The Centers for Medicare & Medicaid Services (CMS) has completed its review of North Carolina's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. North Carolina submitted its STP to CMS on March 12, 2015. CMS is requesting some additional information identifying all settings where services are delivered, clarifying the Timeline for the systemic assessment, and clarifying details of the site-specific assessment (including potential submission of evidence for heightened scrutiny), remediation, and monitoring actions. These concerns and related questions for the state are summarized below.

Settings:

Please provide preliminary estimates of how many individual sites/facilities the state expects to fall in to each of the compliance categories (compliant, not compliant but can be compliant with remedial actions, not compliant and cannot become compliant, and facilities for which the state may submit evidence under heightened scrutiny to rebut the presumption that a facility is institutional).

Please list all settings types in which waiver services are delivered, including any services provided in foster homes (please also clarify this for the CAP/C waiver).

State's Response:

As our statewide assessment is not complete, the State surveyed the PIHPs (as well as the Adult Day Health facilities providing services under CAP DA) on their anticipated numbers of sites that would be either clearly not compliant or not able to become compliant and facilities for which the State may submit evidence under heightened scrutiny. Based on the information reported, we anticipate that one site that may not be complaint and we anticipate that we will submit nine requests for heightened scrutiny. We anticipate that an estimated 2,875 of 2,934 will be able to be compliant with remedial action/technical assistance. This number is based on 2% of our provider sites potentially not meeting compliance.

Under the CAP C waiver, individuals may receive services at home where they reside with their family or in foster homes. CAP C considers foster homes in the same way as natural homes. Services are provided on a periodic basis by outside providers. CAP C does not reimburse the foster family for providing a service. Institutional Respite may also be provided in a Skilled Nursing Facility (SNF).

Under the CAP DA/Choice waiver, individuals may receive services at home where they reside with their family or in Adult Day Health facilities. Institutional Respite may also be provided in a SNF.

Under the Innovations waiver, individuals may receive services in their home or in the home of their family, in licensed/unlicensed residential settings, in the community, and in licensed/certified Adult Day Health/Adult Day Care/Day Support facilities. Institutional Respite may be provided in an ICF-IID facility.

Assessments:

Systemic assessment.

Please specify the time periods for the systemic assessment process vs. the remediation process noting that the assessment should be completed within 6 months of the date that the STP was submitted to CMS (September 12, 2015).

State's Response:

The State requested an extension to the six months within which assessments should be completed as we had published the timeframe of 7/15/15 through 9/15/15 for the statewide provider self-assessment process. CMS granted this three day extension on 8/25/15.

We have established expectations that remediation will occur on an ongoing basis with progress reviewed at the following intervals: Six months, one year, two years, and three years with the goal of full compliance for all providers by March 2018. Self-assessments are to be submitted with plans of action to show remediation the provider will implement to ensure full compliance with the rule. Assessments/plans of action will be reviewed at the aforementioned intervals to determine if full compliance has been achieved. Remediation starts as of the date of the acceptance of the self-assessment by the PIHP or DMA. Acceptance indicates that the information as presented has been reviewed and the plan to meet the final rule is sufficient. Technical assistance will be provided throughout the process. The e Review tool affords an operational function that will facilitate the tracking/monitoring of the plans of action and correspondence between the provider and the PIHP or DMA. Reviewing entities will adhere to the thresholds established in the plan and will be submitting ongoing analysis to the State. All reviews can be accessed by the State throughout any phase of this process, thus making it seamless, streamlined and manageable in real time by all parties.

Site-Specific assessments.

Please clarify what the provider assessment validation process will entail, what percentage of assessments will be validated, and how they will be chosen.

State's Response:

Each assessment is reviewed as it is submitted by the PIHP or DMA. A standardized process with a standardized e-Review tool and companion document for evaluation of the provider's compliance is being utilized. We are receiving assessments on 100% of our Day Supports, Residential Supports and ADH providers. We are receiving 100% of corporate SE sites and 10% of individual SE sites for each of the eight LME-MCOs.

Please clarify the state's process for assessing supported employment (the STP notes that the state will "complete an assessment for the corporate sites and a minimum of 10 assessments or 10%, whichever is greater."), How did the state determine this process, specifically for supported employment services?

State's Response:

Throughout stakeholder engagement there was on-going dialogue regarding the assessment process for SE, and based on the outcomes of these conversations, knowledge of the supported employment services across the State (based on available inventory) it was determined that a review of the corporate practices of a provider specific to supported employment and a sample of actual job sites/microenterprises of 10% or 10 whichever is greater for each of the 8 (eight) LME-MCOs was a fair and reasonable sample. The State reserves the right, based on the initial sample, to add additional sites based on the indicated need. Moving forward, prior to service delivery, all new sites will be assessed and must be in full compliance with the rule to provide services.

What types of settings are individuals in that require assessing for supported employment?

State's Response:

Individuals are employed at varying competitive job sites that are integrated within the community. For example, Second Street Sundries (coffee bar/grill), Hand Me Up Thrifts, retail stores, hospitals, etc. There are also microenterprises such as Creations by Mark (costume crystal jewelry).

What is the process for assessing other services (in addition to supported employment)?

Day Supports, Adult Day Health, and Residential Supports are 100% of all sites through an established web-based tool.

Please clarify how the state will oversee local agencies' work, and maintain ultimate responsibility for ensuring compliance with the rules. The state should ensure that there: is no fiduciary link between these local agencies and the providers that are being assessed; and is not a conflict of interest between the stakeholder community and the providers being assessed.

State's Response:

The following language is from the State's contract with the PIHPs and ensures that there is no fiduciary link between the local agencies and the providers that are being assessed.

1.7 Conflict of Interest:
*As required by 42 C.F.R. § 438.58**,** no officer, employee or agent of any State or Federal agency that exercises any functions or responsibilities in the review or approval of this Contract or its performance shall acquire any personal interest, direct or indirect, in this Contract or in any subcontract entered into by PIHP. No official or employee of PIHP shall acquire any personal interest, direct or indirect, in any Network Provider, which conflict or appear to conflict with the employee's ability to act and make independent decisions in the best interest of PIHP and its responsibilities under 42 CFR Part 438 and other regulations applicable to Medicaid managed care organizations.*
PIHP hereby certifies that:
a. no officer, employee or agent of PIHP;
b. no subcontractor or supplier of PIHP; and
c. no member of the PIHP Board of Directors;

is employed by the State of North Carolina, the federal government, or the fiscal intermediary in any position that exercises any authority or control over PIHP, this Contract, or its performance. Pursuant to CMS State Medicaid Director Letter dated 12/30/97 and Section 1932(d)(3) of the Social Security Act, PIHP shall not contract with the state unless PIHP has safeguards in place that are at least equal to Federal safeguards provided under section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

For Adult Day Health facilities, DMA will be reviewing all self-assessments to assure compliance to the final rule.

The State has strategically worked with the stakeholder community inclusive of Individual's receiving supports, PIHPs, Providers, Advocacy Groups, Provider Organizations, etc. to ensure that there is no personal conflict of interest between private interests and official responsibilities as streamlined processes were developed for an unbiased implementation, completion and review of the comprehensive self-assessment process.

- Please clarify how the state is ensuring that its assessment process represents the individual's viewpoint. Based on the STP, CMS has concerns that the state may be viewing the assessment process from the provider's perspective [1] whereas the regulations were written from an individual's perspective and this is the perspective that the state should use in designing its process. ([1] STP p. 12 "Once the self-assessment is complete, DHHS will conduct a follow up survey to assess the process from a provider perspective. The survey tool will be developed by a sub-group of the State, LME-MCOs and Local Lead Agencies as this data will provide insight for future planning. This process will afford providers an opportunity to engage directly with the Department.")

State's Response:

To clarify the statement on page 12 of the STP, this was to ensure that the assessment process was adequate from the provider's point of view to determine if changes need to be made to the provider assessment tool or the process itself. This is not intended as an opportunity for the provider to negotiate their compliance with the rule.

North Carolina's implementation of the "My Individual Experience Assessment" is presently underway. This assessment will be mirrored against the provider assessment, however will be provided in formats that are easily understood, in person first language, and will contain graphics. The individual experience assessment asks for the provider/site where individuals receive services so that the information received can inform the assessment of the provider/site. The data gathered will provide DHHS/DMA with actionable insight on the individual's desires. A survey that does not support that the individual has integration in the community to the extent the individual desires will illicit follow-up from the Care Coordinator/ Case Manager. An analysis of surveys and actions taken will be submitted to DHHS annually.

<u>Remedial Actions</u>

Please provide a more detailed description of the remediation plans, such as, how will the focus groups be used in this process? How will the state monitor progress of providers found out of compliance?

State's Response:

We have established expectations that remediation will occur on an ongoing basis with progress reviewed at the following intervals: six months, one year, two years, and three year with the goal of full compliance for all providers by March 2018. Self-assessments are to be submitted with plans of action to show remediation the provider will take to ensure full compliance with the rule. Assessments will be reviewed at the aforementioned intervals to determine if full compliance has been achieved. Remediation starts as of the date of the acceptance of the self-assessment by the PIHP or DMA. Technical assistance will be provided throughout the process. The e Review tool affords an operational function that will facilitate the tracking/monitoring of the plans of action and correspondence between the provider and the PIHPs or DMA. The State has recommended the additional use of ticklers for the PIHPs/DMA to reach out to providers if information is not submitted within timeframes. All reviews can be accessed by the State throughout any phase of this process, thus making it seamless, streamlined and manageable in real time by all parties.

The focus group that was established for HCBS (the HCBS Strategic Workgroup) was charged with the development and vetting of various components of the HCBS process. For example, the group developed the concept of the electronic tool and review process, the companion guide, and the initial statewide training for providers. These were further developed and vetted by the State Stakeholder Group. We are also using this group to develop an ongoing monitoring tool for use with the provider community once full compliance has been achieved. This process will occur on an individual basis as well. This will be streamlined into the regular Statewide Monitoring Tool that is currently used for all PIHP providers (Medicaid and State services). For ongoing monitoring for CAP DA/Choice, this will be streamlined into the regular monitoring completed by the Local Lead Agency Case Manager.

Please provide general expected remediation actions, milestones, and how long each action can be expected to take for all programs. CMS notes that specific remediation steps should be included in the STP that is posted for public comment, once outcomes of the assessments are completed.

State's Response:

We have established expectations that remediation will occur on an ongoing basis with progress reviewed at the following intervals: six months, one year, two years, and three years with the goal of full compliance for all providers by March 2018. Self-assessments are to be submitted with plans of action to show remediation the provider will take to ensure full compliance with the rule. Assessments will be reviewed at the aforementioned intervals to determine if full compliance has been achieved. Remediation starts as of the date of the acceptance of the self-assessment by the PIHP or DMA. Technical assistance will be provided throughout the process. The e Review tool affords an operational function that will facilitate the tracking/monitoring of plans of action and correspondence between the provider and the PIHP or DMA. The intent is for all providers to be in full compliance with the rule by March 2018. Remediation actions, milestones, and timelines will be included in the updated Statewide Transition Plan and will be posted for public comment once the outcomes of the assessments are completed.

<u>Ongoing Monitoring</u>

Please provide a timeline for when the state will submit a more detailed monitoring plan, including specific milestones and a concrete timeline for ongoing monitoring beyond the transition period. In addition, indicate how the state will monitor changes made based on the assessment outcomes.

State's Response:

Analysis of the self-assessment data from the PIHPs and DMA is due by January 16, 2016. During the transition period providers that are not in full compliance with the HCBS Final rule will receive ongoing TA as needed with progress reviewed at the following intervals: six months, one year, two year, and three year with the goal of full compliance for all providers by March 2018.

*Ongoing Monitoring: Additional tools are being developed with the goal of incorporation into the Statewide Monitoring Process that is utilized for all PIHP providers (Medicaid and State services). A separate workbook will be included in the tool to ensure that the tool can be utilized either as an integral part of the existing tool or as a stand-alone tool contingent on the specific need. The Statewide Monitoring Workgroup will work in partnership with the HCBS Strategic Workgroup to develop and vet the specific tool. All elements of this tool will be unique to the HCBS Final Rule. From preliminary meetings, the representative sample for on-going monitoring will be 10% annually. For ongoing monitoring for CAP DA/Choice this will be streamlined into the regular monitoring completed by the Local Lead Agency Case Manager. Information received from the completion of the "*My *Individual Experience Assessment" will be used to monitor individual experience at the HCBS site.*

Care Coordinator/Case Management monitoring will continue, ensuring that participants are receiving services consistent with their person-centered plan and CMS requirements. These processes will deliver a continuous monitoring and oversight system to assure that providers are offering services and supports that are consistent with HCBS.

Please describe how the state will link consumer satisfaction data to specific providers/sites as opposed to looking at the data at an aggregate level.

State's Response:

The individual experience assessment (My Individual Experience Assessment) asks for the provider/site where individuals received services. The data gathered will provide DHHS/DMA with actionable insight on the individual's desires. A survey that does not support that the individual has integration in the community to the extent the individual desires will illicit follow-up from the Care Coordinator/ Case Manager. An analysis of surveys and actions taken will be submitted to DHHS annually.

Relocation of Beneficiaries

Please clarify the timeframe by which the state will begin the relocation/transition process that will create confidence that the state will have transitioned their settings by March of 2019. For instance, specifying that this process will begin at least one year prior to the March 2019 compliance deadline will allow the state time to address any complications that may arise. In addition, specify number of beneficiaries anticipated to be impacted.

State's Response:

Unless, through this process, a provider is determined to be unable or unwilling to comply with the

HCBS Final Rule, it is the State's position that we provide technical assistance to providers to help them achieve full compliance. Our goal would be to have less than 2% of individuals that need to transition.

Transition planning will begin immediately for individuals in a setting where it is determined to not be able to or is unwilling to comply with the HCBS rule.

Following ongoing technical assistance, if significant progress has not been made by a site to achieve full integration/compliance, transition planning will begin. Person-Centered Planning meetings will be held as determined by the individual and his/her team. Transition should be complete by March 2018. DHHS will monitor monthly, the transition of individuals until the transition is complete. The State, in conjunction with the PIHP/Local Lead Agencies will oversee all necessary transition processes. A minimum of 60 days' notice will be provided to all individuals required to transition to another provider (unless there is imminent need to expedite the transition process). More notice may be granted in instances where other housing options are being secured (specific to the service of residential supports only). To ensure continuity of care and as little disruption to an individual's life as realistically possible, each person will receive a detailed description/notice of the process in plain language and a comprehensive listing of providers to consider for continuation of services. Assigned PIHP or Local Lead Agency Staff in conjunction with DHHS staff will schedule a face-to-face visit with the beneficiary and his/her guardian(s) (with subsequent visits occurring based on the specific needs of the individual) as soon as possible, but no later than 14 days after becoming aware that a new service option needs to be pursued to discuss the transition process and ensure the individual and family has been fully informed of any applicable due process rights. The State, in partnership with the PIHP/Local Lead Agency, will ensure there is transitional support for the beneficiary, and their family during the transition process.

Heightened Scrutiny

The state should clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved either to compliant settings or to non-Medicaid funding streams.

These settings include the following:

Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; Settings in a building on the grounds of, or immediately adjacent to, a public institution; any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. In addition, with respect to the heightened scrutiny process, please clarify the interaction of the following three state strategies for finalizing a determination that it will submit evidence to overcome the presumption that a site is institutional: (1) review of self- assessment responses; 2) request for public comment on each setting in question; 3) institution of the process for administrative review by the State in evaluating heightened scrutiny.

State's Response:

The State has incorporated into the e Review process a function that immediately denotes if a setting/site has the qualities of an institution. Once identification occurs, the State has engaged a process through the development of threshold assessment to determine if heightened scrutiny is warranted. The PIHP/DMA will immediately share the form with the provider agency if it appears that heightened scrutiny may apply. The provider will have 10 working days to complete and return the threshold assessment. Follow up will occur as indicated based on the review of the form within 5 working days. If the site is not found to warrant heightened scrutiny, the assessment process will continue as with any other provider. If the site is found to warrant heightened scrutiny, then a site visit by the PIHP and/or DMA will be conducted within 14 days of the determination. If the site is not found to warrant heighted scrutiny after the visit, the assessment process will continue as with any other provider. If the site is found to warrant heightened scrutiny, but DMA determines that the site is capable of meeting HCBS then public comment will be sought on the site. If DMA determines that the site is not capable, then transition will need to occur. We anticipate having this form added to our electronic process by the end of September 2015.

Future Amended Plan:

As noted above, once the state has finalized outcomes from its assessments, it must post an amended STP, including these outcomes as well as specific remedial actions tied to each compliance issue, for public comment before submitting it to CMS. The state should ensure that it includes specific outcomes for systemic assessments of statutes, regulations, policies, etc., as well as site-specificfacility assessments, along with corresponding detailed remedial actions to address each compliance issue. Remediation actions should include milestones and timelines as well.

Prior to that submission, the state must submit a revised STP no later than 30 days from receipt of this feedback letter that addresses CMS concerns. In this revised STP, the state must identify a date when the amended STP will be provided that describes the finding of the state's systemic and site-specific assessments, all final outcomes and the remediation actions specific to each compliance issue.

CMS would like to have a call with the state to go over these questions and concerns and to answer any questions the state may have. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Pat Helphenstine at 410-786-5900 or at Patricia.Helphenstinel@cms.hhs.gov, the CMS CO analyst taking the lead on this STP, with any questions related to this letter.