



ATTACHMENT 1: COMMENTS FROM MARCH 2015 PUBLIC COMMENT PERIOD

Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
1.	Assessment Activities	The State should look for existing survey and processes already in use by other states.	Commenter	We agree that this is beneficial and intend to review existing tools.	
2.	Assessment Activities	A commenter noted support for the proposed “look-behind” review of the provider self-assessment and noted that it is important to have checks and balances so that a provider’s information alone is not accepted without verification.	Commenter	We agree with this comment.	
3.	Assessment Activities	There is not a description of relocation processes. The Plan does not discuss relocation processes for people who are being provided services in settings that cannot come into compliance with the regulations. This is an important process to establish early with input from multiple stakeholders.	Commenter Developmental Disabilities Council SCPD	We agree with this comment and will modify the Plan to note that the relocation process will be tailored to each individual, and that 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.	X
4.	Assessment Activities	Look-behind reviews should include a site visit.	Commenter Developmental Disabilities Council SCPD	We agree with this comment and will make the necessary modifications to the Plan.	X (DMMA will build in a look-behind process for DSHP)



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5.	Assessment Activities	On p. 10, the first "bullet" refers to "State laws, regulations, policies, etc. and provider policies". The recommendation is to include "budgets". If funds or incentives are disproportionately allocated to restrictive or non-integrated settings, the Plan is undermined.	DECLASI (2/10) GACEC	Delaware's reimbursement methodology for HCB services under the DDDS waiver is based on the wage scale for the direct support workers providing the HCB services and related costs. Rates are the same for all providers and there are no incentive payments. The DMMA budget for HCB services is currently adequate to fund the services at current payment rates. If the rates need to be adjusted in order to pay for a change in the way services are delivered, additional funds can be requested at that time.	
6.	Assessment Activities	Page 10 of the Plan notes: "As available, NCI data will be analyzed by type of residence in order to identify non-compliance with HCB settings." The NCI data also addresses vocational and employment settings. It would be preferable to also "mine" the NCI data for information on vocational and employment settings.	DECLASI (2/10) GACEC	DDDS intends to utilize the NCI data to the greatest extent possible to assist with the assessment of HCB services and settings against the Community Rule.	



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7.	Assessment Activities	<p>On p. 11, the following sections of the Delaware Code should be added to the review:</p> <p>A. Employment First Act (codified at 19 Del.C. §§740-747), since it overlaps with CMS standards;</p> <p>B. DDDS enabling law (codified at 29 Del.C. §7909A);</p> <p>C. DDDS Advisory Council enabling law (codified at 29 Del.C. §7910) since it is given a central role in assessment;</p> <p>D. Interagency Collaborative Team law (codified at 14 Del.C. §3124) since "review will include residential and non-residential settings out of State for which waiver funds are currently being used" (pp. 14 and 34);</p> <p>E. Nurse Practice Act (codified at 24 Del.C. Ch. 19) since restrictions impact settings in which residents receive services; and</p> <p>F. Community-based Attendant Services Act (codified at 16 Del.C. Ch. 94) since DDDS receives funds under Act and Plan mentions at p. 26.</p>	DECLASI (2/10) GACEC	The list included in the Plan was not intended to be exhaustive. All relevant Administrative codes will be reviewed	



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8.	Assessment Activities	On p. 11, the following "Administrative Code" provisions should be added: A. IBSER regulations (16 DE Admin Code 3320) which cover AdvoServ; and B. Family Care Home regulations (16 DE Admin Code 3315) which may cover shared living providers; and C. PASRR regulations (16 DE Admin Code 20000).	DECLASI (2/10) GACEC	The list included in the Plan was not intended to be exhaustive. All relevant Administrative codes will be reviewed.	
9.	Assessment Activities	On p. 12, policies to be reviewed should include PROBIS and HRC. The relevant CMS regulation (42 C.F.R. 441.530) addresses privacy and freedom from coercion and restraint. Both the PROBIS and HRC are the main DDDS components protecting such rights.	DECLASI (2/10) GACEC	The policies referenced are included in the list of "DDDS policies" that will be reviewed against the Community Rule. There is no need to list them individually.	
10.	Assessment Activities	On p. 13, first paragraph, and p. 19, top entry, the implication is that providers will submit a Corrective Action Plan contemporaneously with their self-assessment results. However, the Plan (p. 22) gives them 90 days to prepare a Corrective Action Plan which then must be reviewed and approved by the State. The 90-day period is too long to simply develop a Corrective Action Plan. Instead consider changing to 30-day period.	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to indicate that the Corrective Action Plan must be submitted within 30 days.	X



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11.	Assessment Activities	The Plan (p. 13) contemplates a Council subcommittee conducting "look- behind" reviews of a sample of provider self-assessment results. The Plan also envisions the Council developing "dispute resolution processes for the findings". A few commenters recommend that DDDS develop and implement the dispute resolution process. The Advisory Council should not be cast in the role of arbiter of such disputes. Disputes and appeals should be handled by DDDS and DMMA. Cf. reference on p. 14: "An appeal process will be developed to dispute the State's findings of non-compliance." The DDDS Office of Quality Improvement is identified (p. 15) as the agency which monitors compliance with the Community Rule for providers with and without a Corrective Action Plans.	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X
12.	Assessment Activities	On p. 13, in the first set of bullets, a few commenters recommend including IBSER group homes which are not neighborhood group homes. The IBSER regulations (§6.2.1) "grandfathered" residences with more than ten residents and the only agency regulated by the IBSER regulations operates its own PROBIS which reduces oversight.	DECLASI (2/10) GACEC	The list included in the Plan was not intended to be exhaustive. All relevant sections of the Administrative Code will be reviewed.	
13.	Assessment Activities	On p. 20, there are references to changing policies but no references to changing statutes and regulations which will be reviewed per p. 11.	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X



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14.	Assessment Activities	Pages 22-23 contemplate DDDS submission of waiver amendments to CMS. Please clarify that DMMA, as the Delaware Medicaid agency, submits such amendments.	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to clarify that DMMA will submit any amendments to CMS.	X
15.	Assessment Activities	On pp. 25 and 34, the Plan notes that "DMMA will consider using its External Quality Review Organization (EQRO) to develop the surveys." This is a rather tentative feature to incorporate in a Plan and suggests that the State is unsure how it will develop the instruments.	DECLASI (2/10) GACEC	The reference to using the EQRO conveys that the State is exploring all possible options to determine the most appropriate course of action for developing the surveys.	
16.	Assessment Activities	On p. 27, the recommendation is to add the Nurse Practice Act, 24 Del.C. Ch. 19, to the list of Delaware Code provisions to review.	DECLASI (2/10) GACEC	The list included in the Plan was not intended to be exhaustive. All relevant Administrative codes will be reviewed.	
17.	Assessment Activities	On p. 27, the Plan envisions MCOs distributing surveys to network providers. I question whether such providers will complete the surveys. Query what incentives exist for providers to complete the surveys? Medicaid MCO reimbursement rates are low and providers may want to be paid for their time. Concomitantly, the Plan has no benchmark for the percentage of providers who will complete the surveys. Will 30%, 50%, or 70% be sufficient?	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to note that benchmarks will be established in addition to creating a process for following up with providers failing to meet requested response timeframes.	X
18.	Assessment Activities	On p. 27, the Plan contemplates providers participating in training to learn how to complete the surveys. Consistent with the preceding comment, what incentive exists for providers to participate in the training.	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to note that DMMA will take into consideration the need for incentives.	X



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19.	Assessment Activities	On p. 28, second set of bullets, I recommend inserting a reference to revising "budgets".	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to include as a bullet on page 28: "Develop budget strategies to fund remediation as necessary".	X
20.	Assessment Activities	On p. 29, "fair hearing results" could be added to the list of information related to MCO performance.	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to add analysis of fair hearing results to the list of potential compliance monitoring activities.	X
21.	Assessment Activities	It is unclear how Logisticare, the Medicaid transportation broker, will be assessed for compliance with the HCBS Rule. Consistent with Comment #4 above, transportation can be integrated or segregated.	DECLASI (2/10) GACEC	Only those services provided in either a non-residential or residential HCB setting, per CMS expectations, are addressed in the Plan. Transportation services do not fall into this category.	
22.	Assessment Activities	A few commenters questioned the use of the term "remediation strategy" and instead recommend the use of term "Corrective Action Plan"	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to refer to Corrective Action Plan as appropriate.	X



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23.	Assessment Activities	There is no requirement (p. 33) that provider "remediation strategies" be shared with DMMA. It would obviously help DMMA assess MCO conformity with the Plan if the MCOs shared the "remediation strategies" submitted by providers with the State. The Plan (p. 36) otherwise envisions DMMA monitoring of provider "Corrective Action Plans". Even this is a less strident standard than adopted for DDDS providers. DDDS must approve provider Corrective Action Plans (p. 13) but there is no analogous requirement that DMMA approve provider Corrective Action Plans (p. 36).	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to add language, where appropriate, to clarify that remediation strategies and/or Corrective Action Plans will be approved by DMMA.	X
24.	Assessment Activities	On p. 34, first entry, there is a "disconnect" between the action item (changing policies and procedures) and the proposed end date (a vague "legislative timeframe"). There is no proposed end date for completion of State policy changes.	DECLASI (2/10) GACEC	We agree with this comment and will add language indicating that any changes requiring legislative action must be taken before 3/17/2019.	X
25.	Assessment Activities	While DDDS conducts a pilot of its survey (p. 21), DMMA conducts no pilot. DMMA could reconsider this aspect of the Plan.	DECLASI (2/10) GACEC	DMMA will consider conducting a pilot.	
26.	Assessment Activities	The State is encouraged to incorporate robust assessment standards which do not merely pay "lip service" to the CMS guidance but demonstrate that the State wholeheartedly embraces the underlying values reflected in the guidance.	DECLASI (2/23) GACEC	We are committed to developing a robust process, including standards. We believe that the approach as outlined in the Plan positions us to do just this.	





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27.	Assessment Activities	The Plan contemplates both provider and State development of “remediation strategies” to address identified shortcomings. At p. 33 this “targeted” approach to “fixing” specific instances of non-conformity with CMS standards is a logical component of the Plan. However, the Plan could be strengthened through identification of systemic initiatives designed to increase the State’s capacity to offer an array of conforming settings. This would be particularly informative in the context of employment.	DECLASI (2/23) GACEC	DMMA is committed to providing a wide range of available HCBS. We point you to the Pathways to Employment program and the PROMISE program as examples of our commitment to develop and increase meaningful opportunities for employment for Medicaid eligible persons.	
28.	Assessment Activities	The Plan envisions the Department engaging in a “look-behind” review of a 20% sample of provider self-assessments of policies and procedures. At pp 6 and 13 the Plan contemplates completion of these reviews by a single “sub-working group of the GAC”. Realistically, even if the 7-member DDDS Advisory Council assembles a “working group” with some additional members, it may be hard-pressed to conduct a meaningful “look-behind” of numerous providers which operate multiple programs. Moreover, the Plan could be strengthened by clarifying that the “look-behind” is not comprised solely of a marginally effective “paper” review. The “look-behind” should include onsite observation and interviews with program staff, participants and their representatives	DECLASI (2/23) GACEC	We agree with this comment. The Plan indicates that the GAC may create one or more sub-working groups to conduct specific activities under the Plan. We have addressed look-behind reviews and our intent in a response to a previous comment.	X



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		(including family members).			
29.	Assessment Activities	The Plan contemplates use of participant surveys to gather information (p 27) as well as survey-based NCI data (p 3). As a supplement to this planned assessment process, the State could consider establishing an on-line survey tool (e.g. through Survey Monkey) to allow individuals the opportunity to comment on specific programs. Some individuals may be more comfortable with the ease and anonymity of completing an on-line survey and the questions could be more targeted to CMS standards than the NCI survey.	DECLASI (2/23) GACEC	We will explore the use of an online survey tool as an option for responding to the participant survey.	
30.	Assessment Activities	Provider and DMMA/DDDS Staff should be asked to think not only about the facility/setting itself when a self-evaluation is being completed, but whether or not compliance with the rule is applied to each individual served.	SCPD	The assessment tool will include a focus on the individual.	
31.	Assessment Activities	One commenter asked: who is developing the assessment tool and will it be available for public review before being implemented?	Commenter	The GAC and the GCCBA have been designated as the Steering Committees that will be responsible for the development of the assessment tools. These bodies will be augmented with additional resources as necessary to ensure representation of the broad stakeholder group.	



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32.	Assessment Activities	There is concern about the process that develops the survey instruments and processes. The Plan could benefit from greater description about the survey instrument and process. As described, the process does not appear to be fully transparent.	State Representative	As we move forward to flesh out the details of the survey process, we will we seek broad public input.	
33.	Availability of Options	Implementation of the Plan should preserve a broad range of choices for housing (including group homes and intentional communities) and employment services (including pre-vocational services such as work-based facilities/sheltered workshops). Many relatives of participants in pre-vocational services related that these settings are safe and provide an important protected environment for participants to develop skills.	Multiple Commenters	We understand and share your commitment to making sure participants are safe, protected, and have the services and supports they need. The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	



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34.	Availability of Options	DMMA should ensure the continued availability of current providers such as Elwyn, KSI and Chimes and the services they provide. Implementation of the Plan should preserve all currently available options.	Multiple Commenters Chimes	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	
35.	Availability of Options	The Plan should include language that stipulates the need for all the existing options, and it should also be free of any pre-conceived notions, theories or ideas that would restrict the choices that should be available to all individuals with special needs. New options that enhance or complement the existing options would certainly be welcomed.	Commenter	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	
36.	Availability of Options	Many commenters encouraged Delaware to avoid using a “one-size-fits-all” approach to considering supports and services for people with disabilities. Not all disabilities are the same and not all people with disabilities are the same. What is restrictive for one person is not restrictive for another. Options, including housing options and employment options, need to be based on the needs of the individual.	Multiple Commenters Chimes of Delaware	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	



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37.	Availability of Options	Many relatives described the effect that losing the option of work-based facilities and sheltered workshop would have on their family members.	Multiple Commenters	All current recipients of day services will continue to receive day services. How services are delivered may or may not need to be modified based on the outcome of the assessment process. The assessment tool will be developed using CMS guidelines and input from stakeholders.	
38.	Availability of Options	Current employment opportunities are limited in areas such as Sussex County.	Multiple Commenters	The Department agrees that employment opportunities need to be expanded across all Delaware counties.	
39.	Availability of Options	Commenters expressed concerns about limiting group homes to two or three residents per home and limiting the availability of foster family arrangements thereby forcing persons into higher occupancy group homes and apartments.	Multiple Commenters	The Community Rule does not specifically address the size of the residential settings. The current approved DDDS waiver indicates that waiver residences will house no more than four individuals. Nothing in the new Community Rule requires DDDS to change this.	
40.	Availability of Options	Several commenters disagreed with sheltered workshops and gated communities as viable community options for disabled persons.	Multiple Commenters	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	



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41.	Availability of Options	Programs should not mandate a disabled to non-disabled ratio of participants and should allow for the full range of vocational services that currently exists, including facility-based prevocational programming and supported employment.	Commenter	The Plan will help to identify which of the current services and settings meet the characteristics of HCB setting that can be covered under an HCBS program. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	
42.	Availability of Options	Integrated, safe, accessible and affordable disability housing is a challenge in Delaware with limited options for choice. Private and public partnerships for housing options must be encouraged and embraced and not diminished or discouraged in Delaware.	Commenter	The Department will continue to maintain and expand its partnerships with its housing providers. The Plan will assist in identifying settings that meet the characteristics of HCB settings that can be covered under HCBS programs. The assessment will provide guidelines to housing partners.	



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43.	Availability of Options	There is concern that some existing programs, such as group homes with four or more residents, and sheltered workshops, would be prohibited until the new 2019 federal guidelines. You indicated in your emailed statement that 'the Rule does not require any of those changes.' Can you ensure that this assurance is also contained prominently in the Transition Plan?	State Representative	The current DDDS waiver allows for group homes of four or less individuals. The Plan will not alter the approved capacity. The Plan assessment will evaluate the experiences of the individuals in those group home settings. Pre- vocational services provided in a sheltered workshop setting will be evaluated by the Plan assessment to measure compliance with the HCB settings that can be covered under the HCBS program. Services and setting that do not comply with the Rule will have the opportunity to engage in remediation to come into compliance with the Rule prior to March 17, 2019.	
44.	Availability of Options	There is a concern as to whether 1) all existing options will be permitted, that 2) dollars will follow the client, and 3) the client (and/or family) will have a role in selecting which option the client obtains, rather than to have 'the system' make that selection on their behalf. If these overriding goals are also goals of DDDS, perhaps it would be helpful to share them (or perhaps other, similar overarching goals) near the front of the transition plan, to allay the anxiety that several parties are experiencing.	State Representative	Person centered planning is the basis for all HCB services, allowing the individuals and their family to choose their services. HCBS funds are individually allocated and the person chooses what services meet the needs defined in their plan.	



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45.	Availability of Options	There is concern that DDDS could curtail existing programs in advance of the 1019 deadline, and this is worrisome. Could the Plan be clear regarding what kind of changes, if any, would be 'on the table' prior to the 3/17/2019 federal deadline?	State Representative	No services will be curtailed in advance of 10/19. If services are assessed and are found not be in compliance with the Rule, then they will have opportunity to come into compliance.	
46.	Availability of Options	There is not a discussion of how Delaware will ensure that individuals have a choice of "non-disability specific" setting and private units. Delaware should evaluate its current capacity of non-disability specific settings and develop a plan to increase capacity. Current community services are very segregated in Delaware and the lack of capacity of non-disability specific settings is particularly acute for non-residential services, where the majority of Delaware's current settings are disability specific.	Commenter Developmental Disabilities Council SCPD	Choice of non-disability settings is an inherent part of the person-centered planning process. This is one of the components of the Community Rule that will be reviewed as part of the assessment of State laws, regulations and policies as well as provider practices regarding person-centered planning.	
47.	Barriers to Community Integration	Many commenters described the challenges to community integration that they currently face, including the lack of handicapped parking spaces, lack of handicap-accessible and barriers due to transportation.	Multiple Commenters	We acknowledge this comment.	
48.	Barriers to Community Integration	Time limits for employment should not be included in the Plan in order to facilitate successful job placements.	Multiple Commenters	If we understand the comment correctly, there are no time limits currently included in the Plan associated with time limits for employment.	





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49.	Characteristics of Work Environment	The Plan should include a provision that each work environment is safe for the particular needs of mentally challenged individuals. Work environments should be structured and stress-free.	Commenter	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	
50.	Characteristics of Work Environment	Remuneration for work performed should be fair, but does not need to be minimum wage.	Commenter	The Plan evaluates settings not sub minimum wage.	
51.	Characteristics of Work Environment	Commenters stressed the importance of training supervisors and staff in relating to persons with disabilities.	Multiple Commenters	Department agrees with the comment.	
52.	Characteristics of Work Environment	The Plan should include a provision giving persons with disabilities the option to work with other disabled individuals.	Commenter	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	



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53.	Characteristics of Work Environment	The Plan should include a provision for disabled individuals at any skill level to start in a program and work up to a less restrictive environment.	Commenter	By definition, prevocational service is designed to meet the needs of individuals who may not be ready for competitive employment but who have competitive employment as their goal. There is no plan to remove this service from the DDDS waiver.	
54.	Close of Public Comment Period	The advertised time period for public comment does not meet the federal standard. CMS requires "at least a 30-day public notice and comment period" [42 C.F.R. §441.710(a)(1); 79 Fed Reg. 3033 (January 16, 2014)]. In contrast, comments on the Plan must be received by 4:30p.m. on March 6, 2015.	DECLASI (2/10) GACEC	The end of the public comment period was revised to March 9, 2015.	
55.	Incentives	The Plan should be business friendly and should provide incentives to businesses to hire individuals with disabilities.	Commenter	The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	



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56.	Increase Capacity for Community Employment	We encourage the State to increase capacity for community employment. The Plan does not really address increasing capacity in any creative way. New York has ceased new admissions to sheltered workshops. It created a tax credit for employers to hire persons with developmental disabilities who are either unemployed or working in sheltered workshops. The State has to assume a higher percentage of individuals with developmental disabilities will qualify for integrated employment. It needs to expand capacity/incentives so employers hire them. This needs to be incorporated in the Plan.	Developmental Disabilities Council	The Department agrees with the comment.	
57.	Increase Capacity for Community Employment	Reduce the economic uncertainty for service providers in order to encourage innovation and investment to further improve quality and increase capacity of services. By recognizing that one service model does not fit all, insist that DDDS work with providers to create programs that can be tailored to meet individuals' needs.	Commenter	The Plan will help to identify which of the current services and settings meet the characteristics of HCB setting that can be covered under an HCBS program. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019. The Department will work with all providers to develop transition/remediation plans, including investment in quality outcomes.	



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58.	Oversight Body	A few commenters recommended adding the State Council for Persons with Disabilities to the "team". It is a State agency charged with reviewing "all State policies, plans, programs ....concerning persons with disabilities...conducted or assisted...by State departments' and making "recommendations to ...all State departments...respecting ways to improve the administration of services for persons with disabilities and for facilitating the implementation of new or expanded programs."	DECLASI (2/10) GACEC	DMMA agrees to take a look at the composition of the oversight body and add members as needed. We will also consider smaller work groups.	
59.	Oversight Body	The Plan (p. 8) mentions that the "oversight body" will meet "regularly". This is unduly obtuse. It would be preferable to at least include a minimum schedule (e.g. quarterly; monthly).	DECLASI (2/10) GACEC	We agree with this comment and will modify the Plan to note that the advisory council will meet, at a minimum, monthly, but will meet more frequently if necessary depending on the task at hand.	X
60.	Oversight Body	The references to "Governor's Advisory Council" (p. 10) and "GAC" (seriatim) are not appropriate. The current statute (29 Del.C. §7910) refers to the "Advisory Council to the Division of Developmental Disabilities Services".	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X



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61.	Oversight Body	On p. 17, last entry, the reference to "charter" is odd. Councils do not create "charters". The deadline (March 17, 2015) to develop the operational standards is also too short.	DECLASI (2/10) GACEC	Because the Plan is requesting the GAC to perform a role that is specific and time-limited and is somewhat different than what it is supposed to do under Title 29 of the Delaware Code, we felt that it was important to define that role via a Charter or other similar document.	
62.	Oversight Body	On p. 25, the State identifies the Governor's Commission on Community-Based Alternatives for Individuals with Disabilities as the primary stakeholder group to inform the decision-making regarding assessments. The Commission meets infrequently. Moreover, there is no "end date" for confirming the Commission's role as the advisory body for the assessment process (pp. 31-32).	DECLASI (2/10) GACEC	We agree with this comment. DMMA will discuss with the Commission the importance of their role in implementing the Plan and the need to meet more frequently. 2/23 is intended to serve as the start and end date for this task and will modify the Plan to note this date.	X
63.	Oversight Body	On p. 32, the reference to the Commission creation of a "charter" is odd. A Commission does not create a "charter".	DECLASI (2/10) GACEC	Because the Plan is requesting the Commission to perform a role that is specific and time-limited and is somewhat different than what it is supposed to do under Executive Order 50, we felt that it was important to define that role via a Charter or other similar document.	



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64.	Oversight Body	The Division of Developmental Disabilities Services (DDDS) should ensure that the Governor’s Advisory Council to DDDS and its subgroups, which have been set up to implement the Transition Plan, continue to be as representative of all stakeholders within the DDDS system as the Focus Group process was. To do so, we recommend including additional family members of individuals with the most challenging support needs currently served in center-based settings. We believe that Delaware’s citizens should be proud of the separate aids, benefits, or services that have been developed to serve those individuals who truly need them, as determined through a person-centered planning process. That is why we want to make sure that the discussions in the planning groups don’t rule out any of these options strictly on the basis of the “Settings that Isolate” guidance posted on the CMS website, which has a completely different emphasis than the guidance on non-residential services that was issued by CMS on December 15, 2014.	DeIARF	It is DDDS’s intention to encourage the GAC to create subgroups that include family members who represent the varying support needs of people within the DDDS service system and other key stakeholders.	



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65.	Oversight Body	Legislative representation should be added to the GAC’s work groups, so that cost estimates for any changes that are proposed in the DDDS service system can be fully discussed, made realistic, and ultimately receive the support of the General Assembly. We are pleased that the Transition Plan makes reference to the rate system in Section 3 in the “matrix” and we think it would make sense to reflect the existing shortfall in the narrative under Phase 2 and 3, as well. We also want to make sure that transportation is viewed as a necessary support for community inclusion, and therefore, that it be included in the plan and the financial impact assessment. Above all, we want to be sure that changes proposed to bring the state into compliance do not increase the funding gap, because that could result in a number of unintended consequences, including diminished access to services and additional demand for out-of-home placements by families who have adults with disabilities living with them. Therefore, we would recommend the inclusion of representation by the General Assembly and the Office of Management and Budget in the plan’s narrative, in Phase 3, and in Section 3 of the matrix.	DeIARF	DMMA will take a very close look at the composition of the work groups and add members when necessary. We will take this request under consideration. Transportation will be evaluated in the context of whether it facilitates the ability of consumers to access resources in the community.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
66.	Oversight Body	SCPD recommends that it be added to the list on p. 8 and p. 31 regarding the “Oversight Body”.	SCPD	It is our intent to include as wide a representation of stakeholders as possible in the implementation of the Plan.	
67.	Oversight Body	One commenter asked whether the Governor’s Commission on CBAID takes precedence over the Governor’s Advisory Council.	Commenter	No, each group will work with its stakeholders who are subject matter experts.	
68.	Paid Relatives	The recommendation was made to make funding available to allow relatives to serve as paid providers.	Commenter	The purpose of the Community Rule is to ensure that HCBS that were provided as of March 17, 2013, the effective date of the Community Rule, are in compliance with the definition of “community”. The Plan does not address providing new services or changing services that are compliant with the Community Rule.	





Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
69.	Pathways and PROMISE Programs	A few commenters questioned the approach of not including the Pathways and PROMISE programs within the scope of the Plan (p. 3) since the programs were previously approved by CMS after issuance of the January, 2014 CMS regulations.	DECLASI (2/10) GACEC	CMS has made it clear in several venues that the Plan requirements prescribed in the Community Rule apply only to the existing HCBS programs operating as of the effective date of the Community Rule, March 17, 2014. All new programs are required to meet the requirements effective upon approval. For example, section 441.710(a)(3)(i) of the Community Rule notes: “States submitting state plan amendments for new section 1915(i) of the Act benefits must provide assurances of compliance with the requirements of this section for home and community-based settings as of the effective date of the state plan amendment.” Furthermore, in negotiations with CMS regarding approval of both the Pathways and PROMISE programs, CMS notified DMMA that the programs would not be approved unless all requirements of the Community Rule, including requirements for HCB settings, were first met. The quality assurance sections of the Pathways application approved by CMS include measures to monitor the on-going compliance of program services and settings with the Community Rule.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
70.	Person-Centered Planning	The CMS regulations stress the importance of the "person-centered planning process". The Plan contains some brief references to a "person-centered plan" (pp. 3, 12) but the Plan could benefit from the incorporation of more specifics on revamping the current DDDS ELP plans and DSHP care plans to conform to the federal standards. At a minimum, the matrix on pp. 18-19 could specifically highlight the "person-centered planning process" as one of the core State policies meriting review.	DECLASI (2/10) GACEC Developmental Disabilities Council	The Essential Lifestyle Plan (ELP) is considered a best practice for person-centered planning for persons receiving HCBS. The ELP has been in continuous use by DDDS since 1998. The Community Rule makes it clear that their expectation is that states must already be compliant with the requirement for person-centered planning as of March 17, 2014, the effective date of the Community Rule. Since DDDS is already compliant with this requirement, there is no need to address it in the Plan. DDDS continues to refine the ELP process, as the needs of our population change. In addition, DMMA's existing contract with the MCOs require the MCOs to use a person-centered planning process in developing a member's DSHP Plus LTSS case management plan, clinical care coordination plan, or MFP transition plan.	
71.	Person-Centered Planning	DDDS should allow families to decide on services based on their loved one's individual needs and through money that follows the person.	Multiple Commenters	The intent of the required person-centered planning process is to develop a plan that is unique to each individual using the services that meet the characteristics of HCBS.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
72.	Person-Centered Planning	Easter Seals fully endorses each individual's right to choose what his or her services look like.	Easter Seals	Nothing about the Plan will change the basic right under Medicaid for individuals to choose among a set of waiver-covered services delivered by a set of qualified providers. The 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. Services and settings that do not comply with the Community Rule have an opportunity to engage in remediation to come into compliance with the Community Rule before March 17, 2019.	
73.	Plan Implementation	One commenter recommended that the Plan announce the State's intent to create a blueprint for how the services and supports system will look five years from now and specify the timeframe within which it will be completed. People with disabilities, their families, and our provider networks can be much more effective partners in this endeavor when the road ahead is more well-defined.	University of Delaware	The Department agrees with the comment and will engage stakeholders as the Plan evolves.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
74.	Plan Implementation	As Delaware moves forward in its efforts to comply with the CMS Rule, SCPD encourages the State to strictly follow the Olmstead guidance on integrated versus segregated settings and the CMS guidance on settings that have the effect of isolating individuals receiving HCBS from the broader community.	SCPD	In providing HCBS, we are held to the requirements of both the Olmstead decision and the Community Rule.	
75.	Quality of Services	We are very hopeful that as states, including the State of Delaware, begin to implement their transition plan, quality of services for all will improve. The new requirements put forth by CMS include a detailed person-centered planning process, rights and protections for those living in provider-owned settings, and a choice of receiving services in a non-disability setting. These are new requirements that we believe are critically important to creating real community options and we believe that states can work to make these options happen in a timely way.	NACDD	We acknowledge this comment.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
76.	Service Definitions	On p. 3, the State recites that it is listing "the service definition from the approved waiver". This is not entirely accurate. For example, the "definitions" of "prevocational services", "day habilitation" and "residential habilitation" are partial excerpts from the attached (pp. 40-45) service definitions in the DDDS waiver. "Transportation" references included in the DDDS waiver service definitions have been uniformly omitted from definitions in the Plan. This suggests that transportation will not be addressed in the Plan. Waiver-funded transportation should be included in the Plan. For example, use of integrated transportation (taxi; bus; mileage reimbursement) may be preferable to use of paratransit or an identified van with only riders with disabilities.	DECLASI (2/10) GACEC	The language provided in the Plan are excerpts from the approved service definitions intended to convey the intent of the definition. Transportation is not a stand-alone service under the DDDS waiver; it is a component part of residential habilitation, day habilitation and prevocational services, as allowed by CMS. Transportation will be evaluated in the context of whether it facilitates the ability of consumers to access resources in the community.	
77.	Stakeholder Engagement	We ask that the Division of Medicaid and Medical Assistance ensure that parents are involved in the assessment and planning process referred to in the Transition Plan.	Multiple commenters	It is our intent to include as wide a representation of stakeholders as possible in the implementation of the Plan.	



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
78.	Stakeholder Engagement	There needs to be further opportunities for significant public comment. The February 6th Transition Plan describes the process the State will use to evaluate its current system and bring it into compliance with the HCBS rules, but it resembles a plan to plan. As the State completes its assessment process and begins to develop remediation plans for settings not currently in compliance, the public should have an opportunity to give input before the revised plan is submitted to CMS for approval.	Commenter Developmental Disabilities Council	At any point significant changes are made to the Plan, the Plan will be posted for public comment. The Plan will be updated accordingly.	
79.	Stakeholder Engagement	On p. 10, the Employment First Commission should be added as a source of information and analysis. Per 19 Del.C. §747, the Commission reviews and analyzes data on employment of persons with disabilities. Apart from the NCI data, the Commission may have supplemental information to assist with assessment of access to integrated, competitive employment.	DECLASI (2/10) GACEC	As the Employment First Commission develops outcome data, it will be incorporated into the process used to evaluate employment services.	
80.	Stakeholder Engagement	The Plan is inconsistent in sometimes referring to a single GAC work group (p. 12; p. 14) and sometimes referring to multiple GAC work groups (p. 10 at top; p. 20 at bottom).	DECLASI (2/10) GACEC	We agree with this comment. The first paragraph on page 10 of the Plan states that DDDS will work with the GAC and any work groups convened by the Council. We will clarify in the Plan that the GAC is intended to operate as a steering committee.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
81.	Stakeholder Engagement	The Plan should include standards for the composition of the Council subcommittees/work groups to promote objectivity and absence of conflicts. The Plan suggests (p. 42) that DDDS envisions including a single provider representative on the assessment subcommittee. However, there is nothing in the Plan which would preclude establishment of a subcommittee comprised of a high percentage of providers who may have a vested interest in adopting an anemic assessment instrument. The membership of the subcommittees would ostensibly not be limited to the small (seven member) Council membership. Perhaps the Council could vote to establish a protocol in which the Council chair and DDDS director would jointly appoint the members of the subcommittees. Alternatively, the Plan could include some explicit membership standards to ensure the objectivity of the subcommittees. It would also be prudent to include one or more DDDS employees on the subcommittees.	DECLASI (2/10) GACEC	We agree with this comment. The GAC will determine the composition of the working groups. It is our expectation that the groups be representative of the major stakeholder groups. We will add language to this effect. DDDS employees will attend all GAC and GAC working group meetings both to act as staff to the group and also to provide expertise.	X
82.	Stakeholder Engagement	The Transition Plan submitted by the State of Delaware should be written to accurately reflect the public input that is received in the public hearings and in written comments being submitted to DMMA.	DeIARF	It is our intent to accurately reflect all comments received on the Plan.	



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83.	Stakeholder Engagement	The National Association of Councils on Developmental Disabilities (NACDD) is pleased that the State of Delaware will be holding several hearings this week to hear testimony on the Delaware Statewide Transition Plan related to the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based settings rule. The hearings provide an important opportunity for individuals with disabilities, their families and all those who provide care an opportunity to speak out about the rule and its impact.		The Department values stakeholder input.	
84.	Stakeholder Engagement	It is critically important that representatives of all types of service recipients be involved, including individuals with the most challenging support needs. Easter Seals recommends that at least five to seven individuals/family members and no less than five service providers should be included in the Steering Committee and subsequent work groups. These should be consumers and providers who represent a range of services in order that varied support needs are considered.	Easter Seals	It is DDDS's intention to encourage the GAC to create subgroups that include self-advocates, family members, and other stakeholders who represent the varying support needs of people within the DDDS service system and other key stakeholders.	





Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
85.	Stakeholder Engagement	<p>SCPD is unclear why the only stakeholder for the following action items on p. 32 is the Delaware Healthcare Facilities Association:</p> <ul style="list-style-type: none"> <li>Identify HUD Homes and any financial or other terms that impact compliance; and</li> <li>Conduct review of Delaware landlord/tenant code vis-à-vis the Rule.</li> </ul> <p>At a minimum, the SCPD/Governor’s Commission Housing Committee should be included as a stakeholder.</p>	SCPD	It is our intent to include as wide a representation of stakeholders as possible in the implementation of the Plan.	
86.	Stakeholder Engagement	One commenter encouraged the State to involve legislators and OMB in implementing the Plan.	Commenter	It is our intent to include as wide a representation of stakeholders as possible in the implementation of the Plan.	
87.	Stakeholder Engagement	One commenter expressed concern that the Plan is a “top-down” plan rolling out from a federal bureaucracy.	Multiple Commenters	This is not our intent. It is our intent to include as wide a representation of stakeholders as possible in the implementation of the Plan.	
88.	Support of the Plan	Many commenters wrote to express their support of the draft Plan.	Multiple Commenters SCPD	We acknowledge this comment.	
89.	Support of the Plan	The draft Plan is a good start on the process of transitioning and has positive steps toward that end.	Developmental Disabilities Council	Department appreciates the comment.	
90.	Technical Correction	On p. 13, second paragraph, fourth sentence, substitute "indicate" for "indicates".	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
91.	Technical Correction	On p. 13, final bullet, modify the reference to read "(i) informed consent of the individual or legal representative. See 42 C.F.R. §441.301(1).	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X
92.	Technical Correction	On p. 33, the Plan includes a proposed end date of "9/31/15". There are only 30 days in September.	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X
93.	Technical Correction	There are multiple references to the "Governor's Commission on Community Based Alternatives for Individuals with Disabilities." The actual reference should be the "Governor's Commission on Building Access to Community Based Services."	SCPD	We acknowledge the comment but we cannot change the name in that this is the name of the body in Executive Order 50.	
94.	Timeline	The time line is extended beyond what is reasonable, as written remediation strategies will not be implemented until February and May of 2017, leaving insufficient time for the actual implementation, including the relocation of any individuals from settings that prove unable to come into compliance. Commenters urged the State to move more quickly and give the HCBS service system more time to reach compliance by 2019. The Delaware system should not wait until 2017 to begin the actual transition and transformation.	Commenter Developmental Disabilities Council SCPD	We agree with this comment and will make the necessary modifications to the Plan.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
95.	Timeline	<p>There are some inconsistencies in the time periods in the matrix. The following are examples.</p> <p>A. On p. 18, development of the self-assessment instrument has a proposed end date of 4/24/15. On p. 20, development of the self-assessment instrument has an end date of 5/31/15. On p. 21, development of the self-assessment instrument has an end date of 5/31/15.</p> <p>B. On p. 18, last entry, providers have a 7/31/15 end date to complete their self-assessment. In contrast, p. 21 indicates that only three providers will complete the assessment as a pilot to identify "bugs" in the survey instrument by 7/15/15 and a revised survey instrument will be developed by 8/15/15.</p> <p>C. On p. 19, there is a 2/28/16 end date to complete a "look-behind" review of a 20% sample of the provider self-assessments. In contrast, on p. 21, final entry, there is an 8/31/16 end date to review a 20% sample of provider self-assessments.</p>	DECLASI (2/10) GACEC	<p>A. The provider self-assessment tools described on pages 18 and 20 &amp; 21 are different tools. The tool described on page 18 with a due date of 4/24/15 is the tool for providers to assess their policies and procedures, etc. The tools for which the due date is 5/31/15 are for the providers to use to assess their actual settings.</p> <p>B. The survey tool on p. 18 with the due date of 7/31/15 is related to the provider policies and procedures. The survey tool referred to on page 21 is to assess the individual settings. They are two different survey tools.</p> <p>C. The tool referred to on p. 19 with the due date of 2/28/15 is related to the provider policies and procedures. The tool referred to on page 21 with the 8/31/15 due date is related to the HCB settings.</p>	
96.	Timeline	On p. 35, the Plan contemplates a 5-month period (10/11/15 to 2/29/16) for providers to conduct a self-assessment and participants to complete participant surveys. This period is unnecessarily long.	DECLASI (2/10) GACEC	We agree with this comment and will make the necessary modifications to the Plan.	X



Comment Number	Theme	Comment	Commenter	Response	Change to Plan – noted by X
97.	Timeline	The timelines in the plan should be adjusted so that each phase has sufficient time to be fully evaluated and implemented, to ensure that changes made are based on a thorough understanding of the system that is currently in place and a sound fiscal analysis of the changes that are proposed. Therefore, we suggest that the plan reduce the amount of time during which the assessments are completed during Phase 2 and correspondingly, that the plan increase the amount of time needed for full consideration of the budget impact in both Phase 3 and 4, i.e., for the determination of compliance and implementation of changes. It might also be helpful to align Phase 4 with the State's fiscal year, i.e., to begin it on July 1, 2016 instead of November 2016.	DeIARF	We agree with this comment and will make the necessary modifications to the Plan.	X
98.	Timeline	We highly recommend that this Plan include an "end date" for completion of State policy changes.	Developmental Disabilities Council	We agree with this comment and will modify the Plan to indicate that revised language for any policies, regulations, etc. that are found not to be compliant will be developed by 1/31/17.	X
99.	Timeline	NACDD believes it is very important for all to understand that states have up to five years to come into compliance with the rules.	NACDD	We acknowledge the comment.	