



Table 3.1: Compliance status of each HCBS waiver regulation

HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
<p>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.¹</p> <p>1. Second round change</p>	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Similar requirement is included in current regulation but must be strengthened; anticipated filing in 1/18
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.</p>	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Included requirement in compliant regulation filed in 10/15 – anticipated effective in 7/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective on 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
<p>Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Included requirement in compliant regulation filed in 10/15 – anticipated effective in 7/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective on 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16



HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
Optimizes, but does 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.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Included requirement in compliant regulation filed in 10/15 – anticipated effective in 7/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective on 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
Facilitates individual choice regarding services and supports, and who provides them.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	Included requirement in compliant regulation filed in 10/15 – anticipated effective in 7/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective on 6/3/16	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to the jurisdiction’s landlord/tenant law. ¹	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Requirement does not exist in current regulation and must be added; Anticipated filing in 1/18

1. Second round change



HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
Each individual has privacy in their sleeping or living unit.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
Units have entrance doors lockable by the individuals, with only appropriate staff having keys.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
Individuals sharing units have a choice of roommates in that setting.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include	N/A – this waiver does not include	Included requirement in compliant regulation filed



HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
			residential services	residential services	in 8/15 – anticipated effective in 7/16
<p>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.¹</p> <p>1. Second round change</p>	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Requirement does not exist in current regulation and must be added; anticipated filing in 1/18
Individuals are able to have visitors of their choosing at any time.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
The setting is physically accessible to the individual.	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16



HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCB (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
<p>Modifications to provider-owned settings requirements:</p> <ul style="list-style-type: none"> ○ The requirements must be documented in the person-centered service plan in order to modify any of the criteria. ○ The person-centered service plan be reviewed, and revised upon reassessment of function need, at least every 12 months, when the individual’s circumstances or needs change significantly, or at the request of the individual. ○ Identify a specific and individualized assessed need. ○ Document the positive interventions and supports used prior to any modifications to the person centered service plan. ○ Document less intrusive methods of meeting the need that have been tried but did not work. ○ Include a clear description of the condition that is directly proportionate to the specific assessed need. ○ Include a regular collection and review of data to measure the ongoing effectiveness of the modification. ○ Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. ○ Include informed consent of the individual. ○ Include an assurance that interventions and supports will cause no harm to the individual. 	Compliant – effective 2/5/16	Compliant – effective 2/5/16	N/A – this waiver does not include residential services	N/A – this waiver does not include residential services	Included requirement in compliant regulation filed in 8/15 – anticipated effective in 7/16
<p>Home and community-based settings do not include the following:</p> <ul style="list-style-type: none"> (i) A nursing facility; (ii) An institution for mental diseases; 	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be	Requirement does not exist in current regulation and must be



HCBS Final Rule – Setting Requirements	ABI (907 KAR 3:090)	ABI-LTC (907 KAR 3:210)	HCBS (907 KAR 7:010; formerly 907 KAR 1:160)	MPW (907 KAR 1:835)	SCL (907 KAR 12:010)
<p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.¹</p> <p>1. Second round change</p>	added; anticipated filing in 1/18	added; anticipated filing in 1/18	added; anticipated filing in 1/18	added; anticipated filing in 1/18	added; anticipated filing in 1/18

1. MIIW Assurance (907 KAR 1:595)

MIIW is a unique waiver in that the waiver only includes two highly technical services for individuals who are ventilator-dependent and require ventilator support for at least 12 hours per day. The individual must reside in his/her home and all services provided by the waiver must be rendered in the individual’s home. DMS provides assurance that the MIIW complies with all setting rules since all services are performed in the individual’s home and not provider-owned or controlled residential, or non-residential settings. DMS presumes that each MIIW participant’s home comports with all HCB setting rules. The CHFS waiver staff validated that all services are performed in the individual’s home.



A. Monitoring Process Assessment

DMS has set monitoring requirements for each of the HCBS waiver providers operating in KY and these monitoring processes will continue while providers comply with the HCBS final rules. The workgroup outlined these monitoring processes, including the oversight process and participant and provider surveying process. Each process was then analyzed to determine the impact of the HCBS final rules and areas requiring revision were identified. Some monitoring tools will need to be updated to incorporate the new federal requirements so that CHFS waiver staff evaluates providers appropriately. If necessary, KY will increase the frequency and percentage of providers selected for review to confirm that CHFS waiver staff effectively track provider compliance. After providers have fully implemented the HCBS final rules, monitoring processes will continue with compliant tools and standards. Table 3.5 below describes the current monitoring/oversight process for each waiver, the participant and/or provider surveys that are conducted, and the areas that will need to be updated to comply with the HCBS final rules. If the department acts regarding a certified waiver provider due to the provider’s behavior in one 1915(c) HCBS waiver program, the action regarding the certified waiver provider shall apply in every 1915(c) HCBS waiver program in which the provider is participating. PDS is specifically separated in Table 3.5 since PDS for all waivers is centrally monitored by CHFS waiver staff through separate waiver monitoring processes.

Table 3.2 Current waiver monitoring processes

Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
ABI, ABI-LTC	<ul style="list-style-type: none"> • Every agency must be certified by state staff prior to the initiation of a service (new agencies are reviewed at regular intervals) • Every agency is re-certified annually by state staff to validate compliance • The certification process includes monitoring throughout the year and is based on compliance with state regulation • Case managers track agencies and locations as an additional line of monitoring • If there are reported issues/complaints, then the state staff might conduct a site visit, review the agency, investigate the issue, or refer the issue to the Office of Inspector General (OIG) 	<ul style="list-style-type: none"> • ABI/ABI-LTC participant surveys are distributed annually by state staff 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • State staff do not base their evaluations on all of the new HCBS rules • Case managers do not base their agency monitoring on all of the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with

Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
	<ul style="list-style-type: none"> The citation and sanctions process is outlined in regulation 		<ul style="list-style-type: none"> mechanisms in place to eliminate provider influence
HCB	<ul style="list-style-type: none"> Every agency must be licensed as a home health agency or adult day health center (ADHC) The DMS contracted Quality Improvement Organization (QIO) agency completes all first line evaluations of HCB providers The evaluations are on-site and include quality questions posed to participants (are you treated with respect, are you aware of your case manager, were you given freedom of choice, etc.), agency policies and procedures, billing, and post-payment audits Waiver providers are evaluated on a two or three year cycle State staff complete second line monitoring for a random sample of the provider evaluations completed by DMS contracted QIO agency The citation and sanctions process is outlined in regulation 	<ul style="list-style-type: none"> Participant interviews are carried out during on-site monitoring 	<ul style="list-style-type: none"> The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules State staff and monitoring QIO agency do not base their evaluations on all of the new HCBS rules Monitoring process manuals do not include all of the new HCBS rules Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence
MPW	<ul style="list-style-type: none"> Every agency must be certified by state SCL staff (including all SCL training and processes) or be licensed by OIG to provide Medicaid HCB services Every agency is recertified/licensed by respective waiver state staff annually The DMS-contracted QIO agency completes first line monitoring for a sample of MPW participants The citation and sanctions process is outlined in regulation 		<ul style="list-style-type: none"> The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules State staff do not base their evaluations on all of the new HCBS rules Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence



Current Monitoring Process			
Waiver	<i>Current Oversight Process</i>	<i>Participant and Provider Surveys</i>	<i>Areas Requiring Revision</i>
SCL	<ul style="list-style-type: none"> • Every agency must be certified by state staff prior to the initiation of a service • Every agency is recertified at least once during their certification period (bi-annually, annually, or biennially) • The citation and sanctions process is outlined in regulation 	<ul style="list-style-type: none"> • Providers are required by regulation to participate in all department survey initiatives, including surveying participants 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence
PDS (All waivers)	<ul style="list-style-type: none"> • Every agency is evaluated annually • The monitoring process includes reviewing participant records, incident reports, and complaints • Home visits or phone interviews with waiver participants are completed • The citation and sanctions process is outlined in regulation 	<ul style="list-style-type: none"> • Participant satisfaction surveys are distributed by the provider prior to monitoring and are reviewed by state staff during the monitoring process 	<ul style="list-style-type: none"> • The tools, including checklists used during on-site monitoring, do not include all of the new HCBS rules • State staff do not base their monitoring on all of the new HCBS rules • Consumer PDS training is not based on the new HCBS rules • Participant surveys need to be developed focusing on compliance with the HCBS final rules with mechanisms in place to eliminate provider influence

V. Remedial Strategies

The strategies identified in this section are the results of assessments completed to date and include updates based on completed activities.

A. State Level Remedial Strategies



1. Policy

The workgroup completed a thorough review of waiver regulations and applications, as outlined in section III. Table 5.1 includes the requirements added to each regulation to transition KY's waiver policies into compliance with each HCBS rule related to settings. DMS is implementing the HCBS final rules in two rounds to assure that providers have adequate time to become compliant with all rules. The first round changes include the setting requirements that are simpler to implement, while the second round changes include the setting requirements that are more complex to implement.

While the second round of changes will not be effective in KY regulations until 2019, DMS and its operating agencies have been educating participants, families, advocates and providers about these requirements since 2014. DMS has solicited input from both participants/families/advocates and providers through a series of meetings/webinars held in 2015 and 2016. Key stakeholder engagement/education sessions include:

- Participants/Families/Advocates Public Input Forums – These forums were in-person meetings focused on gathering input from participants about how the HCBS final rules should be implemented. DMS staff traveled to various locations throughout the state to obtain as much input as possible. Locations and dates of forums included:
 - Frankfort, KY – 2/4/15
 - Prestonsburg, KY – 3/17/15
 - Bowling Green, KY – 3/25/15
 - Paducah, KY – 3/26/15
 - Florence, KY – 3/31/15
 - Louisville, KY – 4/1/15
 - Lexington, KY – 4/13/15

- Provider Webinars/Meetings – DMS has been asked to present on the HCBS final rules to various provider associations since 2015. Whenever possible, DMS provides updates and guidance on the HCBS final rules at these provider association meetings. Additionally, DMS has hosted webinars and meetings to educate and gather input from providers. The following is a non-exhaustive list of the stakeholder engagement sessions conducted with providers.
 - Provider Association Meetings – 2/11/15, 3/18/15, 5/13/15, 11/4/15, 1/26/16, 4/13/16, 5/18/16



- Compliance Plan Webinars – 3/10/15, 3/12/15
- Input on Evaluating Compliance – 2/10/16, 2/11/16

This education will continue to be provided through webinars, forums throughout the state, as well as through individual site visits and discussions with providers.

The timeline of 2019 for the second round changes was selected primarily to allow more time for providers to implement these more time-consuming changes. Additional reasons for the extended timeline are as follows.

1. The rules included in the second round may have a significant impact on KY HCBS providers and create an access issue depending on the number of providers who will lose the ability to render services because of the rules, if adequate time is not allowed for implementation.
2. DMS has allotted a full year to work with the high volume of providers who will need to undergo heightened scrutiny to assure that DMS can spend adequate time working with each provider.
3. DMS is giving time for providers to stabilize the first round of changes before moving into the second round.
4. DMS will be educating providers as soon as the rules are fully defined and operationalized. The education and compliance process for the second round changes will start before 2018, giving providers ample time to become compliant.

Table 5.1 Waiver regulation actions for compliance

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): <ul style="list-style-type: none"> • Add the following requirements to the regulations: 	Anticipated date for filing regulations: 1/1/2018	In Progress

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
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;	<ul style="list-style-type: none"> ○ The setting must be integrated into the greater community and the provider must support full access of participants into the greater community ○ The provider must assure that the participant has opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, according to his/her choices and preferences, to the same degree of access as individuals not receiving Medicaid HCBS 	(Second Round)	
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.</p> <p>The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board;</p>	<p>ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010):</p> <ul style="list-style-type: none"> ● Added the following requirements in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ A provider must assure the participant has the freedom to choose services, providers, settings from among setting options including non-disability specific settings, and where to live with as much independence as possible in the most community-integrated environment ○ The setting options and choices shall be identified and documented in the person-centered service plan and based on the participant’s needs and preferences 	<p>Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)</p>	Complete
Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint;	<p>ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010):</p> <ul style="list-style-type: none"> ● Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ A provider must assure the participant has rights of privacy, dignity, respect, and freedom from coercion and restraint 	<p>Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)</p>	Complete

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
Optimizes, but does 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.	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): <ul style="list-style-type: none"> • Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ A provider must assure the participant has freedom of choice, as defined by the experience of independence, individual initiate, or autonomy in making life choices, both in small everyday matters (what to eat and what to wear), and in large, life-defining matters (where and with whom to live and work) 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete
Facilitates individual choice regarding services and supports, and who provides them.	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): <ul style="list-style-type: none"> • Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ A provider must assure the participant has the freedom to choose services, providers, settings from among setting options including non-disability specific settings, and where to live with as much independence as possible in the most community-integrated environment 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete
Home and community-based settings do not include the following: (i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), HCB (907 KAR 7:010), MPW (907 KAR 1:835), SCL (907 KAR 12:010): <ul style="list-style-type: none"> • Add the following requirements to the regulations: <ul style="list-style-type: none"> ○ A provider setting must not be: a nursing facility, an institution for mental diseases, an intermediate care facility for individuals with intellectual disabilities, a hospital, nor any other locations that have qualities of an institutional setting, including: 	Anticipated date for filing regulations: 1/1/2018 (Second Round)	In Progress

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
<p>setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.</p>	<ul style="list-style-type: none"> ▪ A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment ▪ A setting in a building on the grounds of, or immediately adjacent to, a public institution ▪ A setting that has the effect of isolating participants from the broader community of individuals not receiving Medicaid HCBS 		
<p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State,</p>	<p>ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010):</p> <ul style="list-style-type: none"> • Add the following requirements to the regulations: <ul style="list-style-type: none"> ○ A residential provider setting must be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the participant ○ Within this legally enforceable agreement, the participant must have the same responsibilities and 	<p>Anticipated date for filing regulations: 1/1/2018 (Second Round)</p>	<p>In Progress</p>

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	protections from eviction that tenants have under the landlord/tenant law (KRS 383.505-383.705)		
Each individual has privacy in their sleeping or living unit	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> The provider must assure the participant has privacy in the sleeping unit and living unit in a residential setting 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete
Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> The provider must assure the participant has a unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete
Individuals sharing units have a choice of roommates in that setting	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> Added the following requirement in the revised regulations that have been filed: 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016	Complete

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
	<ul style="list-style-type: none"> ○ The provider must assure the participant has a choice of roommate or housemate 	(First Round)	
Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> ● Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ The provider must assure the participant has the freedom to furnish or decorate their sleeping or living units within the lease or other agreement 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> ● Add the following requirement to the regulations: <ul style="list-style-type: none"> ○ A provider must assure that a participant has the freedom to: control their own schedules and activities and have access to food at any time 	Anticipated date for filing regulations: 1/1/2018 (Second Round)	In Progress
Individuals are able to have visitors of their choosing at any time	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> ● Added the following requirement in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ The provider must assure the participant has visitors of the participant’s choosing at any time and access to a private area for visitors 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete
The setting is physically accessible to the individual	ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010): <ul style="list-style-type: none"> ● Added the following requirements in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ The provider must assure the participant has physical accessibility, defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability 	Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)	Complete

Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
	<ul style="list-style-type: none"> ○ Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting ○ All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.) 		
<p>Any modification of the additional residential conditions except for the setting being physically accessible requirement, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none"> ● Identify a specific and individualized assessed need. ● Document the positive interventions and supports used prior to any modifications to the person-centered service plan. ● Document less intrusive methods of meeting the need that have been tried but did not work. ● Include a clear description of the condition that is directly proportionate to the specific assessed need. 	<p>ABI (907 KAR 3:090), ABI-LTC (907 KAR 3:210), and SCL (907 KAR 12:010):</p> <ul style="list-style-type: none"> ● Added the following requirements in the revised regulations that have been filed: <ul style="list-style-type: none"> ○ Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the participant’s person-centered service plan. ○ Regarding a modification, the following shall be documented in a participant’s person-centered service plan: <ul style="list-style-type: none"> ○ That the modification is the result of an identified specific and individualized assessed need; ○ Any positive intervention or support used prior to the modification; ○ Any less intrusive method of meeting the participant’s need that was tried but failed; ○ A clear description of the condition that is directly proportionate to the specific assessed need; ○ Regular collection and review of data used to measure the ongoing effectiveness of the modification; 	<p>Regulations filed between 8/2015 – 10/2015; effective dates span 2/2016 – 7/2016 (First Round)</p>	<p>Complete</p>



Waiver Regulation – Action for Compliance			
Rule	Action for Compliance	Timeline	Status
<ul style="list-style-type: none"> • Include regular collection and review of data to measure the ongoing effectiveness of the modification. • Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. • Include the informed consent of the individual. • Include an assurance that interventions and supports will cause no harm to the individual. 	<ul style="list-style-type: none"> ○ Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated; ○ Informed consent by the participant or participant’s representative for the modification; and ○ An assurance that interventions and supports will cause no harm to the participant. 		

DMS will submit revised ordinary regulations for setting-related rules in two rounds in order to allow stakeholders time to review and providers time to implement. The HCBS final rules will be implemented in two rounds based on the ease of implementation and complexity of the change. DMS drafted the regulation language for the first round from January 1, 2015 to February 28, 2015. The first round of revised ordinary regulations were filed in August 2015 and will be effective in February, March, and April 2016. DMS will draft the regulation language for the second round from January 2017 to August 2017, and leadership will begin their review in August, 2017. The second round of revised ordinary regulations will be submitted in January 2018, with an effective date in July 2018, and an implementation date of January 2019. The implementation date of January 2019 is when all providers must be compliant with all HCBS settings final rules.

2. Operations

CHFS waiver staff and the workgroup will be preparing operational practices for compliance over the next three years. This includes developing a tool for providers that outlines the federal requirements and how they will be evaluated, along with hosting a webinar for waiver providers. Once updated state policies take effect, CHFS waiver staff will transition from current operational practices to revised, compliant protocols to administer the HCBS waivers. The HCBS final rules affect several areas of DMS’ waiver operations including, but not limited to, internal



processes, monitoring, and service delivery. Below is a list of operational changes required for each waiver to bring their practices into compliance.

Table 5.2 Potential waiver operational actions for compliance

All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
Internal Processes:			
Prior authorizations (PA)	All Waivers: <ul style="list-style-type: none"> • Update PA processes to incorporate new HCBS rules in regards to the participant setting selection process 	1/1/2015 – Ongoing	In Progress
State staff training	All Waivers: <ul style="list-style-type: none"> • Train PA staff, focusing on the service plan and case management in relation to PAs • Train state staff, including waiver and QA staff, on HCBS rules to be able to provide technical assistance to providers • Train state staff, including waiver and QA staff, on the transition process, new monitoring processes and checklists, related to the HCBS rules 	1/1/2015 – Ongoing	In Progress
Capacity, resources, and services	All Waivers: <ul style="list-style-type: none"> • Evaluate provider capacity throughout the state • Determine appropriateness of resources for providers • Evaluate if covered services are adequately meeting the needs of the participants, in view of any changes required by the HCBS final rules 	10/1/2015 – Ongoing	In Progress
Provider Processes:			
Requirements (mission/values)	All Waivers: <ul style="list-style-type: none"> • Providers should update their mission/values and policies/procedures to align with the new DMS regulations 	1/1/2015 – Ongoing	In Progress
Trainings	All Waivers: <ul style="list-style-type: none"> • Update relevant provider trainings and offer providers all relevant information and trainings 	1/1/2015 – Ongoing	In Progress

All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
Transition process	All Waivers: <ul style="list-style-type: none"> • Develop HCBS evaluation tool (monitoring tool) and HCBS compliance plan template to be used by providers, outlining their plan for complete compliance • Host webinars for waiver providers • Validate each provider’s compliance level during annual evaluation • Notify providers of their compliance level • Complete on-site reviews for all groups based on provider and CHFS waiver staff provider evaluations • Review, track, and approve/deny the providers’ HCBS compliance plans • Assist providers to ensure compliance and resolve any access issues found • Use processes outlined in state regulations for provider corrective action or actions not to certify or to terminate non-compliant providers 	1/1/2015 – Ongoing	In Progress
Monitoring Processes:			
Requirements	All Waivers: <ul style="list-style-type: none"> • Validate that the current monitoring processes are sufficient to monitor new and existing providers against the HCBS rules and modify as necessary 	1/1/2015 – Ongoing	In Progress
Tools (on-site items, checklists, etc.)	<ul style="list-style-type: none"> • Update provider checklists and survey tools for provider sites (residential, ADT, ADHC, etc.) based on the revised regulations that comply with the HCBS rules • Implement provider requirements using the CMS toolkit to determine the materials/documentation providers need to submit as validation of HCB setting under heightened scrutiny 	1/1/2015 – Ongoing	In Progress
Surveying process	All waivers: <ul style="list-style-type: none"> • Update PDS provider on-site surveys 	1/1/2015 – Ongoing	In Progress

All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
	<ul style="list-style-type: none"> • Establish process for participant surveys 		
Grievance process	<p>All waivers:</p> <ul style="list-style-type: none"> • Review grievance process and implement updates as needed for participants to file complaints about non-compliant providers • Determine method to confirm participants are aware of grievance process 	10/1/2015 – Ongoing	In Progress
Miscellaneous:			
Communication plan for additional stakeholders (advocacy groups, provider associations, etc.)	<ul style="list-style-type: none"> • Develop stakeholder engagement process to obtain input on implementation of the final rules, focusing on defining and operationalizing rules before policies and tools are established <ul style="list-style-type: none"> • Host public forums and/or focus groups for providers and participants, representatives, family members, and advocates • Attend meetings of established public consumer, advocacy, and provider groups to review and provide feedback on key changes • Accept public comments from stakeholders during public comment periods for waiver regulations, waiver amendments, and waiver renewals • Communication activities could include periodic email updates with rule summaries, educational materials, webinars, and presentations at conferences and advocacy group meetings upon request 	1/1/2015 – Ongoing	In Progress
Relocation Process (due to HCBS rules)	<p>All Waivers:</p> <ul style="list-style-type: none"> • Determine relocation process <p>ABI, ABI-LTC, and SCL:</p> <ul style="list-style-type: none"> • Determine how the lease agreement requirement will affect the availability of services and the relocation process 	2/1/2016 – Ongoing	Not Started



All Waivers			
Item	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
	<ul style="list-style-type: none"> Require the service plan team/case manager to be involved in every move of the participant, ensuring the participant has a choice in every move or change in service provider 		

3. Participants

The significance of the changes to DMS' HCBS waivers warrants continuous communication with waiver participants and advocacy groups that communicate with participants and their families. Communicating regularly with participants also provides opportunities for CHFS waiver staff to conduct further monitoring of providers. In addition to public notices, CHFS waiver staff will organize outreach to participants to inform them of the key changes to their programs, and confirm they understand their rights. In certain cases, participants may need to be relocated based upon the results of the provider assessments. If the provider falls under compliance level three (not compliant and never will be), CHFS waiver staff will follow the same protocols to relocate participants as currently are in place when providers are terminated.

Table 5.3 Potential participant actions for compliance

All Waivers			
Rule	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
All HCBS rules	All Waivers: <ul style="list-style-type: none"> Develop stakeholder engagement and education plan and implement process for informing participants of the HCBS rules Send information to waiver participants targeted to each participant's situation explaining waiver changes related to HCBS rules <ul style="list-style-type: none"> Include information outlining the new participant rights, provider requirements, and links to all related information 	1/1/2015 – Ongoing	In Progress
Residential rules	ABI, ABI-LTC, and SCL:	1/1/2015 – Ongoing	In Progress

All Waivers			
Rule	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
	<ul style="list-style-type: none"> • Develop and implement communication process for informing residential waiver participants of waiver changes related to HCBS rules <ul style="list-style-type: none"> • Include information outlining the list of new participant rights, provider requirements, and links to related information • Include lease information and sample leases 		

4. Technology

In April 2015, the Medicaid Waiver Management Application (MWMA), which converts the majority of waiver processes to a central online system, was implemented. The system tracks the application, assessment, and service plan process. Many of DMS’ existing waiver forms have been switched from paper to electronic through MWMA, and the HCBS setting final rules impact the language that must be included on the MWMA screens. Below are the primary changes required for the MWMA to comply with the federal requirements.

Table 5.4 Potential technology actions for compliance

Medicaid Waiver Management Application			
Forms:	Potential Actions to be in Compliance with HCBS Rules	Timeline	Status
Plan of care/prior authorization form, long term care facilities and home and community based program certification form, Medicaid waiver assessment form, SCL demographic and billing information form, and SCL freedom of choice and case management conflict exemption form	All Waivers: <ul style="list-style-type: none"> • Modify forms/screen within MWMA to comply with HCBS rules 	1/1/2015 – 12/15/2015	Complete