

## Appendix 3a

### 2014-2016 Settings Self-Assessment Surveys, Methods for Categorization, Survey Result Validation Process, and Heightened Scrutiny

#### *Initial Setting Self-Assessment Surveys*

To assess its providers' current compliance with the new HCBS rules, the State began by creating two provider self-assessment surveys—one for residential and one for non-residential settings—in collaboration with the University of Illinois at Springfield Survey Research Office. To ensure the appropriateness and effectiveness of the survey questions, each State agency reviewed them, and staff from several community-based HCBS waiver residential settings tested them.

The surveys began by asking settings to describe their location characteristics, so that the settings identified whether they are connected to, adjacent to, or share grounds with an institutional setting; are an institutional setting themselves; or are part of a farmstead, gated community, or multiple-setting campus. The surveys then asked a series of questions designed to track the new federal HCBS setting requirements. The question topics included matters relating to setting characteristics, levels of client access to the setting, access to community and community activities, transportation, meals, personal autonomy, and choice of care. Generally, the questions fell into two broad categories: those relating to level of client autonomy, and those relating to frequency of independent behaviors.

Between September and November 2014, the State sent surveys to all of the 252 community-based social service agencies that the State's interagency group had identified as operating residential HCBS waiver settings, and to all of the 218 community-based agencies operating non-residential HCBS waiver settings. The State asked the social service agencies to distribute the surveys to the settings they operated. The State followed up with a reminder and a second set of surveys, and it also called nonresponsive settings to obtain answers via telephone. In addition to these efforts, to ensure that it had identified all HCBS providers subject to the new federal rule, the State consulted published provider lists, internal agency provider lists, licensing reports, provider billing submissions, and provider websites. As of February 2016, 1831 of the 1833 residential settings Illinois identified (99.89%) had completed surveys, and 425 of 433 non-residential settings (98.15%) had completed surveys. In all, the State obtained responses from 2256 of 2266 (99.56%) of settings it identified in the first stage of the on-site assessment process. Settings that did not return a survey were categorized as being out of compliance with the rule, and slated for an on-site assessment visit as outlined later in this document.

Copies of the letters of introduction, the residential and non-residential survey forms, the Executive Summaries, and the analysis of the responses to the surveys can be found at the HFS website, at <http://www.illinois.gov/hfs/MedicalClients/HCBS/Transition/Pages/default.aspx>. An analysis of the results of the residential and non-residential surveys received as of the first draft of this transition plan is provided on HFS' Statewide Transition Plan website.

#### *Categorization of Settings, and Scoring and Validation of Survey Results*

a. State Methods for Categorization

Using the setting self-assessments described above, and also relying on a preliminary review of licensing and other data, the State divided its settings into the following four categories, all aligned with CMS guidance:

1. Settings that fully align with the federal requirements;
2. Settings that do not comply with the federal requirements but may comply with modifications;
3. Settings that are unable to meet the federal requirements and require removal from the HCBS program and relocation of individuals; and
4. Settings that are presumably not home and community-based (i.e., are presumed to be institutional), but for which the State may provide justification/evidence to federal CMS through the heightened scrutiny process to prove that the settings do not have the characteristics of an institution and do have the qualities of home- and community-based settings.

Before conducting on-site assessments, in accordance with the federal rule, the State preliminarily classified into Category 4 any sites that identified themselves (or whose readily available licensing or other data revealed them):

- to be hospitals, nursing facilities, intermediate care facilities, or institutions;
- as being physically connected or adjacent to one of those facilities;
- as sharing grounds with one of those facilities; or
- as otherwise having an isolating effect.

To interpret this last prong of the federal rule, which requires the State to place into Category 4 any settings that have the effect of isolating individuals, the State consulted CMS guidance specifically citing gated communities, campus settings, and farmsteads as setting types that tend to have isolating effect. Thus, the State as a preliminary matter placed into Category 4 all gated community, campus, and farmstead settings. (Note: Since then, CMS issued guidance on March 22, 2019 that replaced citations of specific settings types with information about factors it intends to take into account "in determining whether a setting may have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS.")

As the State conducted its on-site assessments, it refined its list of Category 4 sites by (1) collaborating with operating agencies to remove duplicate or misidentified sites from the list; (2) using on-site assessor observations to remove sites that had improperly self-identified their location as one of the Category 4 types; (3) using operating agency familiarity with sites to remove sites falsely categorized as presumably institutional or add sites that should have been so categorized; and (4) adding sites that had not returned surveys and whose site visits revealed them to belong in Category 4. Following these refinements, the State now identifies 87 settings that must be presumed to be institutional.

In its February 29, 2016, version of this plan, the State placed 10 sites—all of the sites that failed to return a self-assessment survey—into Category 3. Through continued efforts and record examination, the State identified an additional 22 sites that had not been surveyed, for a total of 32. All of those sites received an on-site assessment and were subsequently removed from Category 3.

For the remaining sites, the State aggregated its survey results based on the two broad question categories contained in the survey: those relating to level of client autonomy, and those related to frequency of independent client behaviors. Level of autonomy questions invited responses on a five-point Likert scale, with two positive responses (strongly agree and somewhat agree), a neutral response, and two negative responses (somewhat disagree and strongly disagree). Frequency of independent behaviors questions were assessed on a four-point scale, with two positive and two negative responses. Settings with an aggregate score above two—that is, an aggregate score that indicates a non-negative response—in both areas were deemed compliant and placed in Category 1. Any sites whose responses included an aggregate negative response for either or both of the two broad survey areas were placed into Category 2 and deemed non-compliant but capable of complying with modifications. Category 1 and 2 sites that received a site visit were recategorized based on the results of their site visit; those with seven or fewer areas of noncompliance on the 54-item tool were classified into Category 1, while those with more were classified into Category 2. Through this process, the State identified 2132 sites within Categories 1 and 2.

*b. Description of Survey Result Validation Process*

As suggested in CMS feedback and in public comments, the State used methods beyond the survey results to assess its settings' compliance with the federal HCBS rules. In addition to information it will continue to gather from the ongoing monitoring and compliance activities described below, the State conducted a survey validation process that comprised four layers. This survey validation process involved the State's HCBS waiver operation agencies (HFS, DHS, DMH, and Aging), stakeholders, the public, advocacy groups, providers, and individual clients.

First, the State invited feedback on its preliminary categorization of its HCBS settings by publishing a list of the sites it had placed in Category 3 and Category 4, and asking for public comment both on the listed sites and on any sites that should have been included. The State published this notice on April 1, 2016. It did not receive any responses.

Second, the State conducted on-site visits to all settings that it initially placed into Category 3 or Category 4. These on-site visits were conducted by the agency with normal oversight of the setting to be visited. That is, for example, HFS conducted the on-site visits for the Supportive Living Program, and DHS conducted the on-site visits for Community Integrated Living Arrangements. The precise procedures for these on-site visits, such as whether the visits were pre-announced and the timing of feedback to settings, varied minimally among the agencies, so that the on-site visit process aligned as much as possible with existing and ongoing monitoring efforts. In the State's view, this alignment approach minimized the burden on clients, providers, and the State alike, and it facilitated future ongoing monitoring efforts. However, even with minor procedural differences, the core features of the on-site visits remained uniform: the visits included interaction with individual clients, record reviews, meetings with key setting staff, and reviews of individual plans, all by the agencies and personnel with the most experience with the setting in question. Most importantly, all on-site reviews were conducted based on an assessment tool the State devised based on published CMS guidance and adjusted based on stakeholder input. A copy of the tool appears in Appendix E.

Third, the State conducted on-site visits to a statistically valid sample of settings assessed in Categories 1 and 2. These visits were conducted in the same manner as the visits to the Category 3 and Category 4 visits. In all, the State conducted visits to 446 of its 2219 total sites. It visited all 101 sites that it initially placed in Category 3 or Category 4 as of the time of the site visits.<sup>1</sup> It also visited 281 sites that comprised a sample (using a 95% confidence interval) of Category 1 and Category 2 sites (as sites were initially categorized). The overall breakdown of the State’s site visits is depicted below, broken down by current site categorization.

**Breakdown of Site Visits by Categorization**

	DRS	Aging	SLP	DD	Total
Category 1	6	12	17	245	280
Category 2	0	0	3	76	79
Category 3	0	0	0	0	0
Category 4	4	6	31	46	87
Total	10	18	51	367	446

Fourth, the State conducted a desk review of a sample of all of the on-site visit results, and all of the Category 4 visit results. This desk review was performed by a panel of participants from each of the HCBS operating agencies. This multi-agency team examined the assessment results in light of their knowledge of each site and other State records for the site, and they adjusted the final assessments of any sites whose results created inconsistencies. In addition to using this desk review to improve its setting assessment results, the group used this process to help determine which of the Category 4 sites should be submitted to CMS for heightened scrutiny, and through this process the State discovered common issues that warranted systemic remediation.

c. Results of Process

The on-site visits began on April 25, 2016 and ended on September 30, 2016. The State used information gleaned from the initial self-assessment survey, on-site visits, and agency desk review, to reach the following updated breakdown of its HCBS sites’ current compliance with the HCBS Rule.

**Overall Site Categorization**

	DRS	Aging	SLP	DD	Total
Category 1	26	61	88	1588	1763
Category 2	5	16	22	326	369
Category 3	0	0	0	0	0
Category 4	4	6	31	46	87
Total	35	85	146	2023	2219

<sup>1</sup>In February 2015, the State identified 165 Category 3 and 4 sites, but further work and investigation refined this number to 101 by the time site visits began. As described above in this document, information gathered from site visits and otherwise caused the State to remove several of these sites from Categories 3 and 4, so that the updated total of Category 3 and 4 sites is now 87. As also described above, the majority of the difference between the 165 figure and the 87 figure is attributable to the movement of Category 3 sites to lower categories.

Comparison of the self-assessment survey results and the results of the site visits proves the surveys to have been quite accurate. The following table tracks the categorization of the 446 sites that received visits, before and after their visits.

**Number of Sites in Each Category Before and After Site Visits**

	<b>Aging</b>		<b>SLP</b>	
	Self Assessment	After Visit	Self Assessment	After Visit
Cat. 1	11	12	11	17
Cat. 2	1	0	5	3
Cat. 3	0	0	9	0
Cat. 4	6	6	26	31
	<b>DRS</b>		<b>DDD</b>	
	Self Assessment	After Visit	Self Assessment	After Visit
Cat. 1	6	6	276	245
Cat. 2	0	0	35	76
Cat. 3	0	0	23	0
Cat. 4	4	4	33	46

Much of the movement in the above chart is attributable to the clearing of Category 3 sites, which migrated both downwards and upwards in very roughly equal numbers. With that migration set aside, the above chart shows that the self-assessment survey results were largely unchanged by the survey validation visits.

At the end of this four-layered, multi-agency validation process, the State believes that it has formed very reliable assessments. Those assessments, however, will be further checked and reinforced by the remediation and ongoing monitoring processes that will follow.

Remediation and Compliance

*Provider Remediation and Compliance*

Now that it has concluded the survey validation process, the State has several sources of information regarding its HCBS settings' compliance with the new federal rule, chief among them the self-assessment surveys and the results of the on-site visits and multiagency desk audits. The State began its remediation process by publishing a provider informational notice listing all of the measures its HCBS settings are expected to meet. For sites deemed out of compliance with the HCBS rule, the State, through the agency that operates the provider's waiver program, informed the setting of the State's findings and advised the settings of the State's expectations for remediation. Although the wording and mode of conveyance of the message varied slightly among the operating agencies delivering it or based on the nature of the provider, the messages as a rule apprised the setting of the rule requirements, of areas it needs to change, and of the expectations for compliance. Sites that required very minimal remediation were not asked to

affirmatively submit evidence of remediation, but they were informed that full compliance must be demonstrated at their next regular monitoring visit, which will occur before the effective date of the HCBS Rule. Other sites were asked to submit evidence of remediation to the State or were given a timetable for compliance. Each agency also communicated with Category 4 settings to describe the heightened scrutiny process and ensure that the State had all evidence the site could provide to CMS to advocate for those sites. A significant amount of subsequent guidance has been issued by federal CMS in the time since the final rule was first issued. Illinois is using the lessons learned from its previous assessment efforts as well as information from subsequent guidance to incorporate the necessary changes as appropriate for waiver programs' assessment, remediation and compliance processes. Illinois considers it very important to ensure all settings are being measured in accordance with federal guidance.

The State Agency that operates each program will monitor remediation efforts of settings in its own program and communicate progress to the Medicaid agency. All sites will be required to be fully compliant by March 17, 2023.

To supplement this site-specific remediation procedure, the State will also pursue systemic remediation as described below.

#### *Systemic Remediation and Compliance*

Much of the above focuses on the State's efforts to assess and obtain providers' compliance with the HCBS regulation. The State has also undertaken several steps to detect and fix compliance issues that are sufficiently prevalent, or sufficiently reliant on statewide policy, to require systemic remediation.

The State's systemic remediation process began with a review of its statutes, rules, and policies for HCBS settings. To conduct this review, in calendar year 2016, the State convened four meetings among the legal and program staff of each of the state agencies involved in this plan to devise and track a work plan that the State followed throughout the year. From that group's work, the State has created a matrix, duplicated in Appendix B-1 through B-5, that identifies relevant state rules and policies that either already conform to the federal rule or must be revised. That appendix, which is revised from previous versions of this plan, shows the results of the State's review of its statutes and rules, and its timelines for updating them. The State has undertaken redrafting of its rules as needed, and it plans to submit them to the rulemaking process as detailed in Appendix B-1 through B-5.

The State has also reviewed its provider agreements, including its managed care contracts, to maximize alignment between State policies and the HCBS rule. The State has drafted language to add to its Medicaid provider contracts to require compliance with the HCBS rule; those changes have been incorporated. It has also drafted language to require that managed care entities, which now enroll approximately 65% of the State's Medicaid clients, both require and confirm that the HCBS rule's mandates are followed in their service planning and delivery systems. That new managed care language was included in the State's managed care contracts in December 2019.

Relatedly, to ensure that rates remain appropriate for the services provided through its HCBS programs, the State will continue to evaluate, rebase, or negotiate its provider rates as required by commitments made in its HCBS waiver agreements with CMS.

In concert with its planned rule and policy changes, the State is undertaking training and information efforts to support the systemic protections described in new federal rule. For example, to support the new rule's prohibition on client coercion, the Supportive Living Program is updating its administrative rules to describe coercion and include descriptions of resident rights to be free from coercion. In June 2017, DDD revised the "Rights of Individuals" document (IL462-1201) it gives to HCBS waiver clients to include the right to be free from coercion; it also provides a description of coercion. DDD has implemented system changes that shifted service plan development to one of eight independent service coordination agencies in a total of 12 service areas. As detailed in Appendix B's System Remediation Grids, the Operating Agencies offered a number of trainings and other informational opportunities to providers and other stakeholders regarding federal settings requirements.

The State used the results of its on-site assessments of individual settings to further inform its systemic remediation efforts. As the on-site visits progressed, the State noticed recurring issues, and it used its interagency desk reviews as a forum for identifying and addressing those issues, which included further development of policies to align with federal settings requirements, additional study of lease documentation and language, and a focus on inclusion of anti-coercion language in provider policies.

The state is also working to ensure that participants and providers are compliant with the requirements and criteria of Federal Settings requirements, through changes to Operating Agencies' rules, policies and related forms. See Appendix A for more details.

### Heightened Scrutiny

As noted above, the federal rule requires that settings with certain attributes be presumed to be institutional. That is, the federal rule requires all settings attached to a hospital or institution, or any setting that has the effect of isolating clients, to be presumed to be institutional. The State has followed this guidance in creating its list of Category 4 sites.

Under the federal rule, a state may continue to include Category 4 settings in its Medicaid HCBS programs only if (1) the State believes that the setting is truly home- or community-based, despite the presumption created by the rule; (2) the State presents evidence to CMS to support its position; and (3) CMS determines through its heightened scrutiny process the state has demonstrated that the setting qualifies as HCBS under the new rule.

The State followed the federal rule and presumed to be institutional all sites that are now placed in Category 4. Consistent with the federal process for these settings, the State has included with this document Appendix F which lists the sites currently proposed as heightened scrutiny sites. The State collected the evidence for each site through its own record searches, through results of on-site visits, by soliciting evidence submissions from the sites themselves, and by collecting public comments on the listed sites. The evidence gathered previously that is associated with these sites is available at the following link:

<https://www.illinois.gov/hfs/MedicalClients/HCBS/Transition/Pages/HeightenedScrutiny.aspx>.

The process by which the State will be working to update information in the evidentiary packages is described in Appendix F. Waiver agencies will be coordinating as needed with their respective waiver sites that are on Illinois' current heightened scrutiny lists to update the information in their evidentiary packages. Updated packages will then be posted on HFS' website for a 30 day public comment period; waiver agencies will have links on their websites to their respective packages. Any future sites identified through ongoing monitoring efforts as appropriate for heightened scrutiny review will be handled in the same manner.