

# TRANSITION PLAN

## For Complying with the CMS Home- and Community-Based Services Medicaid Rule

### FOR THE STATE OF NORTH DAKOTA

The CMS-approved North Dakota transition plan can be found at:

<http://www.nd.gov/dhs/info/pubs/docs/medicaid/nd-revised-preliminary-statewide-transition-plan-draft-for-public-comment-9-28-18.pdf>

For a crosswalk of North Dakota’s systematic assessment of bringing its regulations regarding services funded by its HCBS waiver into compliance with federal regulations and links to important legal documents, see pages 101–111.

#### SITE-SPECIFIC ASSESSMENTS

<b>Types of Settings/Residents and Funding Authorities</b>	<p>For a full listing of Medicaid HCBS services, see: <a href="https://www.nd.gov/dhs/info/pubs/docs/medicaid/fact-sheet-medicaid-waivers-hcbs.pdf">https://www.nd.gov/dhs/info/pubs/docs/medicaid/fact-sheet-medicaid-waivers-hcbs.pdf</a></p> <p>The state has 6 1915(c) waivers, with the HCBS waiver being most relevant to this review.</p>
<b>Compliant/Non-Compliant</b>	<p>Adult Day Care settings:</p> <ul style="list-style-type: none"> <li>• 4 of 8 in nursing homes (see below) cannot comply</li> </ul> <p>Adult Day Care:</p> <ul style="list-style-type: none"> <li>• 3 settings are in residential care settings whose status is yet to be determined (see below)</li> </ul> <p>Adult Foster Care (four or less residents per settings):</p> <ul style="list-style-type: none"> <li>• 9 of 12 settings (75%) serving 16 Medicaid beneficiaries are fully compliant</li> </ul> <p>Adult Residential Services:</p> <ul style="list-style-type: none"> <li>• 14 settings with 114 Medicaid recipients whose “institutional” status is yet to be determined</li> </ul>
<b>Reasons for Non-Compliance</b>	<p>Adult Foster Care:</p> <ul style="list-style-type: none"> <li>• Changes are needed in regard to the experience of the residents to allow for more control of recipient schedules, access to funds, choice of meals, access to phone at any time, access to visitor’s day or night. Also, settings need to use leases or legally enforceable agreements.</li> </ul>
<b>Types of Remediation</b>	<p>Adult Foster Care:</p> <ul style="list-style-type: none"> <li>• Changes in house rules and use of leases or legally enforceable agreements</li> </ul>

#### SETTINGS PRESUMED INSTITUTIONAL

<b>% Presumed Institutional (No. of Residents Affected)</b>	<p>The Department is still trying to determine if adult residential settings and the adult day care settings located within those facilities with changes, can meet all settings requirements or will need to utilize the heightened scrutiny process to refute any presumption of an institutional characteristic because the setting may be considered to isolate individuals from the broader</p>
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**NORTH DAKOTA TRANSITION PLAN FOR COMPLYING WITH THE CMS HOME- AND COMMUNITY-BASED SERVICES MEDICAID RULE (continued)**

	community. To assist in this effort from January 2018 to May 2018 Department staff conducted additional conference calls and or site visits with all 14 adult residential service providers to specifically review the settings rule as it relates to their facility and provide guidance on areas that need to be changed in order comply with the rule.
<b>Type of Setting/Residents</b>	See above
<b>Reason for Presumption</b>	<p>When a provider requests to enroll or add a setting that may fall under one of the three prongs that will trigger the need for heightened scrutiny the Department will utilize a setting assessment tool to identify any institutional characteristics. The three prongs include:</p> <ol style="list-style-type: none"> <li>1. Settings in a publicly or privately-operated facility that provides inpatient institutional treatment</li> <li>2. Settings in a building on the grounds of, adjacent to, a public institution</li> <li>3. Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS</li> </ol>
<b>Heightened Scrutiny Process</b>	<p>Once problem areas have been identified providers will be given time to implement remediation efforts.</p> <p>Once the provider informs the Department that they have implemented the necessary remediation efforts into their daily practice, trained necessary staff, educated consumers and family, they will be required to submit an evidence package to the Department for review.</p> <p>Once the Department receives the evidence package and concurs that it includes enough evidence that the setting has made the changes identified in the setting assessment tool, Department staff will conduct a site visit, gather consumer feedback with all Medicaid recipients and /or their family and legal decision makers to assure their experience in the setting is indicative of the HCBS settings rule and supports the information provided to refute the presence of any institutional characteristics.</p> <p>Once this process is complete, the information along with the information submitted in the evidence package will be reviewed by an internal HCBS settings committee. The committee will be comprised of a representative from the State’s Aging Services Division, Developmental Disabilities Division, Medical Services Division, and the State Risk Manager.</p>

**NON-COMPLIANCE COMMUNICATION**

<b>% Cannot/Will Not Comply (No. of Residents Affected)</b>	4 of 8 Adult Day Care settings (50%), serving 0 Medicaid recipients
<b>Type of Setting/Residents</b>	See above

**NORTH DAKOTA TRANSITION PLAN FOR COMPLYING WITH THE CMS HOME- AND COMMUNITY-BASED SERVICES MEDICAID RULE (continued)**

<p><b>Reason for Determination</b></p>	<p>Four of the eight currently enrolled adult care settings do not comply because they are provided in a hospital or nursing facility, comingle nursing home and adult day recipients, share activities, staff, etc. and therefore cannot comply.</p>
<p><b>Communication Strategy</b></p>	<p>Medicaid recipients who live in non-complaint settings who need to be relocated to a complaint setting, will be provided at least 30 days written notice that they will need to find another HCBS setting that fully complies with the rule to continue to receive services. All client transition plans must be completed no later than March 17, 2022.</p>
<p><b>Assistance to Residents?</b></p>	<p>The case/ program manager will provide them with additional information and assistance on finding other HCBS options in their community that fully comply with the rule. Individuals will be provided choices among alternative services and providers that meet the individual’s needs, preferences, and HCB setting requirements. Individuals will have the opportunity to interview and tour potential providers to make an informed decision. Once a new setting/provider is selected, a plan is developed to assist in a seamless transition. Services and supports relevant to the individual’s needs and goals are identified.</p>

**ONGOING MONITORING**

<p><b>Monitoring Procedures</b></p>	<p>The Department may make a presumption that privately owned or rented homes and apartments of people living alone or with family comply. The state will assure compliance through ongoing monitoring of the client’s experience. This can be accomplished through ongoing consumer and family training and contact with case/program managers trained on the HCBS setting requirements. If there is a presumption that a privately-owned setting is institutional in nature the case/ program managers will be required to report that to the Department who will take steps to conduct a heightened scrutiny review to assure compliance.</p> <p>At the recipient level; the State will monitor all individual person-centered service plans, conduct case management reviews, client interviews/ quality reviews to assure clients are free to choose what services and supports they wish to receive and who provides them. Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.</p>
<p><b>Quality Assurance Measures</b></p>	<p>The HCBS Case Managers will be responsible to assure ongoing compliance with all Medicaid recipients through monitoring done during their required quarterly visit to conduct the person-centered care plan meeting. Case Managers are required to monitor during their quarterly face to face contacts to ensure an individual’s is being afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint. One of the quarterly visits must include a completion of a Medicaid Waiver Quality review. In addition, the HCBS case managers must complete an annual resident setting experience interview using a standardized State Form with all adult foster care recipients living in licensed facilities. This includes both Medicaid, State, and private pay recipients.</p>