

Historical Appendix 1h (formerly Appendix O-2) -- Summary of Public Comment on Revised Plan

After revising this plan pursuant to CMS feedback, the State began a new public comment period that ran from December 4, 2015, through January 3, 2016. The State later announced that it would accept comments through January 18, and it invited its HCBS providers to communicate that information to clients. As a result of these efforts, the State received 72 public comments on its revised plan. The State found these comments to be informative and insightful, and they led to significant and important changes to this plan. The State's responses to the comments appear below. As with the original public input detailed in Appendix O-1, these comments can be distilled largely into 14 themes. Therefore, just as with the original comments, this document lists those themes and the State's general response. For this round of public comments, below the listing of general themes, the State also summarizes the comments and provides a specific response to each comment. Where there is conflict between any of the public comment responses in this appendix and the prior responses contained in Appendix O-1, these newer responses reflect the State's position. The State extends its genuine thanks to all public commenters who contributed to this project.

Public Comment Themes and General Responses

- 1. Assurance of available service options to enable participant choice and integration in the greater community**
Over the next four years, all new and renewed waivers will be reviewed to ensure service options are available in integrated settings that support access to the greater community and Person Centered Planning (PCP) is assured; PCP will need to comport with federal setting expectations. Language in the Transition Plan has been added or modified to reflect these strategies.
- 2. Comments or questions in support of the HCBS Settings Rules**
No action to be taken.
- 3. Raised many concerns relating to confidentiality at a SODC, enrollment in managed care.**
These represent questions or comments that do not appear to relate to HCBS settings rules and are not being addressed in the Transition Plan.
- 4. Current Service Options need to be reviewed and/or expanded under existing HCBS waivers and align with CMS regulations**
Over the next four years, all new and renewed waivers will be reviewed to ensure service options are available and the definitions of these services comport with the rules. Language in the Transition Plan has been added or modified to reflect these strategies.
- 5. General comment or concern about the quality of a program and/or choice options**
Over the next four years, all new and renewed waivers will be reviewed to ensure service options are available and Person Centered Planning (PCP) is assured; PCP will need to comport with federal setting expectations. Language in the Transition Plan has been added or modified to reflect these strategies.
- 6. General comment or question regarding HCBS settings rules and need to be addressed through continuing education**
Continued education is needed at all levels of Transition Plan implementation and will be a key component as we include stakeholders in review of state statutes, policies and procedures and at site visits. Language in the Transition Plan has been added or modified to reflect these strategies.
- 7. Process needs to be more defined regarding review of state statutes, policies and procedures to ensure compliance**

State will utilize existing stakeholder groups to help review state statutes, policies and procedures to ensure compliance. Language in the Transition Plan has been added or modified to reflect these strategies.

8. Process needs to be strengthened in relationship to self-administered provider surveys and inclusion of participants

The self-administered surveys were a first step in the initial provider assessment process, and the survey approach was recommended by federal CMS. The State appreciates commenters' point that the surveys alone are insufficient, and it has or will implement several measures to strengthen them. The State has leveraged licensure and certification data to work towards full provider responsiveness to the surveys. The State will validate the survey results by conducting on-site follow-up visits at a statistically valid sample of sites whose survey results indicate full or near-full compliance. Those on-site visits will incorporate client/resident interactions, interviews and focus groups. The on-site visits will also include reviews of individual plans of care. In addition, the State will conduct a desk audit of on-site visit results to provide another check on the accuracy, and the State will include stakeholder and public feedback on the classification of the settings (to the extent practicable without violating client privacy rights).

9. Process needs to be strengthened in State oversight of HCBS Providers to ensure compliance

Over the next four years, all new and renewed waivers will be reviewed with a sensitivity to assure waiver assurances and performance measures comport with the HCBS rules. In the future, after the full implementation of the new HCBS rules, on-going monitoring will occur through routine licensure/certification visits. Language in the Transition Plan has been added or modified to reflect these strategies.

10. Provider reimbursement rates may be barriers to compliance with portions of the CMS regulations

The State recognizes the relationship between reimbursement and provider willingness and ability to provide additional service options as envisioned by the regulations and will make every effort to remain sensitive to this concern while implementing the transition plan. For example, the State will attempt to combine its onsite validation visits and ongoing monitoring visits with other on-site visits (for example, licensure or certification visits) providers must already accommodate. However, ultimately, compliance with the new federal rules is not optional for the State or for its providers.

11. Rules may not recognize the value of a particular setting in terms of impact and support to specific populations

The State agrees that many successful settings may currently exhibit features that make them appear at first look to be non-integrated under the federal rules. The State further acknowledges that successful settings may have certain characteristics that subject them to the federal rule's presumption that they are institutional. The State recognizes the important place these settings hold in the social service system. The State anticipates that many of the settings that appear to be out of compliance will be able to come into compliance with manageable changes, and the State is committed to helping to guide those changes. The State hopes that the lengthy transition period will ease the adjustment for providers. For settings with location characteristics that by federal rule trigger a presumption of institutional character, the State will work with settings to present evidence to the federal government that they are well-integrated facilities. Language in the transition plan has been added or modified to reflect these points.

12. Specific concern that implementation of Transition Plan could add additional burden to provider and responsible parties

State will utilize existing stakeholder groups to help review state statutes, policies and procedures to ensure compliance. HCBS Rules are in effect and state is responsible for their implementation. Language in the Transition Plan has been added or modified to reflect these strategies.

13. Timeframes identified in Statewide Transition Plan may not be realistic

State plans to work with legal and policy representatives that represent all nine (9) of the HCBS Waivers to ensure process moves forward at a timely pace. Timeframes indicated in Transition Plan will continuously be reviewed and updated, but the State is required to achieve full compliance by the effective date of the rule. The State will make every effort to inform settings as soon as possible if and how they must be modified to achieve compliance.

14. General Comment Regarding Statewide Transition Plan Process

Illinois is required to meet the expectations of federal CMS in regards to the implementation of HCBS settings. Language in the Transition Plan has been added or modified to reflect these strategies.

Summary of Comments and Specific Responses to Each Comment

Comments 1 - 49 (emails from advocates)

Summary of Comment

These 49 identical comments expressed two major points: (1) "I would like to urge that the State's enforcement of the proposed heightened scrutiny process be robust" and "please make clear that institutional settings that provide community transition services are still institutional"; and (2) "I would ask that the State of Illinois take the effort to ensure input from actual people with disabilities affected by this rule."

Specific Response

In addition to its response to themes 5 and 8, the State adds the following specific response. The State appreciates this comment and agrees that input from people with disabilities--the people all the services and settings involved here are ultimately designed to help--is important. To this end, the State has held stakeholder meetings that have included the disability advocacy community, and has adopted ideas raised in those meetings. For example, in response to a suggestion at a December 2015 forum, the State plans to solicit public feedback on its categorization of some settings, to the extent it can do so in a manner consistent with clients' privacy interests. In addition, the State's on-site survey validation visits and ongoing monitoring efforts will include interactions and input from individual clients and consultation of individuals' care plans.

Regarding the enforcement of heightened scrutiny, the State notes that heightened scrutiny is a federally-driven process. However, the State agrees that it must correctly identify settings with location-type characteristics that trigger heightened scrutiny, and it will make every effort to do so. The State agrees that institutional settings, including those that provide transition services, should be correctly identified. The State has updated the transition plan to reflect these points.

Comments 50-52 (emails from clients)

Summary of Comments

In separate and unique emails, these commenters all express satisfaction with their current settings but would like more robust services and housing options. The commenters also believe that the state should close all institutions.

Specific Response

In addition to its response to theme 1, the State adds the following specific response. Independent of this transition plan, the State continues to work to improve the depth of service options to clients. The State will make every effort to ensure that its implementation of the new federal regulations augments, rather than restricts, clients' home- and community-based options, as that is the fundamental goal of the rule change.

Regarding institutions, the State is engaged in many interconnected efforts to rebalance its long term care delivery system to provide more home- and community-based supports and services, but it also respects that some of its clients may choose to live in institutions. Illinois will always maintain some institutional capacity.

Comment 53 (email from parent of client)

Summary of Comment

This comment is from a parent of a child receiving disability services. The mother wrote, "At 29 years of age she needs and deserves the same opportunities her peers have to engage in her greater community, choosing activities outside of the home that are meaningful & purpose-filled."

Specific Response

In addition to its response to theme 5, the State adds the following specific response. The State thanks the commenter for the statement in support of client choice and independence. This is an important theme in this process, and an important goal of the federal rule. This comment provides a real illustration of the theme.

Comment 54 (email from advocate)

Summary of Comment

This comment is from an advocate for people with disabilities. The advocate states, "I realize the process is still being designed, but once completed, strongly recommend dissemination and discussion as quickly as possible." The commenter suggests forums, designated communications channels. The commenter also suggests that the state provide feedback on information generated from the planning process.

Specific response

In addition to its response to theme 14, the State adds the following specific response. The State agrees that public education and feedback is imperative to the process. The State is committed to providing information and being visible and available. The State has modified the plan in response to this and other comments to indicate that it plans to hold further stakeholder input meetings as the plan is implemented. In addition, partly in response to this comment, the State will maintain its dedicated HCBS Transition Plan email inbox to allow the direct input channel this commenter describes.

Comment 55 (email from provider)

Summary of Comment

The commenter explains that people with disabilities should "have access to all of the activities and services that other people have," and that they be given independence and meaningful choice in their living circumstances. The commenter asks that the State adopt the federal definition of "community-based settings."

Specific Response

In addition to its response to theme 5, the State adds the following specific response. The State thanks the commenter for the statement in support of client choice and independence. This is an important theme in this process. As for the federal definition, the State intends to follow the federal definition, as is required to comply with federal rules for home- and community-based Medicaid settings.

Comment 56 (email from advocate)

Summary of Comment

The commenter raises several points. The commenter emphasizes the role that people with disabilities should play in guiding the plan, offers several suggestions for strengthening the State's approach to person-centered-planning and for related training, offers suggestions about participant relocation, argues for Illinois Initial Statewide Transition Plan – February 2020

rigorous oversight of the heightened scrutiny process, offers suggestions for ongoing compliance strategies, and suggests that more channels be opened for stakeholder input. The commenter also asks that the state unequivocally declare that specialized mental health rehabilitation facilities (SMHRFs) “definitionally and conclusively are ineligible for federal HCBS funding.”

Specific Response

In addition to its responses to themes 5, 8, 9, and 14, the State adds the following specific response. The State appreciates the thoughtful and constructive comment, which contains many good points and suggestions. The State agrees that input from people with disabilities--the people all the services and settings involved here are ultimately designed to help--is important. To this end, the State has held stakeholder meetings that have included the disability advocacy community, and has adopted ideas raised in those meetings. For example, in response to a suggestion at a December 2015 forum, the State plans to solicit public feedback on its categorization of some settings, to the extent it can do so in a manner consistent with clients' privacy interests. In addition, the State's on-site survey validation visits and ongoing monitoring efforts will include interactions and input from individual clients and consultation of individuals' care plans.

The State also appreciates the suggestions regarding training and ongoing monitoring, and will work to incorporate them to the extent practicable. The plan has been updated to reflect these suggestions.

Regarding the enforcement of heightened scrutiny, the State notes that heightened scrutiny is a federally-driven process. However, the State agrees that it must correctly identify settings with location-type characteristics that trigger heightened scrutiny, and it will make every effort to do so. On this point, the State thanks the commenter for pointing out that the State had responded to a prior public comment, about a setting with location characteristics that should trigger heightened scrutiny but which some commenter's had suggested be "grandfathered out" of the settings requirements, by suggesting that the State might exempt that setting. The State hereby updates its response to that public comment to emphasize that the State has no authority to grandfather settings in or out of the federal rules. The State also thanks the commenter for noticing that this plan had stated that no setting would be declared noncompliant or subjected to the federal presumption of institutional character based on its policies and procedures. The commenter correctly pointed out that policies and procedures can lead to a site's having an isolating effect. The plan has been revised to address this point. However, the State must disagree in part with the commenter's position that no site attached to hospitals or institutions may qualify as an integrated setting. Under the plan and the federal rule, such sites may qualify if they can demonstrate their integrated character through the heightened scrutiny process.

Regarding relocation of waiver participants, the State agrees with the commenter that one relocation goal should be to place consumers closer to family and friends. The plan has been updated to reflect this goal.

Regarding the commenter's suggestion that more stakeholder input be allowed, the State agrees that stakeholder input, including input from this commenter, has been and will continue to be a valuable part of this process. The State intends to continue both the regular informal communications it has with this and other stakeholders and the more formal group sessions that allow all parties to share their viewpoints and ideas. The plan has been updated to include future stakeholder meetings.

Finally, the State agrees with the commenter that SMHRFs are not HCBS settings. SMHRFs are not included in the State's HCBS waiver programs.

Comment 57 (email from advocate)

Summary of Comment

The commenter offers several suggestions for ways in which transition planning efforts should coincide with or take advantage of current and past long term care rebalancing efforts. The commenter also asks

that the State not limit itself to simple compliance with the federal rule, but instead work toward the civil rights vision of *Olmstead* and the ADA.

Specific Response

In addition to its response to theme 14, the State offers the following specific response. The State appreciates the commenter's point that this transition effort should be placed in the broader rebalancing and *Olmstead* perspectives. In order to leverage the insights of its rebalancing and *Olmstead* efforts, the State has composed this plan through the collaboration of a multi-agency workgroup that includes several people who work on the state's *Olmstead* consent decree implementation efforts and on other rebalancing initiatives. The State shares the commenter's view that this plan is not an end unto itself, but another way in which the State can help provide meaningful choice to its Medicaid clients.

Comment 58 (email from advocate)

Summary of Comment

This comment raises several points directed at ensuring that the plan protects individual participants. It asks that the State continue to engage stakeholders in the planning process, in assessing setting compliance, and in statutory and rule changes. Like other commenters, it also emphasizes the role individual clients should play in site assessment and plan development. It suggests that the State's relocation procedures include a preference for the most integrated setting appropriate. The comment adds that the State should continue to develop its home- and community-based service capacity, including housing and employment. Finally, the comment offers that ongoing compliance monitoring should be more frequent than yearly.

Specific Response

In addition to its response to themes 1, 8, and 14, the State offers the following specific response. The State thanks this commenter for the input. On stakeholder input, the State agrees that continued and more input will improve the plan and its implementation. Accordingly, the plan has been updated to reflect the State's further efforts towards additional stakeholder input. The State further notes that any statutory or rule changes will require public, legislative approval.

The State also agrees that stakeholder input can aid in the assessment of existing sites, and as a result of this suggestion, it plans to provide public notice of, and invite public comment on, its site categorization to the extent practicable under privacy laws. On the issue of individual involvement in the assessment process, the State appreciates this viewpoint and has changed the plan to confirm that its on site visits include interaction and conversation with individual clients and residents.

The commenter's point about relocation procedures is well-taken. Where the plan once said only that relocating participants would "be offered informed choice of available options," the plan has been revised to say "the State will work within existing structures to afford participants an informed choice of available options. Consistent with client choice, the State will make every effort to relocate affected clients to the most integrated setting appropriate to their needs and close to family and friends."

Regarding the commenter's point that the State should continue to maintain and develop its home- and community-based service capacity, the State agrees. Although those efforts fall outside the literal scope of this plan, those efforts and this plan are mutually complimentary. The success of this plan will be aided by several initiatives the State is currently pursuing to develop HCBS capacity and rebalance its long-term care delivery system towards more integrated settings. The State transitions thousands of clients and develops community supports they need through the Money Follows the Person program and by implementing three *Olmstead* consent decrees. It also maintains a robust array of HCBS waiver programs and is participating in the federal Balancing Incentive Program to help effect systemic system change.

Finally, the commenter suggests that ongoing compliance monitoring must occur more frequently than annually, because "[i]nformation should be sought from participants on access to the community, choice of

accommodations, roommates and services far more often and separately from the annual review or audit process.” The State agrees with this sentiment and expects that providers and settings will conduct ongoing person-centered planning in order to accord full respect to participants’ preferences. The State’s ongoing process will monitor, not take the place of, that activity. To strengthen protections surrounding client choice, the State will also explore the suggestions offered in Comment 56 to strengthen its ongoing monitoring efforts; those suggestions include the creation of a consumer complaint mechanism and further outreach and education on HCBS ombudsman programs.

Comment 59 (email from provider)

Summary of Comment

This comment expresses concern that sites, in particular the commenter’s site, would be considered non-compliant solely due to location characteristics, despite demonstrated success. The comment also suggests expanded stakeholder involvement in the planning process.

Specific Response

In addition to its responses to themes 8, 11, and 14, the State offers the following specific response. The State thanks the commenter for this comment and adds that the State has a strong interest in the continued approval of its most successful settings. The State has no intention to impose setting restrictions more stringent than those created by the federal rule. However, the federal rule lists specific location-based characteristics that require a setting to be presumed to be institutional, and the State is mandated to follow that edict. The State notes that the presumption does not disqualify a setting. For settings subjected to the presumption, federal CMS allows the State to present evidence that a setting is, in fact, home- and community-based and not institutional. This process, and not the “presumed institutional” label, will determine whether a setting is approved under the federal rule. The State is committed to identifying “presumably institutional” sites that should be considered home- or community-based and working with them to pass federal heightened scrutiny.

Regarding stakeholder input, the State agrees that stakeholder input has been and will continue to be a valuable part of the planning and implementation process, and it has updated this plan as described above to reflect the point.

Comment 60 (email from advocate)

Summary of Comment

This message appears to be a message testing whether the State’s email inbox would accept or reject an email.

Specific Response

The State’s inbox appears to be in working order.

Comment 61 (email from parent of a residential client)

Summary of Comment

This comment expresses support for a particular setting.

Specific Response

In addition to its response to theme 14, the State offers the following specific response. The State appreciates this input, and it will use this information as part of its site assessment process for the setting described.

Comment 62 (email from advocate)

Summary of Comment

This comment suggests that the State must develop its home- and community-based services and supports; that stakeholders continue to be involved in the planning process; and that the plan include stakeholder, provider, and participant education. The commenter offers a specific, detailed proposal for two new services that the State could add to one of its HCBS Medicaid waivers.

Specific Response

In addition to its response to themes 1, 5, and 6, the State offers the following specific response. The State thanks the commenter for this input. In response to other comments, the State has outlined its commitment to continued stakeholder input and to home- and community-based supports and services. The State appreciates the detailed suggestion about waiver services. Although the suggestion is not directly related to this plan, a stronger HCBS support system will certainly help ensure this plan's success. The State will consult with the agency that operates the relevant waiver regarding the service proposal

Comment 63 (email from provider)

Summary of Comment

The commenter asks for a description of the State's process to ensure that clients maintain services during their transition, and emphasizes that relocation should be community-based and person-centered. The commenter also suggests more stakeholder workgroups.

Specific Response

In addition to its response to theme 6, the State offers the following specific response. The State thanks the commenter for this input. In response to this suggestion, the State has updated the plan to say that it will make every attempt to ensure the transition will be done to ensure the safety and well-being of the client. In response to this and similar comments from others, the State is also updating the plan to emphasize that any relocations will be to the most integrated setting appropriate, consistent with individual choice. The State agrees that stakeholder involvement and education is important, and it has updated the plan to reflect those issues as described in response to previously addressed comments.

Comment 64 (email)

Summary of Comment

This comment lists priorities that the commenter believes the State should pursue, including employment for developmentally disabled clients, expanded housing options, a new assessment tool, person-centered planning, and environmental modifications and behavioral supports.

Specific Response

In addition to its response to theme 1, the State offers the following specific response. The State appreciates this input. Although these suggestions do not fall directly within the purview of this plan, the availability of

community services will affect the success of the plan. The State is undertaking a revised assessment tool as part of its participation in the federal Balancing Incentive Program, and it is pursuing person-centered-planning as required under the federal rule that animates this plan. In the meantime, the State continues to develop its array of home- and community-based services and supports as part of its ongoing efforts to rebalance its long-term care system towards integrated community settings.

Comment 65 (email)

Summary of Comment

This comment appears to be a solicitation.

Specific Response

None required.

Comment 66 (email from advocate)

Summary of Comment

This comment is an abbreviated version of Comment 56.

Specific Response

The State appreciates this comment and responds to it above.

Comment 67 (email from advocate)

Summary of Comment

This comment raises several points. It notes that compliance with the federal rules may cause expense to providers, and asks that the State take measures to mitigate that problem. It also states that, due to the different needs of different populations, the continued involvement of the Department of Human Services-Division of Developmental Disabilities is essential. Finally, it asks that the State clarify how it will notify providers of their remediation requirements and of future site visits.

Specific Response

In addition to its responses to themes 10 and 12, the State offers the following specific response. The State thanks the commenter for this input. The State recognizes that these new requirements will place a burden on providers. To mitigate that burden, the State (1) intends not to impose more stringent requirements than those expressed in the federal rule; and (2) will make efforts, as this commenter suggests, to include assessment and ongoing monitoring activities in existing processes that providers must already navigate, instead of adding a new process. On the second point, as the commenter notes in the comment, the State is exploring having its onsite survey validation visits conducted by State bodies that are already scheduled to visit the facilities for other routine monitoring. The plan has been updated to reflect these points.

The State agrees with the commenter's position that the Division of Developmental Disabilities should participate in inter-agency planning on this project, and DDD has, in fact, played a central role in all inter-agency workgroups for this plan.

The State appreciates the commenter's point that the plan should clarify how providers will be informed of the need for remediation, and the plan has been updated to reflect this information.

Comment 68 (email from provider)

Summary of Comment

This comment asserts that a specific provider type should be deemed non-compliant, expresses doubt about the validity of the self-survey process, asks the State to accelerate its timelines for amending rules, notes the costs to providers for compliance with these rules, and questions the public comment process.

Specific Response

In addition to its responses to themes 10 and 12, the State offers the following specific response. In response to comments already addressed, the State outlined its commitment to accurate setting assessments. The State also outlined the measures it has taken and will take to validate its survey results and strengthen its assessment program. This commenter correctly notes that a survey administered in 2014 may not reflect a setting's true compliance in 2019. However, the State believes that any positive change will be revealed by the remediation process, and any negative change will be revealed by ongoing monitoring.

Regarding rules, the commenter makes the point that the State should accelerate its revision of rules and statutes, so that providers have time to adapt their practices before full compliance is required in 2019 (now 2022). The State is sensitive to this concern and wishes to allow providers as much time as possible to adapt to the new federal requirements. Although the State may have to adopt new administrative rules to implement the federal requirements, it notes that the federal requirements themselves are already well-publicized. In any event, although the State will not have new rules promulgated by March 2017 as originally indicated, its new timeline of July 2018 still gives providers, and the public, ample time to view the rules before they become effective. The State notes that this July 2018 target is for the full promulgation of the rules, not their initial publication. Under the State's rule-promulgation process, this means that the draft versions of the rules will be available publically much earlier than July 2018.

The commenter's concerns about costs to providers have been addressed in responses to other comments.

Finally, the commenter expresses skepticism that the public notice period provided with this plan revision was sufficient, because even though it spanned the required 30 days, those days included several holidays. The State notes that schedule allowed ample time for this commenter, and 68 others, to submit comments. It further notes that federal public comment requirements contain no provisions about avoiding holiday periods. Further, the official 30-day public comment period was not the only method the State offered for public input on this revised plan. The State also issued an informational notice to all of its HCBS providers inviting their comment on the plan and encouraging them to publicize the opportunity to their clients. Although the official public comment period ended on January 4, the State indicated in that informational notice that it would accept all comments through January 18.

Comment 69 (email)

Summary of Comment

This comment expresses support for comment 68.

Specific Response

None required.

Comment 70 (email from advocate)

Summary of Comment

This comment provides comments on several quoted sections of the transition plan. The commenter suggests that the State (1) alter its setting survey; (2) provide added detail regarding the tools to be used to measure compliance; (3) incorporate various suggestions into the tool for its site visit process; (4) use this plan as an opportunity to create a protocol to allow all clients, not just clients in non-HCBS settings, to relocate; (5) use other rebalancing mechanisms already in place to relocate clients where necessary; and (6) provide more explanation of the heightened scrutiny process.

Specific Response

In addition to the responses to themes 8 and 9, the State offers the following specific response. The State thanks the commenter for this thoughtful input. On the first point, in response to comments already addressed, the State outlined the measures it has taken and will take to validate its survey results and strengthen its assessment program. Regarding the second and third points, partly in response to this comment, the State has included a working version of its site visit tool as an appendix to this plan. That tool, which was developed in consultation with an inter-agency workgroup and is based on published guidance from CMS, incorporates many of the themes the commenter suggests that site visits should consider. On the fourth point, long-term care rebalancing remains a priority for the State, and it will continue to pursue programs that help clients to choose to transition out of institutional to HCBS settings. The State will also continue to use existing mechanisms, and the person-centered-planning process outlined in the federal rule, to help ensure that clients in HCBS settings wish to remain there, or are presented other options.

Regarding the commenter's fifth point, the State agrees with this suggestion and has incorporated it into the plan, which now says that the State will use existing mechanisms and programs to transition clients who must be relocated. Finally, in response to this and other comments, the State has revised the plan's description of the heightened scrutiny process.

Comment 71 (email from advocate)

Summary of Comment

This comment is similar to questions #56 and #66 above.

Specific Response

The State appreciates this comment and responds to it above.

Comment 72 (email from advocate)

Summary of Comment

This comment states a belief that the overall plan for compliance is vague regarding how the state will differentiate between community-based and institutional settings, and it asks that the State advocate for continued HCBS status of adult day services that are connected to a hospital.

Specific Response

In addition to its response to theme 11, the State offers the following specific response. The State thanks the commenter for this comment and adds that the State has a strong interest in the continued approval of its most successful settings. The State has no intention to impose setting restrictions more stringent than those created by the federal rule. However, the federal rule lists specific location-based characteristics that require that a setting be presumed institutional by federal CMS, and the State is mandated to follow that edict. The State notes that the institutional presumption does not disqualify a setting. For settings subjected to heightened scrutiny, federal CMS allows the State to present evidence that a setting is, in fact, home- and community-based and not institutional. This process, and not the “presumed institutional” label, will determine whether a heightened scrutiny setting is approved under the federal rule. The State is committed to working with sites that have been identified for the institutional presumption but which the State believes are truly home- or community-based.