



ATTACHMENT 9: COMMENTS FROM FEBRUARY 2016 PUBLIC COMMENT PERIOD AND DHSS RESPONSES

Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
1.	Assessment Activities	Apartment complexes and houses that are funded by agencies and typically support individuals with physical disabilities are not mentioned in the review process. These, too, are providing Home and Community Based supports for individuals who are at risk of institutionalization. These individuals must also be given the opportunity to weigh in on this issue for their own benefit.	Developmental Disabilities Council	All individuals currently receiving HCBS services under DSHP Plus were given the opportunity to participate in the survey.	



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2.	Assessment Activities	One of the largest concerns we have of the Transition Plan is whether or not those individuals that receive services in HCBS with DDDS currently will have significant input into the process of the plan and in the outcome for them personally. There’s been no mention of utilizing natural supports or assistive technology or just taking an extra hour with the resident or consumer in providing feedback to the agency and no discussion or steps in the plan of providing those same individuals with information they may need to be able to compare their current residences and services to something different or better or worse. If you don’t know what you don’t know how can you provide an informed response to any survey questions? If there is no way to identify that all the residents and consumers are satisfied with their supports or a way to educate those same individuals to provide informed feedback and to communicate in their own way their own opinions, Delaware will not be able to move forward with this plan. This is a serious flaw to this Transition Plan.	Developmental Disabilities Council	<p>DDDS is working to enhance its person centered planning process to facilitate greater participant involvement in all aspects of service delivery and monitoring. This includes ensuring that the needs, preferences, goals and aspirations of the individual receiving services guide and shape the planning process and monitoring the delivery of services. For individuals with and without communication barriers, DDDS will assure that the planning team includes individuals who know the person best and can help to understand and communicate their wishes. DDDS also participates in the National Core Indicators Annual Survey of consumers and intends to use information from the survey as feedback into the process.</p> <p>Also, as noted previously, DMMA and DDDS have committed to using their listservs, websites, social media, and other communication avenues, as available, to solicit broad stakeholder involvement in review of the Transition Plan. DDDS also anticipates use of Delaware’s Communities of Practice activities to inform transition activities.</p>	



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3.	Assessment Activities	p. 24: The “end date” for DDDS to revise the monitoring tool used by the DDDS Office of Quality Improvement to include the HCBS settings requirements is July 1, 2016 (pp. 24 and 28). There is some “tension” between that Office conducting “look behind” reviews of providers by May 31, 2016 (p. 26) and development of the monitoring tool by July 1, 2016 (p. 39). Ideally, it would be preferable for the Office to have finalized and been trained in using its assessment tool to assist with the “look behind” assessments to be completed by May 31, 2016.	Community Legal Aid Society, Inc. Disabilities Law Program	The monitoring tool described under the heading of “Ongoing Monitoring” is the tool that will be used for ongoing monitoring for compliance with the HCBS Final Rule to be used in concert with the new provider standards. This section is not referring to the tool that will be used for the onsite reviews.	
4.	Assessment Activities	p. 26: The May 31, 2016 date to complete “look behind” reviews (p. 24) is different than the date to complete “look behind” review (March 2016) identified on p. 34.	Community Legal Aid Society, Inc. Disabilities Law Program	The language on page 34 has been updated to reflect that the date to complete “look-behind” reviews will be May 31, 2016.	X
5.	Assessment Activities	p. 32: It would be interesting to assess any patterns between surveys completed by guardians versus those completed by waiver participants themselves.	Community Legal Aid Society, Inc. Disabilities Law Program	Consumer surveys completed by both waiver members and guardians will be a valuable tool in cross-validating the results of the provider self-assessments and onsite reviews.	



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6.	Availability of Options	The Transition Plan and services offered for waiver participants should not be a one size fits all approach.	Multiple Commenters	Choice of available options is a tenet of HCBS programs and reinforced in the HCBS Final Rule. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Person-centered service plans will continue to reflect the individual needs and preferences of the HCBS recipient.	
7.	Availability of Options	It's important that all options continue to be available and choice be based upon an individual's person centered plan.	Multiple Commenters, Elwyn DE's Supported Employment Program	Choice of available options is a tenet of HCBS programs and reinforced in the HCBS Final Rule. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Technical assistance will be provided to settings that do not comply with the HCBS Final Rule, as they engage in remediation activities to come into compliance before March 17, 2019. Person-centered service plans will continue to reflect the individual needs and preferences of the HCBS recipient.	



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8.	Availability of Options	Several commenters highlighted the importance of pre-vocational and vocational services for their family member or loved one who is a participant in an HCBS waiver.	Multiple Commenters	Pre-vocational and vocational services are an important to the successful integration of persons in the community. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system.	
9.	Availability of Options	Delaware needs to offer more options for persons with IDD.	Multiple Commenters	Choice of available options is a tenet of HCBS programs and reinforced in the HCBS Final Rule. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system.	
10.	Availability of options.	Commenter is concerned about the Transition Plan eliminating facility-based programs.	Multiple Commenters	DHSS understands and shares Delaware’s commitment to making sure participants are safe, protected, and have the services and supports they need. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Technical assistance will be provided to settings that do not comply with the HCBS Final Rule, as they engage in remediation activities to come into compliance before March 17, 2019.	



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11.	Barriers to Community Integration	Many commenters with children who receive services at CERTS, Inc. expressed concerns about physical difficulties and harm as well as practical barriers to bringing their children into the community.	Multiple Commenters	As we noted in response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Settings that do not comply with the HCBS Final Rule will be afforded the opportunity to engage in remediation activities to come into compliance before March 17, 2019.	
12.	Barriers to Community Integration	Commenter expressed concern that the Community Rule will cause loss of services at KSI and Easter Seals and HCBS recipients will be forced to receive these support services at home instead. This will be unaffordable for many.	Commenter	We acknowledge this comment.	
13.	Barriers to Community Integration	Multiple commenters expressed concerns about their family members being dropped from day programs. These commenters cited extensive supports that could not realistically be supplied in the community, the potential dangers with public settings, and additional costs related to community services.	Multiple Commenters	The HCBS Final Rule is intended to improve the quality of the services and the experience of recipients of HCBS. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. The person-centered service plan should address these concerns by reflecting each person's choices and ability to participate in activities in the community.	



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14.	Barriers to Community Integration	The requirement that day program participants be out in the community for 15 hours per week is impossible for many individuals because many are tube fed, are unable to use a regular bathroom, have seizure disorders, or use large wheelchairs that won't fit into a standard passenger vehicle.	CERTS, Inc.	Neither the HCBS Final Rule nor Delaware's Transition Plan requires a number of hours that individuals must be in the community. The manner and location in which services are provided are dependent on the needs of the participant, which are determined through a needs assessment and noted in the person-centered service plan.	
15.	Barriers to Community Integration	We ask the state to consider that we serve a diverse group of seniors; some mobile and some not. For some, moving them into an uncontrolled environment may cause unnecessary stress or trauma. Please protect Aging Delawareans' choice, safety, and dignity.	Elwyn Delaware	DHSS is responsible for protecting the health and welfare of all participants receiving HCBS and the larger community. Any living, work, or community situation that may pose a danger to the individual or the larger community is to be documented and accounted for in the person-centered service plan and a risk assessment completed to identify how the risk will be mitigated.	



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16.	Barriers to Community Integration	There are some people for whom community integration would be unsafe and dangerous for the individual and for the larger community.	KSI	DHSS is responsible for protecting the health and welfare of all participants receiving HCBS and the larger community. Any living, work, or community situation that may pose a danger to the individual or the larger community is to be documented and accounted for in the person-centered service plan and a risk assessment completed to identify how the risk will be mitigated.	
17.	Barriers to Community Integration	In states that have moved HCBS services to the community and have closed facilities, employment, wages, and services have decreased.	KSI Multiple Commenters	Consistent with Delaware Law, employment must be explored as the first option. DHSS will monitor the impact of Delaware and national changes resulting from the HCBS Final Rule and evaluate policy options.	



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18.	Community Employment	Many people with I/DD cannot succeed in competitive work settings or totally integrated community settings due to the nature and severity of their individual needs. Some choose to go to Day Habilitation Programs or work at sheltered workshops, where they feel capable and safe, in the company of friends and caring staff. Although the wages they earn may be sub-minimum, the routine and pride of accomplishment are often more significant factors in their quality of life. Overly strict interpretations of “community settings” could eliminate some of these service models despite most of these individuals expressing high individual satisfaction with their current setting of choice.	Arc of Delaware	Choice of available options is a tenet of HCBS programs and reinforced in the HCBS Final Rule. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Person-centered service plans will continue to reflect the individual needs and preferences of the HCBS recipient.	



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19.	Community Employment	Some individuals who are in need of HCBS assistance are not equipped to independently function in a public workplace on a daily basis.	Multiple Commenters Elwyn Delaware	As noted previously, DHSS understands and shares Delaware’s commitment to making sure participants are safe, protected, and have the services and supports they need. This commitment applies to all settings, including workplaces for HCBS recipients who choose to pursue employment opportunities. Any living, work, or community situation that may pose a danger to the individual or the larger community is to be documented and accounted for in the person-centered service plan and a risk assessment completed to identify how the risk will be mitigated.	



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20.	Community Employment	Commenters express concern that their child, who is enrolled in a sheltered workshop, will be profoundly affected and suffer serious setbacks if the program closes. The commenters also state that “if the alternative was supervised employment, this might be possible if the work was simple assembly and repetitive.”	Commenter	Choice of available options is a tenet of HCBS programs and reinforced in the HCBS Final Rule. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Technical assistance will be provided to settings that do not comply with the HCBS Final Rule, as they engage in remediation activities to come into compliance before March 17, 2019. Person-centered service plans will continue to reflect the individual needs and preferences of the HCBS recipient.	
21.	Federal Rule	The potential ruling would be detrimental to KSI and to the hundreds of happily and appropriately served.	KSI	We acknowledge this comment.	
22.	Federal Rule	The federal regulation could prohibit future placements in AbilityOne and State Use programs here and in other states. In other words, if the “work setting” and “work unit” definitions are included in the final federal regulation, Community Rehabilitation Programs would no longer be paid for helping people with disabilities get hired in these programs.	Families Speaking Up	As we noted in response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Settings that do not comply with the HCBS Final Rule will be afforded the opportunity to engage in remediation activities to come into compliance before March 17, 2019.	



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23.	Federal Rule	Commenter believes that people with I/DD deserve equal protection under the law. Commenter believes that the ADA protects those who actually meet the definition of “disabled.” Commenter believes in Olmstead and that the issuance of constitutionally invalid regulation overreaches any administration’s policy prerogatives.	Commenter	We acknowledge this comment.	
24.	Federal Rule	The definition of community should be determined by the person with IDD not CMS.	Commenter	We acknowledge this comment.	
25.	Federal Rule	The Community Rule doesn’t give enough consideration to the needs of individuals.	Commenter	We acknowledge this comment.	
26.	Federal Rule	The Community Rule allows for latitude in implementation. We strongly encourage DMMA, DDDS and all relevant decision makers to use this latitude to develop a Transition Plan that promotes more integrated, diverse and improved services without sacrificing the informed and effective choices already in place. No current service option should be categorically eliminated, until individuals and families stop choosing that option.	Arc of Delaware	We acknowledge this comment. As we noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system. Person-centered service plans will continue to reflect the individual needs and preferences of the HCBS participant.	



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27.	Individual Rights	Several commenters expressed the importance of preserving the individual rights of waiver participants	Multiple Commenters	Section 441.301(c)(4)(iii) of the HCBS Final Rule requires that HCBS provider settings ensure an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint. The manner and location in which services are provided are dependent on the needs of the participant, which are determined through a needs assessment and noted in the person-centered service plan.	
28.	Oversight Body	p. 43: The State indicates that the Governor’s Commission on the CBAID will assist in conducting look-behind reviews “as determined appropriate.” Since the end date for this activity is February and March of 2016 (p. 55), the State should be able to provide greater specificity in describing the Commission’s role.	Community Legal Aid Society, Inc. Disabilities Law Program	DMMA plans to present findings from the look-behind reviews as soon as possible at a meeting of the Governor’s Commission on CBAID.	
29.	Oversight Body	P. 23: The following recital appears on this page: “Advisory Council to DDDS will review and must approve any DDDS strategies for remediation.” The Advisory Council should not be afforded the authority to “trump” or “overrule” DDDS decisions. Under enabling law (29 Del.C. Sec. 7910), it is an advisory body to DDDS.	Community Legal Aid Society, Inc. Disabilities Law Program	The Transition Plan has been edited to indicate that the Advisory Council to DDDS will review and provide feedback on DDDS strategies for remediation.	X



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30.	Oversight Body	Pp. 34-35: It would be appropriate to add the DDDS Human Rights Committees as a source of consultation on provider compliance with the CMS "settings" regulation, client rights, and restrictions of rights in behavioral plans. The HRCS review an aggregate of hundreds of plans annually as well as rights complaints.	Community Legal Aid Society, Inc. Disabilities Law Program	Any concerns related to the HCBS Final Rule that are reported as a human rights violation will continue to be reviewed by the DDDS HRC. DDDS/HRC will continue to review all reports of human rights violations including those related to the HCBS Final Rule.	
31.	Person-Centered Planning	The participant's Individual Support Plan (or ISA) should also work to support what the most appropriate setting is for that individual to receive services they need and want.	KSI	CMS requires that person-centered service plans reflect the assessed needs of the HCBS participant. The manner and location in which services are provided are dependent on the needs of the participant, which are determined through a needs assessment and noted in the person-centered service plan.	
32.	Person-Centered Planning	Concern for the individual is lost in pursuit of the "integration ideal." Person centered planning is shortchanged by "system change advocacy 'to eliminate specialized care options' for those who need it, which is exactly what the Olmstead court cautioned against."	Commenter	DHSS acknowledges the importance of adherence to the Olmstead decision and the HCBS Final Rule. The manner and location in which services are provided are dependent on the needs of the participant, which are determined through a needs assessment and noted in the person-centered service plan.	



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33.	Person-Centered Planning	The setting in which one receives services must do two things: the services must be supportive of the person’s Individual Support Plan and the person being served should be able to choose the setting where they receive services.	KSI	Both of these objectives are HCBS Final Rule requirements and are addressed in the Transition Plan. The manner and location in which services are provided are dependent on the needs of the participant, which are determined through a needs assessment and noted in the person-centered service plan.	
34.	Person-Centered Planning	Easter Seals fully endorses each individual’s right to choose what his or her services look like. Services should reflect the individual’s strengths, needs, and capabilities consistent with his or her person-centered plan. As such, the array of choices available must encompass the complete range of supports needed by individuals, including those who require intensive staffing and personal care.	Easter Seals Delaware & Maryland’s Eastern Shore	Choice of available options is a tenet of HCBS programs and reinforced in the HCBS Final Rule. As noted in the response to public comments in the September 17, 2015 update to the Transition Plan, DHSS has no plans to remove any of the current services from the system.	
35.	Plan Implementation	The Arc believes very strongly that many of DDDS’s current service settings should easily meet all new requirements for “Community Settings.” For example, group homes continue to be a choice for most people with I/DD and their families in the Delaware DDDS residential system.	Arc of Delaware	We acknowledge this comment.	
36.	Plan Implementation	The SCPD endorses the letter submitted by the Community Legal Aid Society, Inc. Disabilities Law Program.	State Council for Persons with Disabilities (SCPD)	We acknowledge this comment.	



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37.	Plan Implementation	GACEC endorses the letter submitted by the Community Legal Aid Society, Inc. Disabilities Law Program.	Governor’s Advisory Council for Exceptional Citizens (GACEC)	We acknowledge this comment.	
38.	Plan Implementation	The State Transition Plan must identify the “most integrated setting appropriate” in person-centered plans before any remediation plans are submitted to CMS.	Easter Seals Delaware & Maryland’s Eastern Shore	Under the HCBS Final Rule, states are required to engage in a person-centered planning process that ensures that the setting chosen by the individual “is integrated in, and supports full access...to the greater community.” Delaware intends to comply with that requirement.	
39.	Plan Implementation	Commenter describes a new program, Endless Possibilities in the Community (EPIC), which provides day habilitation services in alignment with the HCBS Final Rule. The commenter agrees with the research leading to the development of the Transition Plan. The commenter concludes that EPIC programming is “off to a positive start while embracing the language and direction contained within the Delaware Transition Plan.”	Endless Possibilities in the Community (EPIC)	We acknowledge this comment.	



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40.	Plan Implementation	Creative, cost effective, and consumer-responsive residential services are being developed in other states; Delaware should be following suit and focusing on an individual's experience and not only geographic location or number of individuals being served.	Families Speaking Up	A key tool for including the voices of individuals and their experience is through the DMMA and DDDS member surveys. For DSHP, DMMA is currently assessing HCBS provider settings based in part on the results of the participant survey. For the DDDS waiver, we are in the process of implementing a participant survey. DMMA is currently reviewing the results of the survey. Additionally, a core part of the person-centered planning process is to make sure that the voice and preferences of the individual are heard and incorporated in the person-centered service plan.	



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41.	Plan Implementation	<p>The due date listed in the Statewide Transition Plan for complete compliance with Corrective Action Plans should be changed back to March 17, 2019 because DDDS has said that the process of identifying “most integrated setting appropriate” in person-centered plans will take approximately one year. Changing the date back to March 17, 2019 will enable providers to have sufficient time, and the knowledge of what resources are available in the state’s FY2018 budget, to develop realistic Corrective Action Plans.</p>	Families Speaking Up	<p>CMS has required that states ensure all remediation activities are in place before March 17, 2019 to allow the state time to determine the appropriateness and success of implemented remediation. The final compliance date remains March 17, 2019. The July 31, 2018 date is a check point. Ongoing, beyond March 17, 2019, DHSS will monitor to ensure compliance with all HCBS Final Rule requirements.</p> <p>To ensure that providers have sufficient time to complete all necessary remediation activities, DDDS will work with DLTCRP to delay the effective date for publishing the revised set of fully compliant regulations for Neighborhood Group Homes and the revised DDDS standards to July 31, 2018. Should DDDS discover, however, that all providers are fully compliant before that date, it will consider publishing the revised regulations and standards at an earlier date.</p>	



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42.	Plan Implementation	We are strongly supportive of the intent of the work that has been completed thus far in order for Delaware to evaluate its services through the Medicaid Waiver to ensure that we meet the standard set forth in the new “Community Rule.”	Developmental Disabilities Council	We acknowledge this comment.	
43.	Plan Implementation	An especially good section of the Plan is on page 39, “Ongoing Monitoring.” The intention to include HCBS requirements from the final Rule and to incorporate measures for member satisfaction into the annual DLTCRP licensing reviews of residential sites is a good use of existing resources to ensure an ongoing review of the services and sites that are provided through Medicaid.	Developmental Disabilities Council	We acknowledge this comment.	
44.	Plan Implementation	The Transition Plan is an opportunity. It’s an opportunity to look to the future. To make sure everyone is included. To be seen in the community over and over until people know your name and look forward to seeing you again. And when you are not there, people notice that too and make sure you are ok.	Commenter	We acknowledge this comment.	



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45.	Program Funding/ Fiscal Impact	Commenter expressed concern that the changes will add costs for the taxpayers.	Commenter	The full impact of the implementation of the HCBS Final Rule will not be known until all provider assessments have been completed and all remediation activities have been developed for each provider. Furthermore, CMS' guidance in this area continues to evolve, which affects implementation activities and timelines.	
46.	Program Funding/ Fiscal Impact	Community-based programming is not financially sustainable at the current rates.	CERTS, Inc. Elwyn Delaware Kent-Sussex Industries (KSI) Easter Seals Delaware & Maryland's Eastern Shore	The full impact of the implementation of the HCBS Final Rule will not be known until all provider assessments have been completed and all remediation activities have been developed for each provider. Furthermore, CMS' guidance in this area continues to evolve, which affects implementation activities and timelines.	



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47.	Program Funding/ Fiscal Impact	It is important that the State make clear its intention to fully fund the costs of the implementation of the State Transition Plan, and outline how that funding will occur as the service delivery model shifts. The shortfall in reimbursement rates for disabilities service providers just under DDDS has reached more than \$39 million. This dollar amount does not account for the shortage in funding under DSAAPD. A system that is already underfunded by \$39 million cannot absorb dramatic changes in service delivery. There must be a major investment by the State to assure it remains a viable means of caring for Delawareans with disabilities. The Governor’s budget this year contains an increase of \$153,000 (\$300,000 when matched by federal funds) which is to be shared by all DDDS providers.	Easter Seals Delaware & Maryland’s Eastern Shore	The full impact of the implementation of the HCBS Final Rule will not be known until all provider assessments have been completed and all remediation activities have been developed for each provider. Furthermore, CMS’ guidance in this area continues to evolve, which affects implementation activities and timelines.	
48.	Program Funding/ Fiscal Impact	The funding should follow the individual.	Commenter	As the needs of individuals receiving HCBS change over time, the person-centered planning process should identify the different support needs and corresponding funding.	



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49.	Program Funding/ Fiscal Impact	There is a reference in the plan to “review DDDS rates for adequacy to support the requirements of the Rule (especially related to smaller staffing ratios in the day programs).” However, the deadline for that review is December 31, 2016. This is well after the Dept. of Health and Human Services Budget Hearings for the State’s FY18 budget and less than a month before the new governor’s budget is to be introduced.	Easter Seals Delaware & Maryland’s Eastern Shore	We acknowledge this comment. The Transition Plan is intended to be an iterative process that may take several years to fully implement.	
50.	Provider Assessment Activities	p. 15–17: There are several references to planned development of an appeal process for providers to dispute findings. Since reports with findings are due by March 31, 2016, the appeal process should have been developed by now and should be described. The timeline for development is omitted from the matrix on p. 26.	Community Legal Aid Society, Inc. Disabilities Law Program	DMMA and DDDS are working to develop the appeals process for providers to dispute findings. The Transition Plan has been amended to include dates for this activity.	X
51.	Provider Assessment Activities	p. 15: The IBSER-regulated program should be added to the bulleted list of settings subject to review and p. 32: The setting (AdvoServ) regulated by the IBSER regulation is omitted from the bulleted list of provider settings to be reviewed.	Community Legal Aid Society, Inc. Disabilities Law Program	The IBSER regulations were reviewed as part of the State systemic assessment (see Attachment 6), and recommendations have been made for changes to implement the HCBS Final Rule but were inadvertently left off the list. DDDS is in discussion with DLTCRP regarding these changes. This regulation will be added to the list.	X



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52.	Provider Assessment Activities	p. 35: The behavior plans of DDDS clients covered by the IBSER regulations often deviate from the bulleted plan requirements, including adoption of generalized “levels” systems to earn access to preferred food and privileges. DDDS review which exceeds the minimum sample standard would be appropriate.	Community Legal Aid Society, Inc. Disabilities Law Program	Providers of residences licensed under the IBSER regulations must also meet DDDS provider standards and policies in addition to the regulatory requirements for DDDS waiver clients.	
53.	Provider Assessment Activities	p. 43: The State recites as follows: “DMMA will develop an acceptable response rate for the provider self-assessment.” This is somewhat vague. It would be preferable to include a specific percentage figure. The actual response rate was high.	Community Legal Aid Society, Inc. Disabilities Law Program	The actual response rate for DMMA provider self-assessments was 100%. This information is noted in the “February 2016 Update to DSHP Demonstration and Remediation Plan” on page 65 of the Transition Plan.	
54.	Provider Assessment Activities	p. 56: The timetable envisions providers being given “findings” by April 30, 2016 in anticipation of providers submitting a Corrective Action Plan immediately or within a few days (e.g. between April 30–May 6). This is ostensibly unrealistic.	Community Legal Aid Society, Inc. Disabilities Law Program	The Transition Plan has been amended to include a due date of May 31, 2016, for CAPs to be submitted.	X
55.	Stakeholder Engagement	We ask that DMMA ensure that all stakeholders in the DDDS service system, which includes family members of people served, be given adequate notice of future hearings on the Statewide Transition Plan. Publication on the DMMA website is not sufficient. Families Speaking Up did not learn of the schedule for these hearings for more than a week after the dates and locations were published on the DMMA website.	Families Speaking Up	DMMA and DDDS have committed to using their listservs, websites, social media, and other communication avenues, as available, to solicit broad stakeholder involvement in review of the Transition Plan. DDDS also anticipates use of Delaware’s Communities of Practice activities to inform transition activities.	



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56.	Stakeholder Engagement	As you begin Phase 3 of this Transition Plan, it is very exciting that DMMA has taken a cross-disability approach in developing this plan. Any group that receives services is going to be positively affected with the outcome of this plan. That has been stressed by both Federal and state officials. This includes individuals receiving support from the AIDS waiver and those transitioning from nursing homes into their own home. We support this continued broad perspective for the variety of people that receive services through Medicaid.	Developmental Disabilities Council	We acknowledge this comment.	
57.	Stakeholder Engagement	Those who cannot speak for themselves should also have a voice representing their interests.	Commenter	DHSS has engaged and will continue to engage a wide range of stakeholders throughout implementation of the Transition Plan, including members, caregivers, and advocates.	
58.	Stakeholder Engagement	All of the key stakeholders who will be most impacted by these plans are entitled to be directly and meaningfully involved in determining their own futures through these plans.	Arc of Delaware	We have engaged and will continue to engage a wide range of stakeholders throughout implementation of the Transition Plan, including members.	



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59.	Stakeholder Engagement	A new item should be added to the Transition Plan to convene working groups to discuss how DDDS plans to meet future service needs. Addressing the residential service needs of the more than 3,000 adults with I/DD currently living with their families is critically important. These working groups should request presentations from national experts that have a variety of perspectives.	Multiple Commenters Families Speaking Up	D DDS intends to involve a broad range of stakeholders in the continuing effort to transition to compliance with the HCBS Final Rule.	
60.	Stakeholder Engagement	Another positive attribute of the Plan is that DMMA will be utilizing consumer input throughout the process of evaluation. This is extremely critical in order to receive an objective view of the strengths and weaknesses of supports individuals receive. Using this feedback in combination with provider input will give a better picture of how the supports are working in the community and whether or not the services meet the standards of the Community Rule. Finally, it is very positive that national statistics and surveys are being used to compare state data.	Developmental Disabilities Council	We acknowledge this comment.	



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61.	State Self-Assessment	p. 24: CMS questioned the “distant” target of January 13, 2017 to complete legislative revisions. The State is now extending that “distant” date for legislative changes to March 17, 2019 (p. 24). The State completed its review of the landlord-tenant code by April 30, 2015 (p. 22) and contemplates completion of its review of other laws by March 31, 2016. It should not take three years to effect legislative revisions. The STP would also benefit from some interim targets rather than a single global target (March 17, 2019) for all legislative changes.	Community Legal Aid Society, Inc. Disabilities Law Program	<p>The Transition Plan has been changed to clarify that legislative action will need to be implemented (as opposed to taken) by March 17, 2019.</p> <p>To ensure that providers have sufficient time to complete all necessary remediation activities, DDDS will work with DLTCRP to delay the effective date for publishing the revised set of fully compliant regulations for neighborhood group homes and the revised DDDS standards to July 31, 2018. Should DDDS discover, however, that all providers are fully compliant before that date, it will consider publishing the revised regulations and standards at an earlier date.</p>	X
62.	State Self-Assessment	p. 29: Activities to “begin” correction of regulations and policies will not occur until October 2016. This is ostensibly too long to begin work. It is also inconsistent with the January 1, 2016 date to start changing regulations and policies listed on p. 24.	Community Legal Aid Society, Inc. Disabilities Law Program	Changes to State laws and regulations and DDDS policies and practices necessary to implement the HCBS Final Rule will be implemented as outlined in the State Systemic Assessment document, Attachment 6. DHSS will revise the Transition Plan to reflect this.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
63.	State Self-Assessment	P. 42: Per comments on p. 23 above, DSCY&F regulations should be added to the list of standards to be reviewed.	Community Legal Aid Society, Inc. Disabilities Law Program	There are no waiver members residing in homes that are licensed under the DSCYF DelaCare regulations.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
64.	State Self-Assessment	<p>p. 42: The STP recites that “(a)dditional materials will be added to the review as they are identified.” The current list includes the “Landlord-Tenant Code.” See also p. 50. Legislation (SB No. 179) to amend Delaware’s Fair Housing and Landlord-Tenant Codes has been introduced to ban discrimination based on “source of income.” Under current law, a landlord can refuse to rent to a tenant based on SSI or SSDI being their source of income. Delaware has 27,404 SSDI (“disabled workers”) beneficiaries and 16,687 SSI beneficiaries. Almost all DDDS HCBS waiver participants and a high proportion of DSHP + participants are SSI beneficiaries. The legislation would obviously facilitate implementation of the HCBS Community Rule for individuals with leases. The legislation has been supported by several State agencies, the DLP, AARP, League of Women Voters, and a host of other organizations. It passed the Senate in January 2016. In contrast, the Delaware Department of Health and Social Services has declined to support the bill, adopting a “neutral” position. SB No. 179 should be added to the list of initiatives for review and DHSS should reconsider its lack of support for the legislation.</p>	Community Legal Aid Society, Inc. Disabilities Law Program	We acknowledge this comment.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
65.	State Self-Assessment	p. 23: The review of DDDS and DLTCRP regulations by these divisions is “underinclusive.” The DDDS waiver covers children between the ages of 12-17 (p. 3). Such children served in an entity (AdvoServ) covered by the adult IBSER regulations are covered by DSCY&F regulations. The DSCY&F regulations have not been identified for review.	Community Legal Aid Society, Inc. Disabilities Law Program	There are no waiver members residing in homes that are licensed under the DSCYF Delaware regulations.	
66.	Suggested Transition Plan Additions	p. 1: In the “Introduction” section, DHSS could consider embellishing the “core values” discussion by including some explicit references and/or quotes from the DD Bill of Rights (16 Del.C. Ch. 55) and the Employment First Act (19 Del.C. Sec. 740-747) confirming State public policy. Proponents of the “status quo” and interest groups espousing a “low expectations” approach could easily overlook the consistency in values contained in State law and the CMS “Community Rule.” Moreover, the Plan contains many references to a goal of promoting employment paying at least the “minimum wage” (pp 4, 5 and 6). As an update, a reference to current State legislation to raise the minimum wage could be mentioned. S.B. No. 39 passed the Senate in January, 2016 and represents an initiative which would benefit many individuals enrolled in HCBS waivers.	Community Legal Aid Society, Inc. Disabilities Law Program	We acknowledge this comment.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
67.	Suggested Transition Plan Additions	p. 3: It would be informative to update the 2014 figures on enrollment in the DDDS waiver and DSHP and DSHP + programs (by footnote or otherwise). It would also be informative to provide recent statistics demonstrating DHSS success in transforming its service delivery system to one which is predominantly community-based.	Community Legal Aid Society, Inc. Disabilities Law Program	DHSS will provide additional information in the next update to the Transition Plan.	
68.	Suggested Transition Plan Additions	p. 27: The status of the new home being built with an expected December 31, 2016 move-in date is not provided. It would be useful to know the status of construction.	Community Legal Aid Society, Inc. Disabilities Law Program	DDDS continues to work with the Arc regarding the development of this home.	
69.	Suggested Transition Plan Additions	Commenter believes in the need to revise and improve upon the existing plan.	Commenter	We acknowledge this comment.	
70.	Suggested Transition Plan Additions	The Transition Plan should be revised to include the commitment from DDDS Director Jill Rogers and DHSS Secretary Rita Landgraf gave to the Joint Finance Committee to identify the “most integrated setting appropriate” in person-centered plans before any remediation plans are submitted to CMS. The needs identified in person-centered plans and individual choice should become the basis for requesting heightened scrutiny, if DDDS decides that any of the settings listed in the person-centered plans may not comply with the federal regulations.	Multiple Commenters Families Speaking Up	Under the HCBS Final Rule, states are required to engage in a person-centered planning process that ensures that the setting chosen by the individual “is integrated in, and supports full access...to the greater community.” Delaware intends to comply with that requirement.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
71.	Suggested Transition Plan Additions	There is no input at all from the mental health community. People with mental health issues typically do not receive Home and community-Based Services because it is not required. However, there is nothing prohibiting the state from providing services for this population. Since there was a recent Department of Justice Consent Decree with DSAMH, this should be a priority for DHSS. It will be advantageous for Delaware to start looking at this population now while CMS is providing various tools and techniques.	Developmental Disabilities Council	DHSS welcomes all comments and invite all to provide feedback on the Transition Plan. The Division of Substance Abuse and Mental Health is a member of the cross-agency advisory body.	
72.	Suggested Transition Plan Additions	One or more Advisory Committee(s) should be established to directly participate in the related planning and implementation process. These groups should meet frequently, and this stakeholder participation should be carefully documented and should weigh heavily into all related transition decision-making and plans.	Arc of Delaware	We have engaged and will continue to engage a wide range of stakeholders throughout implementation of the Transition Plan, including members.	
73.	Technical Correction	p. 45: Grammar should be corrected as follows: “The State... to continuously monitoring participant health...”	Community Legal Aid Society, Inc. Disabilities Law Program	The Transition Plan has been edited.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
74.	Technical Correction	Each page in the State Transition Plan has been dated “February 1, 2016.” However, many pages have not been updated and refer to plans and expectations from 2015. This is confusing. Perhaps each page should be a “revision” date so it would be clear that some original pages reflect planning as of March 2015 and some pages contain updated information as of a later date.	Community Legal Aid Society, Inc. Disabilities Law Program	A note to reviewer is added at the beginning of this update to the Transition Plan, as well as the previous update to the Plan to direct the reader to modifications or additions to the Plan.	
75.	Technical Correction	A technical remark to consider, on page 38 under “Homes on the Grounds of a Public Institution”, the second sentence has a typo. The word “intension” should be “intention”.	Developmental Disabilities Council	The Transition Plan has been edited.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
76.	Timeline	<p>P. 11: In two documents, CMS requested DHSS to provide information concerning plans and strategies to assure ongoing compliance after March 2019. I infer that CMS would prefer to deter “backsliding,” i.e., achieving compliance by March 17, 2019, but discontinuing efforts to promote continuing compliance after that date. In contrast, the Plan contains an “end date” of March 17, 2019 throughout the document. Page 70 would also benefit from clarification that activities would extend beyond March 17, 2019.</p> <p>p. 45: Identifying an “end date” of March 17, 2019 and no activities after March 17, 2019 is inconsistent with CMS directives to include activities after March 17, 2019.</p> <p>p. 70-71: It would be preferable to clarify that described activities would extend beyond March 2019.</p>	Community Legal Aid Society, Inc. Disabilities Law Program	Ongoing monitoring activities, beyond March 17, 2019, are described on pages 39 and 70 of the Transition Plan. The Transition Plan has been changed to remove March 17, 2019 as the end date for monitoring activities.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
77.	Timeline	p. 52-53: The Plan envisions an end date of July 31, 2016 to develop remediation strategies for laws which are not fully compliant. It then adopts a March 17, 2019 end date for legislative changes. This is almost three years. If the strategies are completed by July 31, 2016, it should not be difficult to prepare legislation over the next six months for introduction by February 1, 2017. Instead, the Plan identifies no work on remediation activities between August-October 2016, i.e. “Implementation of all remediation activities will begin no later than November 2016” (p. 58).	Community Legal Aid Society, Inc. Disabilities Law Program	We acknowledge this comment.	
78.	Timeline	p. 45: The State identifies a March 17, 2019 target date for completion of Corrective Action Plans. This is inconsistent with the July 31, 2018 date identified in other sections of the STP.	Community Legal Aid Society, Inc. Disabilities Law Program	CMS has required that states ensure all remediation activities are in place before March 17, 2019 to allow the state time to determine the appropriateness and success of implemented remediation. The final compliance date remains March 17, 2019. The July 31, 2018 date is a check point. Ongoing, beyond March 17, 2019, DHSS will monitor to ensure compliance with all HCBS Final Rule requirements.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
79.	Timeline	We are concerned that the compliance date for the Transition Plan has been shortened by nine months. DDDS has said that the process of identifying “most integrated setting appropriate” in person-centered plans will take approximately one year so it’s impractical to shorten the compliance time. We ask that the due date listed in the Statewide Transition Plan for complete compliance with Corrective Action Plans should be extended.	Easter Seals Delaware & Maryland’s Eastern Shore	CMS has required that states ensure all remediation activities are in place before March 17, 2019 to allow the state time to determine the appropriateness and success of implemented remediation. The final compliance date remains March 17, 2019. The July 31, 2018 date is a check point. Ongoing, beyond March 17, 2019, DHSS will monitor to ensure compliance with all HCBS Final Rule requirements.	
80.	Timeline	p. 11: There is some “tension” between identification of a March 17, 2019 end date to “implement remediation strategies” on pg. 11 with different targeted “end date” of July 31, 2018 for implementation of provider CAPs on other pages.	Community Legal Aid Society, Inc. Disabilities Law Program	CMS has required that states ensure all remediation activities are in place before March 17, 2019 to allow the state time to determine the appropriateness and success of implemented remediation. The final compliance date remains March 17, 2019. The July 31, 2018 date is a check point. Ongoing, beyond March 17, 2019, DHSS will monitor to ensure compliance with all HCBS Final Rule requirements.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
81.	Timeline	p. 17: The following statement is contained on this page: “Any Corrective Action Plans and other strategies identified in Phase 4 must be fully implemented by March 17, 2019 so that the entire waiver service delivery system will be compliant with the Community Rule.” This date does not conform to the July 31, 2018 target adopted in other sections.	Community Legal Aid Society, Inc. Disabilities Law Program	CMS has required that states ensure all remediation activities are in place before March 17, 2019 to allow the state time to determine the appropriateness and success of implemented remediations. The final compliance date remains March 17, 2019. The July 31, 2018 date is a check point. Ongoing, beyond March 17, 2019, DHSS will monitor to ensure compliance with all HCBS Final Rule requirements.	
82.	Updated Transition Plan - Suggested Transition Plan Additions	p 36: The bulleted section could be improved by requiring some interim milestones towards achieving compliance. This would be consistent with the “quarterly onsite visits” contemplated on p. 37. As written, a CAP could simply have a single date (e.g. July 31, 2018) which undermines meaningful progress assessments. For example, an interim benchmark might be compliance by 25% of the provider’s settings with three months, compliance by 50% of the provider’s settings within six months, etc.	Community Legal Aid Society, Inc. Disabilities Law Program	Because the timeframes necessary for remediation will depend on specifically what items need to be remediated, DDDS does not believe it is appropriate to set specific milestones for compliance across all providers. DDDS will monitor provider progress against the milestones specified in each Corrective Action Plan.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
83.	Updated Transition Plan - State Self-Assessment	Attachment 6, pp. 10-18: If there is a standard DDDS contract with appendices for providers of prevocational services, it should be included in the matrix and assessed for compliance with the CMS Community Rule.	Community Legal Aid Society, Inc. Disabilities Law Program	The DDDS Appendix A for say and residential services includes prevocational service, as well as day habilitation and supported employment. This document was assessed for compliance with the HCBS Final Rule. Specific standards related to each service are expressed in the HCBS waiver application and the DMAP Provider Manual for the DDDS Waiver, which are incorporated by reference into the DDDS contract. They no longer appear in the contract as they did several years ago.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
84.	Updated Transition Plan - State Self-Assessment	P. 39: The STP recites that DLTCRP regulations “largely involve attributes of the physical plant in which the services are delivered, as opposed to addressing the experiences of the individuals who are receiving the services.” This is inaccurate. Compare e.g. 16 DE Admin Code 3320, Sec. 5.0 and 9.0-26.0.	Community Legal Aid Society, Inc. Disabilities Law Program	The current regulations for neighborhood group homes contain a mixture of requirements related to the physical plant, health and safety, programming, and person-centered planning. DDDS is working with DLTCRP to create more defined boundaries between the standards that DLTCRP will monitor and those that DDDS will monitor. The current standards create the appearance that it is the responsibility of the group home provider to manage the planning process, wherein the HCBS Final Rule makes it clear that this role belongs to the case manager, a responsibility which currently lies with DDDS. DDDS has been working with DLTCRP to clarify roles.	
85.	Updated Transition Plan - State Self-Assessment	Attachment 6, p. 2-9: The section omits any reference and consideration of “Adult Day Care” regulations, 16 DE Admin Code 4402. I understand some DDDS clients are served in this setting. The section also omits any consideration of the standard DDDS provider contract. The standard FY16 DDDS “contract” with appendices for day programs is published on the web.	Community Legal Aid Society, Inc. Disabilities Law Program	Adult day care, as defined in section 4402 of the Admin Code is not a covered service under the DDDS HCBS waiver. The DDDS provider contracts were reviewed as part of the State Systemic Assessment.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
86.	Updated Transition Plan - State Self-Assessment	Attachment 6, p. 7: The matrix omits the PROBIS and HRC policies. The PROBIS and HRC committees are key DDDS entities protecting waiver participants from unjustified rights restrictions and chemical, mechanical, and physical restraints.	Community Legal Aid Society, Inc. Disabilities Law Program	All DDDS policies, including the specific policies in question, were reviewed as part of the State Systemic Assessment.	
87.	Updated Transition Plan - State Self-Assessment	Attachment 6, p. 7: The “day hab” section of the matrix has a “freedom from coercion and restraint” section. It omits the IBSER regulations which cover the day program of the covered entity. The IBSER regulations address restraint in detail. The Plan focuses on the IBSER regulations only in the context of residential settings (pp. 26 and 29).	Community Legal Aid Society, Inc. Disabilities Law Program	IBSER has been added to the matrix under the day habilitation section.	X
88.	Updated Transition Plan - State Self-Assessment	Attachment 6, pp. 19-43: If there is a standard DDDS contract with appendices for providers of residential services, it should be included in the matrix and assessed for compliance with the CMS Community Rule.	Community Legal Aid Society, Inc. Disabilities Law Program	The DDDS Appendix A for day and residential services and Appendix A-1 for residential services was assessed for compliance with the HCBS Final Rule. Specific standards related to each waiver service, including residential services, are expressed in the HCBS waiver application and the DMAP Provider Manual for the DDDS Waiver, which are incorporated by reference into the DDDS contract. They no longer appear in the contract as they did several years ago.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
89.	Updated Transition Plan - State Self-Assessment	Attachment 6, pp. 19-43: Although the IBSER regulations are mentioned, an accurate assessment of domains can only be completed through a review of other documents. For example, in the “food domain” (p. 39) the program regulated by the IBSER regulation has “levels” systems in which preferred foods may have to be “earned.” Similarly, in the “choice domain (p. 32), phone access at preferred hours may have to be “earned.”	Community Legal Aid Society, Inc. Disabilities Law Program	The State Systemic Assessment only addressed published state or division rules and standards. To the extent that practices deviate from what is allowed in the regulation or standard, they will be identified as part of the assessment of individual settings.	
90.	Updated Transition Plan - State Self-Assessment	Attachment 6, p. 22: The State assesses itself as compliant with the following domain: “The individual receives services in the community with the same degree of access as individuals not receiving Medicaid HCBS.” It solely cites the following regulation as documentation of compliance: “4.2.1.5. The individual has access to all areas of his/her environment.” I do not understand how this regulation can serve as the sole basis for the State’s conclusion that it meets the domain.	Community Legal Aid Society, Inc. Disabilities Law Program	<p>The following citations have been included from that section of the regulation in addition to 4.2.1.5. Taken together, DDDS believes that they indicate compliance with this requirement.</p> <p>4.1.2 The individual’s lifestyle, personal activities, routines and supports is based on personal choice.</p> <p>4.4.2 The individual has opportunities to participate in activities at home, at work, in the community, and during leisure time that he/she chooses.</p> <p>4.4.2.1 The individual indicates that he/she participates in activities of his/her choice.</p>	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
91.	Updated Transition Plan - Technical Correction	p. 35: The STP recites that a Behavior Support Plan may authorize deviation from the HCBS Final Rule, including authorizing restrictions of rights, only if there is “informed consent of the individual or legal representative (see 42 CFR Sec. 441.301(c)(2)(xiii)(G)).” In practice this is not accurate since many DDDS waiver participants lack capacity to consent and lack a guardian or other substitute decision-maker.	Community Legal Aid Society, Inc. Disabilities Law Program	Part of the charge under the person-centered planning process is for DDDS to assist the waiver member in making informed choices and understanding his or her rights. If an individual needs a guardian and does not have a friend or family member who can fill that role, DDDS will work with the Public Guardian to meet that need.	
92.	Updated Transition Plan - Technical Correction	p. 40: The references to “Plan of Improvement,” “plan of correction,” and “Plan of Correction” should be converted to “Corrective Action Plan” for consistency with the rest of the STP. The word “division” should also be capitalized.	Community Legal Aid Society, Inc. Disabilities Law Program	The Transition Plan has been edited.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
93.	Updated Transition Plan - Timeline	<p>p. 38: The STP (p. 54) contemplates identification of out-of-state sites in which Delaware waiver participants may live by September 30, 2015. There is some “tension” between that date and the following recital (p. 38):</p> <p>Several DDDS waiver members are supported in residents in other states that were determined to best meet their specialized needs... DDDS has begun the process of communicating with (those) states for this purpose.</p> <p>It would be preferable to provide the current status and verify an “end date” for this process.</p>	Community Legal Aid Society, Inc. Disabilities Law Program	The Transition Plan indicates that DDDS will accept the decision of the state in which the facility is located regarding compliance with the HCBS Final Rule, but we anticipate states will be finished no later than December 31, 2016. DDDS is still in the process of acquiring this information. Other states may have different timeframes for their assessments than Delaware.	
94.	Update to Transition Plan – Availability of Options	Attachment 6, p. 35: A corollary to the “choice of roommates” standard is whether an individual could opt to have no roommates (e.g. live alone). This is partially addressed on p. 24 but is not very clear. In practice, my impression is that few waiver participants are offered the option of their own unit.	Community Legal Aid Society, Inc. Disabilities Law Program	DDDS offers options for individuals to both live with housemates or in shared living homes, consistent with client preferences and their available personal funds that can be used for room and board. Room and board is not a Medicaid covered cost. It is not uncommon for individuals to share rent to make housing more affordable.	