1. What is the Community Rule?

The Community Rule is a product of the Affordable Care Act—the Federal health care reform law passed by Congress in March 2010—and is intended to support home and community-based (HCB) settings as an alternative to institutional care for participants in Medicaid home and community-based services (HCBS) programs.

Under the Community Rule, HCB settings must meet the following criteria:

- Support the individual's full access to the greater community;
- Be selected by the individual from among setting options;
- Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimize autonomy and independence in making life choices; and
- Facilitate choice regarding services and who provides them.

Provider-owned or controlled HCB residential settings must also meet the following requirements under the Community Rule:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

2. What is the Delaware Statewide Transition Plan?

The Community Rule includes a transitional period through March 17, 2019 for states to come into compliance with the HCB settings requirements. All states developed a Statewide Transition Plan to outline how their state would come into compliance with the Community Rule by this date. Delaware submitted its Transition Plan for CMS approval on March 17, 2015.

Delaware's Statewide Transition Plan specifies all the services, delivered in both residential and non-residential settings, which will be reviewed to determine compliance with federal requirements in the Community Rule~~.~~.

Specifically, the Transition Plan outlines the actions that Delaware will take to:

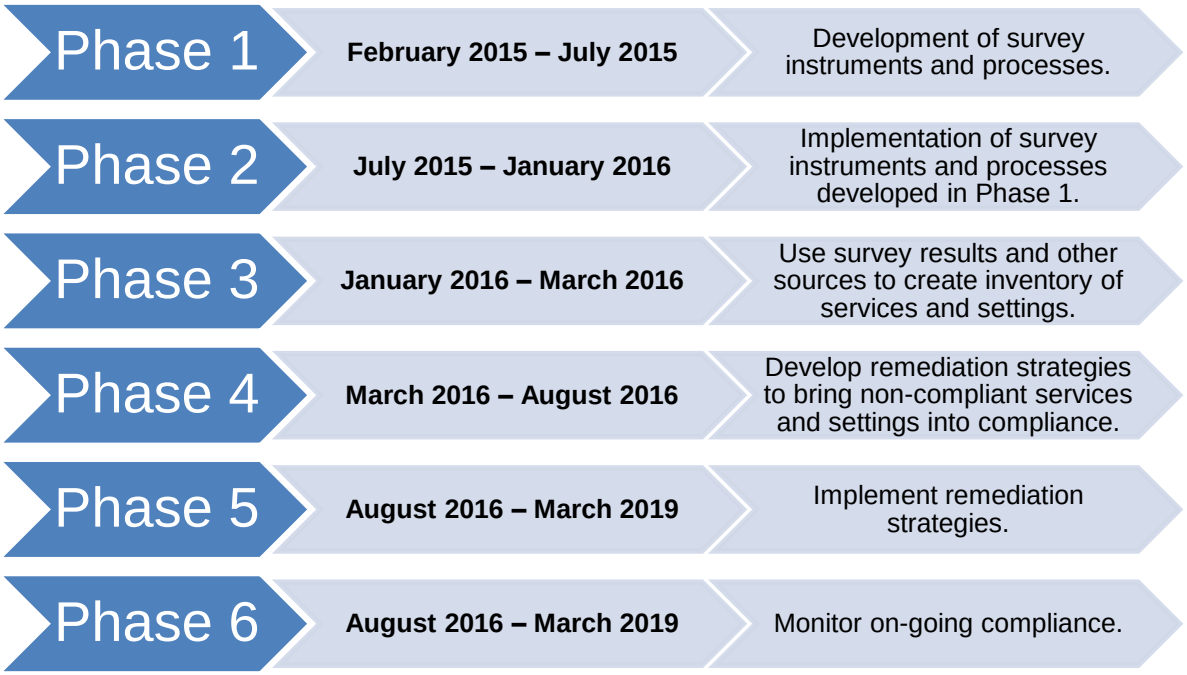
- Assess the current landscape of policies and regulations at all levels, as well as provider settings against the Community Rule;
- Develop and implement strategies to remediate non-compliant situations; and
- Demonstrate full compliance with the Community Rule by March 17, 2019.

A copy of the Transition Plan submitted to CMS can be found at http://dhss.delaware.gov/dhss/dmma/hcbs_trans_plan.html.

3. How will Delaware implement the Transition Plan and when will activities occur?

CMS is still in the process of reviewing and approving Transition Plans, but states, including Delaware, are moving forward.

Delaware's Transition Plan will be implemented in six phases over the next four years:



4. How will provider settings be evaluated?

Delaware will develop surveys using CMS guidelines and input from stakeholders. Providers will complete the surveys by reviewing their policies and each of their settings where participants are served. The State will review the results of the surveys, and will conduct an onsite look-behind review of a sample of provider survey results.

5. How will family members be involved in implementing the Transition Plan?

DMMA is committed to including as wide a representation of stakeholders as possible in implementing the Transition Plan. DMMA will continue to engage stakeholders and solicit feedback during the transition process. This will include additional public meetings across the State. Also, at any point significant changes are made to the Transition Plan, the Transition Plan will be modified and posted for public comment. It is critically important that representatives of all types of service recipients be involved, including individuals with the most challenging support needs.

6. My family member receives HCBS in Delaware. How will his/her services be affected by the Transition Plan?

The Transition Plan will help to identify which of the current services and settings meet the characteristics of HCB settings that can be covered under an HCBS program. How services are delivered may or may not need to be modified based on the outcome of the survey process.

7. What will happen if my family member needs to be relocated from a provider that is noncompliant?

DMMA is committed to making sure participants are safe, protected, and have the services and supports they need. In the event an individual needs to be relocated, the relocation process will be tailored to each individual, and DMMA/DDDS will work with the individual and his/her family/caregiver, provider, etc. to develop a smooth transition process that will protect the health and welfare of participants through the process.

8. How can I get information about the status of implementation?

DMMA has created a webpage specifically designed to provide updates and information related to implementation of the Transition Plan. Information on the Transition Plan implementation can be accessed at http://dhss.delaware.gov/dhss/dmma/hcbs_trans_plan.html.

9. Is it possible that the HCBS final rule will be repealed?

This is a federal regulation, implemented by CMS. We do not know, nor can we speak to CMS' intent regarding the future of the rule.

10. Have facilities begun to implement anticipated changes?

DMMA has not completed its review of all provider settings, so we do not know the extent to which facilities have begun to make changes.

11. Will all individuals receiving HCBS have locks on their doors?

CMS seeks to promote HCBS participants' access to the community while also safeguarding individuals' privacy, dignity and freedom. While the final rule does not specify that all HCB settings must have lockable doors, the final rule does require, for provider-owned settings, that an individual's sleeping or living unit must have "entrance doors lockable by the individual, with only appropriate staff having keys to doors." On a case by case basis, if interventions such as a staff member locking a door are determined appropriate in order to ensure the health, safety and welfare of that individual or others, the intervention must be documented in the plan of care.

12. Will each individual person receiving HCBS have an assessment?

HCBS recipients have a valuable voice in the assessment process. The Transition Plan includes a participant assessment to capture information from participants about their experience. As needed, care managers will help participants complete the assessment. Our goal is to get information from each individual receiving HCBS.

13. Has DMMA looked at how we will provide adequate staffing…since there is significant turnover in staffing?

We expect that providers will need to consider staffing as part of their capacity to comply with all necessary HCBS requirements.

14. If a residential provider is shut down, are we prepared to have clients in day services?

As is the case today and consistent with CMS requirements, participants will receive services that are approved by CMS for the program and based upon the individual's assessed need for the services offered in the program.

15. How do you define community?

In providing HCBS, DMMA is held to federal definitions and requirements. CMS does not define what it means by community. Instead, CMS believes that individuals should have the freedom to receive services and supports in home and community-based (HCB) settings which allow for maximum flexibility and freedom. In the HCBS final rule, CMS specifies the conditions it believes settings should have to demonstrate that they are appropriate HCB settings. Additionally, CMS indicates that it does not believe the following settings are HCB in nature: nursing facilities; institutions for mental diseases; intermediate care facilities for persons with intellectual disabilities; hospitals; and any other setting that has qualities of an institutional setting, such as being located in a building that is also publicly or privately operated, that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to a public institution.

16. What is DMMA's interpretation for heightened scrutiny?

DMMA's interpretation of heightened scrutiny is based on CMS' requirements in the HCBS final rule. Heightened scrutiny is described in the HCBS final rule as CMS' determination, based on information presented by a state or other parties, that a setting has the qualities of a home and community-based setting. DMMA anticipates that CMS will issue further guidance regarding the heightened scrutiny process in the coming months.

17. What is the hierarchy for the decision process for heightened scrutiny?

The State's heightened scrutiny process will consist of the following:

- Determine that the setting is not institutional in nature, based upon certification and licensure standards as compared to requirements in the HCBS final rule.
- Determine that the setting is HCB in nature (based upon established State standards).
- Conduct onsite review to verify, as determined appropriate.

CMS has issued guidance to states regarding the process for heightened scrutiny. More information is available on CMS' website: http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/Home-and-Community-based-Setting-Requirements.pdf.

As CMS continues to develop its heightened scrutiny process, DMMA will modify its process as appropriate.

18. Is the State giving significance to the fact that legal guardians are making decisions?

As we talk with members about their HCBS experience, we will take into consideration the extent to which legal guardians and caregivers are involved in decision making and will include them as appropriate.

19. How does DMMA interact with the Division of Developmental Disabilities?

DMMA and DDDS are in constant communication. Leaders from the Divisions meet bi-weekly to discuss relevant issues. Once a month, a team of representatives from various state agencies involved in delivering HCBS meet to provide guidance to DMMA in implementing the HCBS Statewide Transition Plan. DDDS is one of the agencies represented on this cross-agency team.

20. Define who will do the "look-behind?"

As appropriate, the State will look to assistance from stakeholder groups such as the Advisory Council to DDDS and the Governor's Commission on Community-Based Alternatives for Individuals with Disabilities for assistance in conducting provider look-behind reviews.

21. The Community Rule states that settings located on the grounds of, or adjacent to, a public institution are presumed not to be an HCB setting. Does the same presumption apply to settings located on the grounds of a private institution?

According to CMS, it depends. Similar to the assumption for public institutions, settings on the grounds of or adjacent to a private institution are not automatically presumed to have the characteristics of an institution. However, if the setting isolates the individual from the broader community or otherwise has the characteristics of an institution or fails to meet the characteristics of an HCB setting, the setting would not be considered compliant with the Community Rule.

22. One of the new requirements of the person-centered service plan is that it must include any "natural supports" the individual may be receiving. What is an example of a "natural support"?

According to the Community Rule, the person-centered service plan must "reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports." Natural supports are services that are provided by unpaid family members and volunteers, or through other means. An example of a natural support might include a grandmother who, every weekend, cares for her grandson who receives HCBS.

23. What is CMS' review process for the State HCBS Transition Plan?

CMS has told states that it plans to implement a phased approach to reviewing transition plans. First, CMS will complete a preliminary review to identify, among other things, whether transition plans include the required components. CMS will then complete a more thorough review of the transition plan and will provide more detailed feedback to each state. The timing of CMS' phased review is not clear.

24. Is DDDS' Essential Lifestyle Plan (ELP) the same thing as the person-centered service plan?

Yes, DDDS' ELP functions as the person-centered service plan for DDDS waiver participants. Like the person-centered service plan document for DSHP waiver participants, the ELP will

need to comply with the new requirements in the Community Rule by 2019. For example, both documents must be written in first-person language, must include signatures of everyone responsible for its implementation, and copies must be distributed to those involved in the planning process.

25. Will there be ongoing monitoring of provider settings?

Yes, ongoing monitoring of provider settings will be an important part of ensuring compliance with the Community Rule and is contemplated in Phase 6 of the Transition Plan.

26. What are some examples of changes that could be needed to come into compliance with the Community Rule by 2019?

The exact nature of changes that will be needed to come into compliance with the Community Rule is not known at this time. The results of the provider, member, MCO and state surveys will inform what changes are needed. However, some examples of changes that could be needed are: service definitions may change, some providers may not be able to come into compliance with the settings requirements so there could be shifts in the HCBS provider network, and some State policies/procedures may need to change.

27. Is there any interaction between the Community Rule and the Calendar Year (CY) 2016 Medicare home health proposed rule?

The Community Rule does not reference any Medicare regulations, including the home health proposed rule. Thus, any State responsibility in implementing the Medicare home health proposed rule will be independent of the State's obligations under the Community Rule.