

Pennsylvania's Statewide Transition Plan for Home and Community-Based Services (HCBS)

ISAC Presentation 8/16/22



Overview Of The HCBS Rule



- CMS published the HCBS Rule amending regulations on January 16, 2014
- The HCBS Rule ensures that individuals receiving services through waiver programs have full access to the benefits of community living
- The HCBS Rule further expands the opportunities for meaningful community integration in support of the goals of the ADA and the Supreme Court decision in *Olmstead*

HCBS Requirement - Integration

The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to:

- Seek employment and work in competitive integrated settings,
- Engage in community life,
- Control personal resources, and
- Receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.



HCBS Requirement - Rights

Services ensure an individual's rights of:

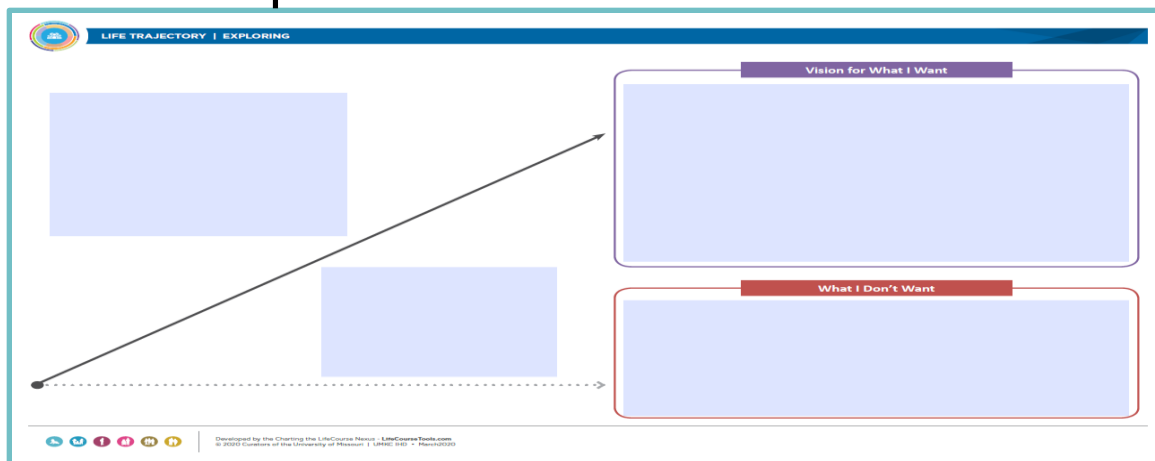
- Privacy,
- Dignity and respect, and
- Freedom from coercion and restraint.

HCBS Requirement – Decision Making

Services optimize, but do not regiment:

- Individual initiative,
- Autonomy, and
- Independence in making life choices,
 - including but not limited to, daily activities, physical environment, and with whom to interact.

Services facilitate individual choice regarding services and supports, and who provides them.



Waivers/Services Impacted



Where: All service locations that receive funding or payment through an approved HCBS Waiver

ODP	OCDEL	OLTL
Adult Autism Waiver	Infants, Toddlers, and Families (ITF) Waiver	Community HealthChoices Waiver
Community Living Waiver		OBRA Waiver
Consolidated Waiver		
Person/Family Directed Support (P/FDS) Waiver		



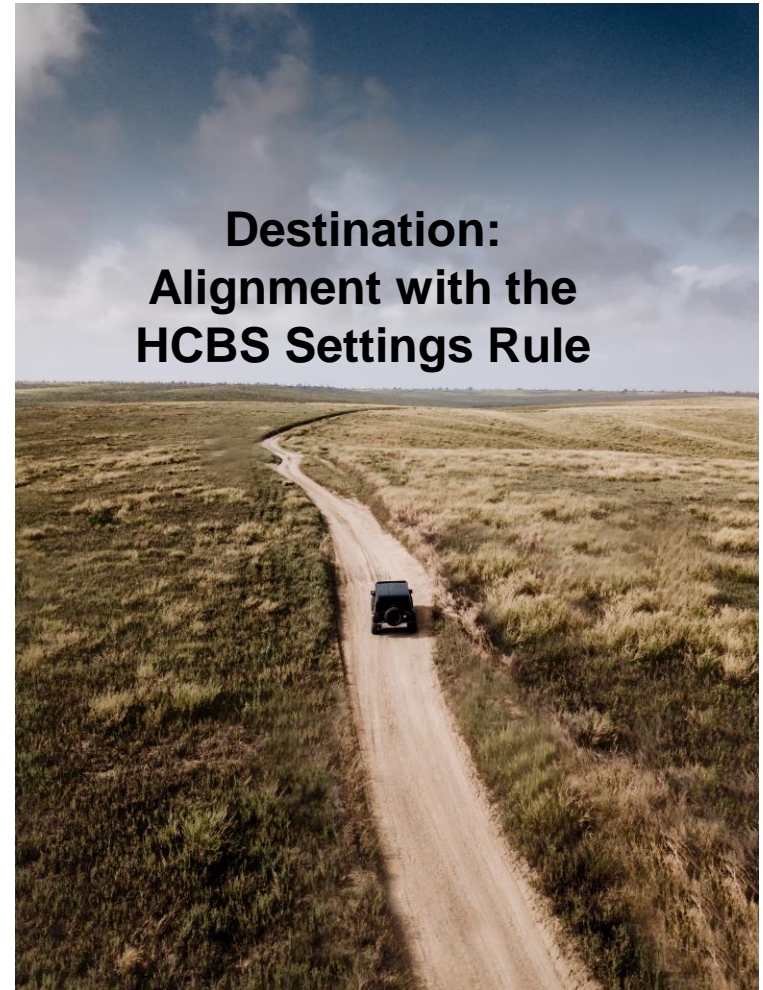
What is a Statewide Transition Plan, and why do we need it?



What is an STP?

Think of a vehicle that helps the state travel through the years to come into compliance with the HCBS Settings Rule.

- New waivers – must meet the HCBS Settings Rule to be approved.
- Currently approved waivers: each setting must be evaluated to ensure compliance



Initial STP



The initial Statewide Transition Plan was approved on August 30, 2016. This plan included:

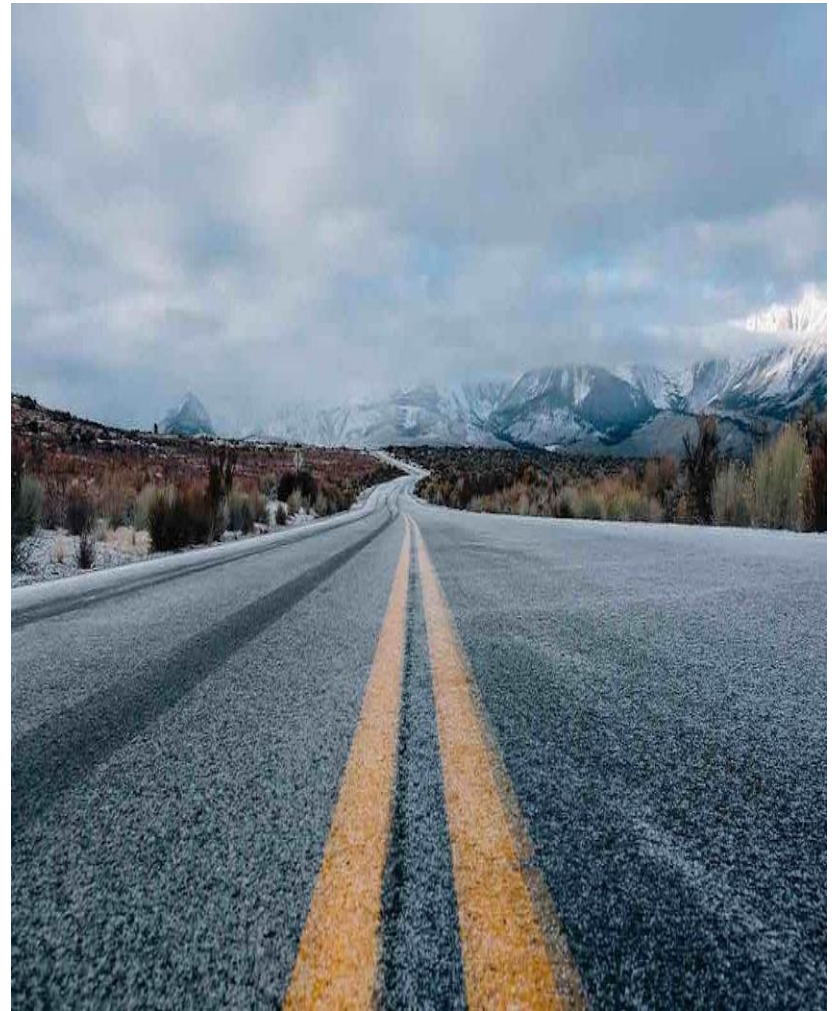
- Identification of all settings subject to the HCBS Settings Rule
- Systemic review of regulations, policies, and service definitions
- Remediation strategies

Final STP

A final Statewide Transition Plan must be submitted to CMS. This plan must contain:

- Site specific assessment of all settings
- How issues found during the site-specific assessment will be resolved by March 2023
- Plan for identifying and evaluating settings presumed to have institutional characteristics (Heightened Scrutiny)
- Process for communicating with people in settings that will not meet requirements
- Process for ongoing monitoring

ODP's Approach in the Final Statewide Transition Plan



Steps Accomplished As Part of Remediation

These actions were completed based on the systemic review of regulations, policies, and service definitions in the Initial STP:

- Everyday Lives: Values in Action
- Waiver renewals and amendments to align services with the HCBS Settings Rule
- Provider self-assessments for Residential and CPS settings
- Chapter 6100 and licensing regulations



Site Specific Assessments

CMS requires that each state assess that the following comply with the HCBS Rule:

- All **services** covered by ODP's Waivers
 - Adult Autism Waiver;
 - Community Living Waiver;
 - Consolidated Waiver; and
 - PFDS Waiver

- All **settings** in which ODP Waiver services are provided
 - Group Homes (Residential Habilitation)
 - Life Sharing Homes
 - Day Programs (Community Participation Support)

ODP utilized the following approaches to assess compliance with the HCBS Settings Rule statewide:

- Self-Assessments for Provider Owned or Operated Settings
- Heightened Scrutiny On-site Reviews
- Licensing Inspections for Provider Owned or Operated Settings
- Quality Assessment and Improvement for all Settings

Provider self-assessments were completed in 2018 by providers of the following waiver services:

- Life Sharing
- Residential Habilitation
- Community Participation Support/Day Habilitation

The final self-assessment reports can be accessed at the [ODP Home and Community Based Settings Final Rule webpage](#).

Heightened Scrutiny by CMS is required for settings presumed NOT to be home and community-based as outlined in the HCBS Rule:

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
 - Intermediate Care Facilities
 - Nursing Facilities
 - Hospitals
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution;
- Any other settings that have the effect of isolating individuals

Heightened Scrutiny reviews were conducted for:

- 1 Life Sharing home,
- 1 Residential Habilitation, and
- 18 Community Participation Support/Day Habilitation locations
 - 1 of these locations recently reopened and is scheduled for review in August

Heightened Scrutiny reviews included:

- Interviews with individuals receiving services
- Interviews with staff rendering services
- Review of documents (ISPs, service notes, policies, etc.)

ODP Heightened Scrutiny Steps



- Complete heightened scrutiny reviews.
- Send findings to each provider. (Compliant or Corrective Action Plan needed.)
- ODP review of provider Corrective Action Plans.
- ODP final determination (currently compliant, will be compliant, not compliant).
- Public notice of locations with ODP determination.
- Submission of locations that are/will be compliant to CMS.

- ODP first identified requirements in Chapters 2380, 2390, 6400 and 6500 that align with the HCBS Rule.
 - These are outlined in the [Licensing Regulations that Align with the HCBS Rule](#).
- Then ODP reviewed licensing inspection data for these requirements, gathered during renewal inspections and partial inspections completed in FY2020-2021.
- The full [Home and Community-Based Settings Rule Assessments report](#) with licensing results for Fiscal Year 2020-2021 is available online.

General ODP Licensing Results



Setting Type	# of <u>inspections</u> completed	# / % of <u>inspections</u> where <i>Zero</i> HCBS violations were found	# of <u>facilities or homes</u> inspected	# / % of <u>facilities or homes</u> where <i>Zero</i> HCBS violations were found
Adult Training Facilities (Chapter 2380)	167	136 / 81%	153	122 / 80%
Vocational Facilities (Chapter 2390)	42	38 / 91%	37	33 / 89%
Community Homes (Chapter 6400)	3,004	2,604 / 87%	2,844	2,458 / 86%
Life Sharing Homes (Chapter 6500)	583	531 / 91%	568	516 / 90%

- All HCBS Rule violations for Adult Training Facilities and Vocational Facilities were corrected to be 100% compliant.
- 8 distinct Community Home providers that were cited for at least one HCBS Rule violation did not correct all violations.
 - 5 corrected all violations and returned to a regular license
 - 2 have been issued a second provisional license
 - 1 had their license revoked. A new entity now operates the home
- 1 distinct Life Sharing provider was cited for three violations that were not corrected. As a result, a provisional license was issued for this provider.

ODP Quality Assessment & Improvement (QA&I)

Fiscal Year 2020-2021 Interim Review Process used during COVID:

- ODP pulled core samples of individuals receiving services and supports
- The SCOs and providers reviewed during the QA&I interim review were based on the individuals selected in the core sample and provider(s) that were authorized in the individual's ISP.
- ODP and/or Administrative Entities conducted a desk review for each individual selected to identify evidence of compliance with key performance metrics and quality outcomes, including some HCBS Rule compliance measures.

ODP QA&I Findings For Service Providers

Question	Statewide Final Compliance		
	Numerator	Denominator	% Compliant
The individual is supported in exploring employment opportunities through Career Assessment and Job Finding or Development (Supported Employment); or through Discovery and Job Acquisition (Advanced Supported Employment).	14	14	100%
The employment provider supports the individual in maintaining employment through Supported Employment and Advanced Supported Employment.	30	30	100%
The provider ensures the individual has the right to control the individual's own schedule and activities and has the right to update those activities regularly.	280	285	98.2%

ODP QA&I SCO Review Findings

Question	Statewide Final Compliance		
	Numerator	Denominator	% Compliant
The SC develops a person-centered ISP to address all assessed needs.	300 ID/A	313 ID/A	95.8% ID/A
	62 AAW	62 AAW	100% AAW
Choice of providers was offered to the individual/family.	217 ID/A	221 ID/A	98.2% ID/A
	42 AAW	42 AAW	100% AAW
Choice of services was offered to the individual/family.	217 ID/A	221 ID/A	98.2% ID/A
	42 AAW	42 AAW	100% AAW

ODP QA&I Administrative Entity Review Findings

Question	Statewide Final Compliance		
	Numerator	Denominator	% Compliant
The ISP has evidence that the individual has opportunities for community activities of their choice.	268	268	100%
The ISP has evidence of necessary supports to participate in community activities.	257	257	100%



Identification of Settings Presumed to Have Institutional Characteristics

Settings Presumed Institutional

Remember, CMS states that the following are presumed to have institutional characteristics:

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
 - Intermediate Care Facilities
 - Nursing Facilities
 - Hospitals
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution;
- Any other settings that have the effect of isolating individuals

Waiver and Regulatory Requirements - Location

As a result of the waiver and Chapter 6100 regulatory requirements and ODP's validation process, **no homes where residential waiver services** are rendered have been identified as presumed to have institutional characteristics due to the location of the home.

Prior to the effective date of 55 Pa. Code Chapter 6100 regulations, there were no requirements regarding the location of **Community Participation Support/Day Habilitation** service locations. ODP identified 18 service locations that are presumed to have institutional characteristics due to the physical location of the facility where services are rendered.

Waiver and Regulatory Requirements - Community

ODP's regulations and waivers require all providers to offer individuals opportunities and needed assistance to participate in integrated community activities, including employment, consistent with the individual's preferences, choices, and interests.

No providers have been identified to date as having the effect of isolating individuals from the broader community.

Analysis of Residential and CPS Locations

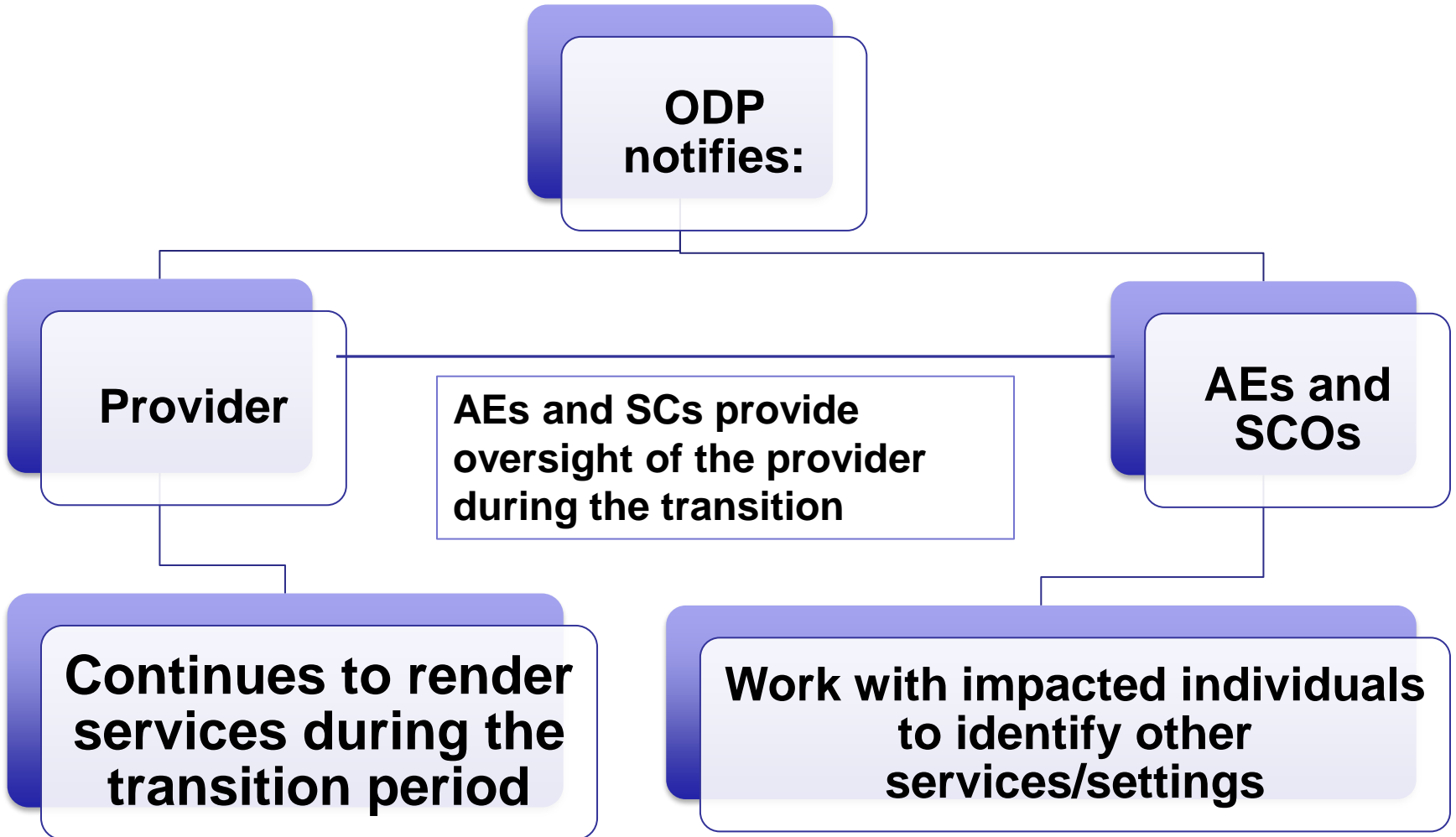
ODP determined whether the physical location where Residential Habilitation, Life Sharing or Community Participation Support services are rendered are presumed to have institutional characteristics by:

- Reviewing all completed provider self-assessments to identify service locations that providers indicated had characteristics of an institutional setting; and
- Utilizing:
 - Software that maps all provider owned or operated service locations receiving ODP waiver funding as well as public and private ICFs/ID;
 - Information and maps available on the internet;
 - Addresses of skilled Nursing Facilities; and
 - ODP staff knowledge of the service locations.



Communicating with People in Settings That Cannot or Will Not Come into Compliance

ODP's Communication Process

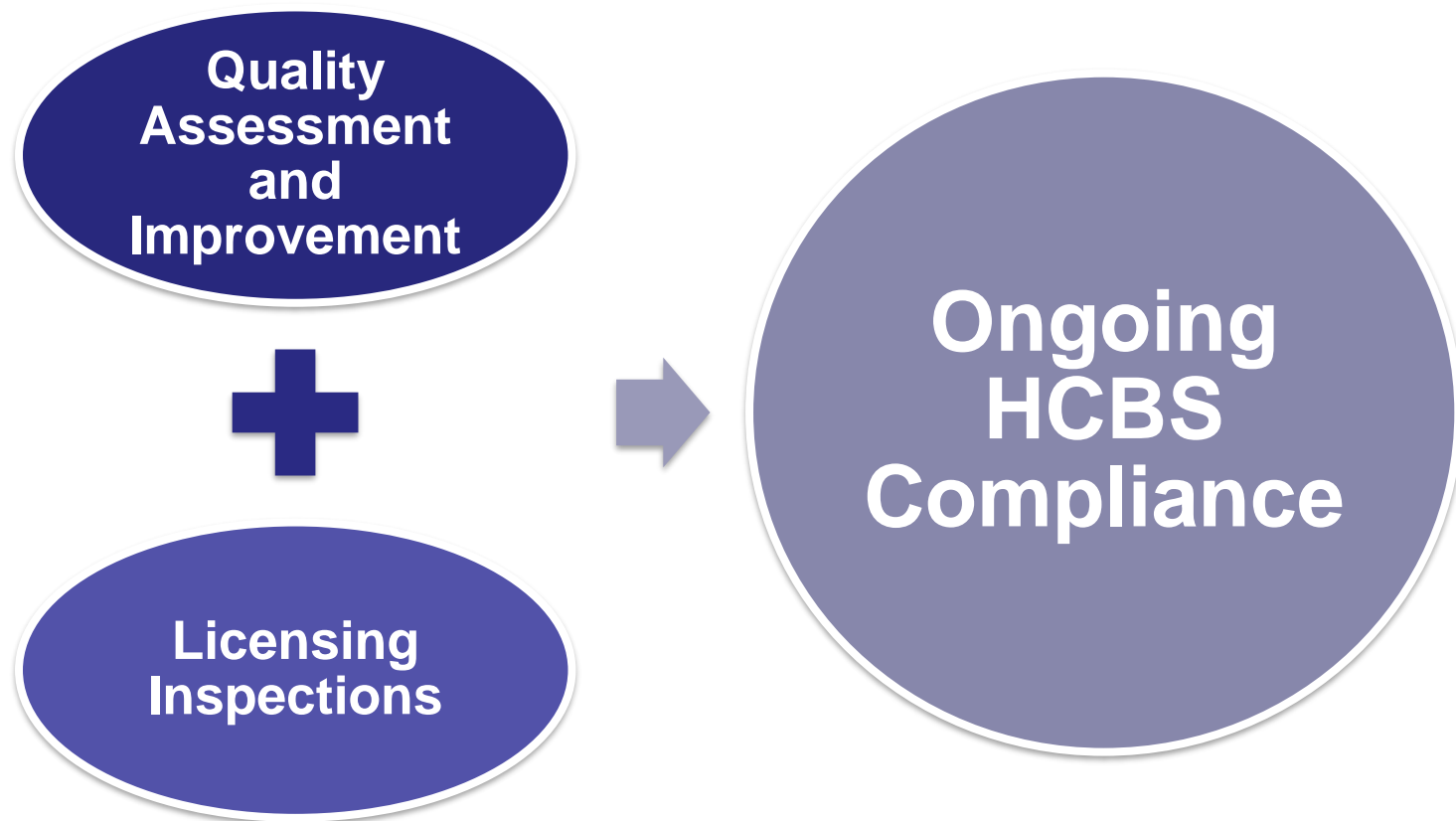




Ongoing Monitoring and Quality Assurance Process

▶ ODP's Process to Ensure Compliance in the Future

ODP will use the following to ensure that providers continue to be compliant with the HCBS Rule



New Providers

Prior to rendering direct waiver services, new providers must:

- Complete ODP's Provider Applicant Orientation (HCBS Rule requirements built in)
- Meet waiver qualification criteria for the service(s) that will be rendered
 - Integrated location
 - Waiver Provider Agreement
 - New Provider Self-Assessment and Guidelines

New Service Locations

When a current provider wants to open a new location where residential or CPS services will be rendered, the following occur:

- ODP ensures the location is integrated in the community
- New CPS facilities must have an onsite licensing inspection
- New residential homes subject to licensing must complete a self-assessment or have an onsite licensing inspection



Beneficiary Recourse: How People Can Report Provider Noncompliance

▶ Reporting Noncompliance to the Provider or SC

ODP encourages everyone to submit concerns about providers not following the HCBS Rule to the provider or SC

- Regulations require providers to receive, document, and manage complaints (including documentation of the investigation process, findings, and actions to resolve the complaint)
- The provider must ensure that there is no retaliation or threat of intimidation relating to the filing or investigation of a complaint.

Reporting Noncompliance to ODP

If anyone is uncomfortable contacting the provider or SC or does not believe that the provider followed the requirements to receive, document, and manage complaints outlined in the previous paragraph, they may call the ODP Customer Service Line at 1-888-565-9435.

This information may also be emailed to ODP at [RA-
odpcontactdpw@pa.gov](mailto:RA-odpcontactdpw@pa.gov).



Next Steps

A draft of the Statewide Transition Plan will be released for a 30-day public comment period.

- The Department plans to hold a general information session
- Each office will hold webinars with information specific to their processes
 - ODP plans to hold 2 webinars
- Comments may also be submitted via email or mail

Comments received during the 30-day public comment period will be considered for inclusion in the Final Statewide Transition Plan submitted to CMS.

- A summary of comments received and Department responses will be included.

CMS Guidance Regarding the HCBS Rule

<https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-settings-requirements-compliance-toolkit/index.html>

ODP HCBS Rule Information

<https://www.dhs.pa.gov/contact/DHS-Offices/Pages/ODP-HCBS%20Final%20Rule.aspx>