 2015, KDADS will begin conducting HCBS provider assessments for all residential and non-residential settings and develop a compliance summary from each provider type and identify areas of non-compliance for further review. This assessment will provide the basis for identifying, settings in compliance with the rule, settings requiring heightened scrutiny, and settings no longer qualifying for HCBS.

KDADS will assess all provider setting types to identify the scope of compliance and measure the impact on individual HCBS participants within 180 days of approval of the Transition Plan. The assessment will identify non-compliant settings and barriers to achieving compliance that require additional time to address. The assessment will also identify settings which are deemed ineligible by the new rule for which relocation of HCBS participants will be required. Kansas will use self-assessments, attestations, policy and record review, participant and provider interviews, observations, and other tools to determine compliance with respect to the new rule.

In calendar year 2015, the State will review existing policies, regulations and statutes to identify barriers to compliance or conflicting information that hinders compliance. State law changes will be initiated to ensure compliance with HCBS Settings Rule and other elements of the CMS Final Rule, if appropriate.

By January 2016, KDADS will notify all HCBS settings and providers of their compliance with the new Final Rule. All settings that are currently in compliance will be identified and shared publically with

MCOs, stakeholders and consumers. HCBS settings that need additional time to come into compliance will be notified of non-compliance areas, timelines for compliance, and benchmarks to achieving compliance within the shortest timeframe possible.

By January of 2016, for settings that are not compliant with the new Final Rule, the State will ensure appropriate transitions by working with stakeholders and community partners. **Between July 2015 and December 2015**, additional stakeholder input will be required to develop a comprehensive plan for transition. However, all HCBS participants will be afforded education and information about their rights and responsibilities prior to a transition from a non-compliant setting to a compliant setting. **By July 1, 2016**, the State will establish a transition policy for relocation or transition to compliant settings after public input and comment that will address the process for transition, ensure choice is provided, and identify timeframes for appropriate transition.

By March 17, 2019, the Kansas Department for Aging and Disability Services (KDADS) will ensure that all residential and non-residential locations where a person receives home and Community-based services (HCBS) through Medicaid allows individuals to be integrated in and have support for full access to services in the greater community, including opportunities to seek employment and work in competitive integrated settings, to control personal resources, and to engage in community life in the same way as individuals not receiving Medicaid HCBS.

Summary

During 2015, KDADS will assess all HCBS Settings by **October 31, 2015** to identify settings that comply with the HCBS Setting Rule and review state law and program policies that may need to be changed. KDADS will make changes to the Transition Plan in 2015 to set more specific timelines and benchmarks for compliance. By December 31, 2015, KDADS will identify all providers and individuals who may be affected by the changing rules and seek public input on timeframes and benchmarks. During 2016, KDADS will notify all HCBS providers of non-compliance areas, timelines for compliance and benchmarks for achieving compliance in the shortest period possible. KDADS may change the Transition Plan to ensure compliance with the HCBS Setting Rules based on the State's Transition Plan for Access, Compliance and Public Engagement.

Questions and Comments

Questions and Answers are made available online and shared through appropriate public sessions, conference calls, listservs and bulletins during the comment period. A summary of responses are available on the website after the public comment period has ended for the draft Transition Plan or any changes to it, and the summary of responses will be provided to CMS as part of the Transition Plan submission.

Comments and Public Input on this Transition Plan can be submitted to KDADS during the comment period the following ways:

- **In Person:** HCBS Setting Final Rule Public Comment Sessions in June and as scheduled
- **By Phone:** Designated Provider and Consumer Lunch and Learn Calls, Provider Forums
- **By Email:** HCBS-KS@kdads.ks.gov
- **By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256

Additional Questions can be submitted to KDADS at any time the following ways:

- **By Phone:** 785-296-4986 or during provider or consumer calls
- **By Email:** HCBS-KS@kdads.ks.gov
- **By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256

KDADS will continue to be available for presentations and question and answer sessions to various state agencies, contracted entities, and community activities related to the HCBS Final Rule.

The Transition Plan coordinator is **Aquila Jordan** who can be contacted at HCBS-KS@kdads.ks.gov. The public is encouraged to visit the agency website for documents, resources and for new Transition Plan development and progress as it becomes available at the following website: [http://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-about-page/hcbs-waivers](http://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-about-page/hcbs-waivers).