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DEPARTMENT OF HUMAN SERVICES

Legislative Report

Transition plan implementation for home and community-based settings

Aging and Adult Services and Disability Services divisions

January 2019

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I. Executive summary

Home and community-based rule overview

On Jan. 16, 2014, the Centers for Medicare & Medicaid Services (CMS) issued a rule that governs the home and community-based services (HCBS) for all states, referred to in this report as the HCBS rule. The rule took effect on March 17, 2014. CMS requires the Minnesota Department of Human Services (DHS) to submit a transition plan for approval. The plan will guide the state in complying with CMS regulations.

The HCBS rule raises expectations around what is possible for older adults and people with disabilities. It requires assurances that all people have information and experiences with which to make informed decisions. It also requires the services they receive to meet a prescribed set of standards.

The HCBS rule complements the goals and values of Minnesota's Olmstead Plan. The HCBS rule is a federal rule that further supports people's rights to make informed choices and decide what is important both to them and for them. The rule requires:

- Person-centered service planning
- Conflict-free case management
- Settings to have characteristics that are home and community-based.

New programs must meet HCBS settings requirements when they begin. The requirements apply to both residential and non-residential settings for people who receive Medicaid funding for HCBS.

For Minnesota, the HCBS rule applies to the following home and community-based service waivers and programs:

- Alternative Care (AC) program, 1115 demonstration waiver
- Brain Injury (BI) Waiver
- Community Alternative Care (CAC) Waiver
- Community Access for Disability Inclusion (CADI) Waiver
- Developmental Disabilities (DD) Waiver
- Elderly Waiver (EW)

CMS's home and community-based settings requirements (42 CFR §441.301(c)(4), 441.710(a)(1) and 441.530(a)(1)) define home and community-based settings based on the person's experience and outcomes, in addition to a setting's location, geography or physical characteristics.

The HCBS rule might mean significant changes for some providers in how they deliver services. It might also mean significant changes in how some people receive services. After almost 30 years of diverse and inconsistent policies across the country, the HCBS final rule is setting a standard for the next generation of services. It raises hopes and expectations for changes in the lives of older adults and people with disabilities, while also generating some fear of losing what is known.

DHS acknowledges that Minnesota must make changes to the HCBS system to meet the federal requirements. These changes include aligning regulations, refining service standards, policy and practice and, if needed, redefining service functions to meet the new requirements. To align regulatory requirements, the Department of Human Services and the Minnesota Department of Health collaborated to identify changes to state licensing and regulatory standards that we need to make to comply with the HCBS rule.

We will work with providers who want and are able to make the necessary changes and support them with technical assistance to comply with the rule. Providers have also indicated a need for additional funding and resources to meet the rule requirements.

We also will:

- Develop and implement a tiered-standards option for disability waivers. This will maintain current settings that meet the basic HCBS standards and create a higher standard for new HCBS settings and services.
- Encourage the development of alternative services that support inclusive community models.

Minnesota's statewide transition plan

The statewide transition plan is a document that outlines how Minnesota will ensure compliance with the HCBS settings rule. CMS requires the transition plan to include three main components:

- Systemic and site-specific assessment
- State action steps
- Stakeholder input

On June 2, 2017, CMS granted initial approval of the statewide transition plan. DHS submitted a revised statewide transition plan (PDF) to CMS on Dec. 17, 2018, for final approval. See VI. Status of statewide transition plan and 2018-2022 activities in this report for additional information about Minnesota's statewide transition plan status.

We continue to move forward with redefining new requirements, recognizing the sooner the new requirements are in place, the more time providers will have to transition into full compliance. The extension provides additional time for the state to implement the new service standards fully, and to develop and implement future service standards for day services and customized living for younger people with disabilities.

2018 transition plan activities

During 2018, we worked to make the transition plan part of our standard operations and to bring our system into alignment with the HCBS Settings Rule. These activities included:

- Assessing all HCBS waiver provider settings to ensure they meet the new regulation requirements and
- Validating settings to determine whether they meet new requirements through desk audits, site visits and asking people receiving services about their experiences.

In 2018, DHS also undertook a communication campaign to reach people who receive waiver services, HCBS service providers, trade associations and other interested parties. The goal was to help make the plan part of our standard operations. For additional information, see the Communication campaign section in this report

DHS is committed to working with our partners, including the people who receive the services, lead agencies (counties, tribal nations and health plans) and providers. Together, we will identify and plan for needed changes to ensure people who receive waiver services have a high-quality home and community experience. We have a strong network of partners who are willing to make the necessary changes to improve experiences for people and comply with the federal rule requirements. Some of the reccomendations in this report require legislative authority. Some of the reccomendations in this report require federal authority. DHS will seek appropriate authority when necessary.

II. Legislation

2015 Laws of Minnesota, chapter 78, article 6, section 30 states:

"Upon federal approval, the department of human services must take initial steps to come into compliance with the home and community-based settings transition plan for the home and community-based services waiver authorized under sections 256B.0915, 256B.092, and 256B.49. By January 15, 2016, and annually during the transition period ending by March 17, 2019, the department of human services must report on the status of the implementation to the chairs and ranking minority members of the house of representatives and senate policy and finance committees with jurisdiction over health and human services for seniors and people with disabilities."

III. Introduction

DHS submits this report to the chairs and ranking minority members of the policy and finance committees, which have jurisdiction over health and human services for older adults and people with disabilities pursuant to 2015 Laws of Minnesota, chapter 78, article 6, section 30.

The Aging and Adult Services and Disability Services divisions at the Department of Human Services prepared this report. It includes updates on the Centers for Medicare & Medicaid Services' review of the transition plan for implementation of the HCBS rule and 2018 implementation activities under the transition plan. The transition plan includes:

- Assessing all HCBS waiver provider settings to ensure they meet the new regulation requirements
- Validating settings through desk audits, site visits and asking people about their experiences to determine whether the settings meet new requirements

On Jan. 16, 2014, CMS issued a final home and community-based services rule, effective March 17, 2014. The rule requires person-centered planning, conflict-free case management and settings to have characteristics that are home and community-based. The rule requires states to assess settings that receive funds through HCBS waivers. All HCBS settings must comply with the federal requirements that ensure people:

- Have opportunities to participate in community life
- Are integrated in and have full access to their communities
- Have the opportunity to seek employment and work in integrated environments

In Minnesota, the rule affects all HCBS waivers and programs:

- Alternative Care (AC) Program, Section 1115 Demonstration Waiver
- Brain Injury (BI) Waiver
- Community Alternative Care (CAC) Waiver
- Community Access for Disability Inclusion (CADI) Waiver
- Developmental Disabilities (DD) Waiver
- Elderly Waiver (EW)

The purpose of the rule is to maximize opportunities for people who receive HCBS. The HCBS rule is not about taking away services or closing down programs. The rule raises expectations around what is possible for older adults and people with disabilities. It requires that all people:

- Have information and experiences with which to make informed decisions

- Are treated with respect and are empowered to make decisions about how, when and where to receive services
- Have opportunities to be involved in the community, including living and working in integrated settings

DHS is committed to working with our partners, which include people who receive services, lead agencies (counties, tribal nations and health plans) and providers, to identify and plan for the changes needed to ensure people who receive waiver services have a high-quality home and community experience. We acknowledge that various changes need to take place within the HCBS system to meet the federal requirements.

DHS will focus on refining service standards, policies and practices. In addition, we are modifying service descriptions and developing new services, as needed, to meet the HCBS rule requirements. DHS will seek necessary legislative and federal authority. We have a strong network of partners willing to make the necessary changes to improve experiences for people and comply with the rule's requirements.

We are committed to providing ongoing information and updates to people who receive services and their families. We continue to develop tools and information for lead agencies, case managers and providers on implementation of the rule. We are working with providers who are willing and able to make the necessary changes that will help them to comply with the rule. Providers continue to express the need for additional funding and resources to meet the requirements.

A higher standard for future settings will encourage the development of alternative approaches that support more inclusive community models. For more information on current and future standards, see Status of current and future standards for disability waivers in this report. We are working with current settings to meet the basic requirements of the HCBS rule and create a higher standard for new settings and/or services.

Implementation of Minnesota's HCBS transition plan to comply with the home and community-based setting requirements in the HCBS rule will also help Minnesota to promote the goals expressed in state public policy and the Olmstead Plan.

The values expressed in the HCBS rule, Minnesota state statute and public policy, and the Olmstead Plan have similarities that will lead to comparable outcomes, which include:

- Person-centered planning
- Choice for people of where to live and work
- Inclusion of people with disabilities into their community.

CMS has granted states until March 2022 to bring their systems into compliance with the HCBS settings requirements. States are required to develop a transition plan for the HCBS waivers in order to comply with the rule. On June 2, 2017, CMS granted initial approval of the statewide transition plan. CMS provided additional guidance and expectations throughout 2017-2018 on what is required for states to receive final approval. Minnesota published a revised statewide transition plan, sent it out for public comment from Sept. 10 until Oct. 10, 2018, and submitted the revised statewide transition plan (PDF) to CMS on Dec. 17, 2018. See VI. Status of statewide transition plan and 2018-2022 activities in this report for additional information about Minnesota's statewide transition plan status.

IV. Overview of the HCBS final rule

A. Person-centered planning requirements

The rule requires that the person-centered planning process reflect what is important to the person who receives HCBS services. It must address personal preferences and ensure health and welfare. DHS created a person-centered planning protocol, the "Person-Centered, Informed Choice and Transition Protocol," which provides guidance for support planners about best practices and expectations for person-centered planning. Over time, DHS will revise the protocol based on feedback from support planners and best person-centered practices.

Person-centered practices are based on five key areas. Services for and interactions with people should be judged by their ability to help people:

- Share ordinary places and activities
- Make choices
- Contribute
- Be treated with respect and have a valued social role
- Grow in relationships

DHS also wrote a series of bulletins and held several learning community sessions specific to the person-centered planning, informed choice and transition protocols. These bulletins and learning community sessions can be found on the Person-Centered Practices website.

B. Home and community-based settings requirements

Requirements for all settings

The HCBS rule requirements apply to all new and existing Minnesota waiver programs. These programs and services must comply with all requirements of the rule by March 17, 2022. The home and community-based setting requirements in the rule contain general requirements that apply to all settings where people receive HCBS.

The requirements focus on the quality of a person's experiences. They maximize opportunities for people to have access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate to meet their needs.

Home and community-based settings include both residential and non-residential settings. In Minnesota, residential settings include:

- Adult and child waiver foster care
- Customized living (often referred to as assisted living for older adults)
- Supported living services (when provided in a licensed foster care or supervised living facility)

In Minnesota, non-residential settings include:

- Adult day services
- Day training and habilitation
- Prevocational services
- Structured day services

The rule is clear that home and community-based settings do not include:

- Hospitals
- Institutions for mental disease
- Intermediate care facilities for people with developmental disabilities
- Nursing facilities

According to the rule, all home and community-based settings must meet the following standards:

HCBS standards that apply to all HCBS settings
Setting supports opportunity to seek employment and work in competitive integrated settings
Setting supports engagement in community life
Setting supports control personal resources
Setting supports receiving services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
The person chooses setting from available setting options
Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint
Optimize individual initiative, autonomy and independence in making life choices including daily schedule and with whom to interact
Facilitate individual choice regarding services and supports and who provides them.

Additional Standards that apply to provider-owned or controlled residential settings
The person has a lease or other legally enforceable agreement
Privacy in their bedroom or living unit including lockable doors
Choice of roommates if shared unit
Freedom to furnish and decorate unit
Freedom and support to control schedule and activities including access to food at any time
Able to have visitors at any time
Physically accessible

Modifications of the additional requirements must be:

- Supported by specific assessed need
- Justified and documented in the person-centered service plan
- Documented in the person-centered service plan

Adapted from
http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/requirements-for-home-and-community-settings.pdf

Settings presumed not to be home and community-based

The rule also identifies settings that CMS presumes are not home and community-based. The settings identified by CMS as settings that are presumed not to be home and community-based include:

- Prong 1 settings: Located in a public or private institution that also provides inpatient treatment
- Prong 2 settings: Located adjacent to or on the grounds of public institutions
- Prong 3 settings: Settings that have the effect of isolating people who receive HCBS from the broader community (effect of isolating)

States may choose to submit evidence to CMS to demonstrate that a setting is, in fact, home and community-based, after a site-specific assessment that includes onsite observation, person-experience assessments, supporting documentation submitted by the provider through the provider attestation and/or through public comment. The submitted information will be subject to a heightened-scrutiny review by CMS.

CMS issued additional guidance to states on settings that have the effect of isolating (PDF) people who receive HCBS from the broader community, and, therefore, are presumed not to be home and community-based. This additional guidance applies to both residential and non-residential settings. CMS has identified the following characteristics that may have the effect of isolating people from the broader community:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability
- The people in the setting are primarily or exclusively people with disabilities, and on-site staff provides many services to them
- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities
- People in the setting have limited, if any, interaction with the broader community
- Settings that use or authorize interventions and restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion)

See Appendix A on Minnesota's approach to identify settings that may have the effect of isolating people from the broader community.

V. 2018 Minnesota statewide transition plan activities

On Dec. 17, 2018, DHS submitted a revised statewide transition plan (PDF) to CMS for final approval. In order to receive final approval, states must assess the level of compliance of each site, validate compliance and describe the plan to remediate areas of non-compliance. See section VI. Status of statewide transition plan and 2019-2022 activities in this report for the next steps for Minnesota's statewide transition plan to receive final approval.

A. Making the plan part of our standard operations

In 2018, DHS continued to implement the strategies identified in the statewide transition plan to bring our system into compliance. These strategies include:

- HCBS rule legislative policy changes: creating new or modifying existing employment service options and residential service options
- HCBS provider attestations and provider implementation of HCBS setting requirements
- Site-specific validation and remediation plans

HCBS rule legislative policy changes

The legislative changes made during the 2018 legislative session align Minnesota's service options and provider standards with the HCBS rule. The changes address the gaps identified through the systemic assessment. These changes reflect the requirements to ensure the provider settings meet the basic requirements of the HCBS rule. Amendments to law include:

- Creation of employment exploration, development and support for BI, CAC, CADI and DD in 245D
- Creation of individualized home supports for BI, CAC and CADI in 245D
- Creation of individual community living support service for EW and AC
- Expansion of in-home family supports to BI, CAC and CADI

For a detailed list of previous legislative policy changes, review Appendix B: New laws effective in 2017.

HCBS provider attestations and provider implementation of HCBS setting requirements

CMS guidance requires states to assess all settings that group people to receive home and community-based services to determine whether the setting meets the HCBS rule requirements. To conduct a site-

specific assessment, DHS developed, tested and launched an online provider attestation for designated HCBS settings

The provider-attestation form requires the HCBS provider to submit documentation to demonstrate compliance in each requirement area. The providers had from March 27 to May 31, 2017, to submit an initial provider attestation.

Providers had until Sept. 1, 2017, to complete any updates and to submit a final attestation, including supporting documentation. A provider could request a hardship extension for additional time, up to Dec. 31, 2017, to make any needed changes and indicate compliance on their attestation.

DHS received 5,981 site-specific final submitted attestations for the following services:

- Residential settings, including:
  - Adult foster care or supportive living services provided in a licensed setting
  - Child foster care or child supportive living services provided in a licensed setting
  - Customized living
- Day settings, including:
  - Adult day services — family and center-based
  - Day training and habilitation
  - Prevocational services
  - Structured day programs

DHS developed service-specific provider-attestation toolkits, including provider-attestation guidebooks to help providers comply with the HCBS rule. Each guidebook has instructions for how to complete an attestation and guidance on what is expected of providers to reach compliance, including helpful tips and tools. DHS developed additional provider-attestation tools and resources that included:

- Training on provider tools and resources
- Improved licensing policy templates and forms
- Developed provider expectation guidance - Guide to Putting the HCBS Settings Rule into Practice (PDF)
- Developed a residency agreement template
- HCBS Rights Modification Support Plan Attachment template (PDF)and video tutorial
- Developed HCBS standards frequently asked questions
- Held webinars and open office hours:
  - Aging and related topics training
  - Community-based services manual
- Developed on-demand video training
- Modified the College of Direct Support (56 online lessons to train direct support workers)

Site-specific validation and remediation plan

The next step in evaluating all HCBS provider settings was to validate each site using a multilayered strategy to ensure compliance with the rule requirements. Throughout 2018, validation strategies included:

- Desk audit/review of provider-submitted supporting documentation of compliance: DHS conducted desk audits to validate the results of all provider attestations. A desk audit included reviewing the provider attestation and the supporting documentation to demonstrate the setting complies with each requirement of the HCBS rule
- Licensing visits: review of the license-holders' compliance with applicable HCBS laws and rules
- On-site visits: required for settings identified as presumed not to be home and community-based to gather evidence to overcome the presumption.
- Person's experience assessments: In November 2017, DHS added new questions (called the LTSS Improvement Tool) to the electronic support plan and the long-term care consultation legacy documents, including MMIS. Case managers now use the tool each year to gauge the experiences of people who receive services compared to the HCBS settings requirements.

Providers who do not comply fully with requirements of the settings rule will be required to complete a site-specific compliance plan. We developed a site-specific compliance plan template for providers so they have a uniform way to document remediation.

Table 1: Number of setting attestation desk audits and audit outcomes as of Sept. 6, 2018

Setting type	Number of settings	Full compliance	Does not comply, but can with modifications	Opt out	Did not respond
Foster care / SLS (adult and child)	4,291	4,072	31	23	4
Customized living	1,204	1,015	12	9	7
Adult day	189	126	8	8	0
DTH, prevocational, structured day	307	301	0	3	0
Total	5,991	5,514	51	43	11

Outreach activities to support providers in remediation include:

- Training and education specific to provider types and/or statewide training on topics identified through desk audits and document review
- Focus groups to help to find ways to eliminate barriers to compliance

- Mentors and providers who can share best practices
- One-on-one technical assistance.

We are working with existing HCBS settings to meet, at minimum, the basic requirements of the HCBS rule. We will, however, require higher standards for designated new service settings serving people with disabilities on the BI, CAC, CADI and DD waivers. New setting standards will meet HCBS standards more fully and further support community-inclusive service models. We will continue to work closely with stakeholders to establish and define criteria to implement future standards for:

- Day training and habilitation (DT&H) services
- Adult day services
- Customized living services

B. Presumed not to be HCBS

Settings were required to respond to the attestation questions that identify each setting that meets the "presumed not-to-be HCBS" criteria. The process for identifying settings that are presumed not to be HCBS based on proximity to institutions (prongs 1 or 2) or that have the effect of isolating (prong 3) can be found in the updated Minnesota statewide transition plan and in Appendix A of this document.

Of the 5,991 total settings required to complete an attestation, as of now, 465 were identified as meeting the prongs 1, 2 or 3 criteria. We identified 97 prong 1 sites, 34 prong 2 sites and 334 prong 3 sites. The number of prong 3 sites might change as the assessment process continues.

DHS took additional steps to validate each setting's responses on the attestation that identified the setting as meeting criteria for prongs 1, 2 or 3. DHS began on-site assessments across the state at each of the 465 settings identified in the summer of 2018 and plans to complete these visits by March 2019. After each on-site assessment, we write an evidentiary package describing the results of the assessment. If DHS determines that a setting in prongs 1, 2 or 3 has characteristics that make it institutional or isolating in nature, we will identify and communicate to the provider what changes it will need to make for the state to deem it home and community-based. The state will support the provider by sending an instructional email, including the HCBS Provider Transition Plan document.

Settings that may have the effect of isolating will not be determined to have the effect of isolating solely because of concentration levels. No provider will be determined not to be home and community-based because of the concentration levels alone. All providers will have the opportunity to demonstrate that their settings meet the requirements of a home and community-based setting, as defined by the HCBS rule.

C. Communication campaign

DHS has continued its communication campaign to provide information and operational guidance to people, providers and lead agencies.

In 2018, DHS developed a Guide to Putting the HCBS Settings Rule into Practice (PDF) and notified providers and other stakeholders via email and electronic distribution lists. DHS uses the HCBS transition plan webpage and the HCBS settings email box (hcbs.settings@state.mn.us and ProviderAttestationReview@state.mn.us) as a central location for sharing information, tools and resources related to the HCBS settings rule. Throughout 2018, DHS provided outreach, technical assistance and information to providers through:

- Direct mail for toolkits, resources and guides
- Dedicated email box for technical assistance
- Community presentations
- Stakeholder feedback sessions
- Conferences
- Provider news and correspondence
- Updates to the HCBS rule webpage
- eList announcements
- Direct email notices

D. Targeted communication to people and families

Our efforts to engage people who receive services and their families remains critical as we implement the HCBS settings rule. In 2018, DHS sent communications about new employment services to people who receive services in May and June:

- Several memos about new employment service options: April 2018 memo from DHS Disability Services Director Alexandra Bartolic about new employment options (PDF)
- Disability Hub MN informational flyer about employment: Employment matters: More money. More Freedom. More Options (PDF)
- E-list announcement: Communication about employment options to people who use disability waivers

DHS designed communications about the new strategies and tools developed by the department to gather participant experience feedback about adult day, foster care and customized living services for people who are on the Elderly Waiver (EW) and enrolled in managed care.

- July 21 video conference: EW Participants in Managed Care Evaluate Certain Services at Reassessment
- July 2 E-list announcement: Bulletin 18-25-04 Elderly Waiver Participants in Managed Care Provide Feedback About Certain HCBS Services

DHS continues to engage people who receive services and other interested stakeholders to share information and develop new services to implement the HCBS rule. DHS is using several outreach methods, including:

- Disability Hub MN (formerly Disability Linkage Line)
- Letters to people who receive aging and disability services
- Provider-attestation resources through associations, webinars and videos
- In-person stakeholder meeting for current and future standards (non-residential and residential services)
- Conferences
- HCBS Advisory Committee

E. Advisory group

The advisory group provided technical assistance throughout the attestation process, provided input on the desk audit and site visit processes and protocols, and provided technical assistance to providers during the desk audit followup and site visits. DHS will continue to engage the advisory group regularly throughout the remainder of the transition period to gather input as we make the transition plan part of our operations.

VI. Status of statewide transition plan and 2019-2022 activities

A. Plan status

The HCBS rule originally allowed a five-year transition plan, ending in March 2019, for existing programs to come into compliance with its home and community-based setting requirements. On May 9, 2017, CMS announced that states have until March 2022 to bring their systems into compliance with the HCBS settings requirements, extending the deadline by three years. Read more in Extension of Transition Period for Compliance with Home and Community-Based Settings Criteria (PDF). Minnesota has until March 17, 2022, to bring existing programs into compliance with the characteristics of settings that are home and community-based.

On June 2, 2017, CMS granted initial approval of the statewide transition plan. Read more in the June 2 letter from CMS (PDF). Initial approval means CMS agrees with Minnesota's systemic assessment, including remediation activities. The details of the systemic assessment are on pages 21 to 35 of Minnesota's statewide transition plan (PDF). Additionally systemic assessment crosswalks may be found at:

- Elderly Waiver and Alternative Care Program: Systemic Assessment Crosswalk of Statutory and Regulatory Authorities Pertaining to Settings Rule for Home and Community-Based Services (PDF)
- Disability Waivers: Systemic Assessment Crosswalk of Statutory and Regulatory Authorities Pertaining to Settings Rule for Home and Community-Based Services (PDF)

To receive final approval of Minnesota's statewide transition plan, DHS made the following revisions to the plan:

- Comprehensive site-specific assessment for 100 percent of HCBS settings, including validation strategies for assessment results and outcome measurements
- Site-specific assessment remediation strategies and timelines
- Ongoing monitoring and quality assurance of HCBS compliance
- Detailed plan for identifying settings that are presumed not to be HCBS, evaluation strategies for these settings and preparing site-specific submissions to CMS for heightened-scrutiny review

- Detailed strategy and communication plan for settings that cannot or will not comply with the HCBS rule by March 2022

DHS published a revised statewide transition plan for a public comment period between Sept. 10 and Oct. 10, 2018. After the 30-day comment period, we amended the plan based on public comments. On Dec. 17, 2018, DHS submitted a revised statewide transition plan to CMS for final approval.

B. Status of current and future standards for disability waivers

We are working with existing HCBS settings to meet, at minimum, the basic requirements of the HCBS rule. However, we will require higher standards for new service settings serving people with disabilities on the BI, CAC, CADI and DD waivers. New setting standards will meet HCBS standards more fully and further support community-inclusive service models. Legislative authority will be required to complete some of this work. We will continue to work closely with stakeholders to establish and define criteria to implement the future standards for:

- Customized living services
- Day training and habilitation (DT&H) services
- Adult day services

Current and future standards for customized living services

Minnesota's Home and Community-Based Services Final Rule Statewide Transition Plan (PDF) outlines in detail the current and future standards for customized living on pages 56 to 57. Implementing future standards for customized living is a multistep process:

- Create a set of current and future standards for customized living services
- Create a new service, integrated community supports, to address the gaps in the current service menu
- Clarify the definition of a person's own home

For current customized living settings that comply with the HCBS settings rule, the setting may continue to deliver customized living services to adults on the BI and CADI waivers. New customized living services settings will be limited to people 55 and older on the BI and CADI waivers. New customized living services settings must comply with service standards for the Elderly Waiver.

To support a full service array, integrated community supports, a new waiver service, will support people living in a living unit (e.g., apartment) that does not meet the definition of a person's "own home." This means a service provider has a level of control over the living unit. Implementing integrated community supports will require legislative approval before adding the service to our waivers via the waiver-amendment process.

The new HCBS service:

- Will be licensed under Minnesota Statutes, Chapter 245D
- May deliver up to 24 hours of service in a day
- Will provide supervision, assistance and, as needed, skill development for adults 18 years and older in four community-living service areas:
    - Community participation
    - Health and safety, and wellness
    - Household management
    - Adaptive skills

In addition to existing guidance on HCBS rule compliance, providers of integrated community supports must meet additional requirements as part of the site-specific review process to ensure settings do not have the effects of isolating. This may include, but is not limited to:

- Describing how opportunities are present and available for people to interact with the broader community individually and in groups, as they desire
- Describing how people may choose activities to participate in individually
- Describing how people are informed that they may choose offsite community service providers

Appendix A in this document describes the effects of isolating people with disabilities from the community.

DHS continues to meet with our stakeholders to design and implement current and future standards for customize living and integrated community supports. Until CMS approves a waiver amendment containing integrated community supports, the current requirements will remain in place for a person's own home policy guidance and current service policies, including customized living service size and location limitations for BI and CADI waivers.

Current and future standards for non-residential services

Day training and habilitation/day support services

Day training and habilitation (DT&H) services are considered bundled services because of the multitude of services covered under DT&H, such as:

- Skills-development
- Therapies
- Behavioral supports
- Transportation
- Community integration

- Paid on-the-job training
- Supported employment

The 2017 Legislature authorized the removal of community employment and supported employment components from the current DT&H service in July 2018 to create three distinct employment services that are available across the BI, CAC, CADI and DD waivers. These three services are employment exploration, employment development and employment support. This change will further Minnesota's Employment First policy to provide people the opportunity to seek employment and work in competitive, integrated settings. It will promote inclusion in the community and ensure people receive enough information about employment, through exposure and actual experiences, to make an informed choice. Individual service plans will reflect more accurately the services people receive and lead to better outcomes.

We've also worked with stakeholders to develop a new day service to offer flexible supports that will replace the current DT&H service. DHS is seeking legislative authority to shift DT&H service to new day support services effective Jan.1, 2021. Day support services will focus on:

- Supporting people as they develop and maintain essential and personally enriching life skills, along with the necessary therapies, to participate fully in their preferred activities and communities
- Creating opportunities for people to build skills to access their communities independently and/or provide the support necessary for people to engage in desired community activities

Prevocational services

DHS has been working with stakeholders to set criteria for prevocational services, including a time limit of three years for the service for any new enrollees. Providers will deliver prevocational services in conjunction with either the redefined DT&H service or one of three available employment services. This approach will allow people to explore what employment services or day support services in the community might mean for them. This might look very different from one person to the next.

People who receive prevocational services before Jan. 1, 2021, will be eligible to receive prevocational services without a time limit. Prevocational services must be provided in conjunction with an employment service or the day support service.

People who are new to prevocational services on or after Jan. 1, 2021, may receive prevocational services for three years. Providers must deliver prevocational services in conjunction with an employment service or the day support service.

DHS will seek authority through a waiver plan amendment to make service changes necessary to meet HCBS rule standards.

Adult day services

Adult day services support people in a congregate setting. The service design originated with a focus on supporting older adults as part of the array of community service options. Current adult day settings that comply with the HCBS settings rule, may continue to deliver adult day services to people age 18 and older on the BI and CADI waivers. New adult day settings will be limited to people age 55 and older. New enrollees age 18-54 on the BI and CADI waivers, will need to access Day Support services (a new service option under development). This change will better support people to develop and maintain essential and personally enriching life skills, and better support people to participate fully in their preferred activities and communities

Needs determination process

Historically, a needs determination process was required to expand or develop DT&H services for people with developmental disabilities. DHS worked with stakeholders to establish a more extensive needs determination process and is seeking legislative authority to implement the new process. The new process will establish standards and manage planning for development and expansion of the following services:

- Prevocational Services
- Adult Day Services for people 55 and younger
- Day Support Services
- Structured Day Services

Throughout the transition, MN DHS will provide information and technical assistance to the people being served and help providers adjust their business models as needed. Several factors will affect the transition, such as licensing standards, service definitions and corresponding payment rates. It may take several legislative sessions to make all of the policy and fiscal changes needed for a sustainable shift in service delivery and meet the intended outcomes.

C. 2019 planned activities

Minnesota has chosen to set higher standards for what constitutes an acceptable HCBS setting for designated new service settings. Tiered standards will create more options to ensure people have access to services in non-disability specific settings among their service options for both residential and non-residential services. In addition to changes in service standards, DHS will analyze existing rates for services and establish rate frameworks for new services funded through the BI, CAC, CADI and DD waivers.

During 2019, we will finish prong 3 on-site visits in the first quarter of the year and draft evidentiary packages. DHS will post for public comment evidentiary packages to further determine which settings

in prongs 1, 2, and 3 have overcome the presumption of not being HCBS. DHS will use an external review committee to review cases when evidence does not support the provider as HCBS.

DHS will evaluate all of the evidence collected and summarize the public comments received during the public comment period. If the evidence collected supports the setting as having the characteristics of an HCBS setting, DHS will submit the setting's evidentiary package to CMS for heightened scrutiny. On a quarterly basis, DHS will submit batches of evidentiary packages to CMS for final heightened-scrutiny determination.

In order to ensure continuity of supports and to continue meeting the needs of people receiving HCBS services during these system changes which began in 2014, DHS will be focusing communication efforts on people receiving services and their families to ensure their understanding of and participation in the HCBS settings rule. This could include direct communication to people, panels, focus groups, information campaigns, and other media (i.e. YouTube videos, FAQ documents, or fact sheets).

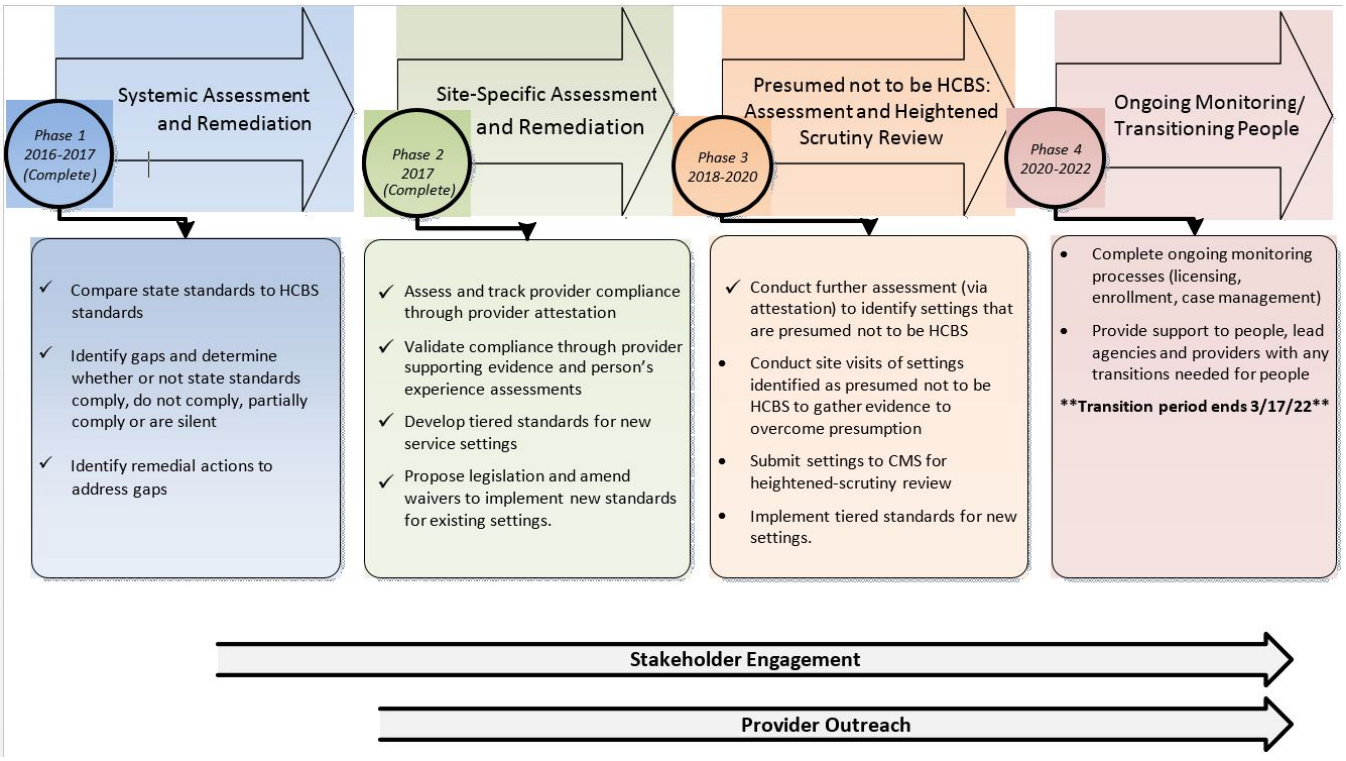
DHS is proposing a multi-pronged strategy that will be accessible and beneficial to providers of all sizes throughout the entire state. This will include

- Supporting a select number of provider organizations to go through the person-centered organizational change process
- Enhance provider practices by promoting stories of high-performing providers
- Provide in-person, one-to-one technical assistance to a select number of provider organizations

DHS will seek out culturally specific programs to participate in the multi-pronged strategy in order to strengthen the ability and depth of providers available to support person-centered needs across a diverse range of individuals and communities served in Minnesota.

DHS will continue to focus on alignment of the HCBS settings rule with other relevant state activities like comprehensive assessment, implementation of Minnesota's Olmstead Plan person-centered planning protocol, implementation of Minnesota's Employment First policy and monitoring service access.

2019-2022 planned activities (visual)



VII. Appendices

Appendix A: Identification of settings that may have the effect of isolating

DHS will identify, through provider attestation responses and reviews of supporting documentation, settings that may have the effect of isolating. Three criteria groups are used to identify settings that are presumed not to be HCBS because they may have the effect of isolating people from the broader community. These three groups are outlined below. We will use criteria identified in groups 1 and 2 to identify settings that isolate people with disabilities and older adults. For settings that provide disability waiver services, we will use the additional characteristics in Group 3 to identify settings that may isolate.

All providers will have the opportunity to demonstrate that the setting meets the requirements of a home and community-based setting, as defined by the CMS rule. No provider will be determined not to be home and community-based because of the concentration levels alone. Information obtained during the assessment will determine what the ongoing evaluation criteria will be, and will be submitted through the waiver-amendment process.

Group 1

The state will identify day and residential settings that provide services paid for by disability and aging waivers and that meet requirements under the rule, but still may have the effect of isolating people. We will use provider attestation responses and review of supporting documentation to identify the settings that may have the effect of isolating.

We will submit the following settings to CMS for a heightened-scrutiny review:

- Farmsteads or disability-specific farm communities
- Residential schools
- Gated or secured communities for people with disabilities

Group 2

The state will identify and develop criteria to determine if heightened CMS scrutiny is needed for:

- A setting designed to provide multiple types of services and activities to people with disabilities or older adults on-site, including any two of the following:
    - Residential
    - Day services
    - Medical without the option to receive these services off-site

- A residential setting where the provider also owns/operates multiple homes on the same street or adjacent property (does not include duplex or multiplex houses, unless there is more than one on the same street).

We will evaluate settings identified in Group 2 further to determine whether they meet criteria of having the effect of isolating. We will also determine:

- The extent to which people have choice of community services when multiple services are on-site
- The extent to which multiple properties on the same street or adjacent property share staffing and programming

Group 3

The state will identify and develop criteria for settings that may have the effect of isolating.

Step 1 - Identify settings that may have the effect of isolating

The state will use the following trigger to assess further settings for the effect of isolating:

- The setting (with a capacity of six or more people) is primarily or exclusively for people with disabilities or 25 percent or more of the total setting capacity are people with disabilities under the age of 55.

Step 2 - Demonstrating that settings do not have the effect of isolating

Settings that meet the trigger in step 1 will be required to demonstrate that the following characteristics are present and submit supporting documentation that the setting does not have the effect of isolating:

- Opportunities are present and people are interacting with the broader community individually and in groups, as desired
- People may individually choose to come and go to various activities; not everyone has the same activities/schedule
- People may choose off-site community service providers.

Step 3 - Effect-of-isolating assessment

Settings that are not able to ensure characteristics and provide supporting documentation in Step 2 will need an effect-of-isolating assessment. The state will determine if the setting meets either of the following criteria:

- People have limited, if any, interaction with the broader community
- Daily activities are typically designed to take place on-site

If the setting meets the criteria in Step 3, the state will identify and communicate to the provider changes needed to transition the setting into one that does not have the effect of isolating. The state will provide tools and information to support the provider with any needed changes.

If the setting is unable to make changes, it may either:

- Be determined not HCBS by the state
- Receive state support as HCBS and be sent for CMS heightened-scrutiny review.

If the setting is unable to make changes, it will be determined not HCBS by the state.

Appendix B: New laws effective in 2017

- Housing with Services Contract Requirements Related to Resident Rights effective May 31, 2017 (http://www.health.state.mn.us/divs/fpc/profinfo/ib17_3.html)
- Adult foster care licensing requirements for people on Elderly Waiver effective May 31, 2017:
  - 245A.11 amended to add subd. 9 to ensure setting bedroom requirements comply with HCBS rule
  - 245A.11 amended to add subd. 10 to ensure adult foster care rights comply with the HCBS rule
  - 245A.11 amended to add subd. 11 to ensure adult foster care license holder establishes policies and procedures for service termination that comply with the HCBS rule
  - 256.045, subd. 3(a) amended to add item 14 to ensure state agency hearings are available to a person issued a notice of adult foster care service termination
- Home and community-based services (245D) licensing requirements effective May 31, 2017:
  - 245D.04, subd. 3, amended to expand the rights of a person who receives services by a licensed provider, including the rights to:
    - Use the lock on his or her bedroom or unit door
    - Access to personal possessions at any time, including financial resources
    - Use of and free access to common areas in the residence and the freedom to come and go at will
    - Choose who visits and when they visit and have privacy for visits with the person's spouse, next of kin, legal counsel, religious advisor or others, in accordance with section 363A.09 of the Human Rights Act (https://www.revisor.mn.gov/statutes/?id=363A.09), including privacy in the person's bedroom
    - Freedom and support to access food at any time
    - Furnish and decorate bedroom or living unit
  - 245D.11, subd. 4, amended to require a residency agreement for people who receive foster care or supported living services
  - 245D.24, subd. 3, amended to require each person who receives services to have a choice of roommate
- Long-term care consultation service requirements effective May 31, 2017:
  - 256B.0911, subd. 3a, amended to require the certified assessor to offer the person the option to receive alternative housing, including options for non-disability-specific settings, at the time of reassessment

Appendix C: Members of the HCBS advisory group

- Association of Residential Resources in Minnesota (ARRM)
- Care Providers of Minnesota
- Dakota County
- HIV Housing Coalition/Coalition for Choice in Housing/Clare Housing
- Leading Age Minnesota
- Managed Care Organizations
- Mental Health Minnesota
- Minnesota Association of County Social Service Administrators
- Minnesota Organization for Habilitation and Rehabilitation
- Minnesota State Council on Disability
- National Alliance on Mental Illness (NAMI) Minnesota
- Office of Ombudsman for Long-term Care
- Office of Ombudsman for Mental Health and Developmental Disabilities
- The Arc Minnesota
- The Minnesota Governor's Council on Developmental Disabilities
- Touchstone Mental Health, Minnesota Association of Community Mental Health Programs
- University of Minnesota & Minnesota Employment First Coalition
- Washington County