

## Summary of Public Input

The Michigan Department of Community Health sought input from the public and a wide range of stakeholders regarding the proposed statewide transition plan. The public input period was from November 24, 2014 through December 24, 2014. Stakeholders were notified of the opportunity to review the transition plan and provide public input using e-mail blasts, MDCH website postings, and announcements at stakeholder events. Stakeholders were able to submit comments regarding the transition plan by e-mail or standard mail. In addition to the public comment period, the following is a list of public input events held to engage the stakeholder community:

Event Title	Date
Meeting with Developmental Disability Advocacy Groups	7/16/2014
Kick-Off Meeting for the Home and Community-Based Services Program Transition Project	8/12/2014
MI Health Link Demonstration Implementation Meeting	9/4/2014
LeadingAge Michigan Conference	9/17/2014
First Webinar for the Home and Community-Based Services Program Transition Project	10/1/2014
Michigan Developmental Disabilities Council Meeting	10/10/2014
Michigan Association of Community Mental Health Boards Conference	10/27/2014
Meeting with Developmental Disabilities Providers	10/29/2014
Olmstead Coalition Meeting	11/6/2014
Self-Determination Leadership Implementation Seminar	11/11/2014
Second Webinar for the Home and Community-Based Services Program Transition Project	11/13/2014
Re:Con Conference	11/14/2014
Michigan Assisted Living Association Meeting	11/17/2014
Waiver Conference for the Behavioral Health and Developmental Disabilities Administration	11/18/2014
Meeting with the Michigan Disability Housing Work Group	11/20/2014
Start of the Public Comment Period for the Statewide Plan	11/24/2014
MI Choice Quality Management Collaborative	12/2/2014
Michigan Center for Assisted Living Meeting	12/9/2014
End of the Public Comment Period for the Statewide Plan	12/24/2014
Michigan Developmental Disabilities Council Meeting	1/6/2015

The transition plan, with any modifications made as a result of public input, will be simultaneously posted on the state website when the Michigan Department of Community Health files the plan with the Centers for Medicare & Medicaid Services. The plan and consultation summary may be accessed at the following link: <http://www.michigan.gov/mdch/0,4612,7-132-2943-334724--,00.html>. Michigan plans to continue stakeholder engagement activities to ensure ongoing transparency and input from stakeholders on the transition plan process. Michigan plans to use public input in the assessment of the state's progress on the milestones approved in the transition plan. Continued stakeholder involvement will include stakeholder review of deliverables such as the assessment, rubric, remediation strategy, Medicaid policy and site review protocols, and ongoing meetings with stakeholders.



STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
LANSING

RICK SNYDER  
GOVERNOR

NICK LYON  
DIRECTOR

January 16, 2015

**TO:** Interested Party

**RE:** Consultation Summary  
Michigan's Statewide Transition Plan for Home and Community-Based Settings

Thank you for your comment(s) to the Michigan Department of Community Health (MDCH) relative to Michigan's Statewide Transition Plan for Home and Community-Based Settings. Your comment(s) has been considered in the preparation of the final statewide transition plan, a copy of which is attached for your information.

Responses to specific comments are also addressed below.

1. **Comment:** Numerous stakeholders asked if there would be an opportunity to appeal the results of the assessment.

**Response:** MDCH appreciates these comments. The results of the assessment will be final; however stakeholders will have the opportunity to provide feedback on assessment results during the development of the corrective action plan for settings that has been determined to be out of compliance.

2. **Comment:** Several stakeholders had questions regarding which waivers the final rule affects. Several stakeholders questioned the fairness of having one set of rules in settings for individuals who are participating in a waiver program and another set of rules for individuals who are not participating in waiver programs. Some stakeholders questioned whether individuals would be moved from the Habilitations Supports Waiver to the Specialty Supports Waiver in order to avoid having a setting come into compliance with the final rule. Some stakeholders also questioned whether the final rule would conflict the intent of the Olmstead decision in regards to what options should be available to individuals in the community.

**Response:** The final rule affects 1915 (c), (i), and (k) waivers. MDCH currently operates four 1915 (c) waiver programs: MI Choice, Habilitation Supports, Children's Waiver Program, and the Children with Serious Emotional Disturbances Waiver Program. The MI Health Link Program also just received approval for a new 1915 (c) waiver, which will also be affected by the final rule. This rule does not affect 1915 (b) waivers.

The Centers for Medicare and Medicaid Services limited the scope of the final rule to only affect 1915 (c), (i), and (k) waivers. MDCH will only implement the rule for settings that receive funding through 1915 (c) waiver programs. For the Habilitation Supports Waiver, individuals who remain eligible for the waiver will remain on the waiver unless they choose to disenroll. MDCH will work with individuals who are in non-compliant settings to develop a transition plan to move to a compliant setting of their choice. MDCH will work to ensure that individuals have access to a range of options for settings that comply with the rule.

3. **Comment:** Several stakeholders inquired about the status of respite care under the final rule. One stakeholder asked MDCH confirm that out-of-home respite is provided in compliant facilities. Another stakeholder asked whether services in licensed settings would be removed from the two waivers under this rule.

**Response:** Respite that is provided in institutional settings is exempt from the final rule. The final rule states: "Home and Community-Based Services must be delivered in a setting that meets the Home and Community-Based setting requirements as set forth in this rule (except for Home and Community Based-Services that is permitted to be delivered in an institutional setting, such as institutional respite)." MDCH is seeking additional guidance from the Centers for Medicare and Medicaid Services on the status of non-institutional settings that provide respite services.

4. **Comment:** One stakeholder noted that Adult Day Sites will likely be affected by the final rule and that Adult Day Sites should be approved as Home and Community-Based Settings due to the importance of respite service for caregivers in the MI Choice Waiver program.

**Response:** MDCH will work with all settings to ensure that they are fully aware of the Home and Community-Based Services rules and will provide technical assistance as necessary to help settings come into compliance with the rule.

5. **Comment:** Some stakeholders noted that the statewide plan did not provide details on how non-residential services such as day programs and workshops would be affected by the new rule or transition process.

**Response:** Non-residential services provided through 1915 (c) waivers are also affected by the final rule. Examples of non-residential services that may be affected by the rule include Out of Home Non-Vocational, Pre-Vocational, Supported Employment, and Adult Day Care. Settings that offer these types of services will be assessed during the transition process.

6. **Comment:** Several stakeholders questioned the meaning of the phrase 'provider owned and controlled' and asked whether these settings are automatically noncompliant with the rule according to Row 39 in the statewide plan.

**Response:** Settings that are "provider owned and controlled" are not automatically considered to be non-compliant with the rule. The Centers for Medicare and Medicaid Services is requiring states to assess all individual settings to determine if each setting meets requirements of the rule.

7. **Comment:** Several stakeholders asked about how the two children's waivers would be impacted under this rule. One stakeholder asked about how MDCH would resolve issues under the rule with children being placed in out-of-state settings.

**Response:** The final rule will not impact the two children's waivers as the settings are all home based and are presumed to be in compliance with the setting characteristics.

8. **Comment:** One stakeholder expressed concern about how the rule would impact settings for individuals with Alzheimer's disease or other memory care needs.

**Response:** MDCH appreciates this comment and will be mindful of the needs of individuals with Alzheimer's disease or other memory care needs when developing the assessment tool.

9. **Comment:** One stakeholder noted that the Habilitation Supports Waiver does not have a statewide enrollment process for providers. The stakeholder noted that Prepaid Inpatient Health Plans are responsible for enrolling providers. The stakeholder asked that the contracts between the Prepaid Inpatient Health Plans and Habilitation Supports Waivers be adjusted to incorporate the new assessment requirements.

**Response:** MDCH will establish contracts between the Department and Prepaid Inpatient Health Plans that will incorporate language regarding assessment and ongoing compliance with the final rule.

10. **Comment:** Several stakeholders highlighted the importance of allowing family members and guardians to assist individuals with completing the assessment tool for the Habilitation Supports Waiver.

**Response:** MDCH appreciates and agrees with these comments. Individuals will be able to receive assistance from family members, friends, or other individuals in completing the assessment tool.

11. **Comment:** Several stakeholders asked for more details on the provision in the statewide plan to use a sampling methodology to assess settings under the Habilitation Supports Waiver. Some stakeholders believed that it is reasonable to sample to check the validity of assessments but that it is unreasonable to have Prepaid Inpatient Health Plans sampling their contracted providers. These stakeholders stated that the assessments should also be a part of the contract procurement, management and monitoring process of the Prepaid Inpatient Health Plans. Other stakeholders did not support the sampling process and asked for a neutral, third-party, on-site review.

Stakeholders questioned whether a sample could accurately reflect the diversity of settings. Some stakeholders asked if a determination of compliance for all settings could be made based upon the assessment of one setting.

One stakeholder asked about who the independent organization will be for validating the results. The stakeholder also asked if this independent organization will do a sampling of all the answers received and how many people need to be surveyed to make the surveys valid. The stakeholder also asked how the organization will be trained. The stakeholder also asked whether this information be included in the provider enrollment policies and contracts. The stakeholder also questioned whether providers will need to do a self-assessment of their settings before contracting with Community Mental Health organizations.

**Response:** MDCH would like to thank stakeholders for their comments. MDCH will utilize the Site Review process to provide oversight of the Prepaid Inpatient Health Plans during the compliance process and ongoing monitoring of policies, procedures, and settings. The Developmental Disabilities Institute will be validating the results of the assessment tool.

12. **Comment:** Several stakeholders noted the importance of education and outreach during implementation. One stakeholder asked if the training and education be designed to assure those participants with intellectual or developmental disabilities have sufficient opportunities for learning and engagement. Another stakeholder noted that MDCH should ensure that individuals know of the accommodations and resources that can be provided to them to support their participation in the assessment process. Some stakeholders stated that individuals receiving services, providers, supports coordinators, and waiver entities should receive training on the assessment tool.

**Response:** MDCH appreciates and agrees with these comments. MDCH will incorporate training and educational opportunities for the assessment into the statewide plan. MDCH will work with waiver entities to provide training and educational outreach opportunities for both new and ongoing beneficiaries.

13. **Comment:** One stakeholder noted that the codes for Habilitation Supports Waiver CLS per diem and per 15 minutes, and respite as sometimes provided in settings, should be used in the analysis.

**Response:** The initial assessment tool for settings will be focused on residential settings which are provider-owned or operated and non-residential settings that offer services such as out of home non-vocational, pre-vocational, ad supported employment. Respite services that are provided in an institutional setting are excluded from this rule.

14. **Comment:** Numerous stakeholders asked about when the assessment tool and process would be shared with stakeholders and if MDCH will accept public comment on the assessment tool. Stakeholders asked for more detail on the assessment process and posting of assessment results. Some stakeholders asked about what the criteria would be assessing residential and non-residential settings. Some stakeholders asked about what influence an Individual Plan of Service would have on the assessment. Several stakeholders asked for more information on the role of the Stakeholder Review Group in designing the tool. Several stakeholders questioned if MDCH had provided enough time in the plan for stakeholders to review and vet the tool. Stakeholders also inquired about how they could access the exploratory questions published by the Centers for Medicare and Medicaid Services.

**Response:** MDCH is developing a draft version of the assessment tool and plans to share the draft version with stakeholders for their review in the near future. The questions for the assessment tool are based on the exploratory questions provided by the Centers for Medicare and Medicaid Services. MDCH will provide a link to the exploratory questions on the project's webpage. MDCH will provide additional details on the relationship between the assessment tool and an individual's plan of service in the near future.

15. **Comment:** Several stakeholders questioned the short time frame for conducting the assessment and collecting data for the Habilitation Supports Waiver. Some stakeholders also questioned whether the time periods for the different steps of the assessment process for the waiver were properly aligned and specifically highlighted steps related to collecting and analyzing data as well as posting the results. Some stakeholders suggested extending the assessment period for the Habilitation Supports Waiver so that it aligns with the assessment period for the MI Choice Waiver.

**Response:** MDCH appreciates these comments and will take them under consideration. MDCH would note that each waiver has unique timeline requirements which are driven by the waiver amendment process through the Centers for Medicaid and Medicaid Services. For example, because MDCH is in the process of renewing the Habilitation Supports Waiver, the Centers for Medicare and Medicaid Services are requiring MDCH to use an abbreviated timeline for the assessment process for the waiver.

16. **Comment:** Several stakeholders asked about the process that the Behavioral Health and Developmental Disabilities Administration would use to select a contractor to administer and complete the tool for the provider, beneficiary, and Prepaid Inpatient Health Plan survey tools. Some stakeholders noted that it is unclear whether the contractor will develop the tool or the contractor will validate the self-assessments. Stakeholders also asked MDCH if a contractor has already been identified and whether MDCH could release the name of the contractor. Another stakeholder asked if this contractor would be required to be an independent third-party.

**Response:** MDCH has selected the Developmental Disabilities Institute of Wayne State University as the contractor for developing, administering, and validating the assessment tool for the Habilitation Supports Waiver. The waiver entities will be responsible for monitoring the progress of settings in terms of compliance and assisting with remediation.

17. **Comment:** Several stakeholders asked for more details on roles and responsibilities for the assessment process. Some stakeholders advocated for using a neutral third-party to conduct the assessments rather than using waiver entities. Several stakeholders inquired about who would have the authority to make the final decision on whether a setting is compliant with the new rule. Several stakeholders inquired about the process for determining the compliance of individual settings under the Habilitation Supports Waiver if the assessment process yielded different results for the beneficiary, provider, and Prepaid Inpatient Health Plan tools.

**Response:** MDCH will be working with waiver entities for each program to conduct the assessment and to support ongoing monitoring and remediation. For the Habilitation Supports Waiver, the Developmental Disabilities Institute of Wayne State University will also be assisting MDCH with designing the assessment tool, conducting the sampling methodology, and validating the results. MDCH will be responsible for making the final determination on the level of compliance for each setting based upon the results of the assessment.

18. **Comment:** Several stakeholders asked about the process of surveying settings that fall under multiple waiver programs or waiver entities. One stakeholder asked about how MDCH would handle assessment situations where multiple MI Choice waiver agents contract with the same setting.

**Response:** MDCH is coordinating programs internally to ensure that each site is only assessed once, even if that site is used by several MI Choice waiver agencies or programs. MDCH would like to avoid duplicating efforts. MDCH will provide guidance on this process once the assessment tool has been developed.

19. **Comment:** Several stakeholders asked about how MDCH would generate lists of residential and non-residential settings to assess. Several stakeholders asked about when these lists would be posted for public review. One stakeholder noted that if MDCH collected the list of care settings from the MI Choice waiver agents, one comprehensive list of sites per county will be available. Another stakeholder questioned the accuracy of lists based on licensing status and noted that this issue is already impacting whether waiver entities approve or deny new providers. Another stakeholder asked what HCPCS codes would be used to identify providers for the Habilitation Supports Waiver. This stakeholder also noted that Services such as pre-vocational (T2015) and out of home non-vocational (H2014) can be delivered in a facility based setting as well as a community based setting.

**Response:** Individuals and settings should contact their waiver agencies provider to learn whether their particular setting will be assessed.

20. **Comment:** Several stakeholders inquired on the exploratory question from the Centers for Medicare and Medicaid Services regarding visiting hours for a setting. These stakeholders asked about what flexibility MDCH would provide on this issue to meet the needs of individuals.

**Response:** Homes may have visiting hours, but the visiting hours must apply to all residents of the home and must also be flexible to allow for special circumstances like family members or friends who work until late, etc. The final rule states: "We acknowledge that in certain living situations the preferences of others must also be respected. We expect that there will need to be communication and coordination between all parties affected...It would be reasonable for there to be limitations on the amount of time a visitor can stay as to avoid occupancy issues. Such limitations should be clearly stated in a lease, residency agreement, or other form of written agreement."

21. **Comment:** Numerous stakeholders provided examples of settings that the stakeholders believe should or should not be considered home and community-based. Several stakeholders questioned why their settings would not be considered home and community-based and noted that the providers for these settings do make the effort to integrate individuals into the community. These stakeholders challenged the idea that certain settings have the effect of "isolating" individuals from the community. Some of these stakeholders also questioned the requirement for individuals to be fully integrated into the community and be employed in competitive work environments. Some of these stakeholders advocated for preserving the current network of providers including group homes, facility-based workshops and skill-building programs.

Other stakeholders noted the importance of only funding settings are inclusive and do not segregate individuals from the community. Some of these stakeholders asked MDCH to define home and community-based as least restrictive, most integrated settings for full community inclusion. Some

stakeholders asked MDCH to exclude settings such as nursing facilities, institutions for mental diseases, intermediate care facilities for individuals with intellectual disabilities, and hospitals. Other stakeholders noted the importance of addressing the issues of isolation, transportation to community opportunities, and co-location of settings. Other stakeholders expressed opposition to the continuation of funding for residential villages and farms.

**Response:** MDCH appreciates these comments and will take them into consideration when implementing the statewide plan.

22. **Comment:** Several stakeholders questioned the use of a self-assessment for providers and stated that the use of a self-assessment would not be appropriate and could lead to inaccurate results. Some stakeholders advocated for using the network of Community Mental Health organizations and Prepaid Inpatient Health Plans to conduct the provider assessment instead. Some stakeholders asked about when the Request for Proposals for the development of the self-assessment would be released.

**Response:** MDCH would note that the Centers for Medicare and Medicaid Service have approved the use of self-assessment tools with the ongoing monitoring activities being conducted by the Prepaid Inpatient Health Plans and MDCH.

23. **Comment:** Several stakeholders had questions about the scoring system for the assessment. Some stakeholders supported the use of red, yellow, and green as the signals for level of compliance for settings but asked for additional details on what each color means.

**Response:** MDCH is in the process of designing the scoring system and will review these suggestions in these discussions. Once the scoring methods are created, MDCH will share this information with stakeholders.

24. **Comment:** Some stakeholders asked when and where the results of the assessment would be posted. One stakeholder also noted discrepancies in the timeline for presenting the results to stakeholders. Some stakeholders also expressed confusion regarding when settings "who are found to not meet and are unable to meet Federal requirements" will be removed from the program and asked if MDCH was allowing sufficient time to transition individuals from these settings. One stakeholder advocated for Row 23 being changed to allow stakeholders 60 days to review the results of the assessment.

**Response:** MDCH appreciates these comments. MDCH will post the aggregated results of the assessment on the project website. Individuals and settings may contact their waiver entities to determine whether a particular setting is in compliance with the rule. MDCH is working on reconciling the timelines for posting the assessment results.

Certain settings such as hospitals, intermediate care facilities for individuals with intellectual disabilities, institutions for mental diseases, and nursing homes cannot meet the requirements of the rule. MDCH does not provide 1915 (c) waiver services in these settings. MDCH will update the statewide transition plan to clarify this issue.

25. **Comment:** One stakeholder asked whether the beneficiary survey for the Habilitation Supports Waiver will be provided in an accessible format for individuals using services. This stakeholder also asked whether individuals will be able to review the results of the provider self-assessment before completing the individual assessment.

**Response:** The assessment will be administered in an electronic version and will accommodate the specific needs of the individual in alternative formats as appropriate. All results will be submitted to MDCH after the survey timeline is concluded.

26. **Comment:** Some stakeholders asked about how MDCH would resolve questions on a setting's status as home and community-based if a setting is presumed to be compliant. One stakeholder asked if settings that are presumed to be compliant (especially settings for children such as family homes, family foster homes, and independent living situations will ever be assessed. Another stakeholder inquired about when the list of settings that are presumed to be compliant with the rule will be released.

**Response:** Settings that are presumed to be compliant with the final rule will not be assessed.

27. **Comment:** One stakeholder advocated for using the Support Intensity Scale to assess individuals.

**Response:** The Support Intensity Scale tool would not meet the requirements for assessing settings under the rule. Under the rule, the survey tool must be designed to assess the qualities of settings: the Support Intensity Scale tool is focused on identifying the support needs of the individual.

28. **Comment:** One stakeholder asked about how the "isolation" factor would be measured in the assessment tool.

**Response:** Questions related to the "isolation" factor will be included in the assessment tool, and settings will be assessed on the "isolation" factor similar to all other criteria.

29. **Comment:** One stakeholder asked MDCH to provide further clarification on the requirement regarding a lease or similar formal relationship for each waiver individual.

**Response:** Yes, MDCH will be providing further clarification for a lease or similar formal documentation.

30. **Comment:** Several stakeholders advocated that a person's Individual Plan of Service be given consideration during the assessment process. One stakeholder noted that many individuals served presently have significant histories of behavior that pose a risk to themselves, others, or severe property damage but noted that the risk they pose is, however, not so significant that they would require hospitalization on an in-patient basis. This stakeholder advocated that individuals should be well-served in a setting that provides increased supervision and monitoring, and as appropriate, a setting that limits their freedom of movement. The stakeholder noted that the Mental Health Code allows for provisions in certain circumstances to restrict freedom of movement, communication, and the receiving of visitors but also requires that individuals be served in the least restrictive setting possible.

**Response:** The final rule allows for an individual assessment of risk factors through the person-centered planning process. The final rule also allows settings to make modifications to address the needs of individuals. If a setting makes such modifications, these changes must be based on an assessed need. The need and modification should be documented in the individual's person-centered plan, and the change should be made based on the needs of the individual rather than the requirements of the setting. Settings must also meet all other requirements for making modifications as outlined in the final rule.

31. **Comment:** Several stakeholders asked about what steps MDCH would take to ensure that providers cannot "game" the system. Some stakeholders asked what steps independent site reviewers would take to prevent "gaming." Some stakeholders also asked when the Request for Proposals for the procurement of independent site reviewers would be released. Some stakeholders inquired about what sources of funding would be used to support compliance enforcement efforts. Some stakeholders advocated for the use of spot checks to ensure compliance with the rule.

**Response:** MDCH will provide oversight of the assessment and remediation process through the use of Site Review teams. MDCH will outline the roles and responsibilities of these Site Review teams in a set of written protocols that will be developed as part of the transition process. MDCH will not be issuing a Request for Proposals for procuring a Site Review team and will be providing Site Review team services directly using Department staff. MDCH will also be responsible for making all final determinations on the compliance of settings, which will help safeguard the integrity of the assessment process.

32. **Comment:** Numerous stakeholders expressed concerns about the impact of the rule on choice of settings and services. Several stakeholders stated that a strict interpretation of the rule would disrupt the ability of individuals to continue living or participating in their current settings. Stakeholders noted that the disruption of services could cause significant hardship to individuals and their families and result in these individuals being moved to institutional settings. Some stakeholders also believed that the rule would limit the choice and options of individuals and their families and inhibit the ability of individuals to participate in settings that meet their health and safety needs and goals. Several stakeholders asked about how the choice of individuals to live in certain settings would be recognized if those settings were found to be out of compliance with the rule.

**Response:** MDCH will work with stakeholders to assist settings with coming into compliance with the rule. MDCH will also provide flexibility during the implementation of the rule so that individuals can make modifications to their settings to address health and safety needs. If a setting makes a modification, the change must be documented in the individual's person-centered plan. The modification must also be based on an assessed need. The modification must also be made to address an individual's need rather than meet the requirements of the setting. If an individual is in a setting that is unable to become compliant, MDCH will assist the individual with transitioning to a compliant setting of his or her choice. MDCH will work with stakeholders to ensure that individuals have a range of options for choosing a residential or non-residential setting.

33. **Comment:** Several stakeholders asked about whether funding would be made available to facilitate the transition process. Some stakeholders noted that MDCH would need to provide additional funding to support the remediation efforts of providers. Other stakeholders inquired about whether funding would be available to help individuals transition to new settings and access necessary services. Other stakeholders asked if MDCH had funding to support higher levels of staffing in more integrated settings. Several stakeholders stated that the behavioral health system is already facing funding issues, which could create challenges for implementing the new rule. One stakeholder asked if the survey data would be used to prepare a financial analysis to determine the financial implications of implementing the plan.

**Response:** The Centers for Medicare and Medicaid Services view the requirements of this rule as expectations to continue to receive federal Medicaid funding. No additional funding has been made available to states to support compliance with the new rules.

34. **Comment:** Several stakeholders stated that the plan looks like a "plan to plan" and asked for MDCH to provide more detail on the transition process. Several stakeholders noted that very little detail was included on the survey and remediation process. Some stakeholders noted the activities for each waiver did not fully align with other waivers in the statewide plan.

**Response:** MDCH understands these comments. MDCH designed the plan to outline the major milestones and requirements of the transition process. MDCH will be providing additional information to stakeholders in the future about key steps in the process. MDCH is working to align the timelines for the different waivers that are part of the statewide plan.

35. **Comment:** Several stakeholders commented on the tight timeframes for some portions of the project. Some stakeholders noted that stakeholders had not received any indication from MDCH of whether certain steps had been completed and asked if certain deadlines had been missed. Several stakeholders also expressed concerns that the time periods for the certain parts of the process did not appear to be appropriately aligned. Some stakeholders also asked that MDCH more clearly define when settings must be in compliance. Some stakeholders also asked that MDCH list when waiver dollars can no longer be used to fund services in noncompliant settings.

**Response:** MDCH is working to reconcile the timelines for different steps of implementing the rule. MDCH has currently met all previous deadlines and milestones for implementation. All settings for current 1915 (c) waivers must be in compliance with the rule by September 30, 2018. MDCH will be able to reimburse services in non-compliant settings under current 1915 (c) waivers until this date. For new waivers such as the MI Health Link program, MDCH can only serve individuals in settings that are currently compliant with the rule.

36. **Comment:** Several stakeholders noted that the current format of the statewide plan was confusing and difficult to read. Some stakeholders suggested developing a narrative portion to accompany the table. One stakeholder also suggested developing a list of operational terms.

**Response:** MDCH appreciates this comment. MDCH will be providing supplemental materials to stakeholders that will provide a high-level summary of the transition process and requirements.

37. **Comment:** Some stakeholders inquired about what MDCH would do to ensure that the integrity of the Person-Centered Planning process is upheld and that Person-Centered Plans meet the needs of individuals. Some stakeholders also highlighted the need for an independent facilitator of the Person-Centered Plan who is selected by the consumer. One stakeholder noted that the services and supports identified in the Person-Centered Plan should not be limited to the services that are offered by the provider who is writing the Person-Centered Plan.

**Response:** MDCH appreciates these comments. MDCH will continue to leverage its current policies and procedures to support the person-centered planning process.

Additionally, for the newly launched MI Health Link program, there will be training for the Integrated Care Organizations on person-centered planning. There will also be state oversight and performance measures, site visits, and quality assurance surveys to ensure enrollee satisfaction with the person-centered planning process. It is required that the enrollee and other individuals of his or her choice be involved in the person-centered planning process to the extent they choose to participate. There must be documentation of the supports and services that have been discussed and the goals and desires of the individual.

38. **Comment:** Some stakeholders noted the importance of accessible housing in providing home and community-based services and advocated that that MDCH follow through on the recommendation in the Mental Health & Wellness Commission Report to ensure that 500 units of housing are made available over the next three years.

**Response:** MDCH thanks the stakeholder for this comment: however, this comment is outside the scope of the transition plan.

39. **Comment:** One stakeholder asked about what the process would be for an individual to file a complaint against a setting who is receiving funding under a 1915 (c) waiver but does not meet the Home and Community-Based criteria.

**Response:** An individual should first file a complaint using the appropriate grievance process used for each program. If the issue is not addressed through this process, the individual may contact the program area in MDCH.

40. **Comment:** One stakeholder noted that the plan does not include a strategy for addressing service disparities between Prepaid Inpatient Health Plan regions.

**Response:** MDCH thanks the stakeholder for this comment: however, this comment is outside the scope of the transition plan.

41. **Comment:** One stakeholder asked if a Prepaid Inpatient Health Plan would lose a waiver slot if an individual transferred over to the new MI Health Link waiver.

**Response:** Habilitation Supports Waiver (HSW) maintains waiver slots. The Prepaid Inpatient Health Plans are waiver entities that contract with MDCH to administer services for the Habilitation Supports Waiver. The Habilitation Supports Waiver will not lose a slot if an individual transfers to MI Health Link Waiver. Prepaid Inpatient Health Plans will retain all current waiver slots assigned to them.

42. **Comment:** One stakeholder asked what MDCH would do to facilitate cross-system cooperation on facilitating integrated, community-based lives for individuals.

**Response:** MDCH appreciates this comment. MDCH is working to implement the rule in a way that promotes integration and enhanced access to community services. MDCH will also work with other parts of the state government to achieve this goal.

43. **Comment:** One stakeholder stated that individuals, guardians, and families should have be able to provide input and make the final decision throughout the entire process on whether settings provide "integration appropriate to the needs of the individual" and should be considered home and community-based. This stakeholder stated that MDCH should incorporate this feedback on the assessment, posting of assessment results, revision of the transition plan, remediation strategy, notification of non-compliance status, and corrective action plan.

**Response:** MDCH appreciates this comment and plans to continue to seek stakeholder input during the transition process.

44. **Comment:** One stakeholder asked whether MDCH would be shifting away from facility-based programs and towards Self-Determination of Services and Employment First.

**Response:** MDCH thanks the stakeholder for the comment and will take it under consideration.

45. **Comment:** One stakeholder asked that MDCH consider how changes under this rule would align with the federal Achieving a Better Life Experience (ABLE) Act.

**Response:** MDCH thanks the stakeholder for this comment: however, this comment is outside the scope of the transition plan.

46. **Comment:** One stakeholder supported the concept of offering individuals with a choice of settings who meet the federal requirement. This stakeholder also noted that participant choice is limited by the lack of integrated, safe, affordable and quality service options which meet the federal standard rather than the deliberate or ill intent of any particular service provider to restrict these choices.

**Response:** MDCH appreciates this comment and supports providing individuals with a range of options for home and community-based settings.

47. **Comment:** Several stakeholders asked about what criteria would be used to determine if the statewide transition plan needs to be revised. These stakeholders also asked if the same public comment process would be used for any revisions to the statewide plan.

**Response:** MDCH appreciates this comment. The rule allows MDCH to make revisions to the statewide plan to address any issues that arise during implementation. If MDCH makes substantial changes to the statewide plan after the initial version of the plan is approved, MDCH must allow public comment on the plan.

48. **Comment:** Several stakeholders inquired about the timeline and process for making revisions to Adult Foster Care Home licensing rules. Stakeholders also asked about how the new rule would affect certification rules for specialized Adult Foster Care homes. One stakeholder stated that an unintended consequence of this rule would be the loss of several specialized Adult Foster Care home settings. Finally, stakeholders noted that the plan did not address how changes to licensing rules would affect licensees who do not provide services to persons funded through 1915(c) waivers.

**Response:** MDCH is collaborating with the Bureau of Child and Adult Licensing to review the effect of the rule on current licensing and certification procedures and rules.

49. **Comment:** Several stakeholders inquired about what the process would be for making changes to Medicaid policy. Stakeholders also asked about what the process would be for stakeholders to submit input on proposed policy changes. One stakeholder suggested including other states agencies such as the Michigan State Housing Development Authority, Michigan Rehabilitative Services, Department of Human Services and Department of Education in the policy development process. One stakeholder asked for MDCH to outline any policy, procedural, or contract changes that may be necessary to address ongoing compliance and monitoring issues.

**Response:** MDCH appreciates these comments. If the implementation of the rule requires MDCH to make changes to Medicaid policy, MDCH will use the normal promulgation process for issuing policy changes, which includes a public comment phase. MDCH will continue to engage stakeholders and inform them of new developments as the plan is implemented. MDCH will work to include stakeholders from other areas of the State government in order to ensure a comprehensive approach to implementation.

50. **Comment:** Several stakeholders also asked about the process for settings that are "presumed not to be home and community-based." In particular, stakeholders were interested in knowing if the Centers for Medicare and Medicaid Services could overrule any decisions that the Michigan Department of Community Health makes for settings that fall into this category. Stakeholders were also interested in knowing if there would be a process for individual settings to appeal decisions made by the Centers for Medicare and Medicaid Services.

**Response:** The rule outlines several types of settings that are "presumed not to be home and community-based." MDCH may submit evidence to the Centers for Medicare and Medicaid Services to prove that settings do in fact have the home and community-based characteristics. MDCH may also accept evidence from stakeholders as part of this process. MDCH will share additional information with stakeholders on this issue in the future.

If MDCH submits evidence to the Centers for Medicare and Medicaid Services to prove that certain settings are home and community-based, the Centers for Medicare and Medicaid Services can choose to either accept or deny this request. The Centers for Medicare and Medicaid Services have not indicated whether it will accept appeals from stakeholders on this issue.

51. **Comment:** Numerous stakeholders asked for additional details about MDCH's plans to develop the remedial strategy for settings that are not compliant with the rule. One stakeholder asked whether the remedial strategy will include outreach in the form of education via site surveys, technical assistance and consultations, and a corrective action plan. Another stakeholder asked about how the corrective action plan will be designed and what the process for ongoing monitoring will be. Another stakeholder asked if benchmarks will be included in the corrective action plan as well as plans for transitioning individuals and closing facilities if compliance is not achieved. Another stakeholder asked if the remediation strategy would only apply to settings that could come into compliance with the rule.

**Response:** MDCH will develop the remediation strategy after the assessment process is completed. MDCH will work with stakeholders during the development process. As part of the remediation strategy, MDCH will work with non-compliant settings to create corrective action plans and align the remedial strategy with the site review process. The remediation strategy will not include settings that are already in compliance with the rule.

52. **Comment:** Several stakeholders asked if MDCH could more specifically define the timeline for providers to submit periodic status updates to the Department.

**Response:** MDCH thanks the stakeholder for this comment and will take this suggestion under consideration.

53. **Comment:** One stakeholder noted that the site review team will begin reviewing residential and non-residential settings as of October 1, 2015, and asked about how providers would be able to prove compliance if they are still in the process of implementing their remediation efforts.

**Response:** MDCH acknowledges this issue. MDCH will have its site review team prepared to evaluate settings on October 1, 2015. The actual remediation process will not start until after the assessment is completed: the remediation strategy will therefore likely start on October 1, 2016. This change will be reflected in the final statewide plan.

54. **Comment:** Several stakeholders asked about what the final date for compliance with the new rule and how much time providers would have to bring their settings into compliance. Several stakeholders asked if MDCH would provide guidance to providers on how settings can come into compliance with the rule. Some stakeholders asked if settings can continue to provide services during the remediation period if the settings are non-compliant. One stakeholder asked if there would be intermediary steps in coming into compliance through remediation. One stakeholder asked about when waiver entities would have to start rejecting new contract applicants and what the basis for rejecting new contract applicants would be.

**Response:** The purpose of this transition plan is to provide details when remediation and interventions should be imposed. The federal deadline date for compliance is March 17, 2019. Michigan is setting its own state-specific timeline in this plan to ensure that the Department meets the federal deadline. After assessment, MDCH will communicate the details of why each setting is not in compliance with the rules and what is required in order to become compliant within timeframes. Providers may also review the CMS rules now to begin work towards compliance to ensure enough time. MDCH does not plan to add additional requirements. While MDCH contracts have not been officially updated, these requirements will be included in the future, therefore it is suggested waiver agencies consider these requirements now when assessing new providers.

55. **Comment:** Several stakeholders asked about what the process would be for notifying individuals and providers if a setting is found to be non-compliant according to the assessment process. One stakeholder also suggested including language in Row 35 that indicates that providers will be notified that they are not compliant after remediation attempts have been made.

**Response:** MDCH thanks stakeholders for these comments. Outreach and education will be included as part of the remediation strategy.

56. **Comment:** One stakeholder asked about if the parts of the statewide plan related to developing remediation strategies for the different waivers might conflict with each other.

**Response:** MDCH will create internal mechanisms to allow for coordination of the remediation process between the different waiver programs.

57. **Comment:** One stakeholder asked about what the process for remediation would be after non-compliance is determined and when the Centers for Medicare and Medicaid Services would be notified that all settings are in compliance.

**Response:** MDCH will develop and outline the remediation process as part of the remediation strategy. MDCH will notify the Centers for Medicare and Medicaid Services of the level of compliance of Michigan's settings when requested by the federal agency.

58. **Comment:** Several stakeholders had questions about the role of waiver entities in implementation of the rule. One stakeholder inquired about what role the Integrated Care Organizations, Prepaid Inpatient Health Plans, and Community Mental Health organizations would play in bringing settings into compliance. Several stakeholders encouraged MDCH to incorporate new language on the rules into the contracts for Prepaid Inpatient Health Plans.

**Response:** Integrated Care Organizations are the health plans for the new MI Health Link program for individuals who are dually eligible for Medicare and Medicaid. The MI Health Link program offers all physical health and long term supports and services as well as the MI Health Link HCBS waiver program for home and community-based services. For the MI Health Link HCBS waiver portion of the MI Health Link program, settings must be in compliance from the time the program starts. MDCH will be doing continual monitoring of settings to ensure compliance with the final rule. MDCH is requiring settings that receive funding for the MI Health Link HCBS waiver services to be in compliance with the final rule from the start of the program. MDCH is currently verifying the provider networks. When an individual applies for the MI Health Link HCBS waiver, the Integrated Care Organization will be required to assess the settings for compliance with the final rule prior to submitting an application to the state for the individual. If the setting is not in compliance, the individual will not be allowed to participate in the MI Health Link HCBS waiver but may still receive other MI Health Link Medicare and Medicaid services outside the waiver. If an individual is enrolled in the MI Health Link program for physical health services and is also enrolled in the Habilitation Supports Waiver, the Prepaid Inpatient Health Plan will be responsible for assessing the settings through the statewide transition plan. Settings under the Habilitation Supports Waiver do not need to be in compliance from the beginning of the MI Health Link program and will fall under the same transition period as other settings under the Habilitation Supports Waiver.

59. **Comment:** One stakeholder questioned why MDCH left Row #33 open until the end of implementation if the language should be included in the relevant contracts before that time.

**Response:** MDCH acknowledges this issue and will address it in the final version of the statewide plan. Settings for the two children's waivers are presumed to be compliant with the final rule, and therefore contract language changes will not be necessary.

60. **Comment:** Several stakeholders inquired about the rules and responsibilities for the site review teams. One stakeholder asked about if the protocols for the site review team would be updated on an ongoing basis. Several stakeholders also questioned whether the processes outlined in Rows 40 - 43 were duplicative of each other. Another stakeholder suggested that the site review protocols be posted for public comment before they are implemented.

**Response:** The site review protocols will reflect a review of compliance with the final rule and will be incorporated in the ongoing site review process.

61. **Comment:** One stakeholder stated that individuals should have the ability to comment on the corrective action plans of their settings.

**Response:** MDCH will work with stakeholders to address concerns with the remediation process and corrective action plans.

62. **Comment:** One stakeholder questioned why the remediation strategy design process takes seven months for adults and 41 months for children.

**Response:** MDCH acknowledges this issue and will address it in the final version of the statewide plan. Settings for the two children's waivers are presumed to be compliant with the final rule, and therefore contract language changes will not be necessary.

63. **Comment:** One stakeholder asked how Row 12 and Row 30 are different from each other.

**Response:** MDCH appreciates this comment. Row 12 of the statewide plan refers to the process of compiling a list of settings to be assessed. Row 30 is the process of creating a list of settings based upon their current level of compliance after they have been assessed.

64. **Comment:** One stakeholder asked if MDCH would monitor compliance on an ongoing basis through a sample group or by observing the entire set of settings. The stakeholder also asked whether the protocols from Row 43 would be used during the ongoing monitoring and compliance mentioned in Row 40.

**Response:** The Centers for Medicare and Medicaid Services require MDCH to monitor compliance on an ongoing basis as part of the waiver program. MDCH will be using the statewide protocols for site reviews.

65. **Comment:** Numerous stakeholders inquired about what opportunities would be made available for individuals to have input and a voice in the process. Several stakeholders mentioned that they were frustrated with the current level of stakeholder engagement. One stakeholder asked if the short time frame between the closing for public comment on the statewide plan and submitting the final plan to the Centers for Medicare and Medicaid Services would prevent MDCH from meaningfully integrating comments from stakeholders into the plan. Several stakeholders also commented that MDCH should do a better job of communicating its strategy for delivery of home and community-based services to all stakeholders. Numerous stakeholders asked if MDCH would provide opportunities to comment on the assessment tool, remediation strategy, and changes to Medicaid policy or licensing rules. One stakeholder recommended the creation of an advisory council to guide MDCH through the process of implementing the rule.

**Response:** MDCH will work to provide stakeholders with more opportunities to provide input and feedback during the transition process. MDCH will provide stakeholders with the opportunity to review the assessment tool, remediation strategy, and changes to Medicaid policy that are created as part of the transition process.

66. **Comment:** Several stakeholders noted the statewide plan included transitioning individuals to new settings if the individual's current setting does not comply with the rule. These stakeholders asked about what steps MDCH would take to ensure that individuals have access to settings and services that meet individual needs. Some stakeholders asked about what the process for disenrollment from the waiver would be and how MDCH would assure that individuals who disenroll from the waiver

receive the service that they need. Some stakeholders asked if individuals could transition to the Specialty Supports Waiver instead of being transitioned from their current setting. One stakeholder asked if the transition process will resemble the nursing facility transition process. Another stakeholder also asked whether MDCH would seek to contract out the transition process. Another stakeholder asked if MDCH would consider developing an ombudsman service to help resolve transition issues.

**Response:** MDCH will provide additional details on the transition process as part of the remediation strategy. For individuals who are in non-compliant settings, waiver entities will assist these individuals with developing a transition plan for moving to a compliant setting. MDCH will work with waiver entities to ensure that individuals have a choice of compliant settings. Individuals will also have access to the current grievance and appeals process to resolve issues that arise during the transition process. MDCH will also use the current process for disenrollment for individuals who wish to disenroll from the waiver. Individuals can also work with their waiver entities to access services that they may need during the transition process.

I trust your concerns have been addressed. If you wish to comment further, send your comments to the Project Team by email at [HCBSTransition@michigan.gov](mailto:HCBSTransition@michigan.gov) or by mail through the following address:

Attention: HCBS Program Transition  
Program Policy Division  
Bureau of Medicaid Policy and Health System Innovation  
Medical Services Administration  
P.O. Box 30479  
Lansing, Michigan 48909-7979

Sincerely,



Stephen Fitton, Director  
Medical Services Administration