

# TRANSITION PLAN

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

### FOR THE STATE OF NEBRASKA

The CMS-approved Nebraska transition plan can be found at:

<https://www.medicaid.gov/sites/default/files/2023-09/ne-transition-plan-hcbs.pdf>

The CMS-approved Nebraska Corrective Action Plan can be found at:

<https://www.medicaid.gov/sites/default/files/2023-07/ne-appvd-cap.pdf>

#### SITE-SPECIFIC ASSESSMENTS

*The Centers for Medicare & Medicaid Services (CMS) required states to conduct validated, site-specific assessments of all provider-owned or controlled settings.*

<b>Types of Settings/ Residents and Funding Authorities</b>	<p>The Nebraska Department of Health and Human Services developed the Statewide Transition Plan. The DHHS Division of Medicaid and Long-Term Care (MLTC) oversees four HCBS waivers:</p> <ul style="list-style-type: none"><li>• CBS for Aged and Adults and Children with Disabilities (A&amp;D) Waiver;<ul style="list-style-type: none"><li>○ As of March 2019, the A&amp;D Waiver was serving approximately 5,286 individuals.</li></ul></li><li>• Traumatic Brain Injury (TBI) Waiver;<ul style="list-style-type: none"><li>○ As of April 2019, the Waiver was serving 20 adults.</li></ul></li><li>• Comprehensive Developmental Disabilities (CDD) Services Waiver;<ul style="list-style-type: none"><li>○ As of July 2019, the Waiver was serving 4,106 individuals.</li></ul></li><li>• DD Adult Day Services (DDAD) Waiver.<ul style="list-style-type: none"><li>○ As of July 2019, the Waiver was serving 665 individuals.</li></ul></li></ul> <p>MLTC administers the A&amp;D Waiver and the TBI Waiver, whereas the DHHS Division of Developmental Disabilities (DDD) administers the two DD waivers.</p> <p>Applicable waiver settings include: Assisted living, adult day health, extra child care for children with disabilities, residential habilitation-extended family home (EFH), residential habilitation-group home, habilitative workshop services, prevocational workshop services, habilitative child care, and community living and day supports.</p>
<b>Compliant/Non-Compliant</b>	<p>A&amp;D Waiver- Residential:</p> <ul style="list-style-type: none"><li>• 221 assisted living facilities out of the 223 are categorized as fully compliant;<ul style="list-style-type: none"><li>○ Two settings were categorized as non-complaint as they refused to be assessed due to planned closures.</li></ul></li></ul>

## NEBRASKA TRANSITION PLAN FOR COMPLYING WITH THE CMS HOME- AND COMMUNITY-BASED SERVICES MEDICAID RULE (continued)

- 54 residential settings were identified as being on the grounds of, or adjacent to, a public institution (Prong II) and underwent a State of Nebraska heightened scrutiny review.
  - One was determined to be fully compliant with heightened scrutiny.
  - 44 submitted heightened scrutiny packets.
  - Ten did not submit heightened scrutiny packets. A list of these settings were submitted to CMS for further review after the heightened scrutiny public comment period.

### A & D Waiver- Non-Residential:

- MLTC categorized non-residential settings as follows:
  - 99 Extra Child Care for Children with Disabilities settings, and 29 Adult Day Health settings, with a total of 128 settings.
  - Five Adult Day Health settings were located in a publicly or privately-owned facility providing inpatient treatment (Prong I) and were categorized as unable to comply after completing the setting assessment.
  - Sites categorized as unable to comply during the initial assessments have opted to discontinue providing non-residential A&D Waiver services. The transition process has been completed for all participants.

### TBI Waiver- Residential:

- MLTC categorized the residential setting as follows:
  - One (1) of one (1) is categorized as fully compliant and not subject to heightened scrutiny review.

### DD Waiver- Residential:

- Data includes activities from 2014-2020.
- 557 of 802 were immediately categorized as fully compliant;
- Out of those 802, 424 were Extended Family Homes (EFHs), 267 were Group Homes, and 111 were Centers for the Developmentally Disabled (CDD).
- 245 of the settings were categorized as partially compliant, but were able to comply and complete the necessary remediations. Out of the 245 partially compliant settings, 149 were Extended Family Homes (EFHs), 53 were Group Homes (GH), and 41 were Centers for the Developmentally Disabled (CDD).
- No residential settings were categorized as unable to comply.
- Seven residential settings were identified as presumed to have the qualities of the institution (Prong III) and underwent a State of Nebraska heightened scrutiny review. Of those settings,

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	<p>seven were able to remediate the issues causing the heightened scrutiny review before July 1, 2021. Five of the seven were Group Homes and two of them were Centers for the Developmentally Disabled (CDD).</p> <p>DD Waiver-Non-Residential:</p> <ul style="list-style-type: none"> <li>• 42 of 124 are categorized as fully compliant;</li> <li>• 82 are categorized as not compliant but could be with modifications;</li> <li>• No non-residential settings are categorized as unable to comply.</li> <li>• Four non-residential settings were identified as presumed to have the qualities of an institution (Prong III) and underwent a State of Nebraska heightened scrutiny review. All four were able to remediate the issues causing the heightened scrutiny review before July 1, 2020.</li> </ul> <p><b>NOTE:</b> Nebraska received approval of its corrective action plan (CAP) on June 26, 2023. The CAP provides updated timeframes for completion of the heightened scrutiny review process. It is possible that setting classifications in the STP may be out of date. The CAP notes that the state submitted information to CMS on presumptively institutional settings that were selected for a sampled heightened scrutiny review on April 21, 2023.. According to the CAP, teams will address heightened scrutiny findings related to CMS’ heightened scrutiny review by 12 months post the date CMS issues a determination and findings to the state. Final compliance statewide with HCBS settings rule will take place 12 months post the date CMS issues a heightened scrutiny determination and findings to the state.</p>
<p><b>Reasons for Non-Compliance</b></p>	<p>Detailed reporting on results from site assessments concerning integration with the community, freedom from coercion and restraint, optimization of individual autonomy, choice of services and supports, etc., can be found from pages 33-45 in the State Transition Plan.</p>
<p><b>Transition plans</b></p>	<p>MLTC and DDD utilized a variety of methods to educate stakeholders and the broader public regarding the State Transition Plan. These methods included a dedicated State Transition Plan website, public forums in communities throughout the state, provider information meetings, and development of technical assistance resources distributed to providers and contracted service coordination agencies. The MLTC and the DDD completed a comprehensive systemic assessment including: state statutes, regulations applicable to all waivers, licensure and certification tools and procedures, other current practice (for example, monitoring by service coordinators), approved</p>

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	<p>waiver applications, and Medicaid provider agreements and applicable addendums to assess compliance with the final rule. Specific site assessments were conducted and validation activities included additional desk-review of settings’ policies and procedures, training documentation, certification and licensure activities, or other evidence of compliance. Heightened scrutiny packets were submitted to CMS for settings presumed institutional. For settings found out of compliance and unwilling to comply, the State will assist in the relocation of participants. Moving forward, monitoring efforts will take place at the individual and provider level and will include reviewing person-centered service plans, trainings, technical assistance to coordinators, on-site inspections, and licensing inspections and certification reviews. For quality assurance, survey instruments and needs assessments will be updated. In addition, on-site visits and annual provider reviews will take place.</p>
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**SETTINGS PRESUMED INSTITUTIONAL**

CMS presumes some settings have qualities that are institutional or isolating in nature. These settings must go through a heightened scrutiny review by CMS.

*CMS presumes the following types of settings have institutional or isolating qualities:*

- *Category 1: Located in a hospital, nursing facility, or other institutional setting.*
- *Category 2: Located adjacent to a public hospital, nursing facility, or other institutional setting.*
- *Category 3: Have the effect of isolating people from the broader community.*

<p><b>% Presumed Institutional (No. of Residents Affected)</b></p>	<p>DD Waiver-Residential:</p> <ul style="list-style-type: none"> <li>• Seven residential settings were identified as presumed to have the qualities of the institution (Category II) and underwent a State of Nebraska heightened scrutiny review. Of those settings, seven were able to remediate the issues causing the heightened scrutiny review before July 1, 2021.</li> </ul> <p>DD Waiver- Non-Residential:</p> <ul style="list-style-type: none"> <li>• Four non-residential settings were identified as presumed to have the qualities of an institution (Category III) and underwent a State of Nebraska heightened scrutiny review. Of those settings, four were able to remediate the issues causing the heightened scrutiny review before July 1, 2020.</li> </ul> <p>A&amp;D Waiver- Non-Residential:</p> <ul style="list-style-type: none"> <li>• Five Adult Day Health settings were located in a publicly or privately-owned facility providing inpatient treatment (Category I) and were categorized as unable to comply after completing the setting assessment.</li> <li>• Sites categorized as unable to comply during the initial assessments have opted to discontinue providing non-</li> </ul>
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**NEBRASKA TRANSITION PLAN FOR COMPLYING WITH THE CMS HOME- AND COMMUNITY-BASED SERVICES MEDICAID RULE (continued)**

	<p>residential A&amp;D Waiver services. The transition process has been completed for all participants.</p> <p>A&amp;D Waiver- Residential:</p> <ul style="list-style-type: none"> <li>• 54 residential settings were identified as being on the grounds of, or adjacent to, a public institution (Category II) and underwent a State of Nebraska heightened scrutiny review.</li> <li>• 44 submitted heightened scrutiny packets.</li> <li>• Ten did not submit heightened scrutiny packets. A list of these settings were submitted to CMS for further review after the heightened scrutiny public comment period.</li> </ul>
<b>Type of Setting/Residents</b>	<p>The type of setting was specified for the DD waiver-residential settings and the non-residential settings of the A&amp;D waiver.</p> <ul style="list-style-type: none"> <li>• DD Waiver- Residential: Five were Group Homes and two were Centers for the Developmentally Disabled (CDD).</li> <li>• A&amp;D Waiver-Non-Residential: Five Adult Day Health Settings were presumed institutional.</li> </ul>
<b>Reason for Presumption</b>	<p>All three prongs were represented in reasons for presumption.</p>
<b>Heightened Scrutiny Process</b>	<ul style="list-style-type: none"> <li>• For sites requiring heightened scrutiny, the final rule indicates that a state may provide evidence to CMS to indicate that a setting has the qualities of home and community-based settings, or that it is transitioning to have such qualities.</li> <li>• Examples of evidence/documentation that MLTC and DDD may request from providers include: an HCBS Heightened Scrutiny Evidence Worksheet, documentation showing individualized planning and evidence that a review of an individual’s interests, priorities, and necessary supports occurs regularly, and evidence that efforts are made to support and promote new experiences for individuals within the broader community.</li> <li>• Once information is reviewed, a public comment period for the identified settings will begin and heightened scrutiny packets will be submitted to CMS as requested.</li> </ul>

**NON-COMPLIANCE COMMUNICATION**

<b>% Cannot/Will Not Comply (No. of Residents Affected)</b>	<p>Both MLTC and DDD have determined that there are no active settings that are unable or unwilling to comply by March 17, 2023, thus no participants will require relocation.</p>
<b>Type of Setting/Residents</b>	<p>Not applicable.</p>
<b>Reason for Determination</b>	<p>Not applicable.</p>

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<b>Communication Strategy</b>	No participants need relocation currently. In the future, should relocation be necessary, MLTC and DDD will ensure that is adequate time to provide notification of the requirement to relocate.
<b>Assistance to Residents?</b>	Person-centered planning processes will be used to identify the individual’s goals and preferences. Assistance will be given to individuals in transition to discuss options, alternate settings, and other individual-chosen services and supports.

**ONGOING MONITORING**

<b>Monitoring Procedures</b>	<p>Monitoring efforts at the individual level will include review of person-centered service plans, training for service coordinators, and guidance to coordinators on how to educate individuals about person-centered philosophy and practice.</p> <p>Monitoring efforts at the provider level include ensuring current providers transition to compliance and maintain compliance. Nebraska will assess providers’ progress towards compliance through reports, interviews, and on-site inspections that include information from providers and individuals receiving services. Once overall compliance is achieved, strategies to ensure ongoing compliance will include:</p> <ul style="list-style-type: none"> <li>• Ongoing licensing inspections and certification reviews by appropriate staff</li> <li>• Ongoing HCBS setting compliance monitoring to ensure that settings continue to comply with the HCBS regulations.</li> </ul>
<b>Quality Assurance Measures</b>	<p>MLTC will continue to modify its quality improvement strategies including:</p> <ul style="list-style-type: none"> <li>• Updating individual survey instruments</li> <li>• Updating needs assessments</li> <li>• Tracking the progress in remediation efforts for setting-related issues via file review summaries</li> <li>• Conducting annual provider reviews</li> <li>• Conducting on-site visits as follow up to complaints against providers</li> </ul> <p>More information about quality assurance measures can be found in Nebraska’s Jan 1<sup>st</sup> submission <a href="#">here</a>.</p>