

# Statewide Transition Plans (STPs)

## HCBS Implementation: Small Group State TA for STP Development

TA Virtual Discussion #2 of 4:

Setting-Specific Assessment & Remediation Process

# AGENDA

- Technical Presentation of Today's Thematic Topics & Information Dissemination of Promising State Examples
- Question & Answer Session/Interactive Dialogue
- Transfer of Knowledge: *Informal Dialogue among State Teams*

## Week #2:

# *Today's Thematic Topics of Discussion*

- States' Approach to Assessing HCBS Compliance of Individual Settings
- State Validation Strategies
- Settings Remediation

# HCBS Setting Requirements

Is integrated in and supports access to the greater community

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Is selected by the individual from among setting options including non-disability specific settings

Ensures an individual's rights of privacy, respect, and freedom from coercion and restraint

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

***\*\*Additional Requirements for Provider-Controlled or Controlled Residential Settings\*\****

# Distinguishing between Settings under the HCBS Rule

## Settings that are not HCB

- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate care facility for individuals with I/DD (ICF/IID)
- Hospitals

## Settings presumed not to be HCB

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals receiving Medicaid HCBS.\*

## Settings that could meet the HCB rule with modifications

- Settings that require modifications at an organizational level, and/or modifications to the PCP of specific individuals receiving services within the setting.
- Settings that engage in remediation plans with the state, and complete all necessary actions no later than March 2019.

## Settings presumed to be HCB and meet the rule without any changes required

- Individually-owned homes
- Individualized supported employment
- Individualized community day activities

# Settings Assessment for HCBS Compliance: *Scope*

- States must identify all types of home and community based program settings in their state where HCBS are provided and where beneficiaries reside.
  - States should first list out all major categories of services provided under their various HCBS authorities.
  - Then, states should identify all settings in which each category of service(s) are provided.

# Settings Assessment for HCBS Compliance: *Scope*

- Settings considered to be an Individual's own home and therefore presumed to be HCB:
  - If a state is presuming one or more categories of settings to automatically comply with the rule (ie. private homes), the state must outline how it came to do this determination and what it will do to monitor compliance of this category over time.
- Group Settings:
  - Any setting for which individuals are being grouped or clustered for the purpose of receiving an HCBS must be assessed by the state for compliance with the HCBS rule.

# Settings Assessment for HCBS Compliance: *Threshold*

- States are responsible for assuring that 100% of all HCBS settings comply with 100% of the final HCBS rule *in its entirety*.
- Quality thresholds should not be used to reduce the state's requirement to assure 100% compliance across all settings.

# Review of HCBS Settings under Final Rule: *Key Components*

Assessment

Validation

Remediation

# Review of HCBS Settings Compliance: *Initial Assessment*

- ❖ Most states opted to perform an initial provider self-assessment
  - States that did not receive 100% participation of providers in self-assessment process must identify another way the assessment process was conducted on all settings including where a provider self-assessment was not conducted.
  - Providers responsible for more than one setting need to complete an assessment of each setting.
- ❖ States must provide a validity check for provider self-assessments. States that chose to initiate a provider self-assessment are strongly recommended to conduct a beneficiary/guardian assessment (or other method for collecting data on beneficiary experience) that mirrors or is similar to the provider assessment in order to have a comparable set of data from the beneficiary perspective.

# Review of HCBS Settings Compliance: *Initial Assessment (continued)*

- ❖ Most states formulated their assessment tools using the Exploratory Questions for Residential and Non-Residential Settings published by CMS.
  - Questions in these documents are examples of ones that states could be asking of settings, but a state may use additional questions or methods to determine whether a setting is truly home and community based in the eyes of a state.

# HCBS Residential Settings: *Considerations*

[Reference: CMS Exploratory Questions]

- *The setting was selected by the individual.*
- *The individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.*
- *The individual is employed or active in the community outside of the setting.*
- *The individual has his/her own bedroom or shares a room with a roommate of choice.*
- *The individual chooses and controls a schedule that meets his/her wishes in accordance with a person-centered plan.*
- *The individual controls his/her personal resources.*
- *The individual chooses when and what to eat.*
- *The individual chooses with whom to eat or to eat alone.*
- *Individual choices are incorporated into the services and supports received.*
- *The individual chooses from whom they receive services and supports.*
- *The individual has access to make private telephone calls/text/email at the individual's preference and convenience.*

# HCBS Residential Settings: *Considerations* (continued)

[Reference: CMS Exploratory Questions]

- *Individuals are **free from coercion**.*
- *The individual, or a person chosen by the individual, has an active role in the development and update of the **individual's person-centered plan**.*
- *The **setting does not isolate individuals** from individuals not receiving Medicaid HCBS in the broader community.*
- *Do individuals receiving HCBS live/receive services in a different area of the setting?*
- *State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices.*
- *The setting is an environment that supports individual comfort, independence and preferences.*
- *Does the setting allow for **24/7 unrestricted access to visitors**?*
- *The individual has **unrestricted access** in the setting.*
- *The physical environment meets the needs of those individuals who require supports.*
- *Individuals have **full access** to the community.*
- *The individual's **right to dignity and privacy** is respected.*
- *Individuals who need assistance to dress are **dressed in their own clothes appropriate to the time of day and individual preferences**.*
- *Staff **communicates with individuals** in a dignified manner.*

# HCBS Non-Residential Settings: *Considerations*

[Reference: CMS Exploratory Questions]

- *Does the setting provide opportunities for **regular meaningful non-work activities in integrated community settings for the period of time desired by the individual?***
- *Does the setting afford opportunities for **individual schedules** that focus on the needs and desires of an individual and an opportunity for individual growth?*
- *Does the setting afford opportunities for individuals to have knowledge of or access to information regarding **age-appropriate activities** including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting, and who in the setting will facilitate and support access to these activities?*
- *Does the setting allow individuals **the freedom to move about inside and outside of the setting** as opposed to one restricted room or area within the setting? For example, do individuals receive HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS?*
- *Is the setting in the community/building located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices, etc. that **facilitates integration with the greater community?***

# HCBS Non-Residential Settings: Considerations (2)

[Reference: CMS Exploratory Questions]

- Does the setting **encourage visitors or other people from the greater community** (aside from paid staff) to be present, and is there evidence that visitors have been present at regular frequencies? For example, do visitors greet/acknowledge individuals receiving services with familiarity when they encounter them, **are visiting hours unrestricted**, or does the setting otherwise encourage interaction with the public (for example, as customers in a pre-vocational setting)?
- Do employment settings provide individuals with the opportunity to **participate in negotiating his/her work schedule, break/lunch times and leave and medical benefits with his/her employer** to the same extent as individuals not receiving Medicaid funded HCBS?
- In settings where money management is part of the service, does the setting **facilitate the opportunity for individuals to have a checking or savings account or other means to have access to and control his/her funds**. For example, is it clear that the individual is not required to sign over his/her paychecks to the provider?
- Does the **setting provide individuals with contact information, access to and training on the use of public transportation**, such as buses, taxis, etc., and are these public transportation schedules and telephone numbers available in a convenient location?
- Alternatively where public transportation is limited, does the setting **provide information about resources for the individual to access the broader community**, including accessible transportation for individuals who use wheelchairs?

# HCBS Non-Residential Settings: Considerations (3)

[Reference: CMS Exploratory Questions]

- Does the setting assure that tasks and activities are **comparable to tasks and activities for people of similar ages who do not receive HCB services**?
- Is the setting **physically accessible**, including access to bathrooms and break rooms, and are appliances, equipment, and tables/desks and chairs at a convenient height and location, with no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting? If obstructions are present, **are there environmental adaptations** such as a stair lift or elevator to ameliorate the obstructions?
- Does the setting **reflect individual needs and preferences** and do its policies **ensure the informed choice** of the individual?
- Do the setting options offered **include non-disability-specific settings**, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA?
- Do the setting options include the opportunity for the individual to **choose to combine more than one service delivery setting or type of HCBS in any given day/week** (e.g. combine competitive employment with community habilitation)?
- Is **all information about individuals kept private**?

# HCBS Non-Residential Settings: Considerations (4)

[Reference: CMS Exploratory Questions]

- Does the setting **support individuals who need assistance with their personal appearance** to appear as they desire, and is personal assistance, provided in private, as appropriate?
- Does the setting assure that **staff interact and communicate with individuals respectfully** and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities?
- Do setting requirements **assure that staff do not talk to other staff about an individual(s) in the presence of other persons** or in the presence of the individual as if s/he were not present?
- Does the setting policy require that the individual and/or representative **grant informed consent prior to the use of restraints and/or restrictive interventions** and document these interventions in the person-centered plan?
- Does the setting policy **ensure that each individual's supports and plans to address behavioral needs are specific to the individual** and not the same as everyone else in the setting and/or restrictive to the rights of every individual receiving support within the setting?
- Does the setting offer **a secure place for the individual to store personal belongings**?
- Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?

# HCBS Non-Residential Settings: Considerations (5)

[Reference: CMS Exploratory Questions]

- *Does the setting afford a variety of meaningful non-work activities that are responsive to the goals, interests and needs of individuals?*
- *Does the setting afford opportunities for individuals to choose with whom to do activities in the setting or outside the setting or are individuals assigned only to be with a certain group of people?*
- *Does the setting allow for individuals to have a meal/ snacks at the time and place of their choosing? For instance, does the setting afford individuals full access to a dining area with comfortable seating and opportunity to converse with others during break or meal times, afford dignity to the diners (i.e., individuals are treated age-appropriately and not required to wear bibs)? Does the setting provide for an alternative meal and/or private dining if requested by the individual? Do individuals' have access to food at any time consistent with individuals in similar and/or the same setting who are not receiving Medicaid-funded services and supports?*
- *Does the setting post or provide information on individual rights?*
- *Does the setting prohibit individuals from engaging in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner different from individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports?*

# HCBS Non-Residential Settings: Considerations (6)

[Reference: CMS Exploratory Questions]

- *Does the setting afford the opportunity for **tasks and activities matched to individuals' skills, abilities and desires**?*
- *Was the individual **provided a choice regarding the services, provider and settings and the opportunity to visit/understand the options**?*
- *Does the setting afford individuals the opportunity to **regularly and periodically update or change their preferences**?*
- *Does the setting ensure individuals are **supported to make decisions and exercise autonomy** to the greatest extent possible?*
- *Does the setting afford the individual with the opportunity to participate in **meaningful non-work activities in integrated community settings** in a manner **consistent with the individual's needs and preferences**?*
- *Does setting policy ensure the individual is supported in developing plans to support her/his needs and preferences? Is setting staff knowledgeable about the capabilities, interests, preference and needs of individuals?*
- *Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?*

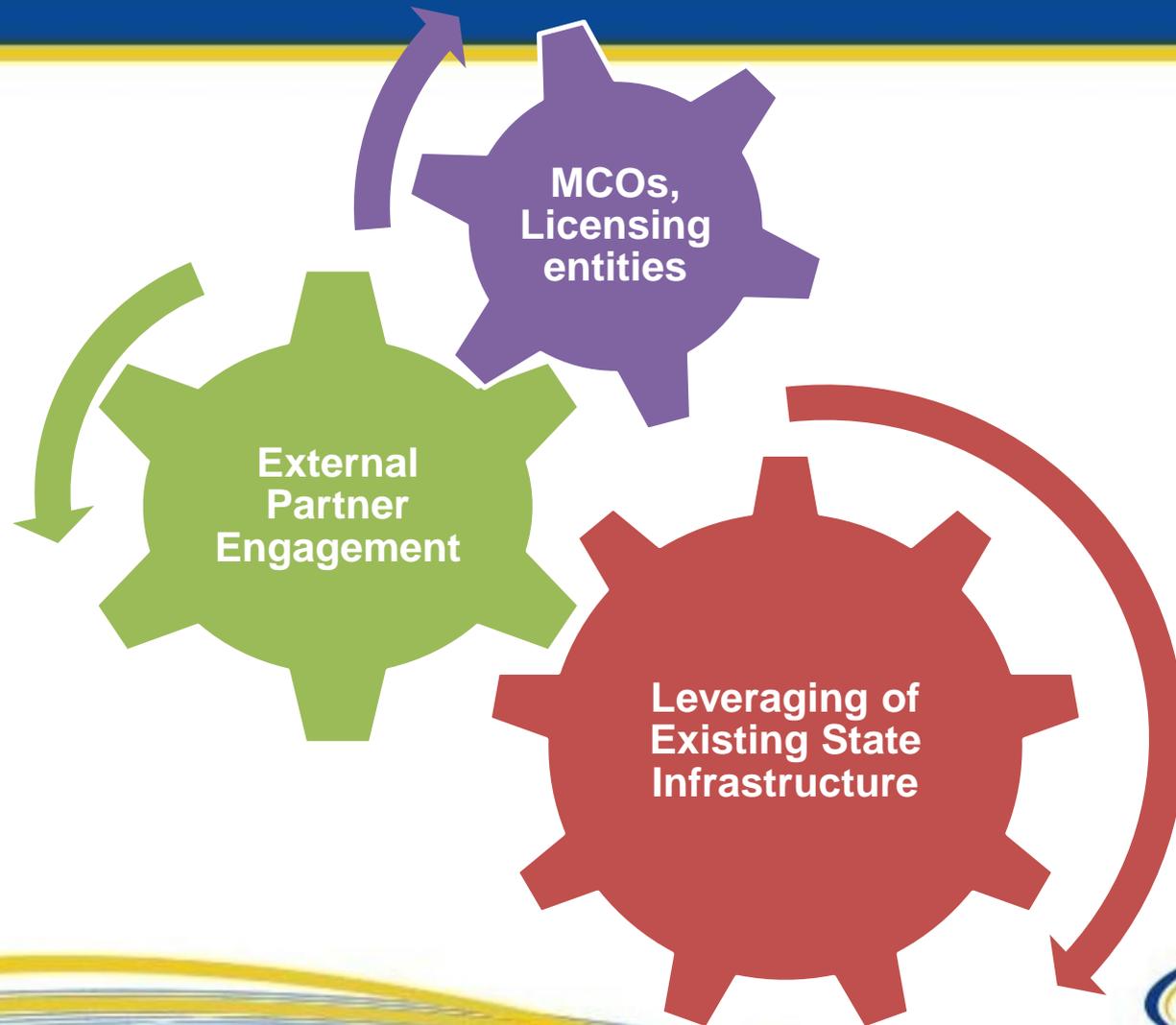
# Highlighting Effective Practices in Assessing Setting Compliance: *State Examples*

Effective Practice/Strategy	State Examples
<b>Provides clear, easy to understand listing of all HCBS settings</b>	<a href="#">Iowa</a> (pgs. 20-21); <a href="#">Pennsylvania</a> (pgs. 20-21)
<b>Developed unique comprehensive assessment tools based on type of setting and target respondent</b>	<a href="#">Delaware</a> (Attachments 7 & 8); <a href="#">Maine</a> (TBD-submission due mid-May); <a href="#">South Carolina</a> (pgs. 79-84; 88-100)
<b>Clearly laid out the specific details of the state's approach to the assessment process (including sample sizes, non respondents, etc.)</b>	<a href="#">Kentucky</a> (pgs. 12-22); <a href="#">Oregon</a> (pgs. 13-17)
<b>Summarized assessment results in a digestible manner (based on the seven key requirements of the rule and corresponding sub-elements) so as to inform state's strategy on remediation.</b>	<a href="#">Iowa</a> (pgs. 22-31); <a href="#">Michigan</a> (pgs. 63-80); <a href="#">South Dakota</a> (pgs. 32-62)

# Review of HCBS Settings Compliance: *Validation*

- Validation strategies re: levels of compliance within settings varies across states
  - onsite visits, consumer feedback, external stakeholder engagement, state review of data from operational entities, like MCOs or regional boards/entities
- The more robust the validation processes (incorporating multiple strategies to a level of degree that is statistically significant), the more successful the state will be in helping settings assure compliance with the rule.
  - NOTE: The state must assure at least one validation strategy is used to confirm provider self-assessment results, and should also supplement strategies where there may be a perceived conflict of interest (ie. MCOs validating provider settings) with additional validation tactics.

# Validation: *Vehicles of Implementation*



# Validation Strategies (examples)



# Highlighting Effective Practices in Validating Setting Compliance: *State Examples*

Effective Practice/Strategy	State Examples
<b>State outlines multiple validation strategies that addressed concerns and assured all settings were appropriately verified. Validation process included multiple perspectives, including consumers/beneficiaries, in the process.</b>	<a href="#">Tennessee</a> (pgs. 18-20)
<b>State relied on existing state infrastructure, but laid out solid, comprehensive plan for training key professionals (case managers, auditing team) to assure implementation of the rule with fidelity.</b>	<a href="#">Delaware</a> (pgs. 23-24, 30, 43-47); <a href="#">Tennessee</a> (pgs. 13, 46)
<b>State used effective independent vehicles for validating results.</b>	<a href="#">Michigan</a> (pgs. 13, 33, 56, 78)
<b>State clearly differentiated and explained any differences in the validation processes across HCB systems.</b>	<a href="#">Indiana</a> (pgs. 14-19)

# Settings Assessment for HCBS Compliance: *Remediation*

- Setting-Specific Remediation
  - Corrective Action Plans
  - Tiered Standards
- Statewide Training & TA is a strong option for states to consider.
  - State lays out clear plan within the STP of how it will strategically invest in the training and technical assistance needed to help address systems-wide modification requirements of specific settings, as well as how it intends to build the capacity of providers to comply with the rule.

# Highlighting Effective Practices in HCBS Settings

## Remediation: *State Examples*

Effective Practice/Strategy	State Examples
<b>State simultaneously provided a comprehensive template for a corrective action or modification plan to all providers as part of the self-assessment process.</b>	<a href="#">Tennessee</a> (pgs. 19-20; 25-28)
<b>State has outlined a process for following up with settings that require modifications to comply with the rule, including but not limited to the negotiation of individual corrective action plans with providers that address each area in which a setting is not currently in compliant with the rule.</b>	<a href="#">Indiana</a> (pgs. 55-59); North <a href="#">Dakota</a> (pgs. 17-27); <a href="#">Pennsylvania</a> (pgs. 26-35)
<b>State has identified those settings that cannot or will not comply with the rule and thus will no longer be considered HCB after 2019. State has also established an appropriate communication strategy for affected beneficiaries.</b>	<a href="#">Ohio</a> (pgs. 12-13, 16, 26); <a href="#">North Carolina</a> (pgs. 29-30)

# Implementation with Integrity: *Emerging Trends in STPs and Key Issues for Consideration*

## • Residential Settings

- States are asking, “How much integration is enough?”
  - Use the exploratory FAQs to help discern HCB settings from ones that are not or that could be but require modifications.
- Intentional communities, farmsteads, and other large congregate residential settings that have the effects of isolation are presumed not to be HCB and must go through heightened scrutiny if a state feels the setting is home and community-based and does not have institutional characteristics.

# Implementation with Integrity: *Emerging Trends in STPs and Key Issues for Consideration*

## • **Non-Residential Settings**

- Large congregate, facility-based settings should be carefully reviewed to identify if modifications are needed to comply with the rule.
- *Reverse Integration* does not equal community integration, and this strategy by itself will not result in an appropriate level of compliance with the rule.
- States should review parameters around service definitions/policies/reimbursement rates as well, in order to promote options like greater use of innovative transportation and natural support strategies that facilitate individual community integration.

# Implementation with Integrity: *Non-Disability Specific Settings*

- States must demonstrate how they are assuring beneficiary access to non-disability specific settings in the provision of residential and non-residential services.
- States should discuss within their STPs how they are investing to build capacity across the state to assure multiple non-disability specific options.

# Implementation with Integrity: *Non-Residential Settings & Employment*

- **Facility-Based Employment:** These settings may exhibit qualities that isolate beneficiaries.
  - Access to employees without disabilities? Same exposure to typical community settings and the public to the same degree as their non-disabled coworkers? Ability to leave the facility during the day and engage with typical community settings for lunch, breaks, etc.?
- **Supported Employment:** In the case of group supported employment, there may be settings (enclaves, some work crews) where the individuals are in settings that isolate. What if any steps are the states taking to assess these settings and make modifications?
- **Aging & Employment:** Beneficiaries who wish to be supported in pursuing employment must have access to such supports via HCBS setting offerings, though it is recognized that many aging beneficiaries do not wish to seek employment.

# Implementation with Integrity:

## *HCBS Compliance in both Residential & Non-Residential*

- Individuals receiving HCB services must reside in settings that comply fully with the rule (regardless of whether those settings are being paid for using HCBS funds or not).
- Living in HCB settings that do not comply with the rule could jeopardize an individual's ability to receive non-residential HCBS.

# Implementation with Integrity: *Tiered Standards*

- States have flexibility to set different standards for existing and new settings through their statewide transition plan
  - Existing settings must meet the minimum standards set forth in the HCBS rules but the state “may suspend admission to the setting or suspend new provider approval/authorizations for those settings”
  - State may set standards for “models of service that more fully meet the state’s standards” for HCBS and require all new service development to meeting the higher standards
  - The tiered standards can extend beyond the transition plan timeframe
  - This allows states to “close the front door” to settings/services that only meet the minimum standard.

[Reference: [CMS FAQs dated 6/26/2015](#); page 11, Answer to Question #16]

# STP Review: *Key Questions*

- *Did the state accurately and clearly lay out all of the settings in each HCBS authority where HCBS is delivered?*
- *Are there any categories of settings for which a state is presuming to automatically meet all of the requirements of the HCBS rule? Are there any categories of settings that the state is automatically determining will require modifications to comply with the rule? Any categories that automatically rise to the level of heightened scrutiny?*
- *How are specific categories of settings structured in the state? For example, are there any that are required to be co-located on the grounds or near the grounds of an institutional setting?*

# STP Review: *Key Questions (2)*

- *Validation Questions*

- *Did the STP adequately describe the state's validation process including the use of beneficiary feedback?*
- *Are the strategies the state has laid out to validate whether a setting is in compliance with the rule sufficient?*
- *Does the state effectively comingle various validation strategies to mitigate any perceived concerns?*
- *Did the state sufficiently train state staff, external contract entities, and providers on what is required for a setting to be 100% compliant with the rule.*

# STP Review: *Key Questions (3)*

- ***Remediation Questions***

- *How does the state propose working with providers of settings that are not currently 100% compliant with the rule but could be with appropriate modifications?*
- *Has the state proposed using tiered standards?*
- *What investments is the state making to provide technical support to help settings come into compliance?*

# Interactive Dialogue: Q&A

*What is on your mind regarding the topics covered today as they relate to your state's approach to HCBS implementation?*

# Interactive Dialogue: *Knowledge Transfer*

- *What is the status of your settings assessment and remediation efforts? How are you accomplishing this work? Do you feel there are any specific strategies/effective practices you've used during the settings assessment process that you think other states would benefit from hearing about in the STP? What obstacles have you faced in fully completing the settings assessment process, and how are you addressing these obstacles?*
- *What concerns do you have about accomplishing the milestones related to setting assessment, validation & remediation set forth in your plan by the end of the transition period? How are you tracking progress in milestone completion?*

# Resources

- **Main CMS HCBS Website:** <http://www.medicare.gov/HCBS>
  - Final Rule & Subregulatory Guidance
  - A mailbox to ask additional questions
  - Exploratory Questions (for Residential & Nonresidential Settings)
- **CMS Training on HCBS – SOTA (State Operational Technical Assistance) Calls:**  
<https://www.medicare.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/hcbs-training.html>
- **Statewide Transition Plan Toolkit:**  
<https://www.medicare.gov/.../statewide-transition-plan-toolkit.pdf>

# Resources (2)

- **Exploratory Questions**
  - [Residential Settings](#)
  - [Non-Residential Settings](#)
- **FAQs**
  - [HCBS FAQs on Planned Construction and Person Centered Planning \(June 2016\)](#)
  - [HCBS FAQs on Heightened Scrutiny](#) dated 6/26/2015
  - [FAQs on Settings that Isolate](#)
  - [Incorporation of HS in the Standard Waiver Process](#)
- **ACL Plain-Spoken Briefs on HCBS Rule & Person Centered Planning:**  
<http://www.acl.gov/Programs/CPE/OPAD/HCBS.aspx>
- **Advocacy Toolkit**  
<http://hcbsadvocacy.org/>

# Resources: CMS HCBS STP Review Team Members

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# THANK YOU!

## SCHEDULE OF ADDITIONAL TA WEBINARS

- **Week #3 (7/26/16-12:30 -2:00 PM EST.)**
  - Heightened Scrutiny, Relocation, Ongoing Monitoring/Quality Improvement
- **Week #4 (8/2/16-12:30 -2:00 PM EST.)**
  - Charting Milestones; Next Steps; Setting up regular communications with CMS on state’s progress
  - “Office Hours” Discussion – Wrap up of Small Group TA