Historical Appendix 1i (formerly Appendix O-3) -- Summary of Public Comment on Revised Plan

After revising this plan, the State began a new public comment period that ran from November 9, 2016, through December 9, 2016. The State received 220 public comments on its revised plan and its list of sites proposed for federal heightened scrutiny review. A bare majority of the most recent public comments largely on the State's proposed list of sites to submit to CMS for heightened scrutiny review. The remaining comments focused, generally speaking, on broad issues relating to the rule's implementation. Although those issues have been addressed throughout the transition process, the comments updating and reframing them were helpful illustrations of the burdens, responsibilities, and opportunities presented by this transition process.

As with prior sets of public comments, the comments for this version of the plan can be organized into general themes. Therefore, just as with the original comments, this document lists those themes and the State's response. The State again thanks all public commenters who contributed to this project.

Public Comment Themes and General Responses

1. **Objection to the inclusion of one provider setting, Misericordia, on the heightened scrutiny list, and statements detailing Misericordia's compliance with the HCBS rule**

   Of the 220 total comments, 70 expressed support for Misericordia's continued participation in Illinois' HCBS system, and expressed dismay that Misericordia had been considered for the list of sites to be submitted to CMS for heightened scrutiny.

   As a response to this public input, and after reviewing other available evidence, including information gathered in Misericordia's on-site visit and through follow-up correspondence with the setting, the State agrees that Misericordia does not have the effect of isolating individuals. On the strength of this evidence, the Plan has been revised to reflect that the State, in accordance with CMS guidance, has moved Misericordia from Category 4 to Category 1, so that it is no longer presumed to be institutional under the federal rule.

   Many of the objections to Misericordia's inclusion in the heightened scrutiny site demonstrated the need for clarity on the categorization and heightened scrutiny processes, and the Plan has been updated with the aim of providing that clarity. The federal rule lists three types of sites that must be presumed to be institutional: those that are connected to a hospital, those connected to an institution, and those that have "the effect of isolating individuals receiving Medicaid HCBS from the broader community." Sites in these categories may continue to provide HCBS only if the State submits them to federal CMS for heightened scrutiny review; the State's including them on the heightened scrutiny list is the means CMS allows States to advocate for those sites' community character.

   Letter writers objected that Misericordia was placed in the presumed institutional category as a site type that has "the effect of isolating individuals receiving Medicaid HCBS from the broader community." The State preliminarily placed Misericordia in this category based on CMS guidance that gated communities, farmsteads, and campuses tend to have isolating effect. (Note: 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.")

2. **Comments in Support of Adult Day Care Programs or Settings**

The State received 45 comments expressing support for adult day care programs. The State is pleased to see these responses and will use them as part of the submission it sends to CMS to argue that, under the heightened scrutiny process, these sites should be considered compliant with the HCBS rule.

3. Concerns or Queries about Funding Changes

Sixty-seven comments raised concerns or questions regarding funding for HCBS providers in light of the new HCBS requirements. These commenters pointed out that the HCBS rule creates a greater burden on provider and state resources and demands more of provider staff. The State agrees that the new HCBS rule requires adaptation in provider practices and that providers and the State must work to ensure that clients receive safe and sufficient community services. All community services and providers subject to this transition plan work through one of Illinois' 1915(c) waivers, and the State must continue to ensure that the reimbursement rates it pays through those waivers are economical and adequate, and do nothing to inhibit access.

The State will also make every effort to remain sensitive to concerns regarding provider resources while implementing the transition plan. For example, the State will attempt to combine its onsite validation visits and ongoing monitoring visits with other on-site visits (for example, licensure or certification visits) providers must already accommodate.

4. Other Comments

The remaining 39 comments (one comment was counted in both the "Funding Changes" category and in this "Other" category) raised an array of issues or concerns that do not fit within the major categories above. The State synthesizes those issues and its responses as follows:

a. Current service options need to be reviewed and/or expanded under existing HCBS waivers to align with CMS regulations

The State will continue its practice of continually evaluating its waiver programs and service options to ensure their compliance with the HCBS rules and federal mandates, and to improve the State's HCBS system.

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

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

c. Concerns that the assessment process overestimates settings' compliance

Several commenters expressed concern that the State's discovered level of initial compliance is higher than they would expect. Commenters took particular note of the high number of Category 1 (fully compliant) sites. The State recognizes the possibility that sites initially assessed as fully compliant may be shown by onsite visits to require modifications, and it acknowledges that any initial assessment of a system as large as Illinois' will require continuous updating. However, the assessment and monitoring scheme the State is following under this plan is designed to provide the checks necessary to ensure that HCBS rule compliance is properly measured. In accordance with CMS guidance, the State began the assessment process with a provider self-assessment survey, but

also in accordance with CMS guidance, the State conducted a series of on-site visits to validate those survey results. Those validation visits revealed the self-assessment surveys to have provided relatively accurate results. Nevertheless, the State has no intention of relying solely on the validated survey results: even sites that have been assessed as compliant will receive on-site visits before the HCBS rule comes into full effect in 2022. At those on-site visits, State monitors will employ the comprehensive on-site assessment tool described in this plan to ensure sites' full compliance with the rule.

That same strategy addresses another concern raised by some commenters: that the State should have employed a more expansive view of the presumed-institutional category, so that more sites fell within Category 4. The State devised its guidelines for Category 4 sites based on CMS guidance. That said, to the extent any settings that did not qualify for Category 4 have the effect of isolating individuals, that isolation will be discovered during the onsite visits that will occur before 2022.

d. Need for systemic changes to accompany any rule changes

Some commenters noted that rule changes alone will not be sufficient to implement the HCBS rule, because the changes must be accompanied by changes in the State's overall HCBS system. The Stat agrees with this premise, and as part of this plan it intends to review its policies and its trainings to ensure that its practices match amended rules. As described in this plan, the State also reviewed the results of the onsite validation visits conducted under this plan, to identify common areas of noncompliance that require further State training or other intervention.

e. Concerns or issues not directly related to the Statewide Transition Plan

A number of commenters raised important concerns that do not relate directly to this Plan. For example, some commenters expressed concern about particular clients' situations, about managed care processes, or about items that could be included in future HCBS waiver amendments. These comments have been relayed to appropriate areas within the State.

f. Questions as to whether providers will be able to comply with the HCBS Rule

Commenters warned that some providers may have difficulty understanding their duties under the rule or coming into compliance, and they expressed hope that the State would provide assistance. As part of this Plan, the State intends to provide training our outreach to providers for larger issues, such as person-centered planning or issues identified during the State's initial onsite visits. In addition, the State's future onsite visits will incorporate a the comprehensive HCBS Rule compliance tool the State used for assessment visits, and providers will be made aware of the areas the tool indicated they need to remediate. The State has also publicized the tool itself so that providers may study its contents and prepare for monitoring visits. In addition, the State has in the past and plans to continue to interact with providers and stakeholders to ensure that information about the rule is shared.

g. Concerns about relocating clients placed at non-compliant sites

Some commenters expressed concern about the need to relocate clients in the event that sites are deemed non-compliant. The State agrees that this is an important concern. However, at this point, the State is providing settings an opportunity to come into compliance with the HCBS Rule, with the hope that no services will be disrupted. However, the State will remain cognizant of the need to identify sites that cannot come into compliance with ample time to allow relocation for affected clients. As stated in this document, the State intends to prioritize this task as 2018 approaches.

h. Campus settings should be closed either under this rule or otherwise

A small number of commenters argue that campus-based settings should be considered *per se* noncompliant with the HCBS rule and either be closed or excluded from the State's HCBS program. The State disagrees with this position, for two reasons. First, one of the philosophical underpinnings of the HCBS Rule, and of LTSS provision in general, is that to the fullest extent possible clients should

be accorded a choice in their mode and location of treatment. The wholesale exclusion of a category of setting would undercut this goal. Second, by allowing States to submit campus-based settings for heightened scrutiny approval and by allowing States to deem compliant non-isolating campus settings, CMS has indicated that it believes that some campus-based settings should be deemed compliant with the HCBS Rule. The course CMS has taken—to allow campus based settings to continue to participate in HCBS programs only where the State has determined they are non-isolating or CMS has approved them through heightened scrutiny—ensures that those settings will be examined closely for compliance while also ensuring that truly integrated campus settings will continue to be able to serve clients.