

ATTACHMENT 5: CMS Comments and DHSS Response

CMS submitted comments on the Delaware Statewide Transition Plan (STP), via email, on November 30, 2015. The following are DHSS responses to CMS' comments.

Systemic Assessment

- CMS appreciates Delaware's thorough systemic review of state policies, administrative codes, and other documents. CMS requests that the state clarify whether Delaware assessed the codes for each setting type.

Delaware response: Yes, Delaware assessed the codes for each setting type. See new Attachment 6 for a new crosswalk of applicable state policies, administrative codes, and other documents organized by setting type.

- Please amend the STP and note whether each code is compliant, silent or conflicts with federal requirements.

Delaware response: The STP has been updated to note if a state policy, administrative code or other document is compliant, silent or conflicts with federal requirements. See new Attachment 6.

- Please amend the STP and add an assessment of Diamond State Health Plan (DSHP) settings against the federal standards related to provider-owned or controlled residential settings.

Delaware response: See new Attachment 6.

- Please provide the sub-codes so that the state's determination may be verified. Currently, the code section that is provided in the "Assurance" column is for entire codes and does not clearly indicate where a reader may find evidence in support of each federal requirement.

Delaware response: See new Attachment 6. Where applicable, sub-codes have been noted.

Site-Specific Assessment

- Please describe in the STP how the state will ensure that all providers respond to surveys, and list any actions the state will take for providers who do not respond.

Delaware response: Completion of the survey is mandatory for any provider interested in continuing to provide HCBS. See new DDDS and DSHP February 2016 Update sections on pages [34 and 67](#).

- Please clarify which activities are included in the desk review of the provider assessment results. The state should also clarify whether the desk review is an activity to validate provider self-assessment results (and if so, how that will be done) or if it is a general review of the surveys.

Delaware response: See new DDDS and DSHP February 2016 Update sections beginning on pages [34-35 and 70-71](#).

- Delaware indicates that it will conduct a “look-behind” review of twenty percent of providers. Please describe the activities included in this review as well as the methodology to select the 20% sample of providers for this review.

Delaware response: DMMA chose to conduct a look-behind/onsite review for all providers completing a self-assessment. See new DDDS February 2016 Update section beginning on pages [36-37](#).

- Please describe how Delaware intends to follow-up with providers who indicate that their settings are not compliant. Will the state conduct a site-visit or use another method to follow-with these settings?

Delaware response: See new DDDS and DSHP February 2016 Update sections beginning on pages [35-36 and 71](#).

- Delaware includes the following action item in its STP: “Providers use the survey tool to assess their policies, procedures, etc. against the Rule. Providers develop/submit Corrective Action Plan (CAP) to correct non-compliance policies, etc. The Division of Developmental Disabilities Services (DDDS) must approve the CAP within 30 days of submission to DDDS.” Please verify that these activities are complete. If this milestone has not yet been completed, please break it apart into individual steps with associated timeframes and identify which activities have been completed and which the state must complete in the future.

Delaware response: This milestone, development and submission of CAPs, has not yet been completed. See updates to the Transition Plan Elements chart beginning on pages [20 and 49](#).

- After completing the site-specific assessments, please provide an estimate of the number of settings that comply with the federal regulation, can comply with modifications, cannot comply, or are presumed to be institutional in nature for which the state may or may not submit requests to CMS for heightened scrutiny.

Delaware response: This information will be provided once the onsite reviews are completed, in the next iteration of the STP.

Monitoring

- In its STP, Delaware notes that it intends to monitor compliance of settings. Please amend the STP to provide a step-by-step approach (supported with precise timeframes) for both provider remediation and compliance activities (based on a provider’s approved CAP), and ongoing compliance after the March 2019 deadline. In the approach, please describe how often monitoring will occur, whether it will be integrated into existing licensing processes, and what specific tools and processes the state will use to ensure compliance of settings.

Delaware response: See new DDDS and DSHP February 2016 Update sections beginning on pages [41-41 and 74-75](#). We also refer you to updated timelines in the Transition Plan Elements chart beginning on pages [20 and 49](#).

Remedial Actions

- CMS appreciates the state's additional information about provider trainings. Please clarify whether the trainings are state-wide or if they are customized to different providers and settings.

Delaware response: The DDDS provider training was available statewide. The DSHP provider training, to provide background and answer questions regarding the provider survey, was available web-based, for all providers across the state.

- Regarding Delaware's plan to make changes to state policies and procedures from 8/1/15-1/13/17, CMS requests that the state confirm if this extended date is due to legislative process. If not, please provide a rationale for this extended date.

Delaware response: Yes, the extended date was a result of the legislative session. For changes to internal policies that do not require legislative approval, assignments have been made for revisions to those policies and that work is already underway.

- Please describe the key elements of the provider Corrective Action Plans (CAPs), the state's approach and timeframe to monitor providers' compliance with these plans, and how the state will ensure that providers adhere to these plans. The STP indicates that CAPs will be fully implemented by March 17, 2019. This date does not allow any time to verify whether providers have fully come into compliance with the requirements or if additional changes are needed. The state should revise the STP to include additional time for each step of the remediation process. These timeframes should provide sufficient time for settings to comply with the federal settings requirements, for the state to verify that settings comply, and for the settings to make additional changes prior to the March 2019 deadline.

Delaware response: CAPs will be fully implemented by July 2018. It is the expectation of DMMA and DDDS, however, that most CAPs will be fully implemented well before this date.

Relocation of Beneficiaries

- Delaware includes the relocation of beneficiaries as part of its remedial strategy. Please indicate how individuals will receive reasonable notice and the critical services/supports necessary for the transition.

Delaware response: See new DDDS and DSHP February 2016 Update sections beginning on pages [40-41](#) and [73-74](#).

- Please revise the STP to provide estimates of the number of beneficiaries who will require relocation, assurances that potentially affected beneficiaries will have all the information and support they need to make informed choices about alternate settings, and the assurance that all the services and supports necessary will be in place at the time of relocation. The state should ensure that the STP includes those currently being transitioned from the Stockley facility, a site the state has identified as non-compliant.

Delaware response: The total number of beneficiaries who will need to relocate will not be known until the comprehensive assessment process has been completed. At that time the STP will be updated to reflect this information. However, DDDS has previously

described its actions to relocate individuals who were living in waiver residences that were located on the grounds of its only public ICF-IID facility to residences in neighborhoods that are closer to the friends and family of the residents. This effort began in late 2013 because of a philosophical shift within DDDS. As of this publication, only two individuals remain in waiver residences on the grounds of a public institution. See new DDDS February 2016 Update section beginning on pages 39-40 for information regarding transition of members from the grounds of the Stockley Center ICF-IID facility. Because it intends to close this residence, the state does not intend to request a heightened scrutiny review for this residence, which is expected to be closed before the end of calendar 2016.

Heightened Scrutiny

- The state must clearly lay out its process for identifying settings that are presumed to be non-HCB. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are HCB in nature and do not have the qualities of an institution. If the state determines it will not submit information, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.
 - These settings include the following:
 - Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
 - Settings in a building on the grounds of, or immediately adjacent to, a public institution;
 - Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Delaware response: See new DSHP February 2016 Update section beginning on page 73.

- In its STP, Delaware indicates that the state will identify settings “presumed not to be HCBS compliant because they are on grounds of, or adjacent to, a public institution i.e., Stockley Center, they are in a publicly or privately-owned facility providing inpatient treatment or they have the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS.” However, the STP does not discuss Delaware’s intent to submit evidence of these settings to CMS for the heightened scrutiny process. CMS requests that Delaware indicate in its STP whether the state will provide evidence to CMS and the state’s timeframe for doing so. CMS strongly encourages Delaware to select a date that allows settings adequate time to comply with the federal HCB setting requirements following feedback from CMS. The state should also identify 1) each specific setting presumed non-HCBS, 2) the step-by-step process for identifying these settings, and 3) a specific timeline with exact dates for each step of the process.

Delaware response: The state does not intend to request a heightened scrutiny review for the one waiver residence that remains on the grounds of its only public ICF-IID facility. It is the state’s intention to close this residence by the end of 2016 after the

residents can be relocated to a home that is in the process of being built to meet their needs.

- Additionally, please describe in its STP the methodology used to determine Stockley's non-compliance and confirm the setting type of the Stockley Center.

Delaware response: Stockley Center is an ICF-IID facility and is not covered under the HCBS Settings Rule. See new DDDS February 2016 Update section beginning on page 40 for information regarding transition of members from the waiver residence that is located on the grounds of Stockley Center, the state's only public ICF-IID.