

Transition Plan for Home and Community-Based Settings

Continuing Care Administration
January 2015



Minnesota Department of **Human Services**

Legislative Report

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I. Executive summary

On Jan. 16, 2014, the Centers for Medicare & Medicaid Services (CMS) issued new regulations governing home and community-based services for all states, explicitly for the following three Medicaid programs: 1915(c) waivers, 1915(i) state plan and 1915(k) community first choice. The rule had an effective date of March 17, 2014 and as required by CMS, the state must submit a transition plan for all existing programs, for approval. The transition plan will provide a blueprint for DHS and providers to be compliant with CMS' federal regulations.

The rule requires immediate compliance for person-centered planning requirements for all programs, and home and community-based setting requirements for any new programs. In Minnesota, the community first services and supports (CFSS) is a new program, which will be replacing personal care assistance (PCA). The rules allow until March 17, 2019 to transition into compliance for any existing programs. In Minnesota, this includes the following 1915(c) waivers; Brain Injury (BI) waiver, Community Alternative Care (CAC) waiver, Community Alternatives for Individuals with Disabilities (CADI) waiver, Developmental Disabilities (DD) waiver, and Elderly Waiver (EW).

Per guidance CMS, the home and community-based settings regulation requirements at 42 CFR §441.301(c)(4)/441.710(a)(1)/441.530(a)(1) established a definition of home and community-based settings based on individual experience and outcomes, rather than one based solely on a setting's location, geography or physical characteristics. The purpose of these final regulations is to maximize the opportunities for participants receiving home and community-based services, to receive services in integrated settings and realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings. The home and community-based settings requirements apply to both residential and non-residential settings for individuals who are receiving Medicaid funding for home and community-based services. In summation the home and community-based services rule aims to:

- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimize individual initiative, autonomy, and independence in making life choices and
- Facilitate individual choice regarding services and supports, and who provides them

A. Home and Community-Based Settings and Services

As defined by CMS, settings that are not considered home and community-based are: a nursing facility, an institution for mental disease, an intermediate care facility for individuals with developmental disabilities (ICF/DD) and hospitals. Settings that are *presumed* not to be home and community-based are: settings in a publicly or privately-owned facility providing inpatient treatment, settings on the grounds of, or adjacent to a public institution and settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid

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HCBS. The presumed not to be home and community-based are settings subject to heightened scrutiny by CMS.

CMS outlines characteristics of settings where the provider of a service owns or controls the setting (provider-controlled). Some features of the regulations for individuals living in a provider-controlled setting include:

- Physically accessible to the individual
- Allow visitors at any time
- Allow access to food at any time
- Allow individual control over their schedule
- Allow freedom to furnish and decorate their living or sleeping unit
- Allow a choice of roommates
- Provide lockable doors, and
- Have landlord-tenant protections in a legally enforceable agreement.¹

The rule also applies to non-residential settings where home and community-based services are delivered. Specifically these services include adult day services, day training and habilitation, pre-vocational services, and structured day services. Within the confines of the new rule DHS must ensure these services maintain the integrity and spirit of home and community-based services and are fully integrated and non-institutional in nature.

B. The Transition Plan

DHS submitted the transition plan to CMS on January 8, 2015. The elements of a transition plan include an assessment process, remediation strategies and public input to reach compliance. The assessment process has two main components; a regulatory review of current home and community-based services standards and a review of settings affected by the regulations from CMS. The state will conduct an analysis of CMS' new regulations to current Minnesota regulations, including state statute, state rule, and federally approved waiver plans affected by the regulations. After assembling the results of the comparative analysis –part of the remediation process– DHS may recommend changes to statute, submit waiver amendments, update provider requirements, revise service definitions and standards, or revise training requirements to ensure compliance.

DHS will identify and assess settings and services that may not meet the criteria outlined by CMS. DHS will also assess settings that fall under the category of presumed not to be home and community-based and seek additional information to make a determination on whether those settings are, in fact, home and community-based.

1. <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>

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In addition to assessing settings, DHS will require providers of residential, day, and employment services to complete a self-assessment to determine their compliance with the rule. The self-assessment will be designed in consultation with a stakeholder advisory group, consisting of advocates, providers, counties and health plans from across the waiver services. The self-assessment will be sent to provider-controlled settings and service providers by May 1, 2015, with an expected completion date of June 1,

2015. Through the self-assessment process, DHS will identify settings and providers that are not complaint or presumed not to be home and community-based and use the opportunity to collaborate with providers to identify steps that can be taken to become compliant by March 17, 2019.

Integral to the process of the transition plan for CMS is public input. DHS published the transition plan for 30-day public comment on the State Register with the opportunity to send comments to dedicated e-mail address. DHS also sought input to the transition plan via a live video conference for constituents interested in the transition plan. Both methods gave DHS the opportunity to inform and update the transition plan.

II. Legislation

This report meets the requirements of two sections of session law. Although the first report was due in February 2014, the Continuing Care Administration notified the legislature that the information would be reported in January 2015, in order to allow for time to analyze the impact of the applicable federal rule, which was released on January 16, 2014.

2013 Laws of Minnesota, Chapter 108, Article 7

Sec. 53. RECOMMENDATIONS FOR CONCENTRATION LIMITS ON HOME AND COMMUNITY-BASED SETTINGS.

The commissioner of human services shall consult with the Minnesota Olmstead subcabinet, advocates, providers, and city representatives to develop recommendations on concentration limits on home and community-based settings, as defined in Minnesota Statutes, section 256B.492, as well as any other exceptions to the definition. The recommendations must be consistent with Minnesota's Olmstead plan. The recommendations and proposed legislation must be submitted to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance by February 1, 2014.

2014 Laws of Minnesota, Chapter 312, Article 27

Sec. 74. HOME AND COMMUNITY-BASED SETTINGS TRANSITION PLAN.

The commissioner of human services shall develop a transition plan to comply with the Centers for Medicare and Medicaid Services final rule defining home and community-based settings published on January 16, 2014, Code of Federal Regulations, title 42, section 441.301(c)(4)-(5). In developing the plan, the commissioner shall consult with individuals with disabilities, seniors, and other stakeholders, including, but not limited to advocates, providers, lead agencies, other state agencies, and the Olmstead subcabinet. The commissioner shall submit the plan to the Centers for Medicare and Medicaid Services by December 31, 2014.

By January 15, 2015, the commissioner shall provide a report with the plan submitted to the Centers for Medicare and Medicaid Services, as well as any changes as a result of negotiations that have occurred with the Centers for Medicare and Medicaid Services, 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. This report must contain any recommended legislation and funding requests necessary to implement the transition plan.

III. Introduction

On Jan. 16, 2014, the Centers for Medicare & Medicaid Services issued a final home and community-based services rule. The rule had an effective date of March 17, 2014. The rule identified several components, including criteria for home and community-based settings and person-centered planning requirements. In Minnesota, the rule impacts all home and community-based services waivers, which are:

- Brain Injury (BI) waiver
- Community Alternative Care (CAC) waiver
- Community Alternatives for Individuals with Disabilities (CADI)
- Developmental Disabilities (DD) waiver
- Elderly Waiver (EW)

The rule also affects the community first services and supports (CFSS) option, which will replace personal care assistance (PCA). The rule allows for a five-year transition plan for existing programs to come into compliance with the home and community-based setting requirements of the rule. All new programs must be in compliance with the home and community-based setting requirements upon implementation of the new program. This means the state may develop a transition plan for the five home and community-based services waivers (BI, CAC, CADI, DD, and EW), in order to comply with the rule by March 17, 2019. However, community first services and supports will need to comply with the rule upon implementation.

This report is submitted to the chairs and ranking minority members of the policy and finance committees with jurisdiction over health and human services for seniors and people with disabilities pursuant to 2013 Laws of Minnesota, Chapter 108, Article 7 section 53, and 2014 Laws of Minnesota, Chapter 312, Article 27 section 74.

The Aging and Adult Services and Disability Services divisions in the Continuing Care Administration at the Department of Human Services (DHS) prepared this report. The report includes the Statewide Home and Community-Based Settings Transition Plan that we submitted to the Centers for Medicare & Medicaid Services on January 8, 2015. This report also has additional implementation information, including areas of discussion, potential areas for changes to legislation, and potential resources necessary to implement the plan.

To develop the transition plan, DHS held listening sessions with a variety of stakeholders, including seniors and people with disabilities, family members, lead agencies, advocacy organizations, providers, partners within other areas of DHS, and other state agencies. DHS also consulted with the Home and Community-Based Services Rule Process Advisory Council. This council, which is made up of members of the Home and Community-Based Services Partner Panel and a couple of other key stakeholders, advised DHS on the stakeholder input process, to assure DHS was attempting to hear from a variety of stakeholders.

The implementation of the transition plan helps Minnesota move forward toward the goals expressed in the Olmstead Plan requirements. The rule affects a subset of the population of

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people covered by the Olmstead Plan; however, the values expressed in the rule and the Olmstead Plan are similar and will lead to similar outcomes.

IV. Overview of the Home and Community-Based Services Final Rule

The CMS rule addresses several components, including:

- Defines, describes and aligns home and community-based setting requirements across three Medicaid authorities that provide home and community-based services
- Defines person-centered planning requirements for person in home and community-based settings
- Provides an option to combine multiple target populations within one 1915(c) waiver program
- Provides CMS with additional compliance options for 1915(c) waiver programs
- Establishes requirements for conflict-free case management

The two areas of the rule that will have the most affect for Minnesota, which we will discuss in this report, are the home and community-based setting requirements and person-centered planning requirements.

A. Person-centered planning requirements

The person-centered planning components of the rule had an effective date of March 17, 2014. The rule requires that the person-centered planning process reflects what is important to the person receiving home and community-based services. It must address personal preferences and ensure health and welfare. The process must also include a way to address disagreements between team members. The plan must identify the person's strengths, preferences, needs and desired outcomes. The written person-centered plan must reflect that the setting(s) where the person receives services:

- Is chosen by the person
- Is integrated into the community
- Supports full access to the greater community

The plan also must reflect opportunities to:

- Seek employment and work in competitive integrated settings
- Engage in community life
- Control personal resources
- Receive services in the community

The plan must include risk factors for the person, as well as what will be in place to minimize those risk factors. The Centers for Medicare & Medicaid Services has made clear any reference to the person in the person-centered planning requirements include the person and their legally appointed decision-making authority.

It is DHS' interpretation that Minnesota meets the basic person-centered planning requirements in the rule. DHS will add questions to assessment tools and planning guides to assure we address the required components during planning meetings to assure greater compliance.

B. Home and community-based setting criteria

The home and community-based setting criteria for new programs, which will include community first services and supports (CFSS), have an effective date of March 17, 2014. The home and community-based setting criteria for existing programs, including Minnesota's five home and community-based services waivers, have up to five years to move toward compliance with the rule. The transition timeline and activities are based on a plan submitted by the state and approved by the Centers for Medicare & Medicaid Services. DHS submitted Minnesota's statewide transition plan on January 8, 2015.

General requirements

The home and community-based setting requirements in the rule contain general requirements that apply to all settings where people are receiving home and community-based services. According to guidance from the Centers for Medicare & Medicaid Services, the requirements in the rule establish an outcome-oriented definition that focuses on the nature and quality of a person's experiences. The requirements 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. According to the rule, a home and community-based setting:

- Ensures a person's right to privacy, dignity, respect, and freedom from coercion and restraint
- Ensures the person receives services in the community to the same degree of access as people not receiving home and community-based services
- Facilitates individual choice regarding services and supports, and who provides them
- Is integrated in and supports access to the greater community
- Is selected by the person from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The person-centered plans must document the option available and choices made by the person.
- Optimizes individual initiative, autonomy, and independence in making life choices
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

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

- Hospitals
- Institutions for Mental Disease (IMD)
- Intermediate care facilities for people with developmental disabilities (ICF/DD)
- Nursing facilities

The rule also identifies settings that CMS will presume are not to be home and community-based. States can choose to submit evidence to the Centers for Medicare & Medicaid Services demonstrating how the setting is, in fact, home and community-based. The information submitted will be subject to a heightened scrutiny process by CMS.

The settings that are presumed not to be home and community-based include:

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- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on the grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid home and community-based services.

The Centers for Medicare & Medicaid Services issued additional guidance to states on settings that isolate people receiving home and community-based services from the broader community. These settings will be subject to heightened scrutiny. The guidance states “settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating people:

- 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.”¹

Residential settings

The rule includes additional requirements for residential settings where the service provider owns or controls the setting. In Minnesota, provider-owned or controlled residential settings include:

- Foster care
- Community residential settings
- Some customized living settings
- Some board and lodge settings

In some of these settings, the unit described in these requirements may be the person’s bedroom. In other settings, the unit may be the person’s apartment or other private living space. These additional requirements include:

- All units or dwellings must have a lease, or similar legally enforceable agreement, which includes the same responsibilities and protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity. If tenant laws do not apply, the written agreement must address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.
- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors, as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement

¹ <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>

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- Individuals have freedom and support to control their schedules and activities and have access to food at any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

The rule does allow for modifications to these additional requirements if it is supported by a specific assessed need for a person, and is justified and documented in the person's person-centered plan. The documentation must include:

- Any prior interventions and less intrusive methods the provider has attempted
- Ongoing data measurement to assure effectiveness of the modification
- The person's informed consent prior to making the modification
- The specific assessed need the modification addresses.

This means that a provider cannot have a specific policy that limits the above requirements, but must instead review the requirements person by person and make modifications based on the person's person-centered plan.

The Centers for Medicare & Medicaid Services' guidance on settings that isolate identifies particular examples of residential settings that typically have the effect of isolating people receiving home and community-based services from the broader community. These settings will be subject to heightened scrutiny. The examples include:

- A farmstead or disability-specific farm community
- A gated/secured "community" for people with disabilities
- Residential schools
- Multiple settings co-located and operationally related.²

In addition to the guidance on settings that isolate, the Centers for Medicare & Medicaid Services also provided states with exploratory questions to use to assess whether residential settings comply with the rule.³ Minnesota will use these questions to help formulate a provider self-assessment, which we will discuss in section V of this report.

Non-residential settings

The Centers for Medicare & Medicaid Services recently released exploratory questions for states to use to assess whether non-residential settings comply with the rule.⁴ This applies to any day or employment services provided through the home and community-based waiver programs. In Minnesota, the services include adult day services, day training and habilitation, pre-vocational services, and structured day services. Minnesota will use the questions provided by the Centers

² <http://www.medicare.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>

³ <http://www.medicare.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-re-settings-characteristics.pdf>

⁴ <http://www.medicare.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-non-residential.pdf>

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for Medicare & Medicaid Services to formulate the provider self-assessment, which we will discuss in section V of this report.

V. Overview of the transition plan

The Centers for Medicare & Medicaid Services require a state's transition plan to include three components:

- Assessment of the current status of home and community-based settings in the state. The state must complete the assessment within six months of submitting the transition plan to the Centers for Medicare & Medicaid Services.
- Remediation strategies on how the state will address gaps in compliance it identified through the assessment process
- Public input process used, including a summary of the public comments received on the transition plan, a summary of the modifications to the plan made in response to the public comments, and any additional evidence and rationale the state may use if the state's determination differs from public comment.

Minnesota's complete statewide transition plan is included in Attachment A of this report. The plan includes a section on preliminary work. It highlights the activities the state engaged in over the summer and fall to hear from a variety of stakeholders on the potential impact of the rule for people receiving home and community-based services. While DHS held sessions with lead agencies, providers, and advocacy organizations, our priority was to hear directly from the seniors and people with disabilities who receive services.

A. Assessment process and remediation strategies

DHS chose to combine the assessment process and remediation strategies sections of the plan. The two primary areas we will evaluate in this section of the plan are regulations and settings.

Regulatory review

In the regulatory review assessment process, DHS will conduct an analysis to determine where there are differences between the federal rule and state regulations. This will include state statute, state rule, and Minnesota's federally approved waiver plans. This review will look at regulations that govern all home and community-based services and property owner-tenant law requirements. This assessment currently is in process and DHS expects to complete it by April 2015.

The regulatory review remediation process will span several years. This will allow DHS to:

- Work with stakeholders on drafting changes to statutes
- Submit waiver plan amendments
- Make necessary changes to DHS policy manuals

We recommend legislative changes to allow Minnesota to comply with the transition plan approved by the Centers for Medicare & Medicaid Services. The majority of the proposed changes to statute will occur during the 2016 and 2017 sessions. The timeline for this section extends until December 2018 to allow a final legislative session to make any remaining changes

to statute, submit any remaining waiver amendments, and make any remaining changes to policy manuals.

Setting identification and review

DHS will use a couple of different mechanisms to identify settings that may not meet the criteria of a home and community-based settings. We have completed an initial data analysis on settings that Minnesota's Olmstead Plan considers segregated. We also will require providers of residential, day, and employment services to complete a self-assessment. This will help the providers and DHS to determine their compliance with the rule. The self-assessment will be sent to providers by May 1, 2015, with an expected completion date of June 1, 2015.

A key component in a setting meeting the criteria of a home and community-based setting is to determine if the setting has the effect of isolating people receiving home and community-based services from the broader community and if the setting is institutional in nature. Minnesota needs to define measurable criteria in order to make this determination. One criterion DHS will use is to identify residential settings where the provider of services has a direct or indirect relationship with the housing landlord, and more than 25 percent of the units in the setting are people receiving home and community-based services. This aligns with the current state statute⁵ that defines home and community-based settings. DHS will not exclude a residential service setting solely based on the concentration level of the setting; however, it will be a trigger to indicate an additional review of the setting.

It is important to note that current state statute allows for a "grandfathering" provision. This provision states the concentration limits do not apply to settings that existed prior to July 1, 2012. The concentration limits also do not apply to two other specific settings that did not exist prior to that date. The Centers for Medicare & Medicaid Services has been clear it will not allow "grandfathering," and that all settings where home and community-based services are provided must meet the criteria in the current rule. DHS specifically will contact the settings that were "grandfathered" in under the current state law to discuss how the setting does or does not comply with the rule.

One criterion DHS will use to identify whether day and employment settings are isolating is to look at whether those services are exclusively provided to individuals receiving home and community-based services. Similar to the residential setting, DHS will not exclude any day or employment service setting solely based on supporting only people receiving home and community-based services; however, this will be a trigger to indicate an additional review of the setting.

A major focus of the remediation strategies in this area will be to require providers to complete a transition plan as part of the self-assessment. DHS anticipates that a majority of the settings will be able to comply with the rule by changing policies and procedures. DHS anticipates that very few settings will require changes to the structure of the building or substantial changes to the way they deliver services.

⁵ <https://www.revisor.mn.gov/statutes/?id=256B.492>

B. Ongoing compliance

DHS chose to include a section in the transition plan on on-going compliance. DHS' goal is to fit the ongoing compliance efforts in with existing monitoring work. To assure ongoing compliance, DHS will rely on:

- Individual assessment processes to assure on-going compliance
- Licensing
- Medical Assistance Provider Enrollment processes
- Waiver review processes.

VI. Implementation

A. Recommended language only

In order to implement the transition plan, there will need to be session law giving DHS the authority to comply with the transition plan, once the Centers for Medicare & Medicaid Services approves the plan. The language also will require on-going reporting to the legislature on the status of the transition plan. In addition, initial changes need to be made to Minnesota Statute 256B.492.

[Proposed uncodified language]

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.

256B.492 HOME AND COMMUNITY-BASED SETTINGS FOR PEOPLE WITH DISABILITIES.

(a) Individuals receiving services under a home and community-based services waiver under section 256B.092 or 256B.49 may receive services in the following settings:

- (1) an individual's own home or family home;
- (2) a licensed adult foster care or child foster care setting of up to five people or community residential setting of up to five people; and
- (3) ~~community living settings as defined in section 256B.49, subdivision 23, where individuals with disabilities may reside in all of the units in a building of four or fewer units, and who receive services under a home and community-based waiver occupy no more than the greater of four or 25 percent of the units in a multifamily building of more than four units, unless required by the Housing Opportunities for Persons with AIDS Program.~~

(b) The settings in paragraph (a) must comply with all requirements identified by the Centers for Medicare & Medicaid Services in the final home and community-based services regulations, and the requirements of the federally-approved transition plan for each home and community-based services waiver.

(c) No exceptions will be granted to the setting requirements in the final home and community-based services regulations or the federally-approved transition plan for each home and community-based services waiver. The department will contact any settings that were granted an exception under Minnesota Statute 2014, section 256B.492 to provide information about the rule and Minnesota's federally-approved transition plan.

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~~not:~~

~~(1) be located in a building that is a publicly or privately operated facility that provides institutional treatment or custodial care;~~

~~(2) be located in a building on the grounds of or adjacent to a public or private institution;~~

~~(3) be a housing complex designed expressly around an individual's diagnosis or disability, unless required by the Housing Opportunities for Persons with AIDS Program;~~

~~(4) be segregated based on a disability, either physically or because of setting characteristics, from the larger community; and~~

~~(5) have the qualities of an institution which include, but are not limited to: regimented meal and sleep times, limitations on visitors, and lack of privacy. Restrictions agreed to and documented in the person's individual service plan shall not result in a residence having the qualities of an institution as long as the restrictions for the person are not imposed upon others in the same residence and are the least restrictive alternative, imposed for the shortest possible time to meet the person's needs.~~

~~(e) The provisions of paragraphs (a) and (b) do not apply to any setting in which individuals receive services under a home and community based waiver as of July 1, 2012, and the setting does not meet the criteria of this section.~~

~~(d) Notwithstanding paragraph (e), a program in Hennepin County established as part of a Hennepin County demonstration project is qualified for the exception allowed under paragraph (e).~~

~~(e) Notwithstanding paragraphs (a) and (b), a program in Hennepin County, located in the city of Golden Valley, within the city of Golden Valley's Highway 55 West redevelopment area, that is not a provider owned or controlled home and community based setting, and is scheduled to open by July 1, 2016, is exempt from the restrictions in paragraphs (a) and (b). If the program fails to comply with the Centers for Medicare and Medicaid Services rules for home and community based settings, the exemption is void.~~

~~(f) The commissioner shall submit an amendment to the waiver plan no later than December 31, 2012.~~

B. Funding Requests

The need for resources to support changing the way services are delivered and monitoring on-going compliance will be determined after the results of the system assessment is complete by July 1, 2015.

VII. Appendix

Minnesota's Statewide Transition Plan

Minnesota's Statewide Transition Plan

VIII. Introduction

Minnesota developed a statewide transition plan to address new rules governing home and community-based services funded through the Medical Assistance. The Centers for Medicare & Medicaid Services (CMS) issued the new rules in January, 2014. The rule is intended to afford participants receiving home and community-based services increased choice and integration into the community and outlines the requirements for person-centered planning and home and community-based settings. CMS requires each state to create a transition plan detailing how the state will come into compliance with the requirements for home and community-based settings by March 17, 2019. This document offers the framework Minnesota will use to ensure compliance with the final rule.

The new federal rule applies to programs authorized under sections 1915(c), 1915(i) and 1915(k) of the Social Security Act. The rule requires immediate compliance for person-centered planning requirements for all programs, and for home and community-based setting requirements for new programs. The rule allows a transition period of up to five years from the effective date of the rule for the home and community-based setting requirements for existing programs.

In Minnesota, this statewide transition plan applies to the following 1915(c) home and community-based services waivers:

- Brain Injury (BI) waiver
- Community Alternative Care (CAC) waiver
- Community Alternatives for Disabled Individuals (CADI) waiver
- Developmental Disabilities (DD) waiver
- Elderly Waiver (EW)

Minnesota is required to develop and implement an Olmstead Plan. The Olmstead Plan is an effort to ensure that Minnesotans with disabilities will have the opportunity, both now and in the future, to live close to their families and friends, to live more independently, to engage in productive employment and to participate in community life. The implementation of this transition plan to come into compliance with the home and community-based setting requirements in the rule will help Minnesota further the goals expressed in the Olmstead Plan. The rule impacts a subset of the population of people covered by the Olmstead Plan; however, the values expressed in the rule and the Olmstead Plan are similar and will lead to similar outcomes.

IX. Preliminary work

The Minnesota Department of Human Services (DHS) sought input on the development of the transition plan from stakeholders at many points in the process and will continue to do so as the plan is implemented. Major phases that have been completed include:

1. **March 2014 to June 2014: Planning phase** – DHS released a document for public review and comment that identified the steps DHS would take over the summer and fall to prepare a transition plan to submit to CMS.
2. **June 2014 to September 2014: Public input phase** – DHS established an advisory committee to advise on the public input process used in the development of the transition plan. From June until September 2014, DHS collected stakeholder input which was used to inform the transition plan. This was accomplished through focus groups and other in-person meetings with seniors, people with disabilities, and family members, which were used as mechanisms to inform people of the new rule and to get their initial input on how the rule would impact their lives. DHS also provided information to and sought input from other stakeholders, such as providers, lead agencies, advocacy organizations and other interested parties through videoconferences and in-person meetings. DHS also established an email address to allow interested parties to submit questions or comments related to the development of the transition plan. In addition to these strategies for input specific to the new federal rule, DHS also reviewed input collected from seniors and people with disabilities from other initiatives with similar focuses, in order to assure a broader look at input on the topic.
3. **September 2014 to December 2014: Plan development phase** – On September 29, 2014, DHS issued a notice in the *State Register* of a draft transition plan available for public comment, as requested by CMS. DHS refined the transition plan based on public input and analysis.

Assessment Process and Remediation Strategies

DHS will complete an assessment process to determine Minnesota's current level of compliance with the home and community-based setting requirements outlined in the CMS rule. There are two components to the assessment – a regulatory review and a settings review. Each assessment component includes remediation strategies that will be used to comply with the CMS rule.

C. Regulatory Review

Assessment start date: June 2014

Assessment end date: April 2015

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The regulatory review includes a comparative analysis of the setting requirements in the home and community-based services rule with Minnesota's current statute, rule, and federally-approved waiver plans. Topics covered by this analysis will include, but are not limited to:

- Regulatory requirements governing non-residential services, including employment and day services
- Regulatory requirements governing residential services
- Applicability of state and local landlord-tenant law
- Regulatory requirements governing any home and community based services, provider qualifications and settings

The analysis is in the process of being conducted by DHS staff.

Remediation start date: October 2014

Remediation end date: December 2018

Once the gaps in regulatory requirements are identified, DHS will propose changes to statute, federal waiver plans, and DHS policy manuals to align regulatory requirements, service descriptions and provider standards with the federal rule. The changes to statute will be proposed in phases over the next several legislative sessions, concluding in the 2018 legislative session. Phasing the changes in law over several legislative sessions allows the opportunity to work with stakeholders, especially for issues that are more complicated. The timeline for remediation also allow for the necessary time to amend the waiver plans and policy manuals. The timelines will also allow adequate time for stakeholder input on specific remediation strategies. The bulk of the legislative changes will be proposed prior to and during the 2017 legislative session. The final legislative session in 2018 will be used, if necessary, to address any final refinements.

D. Setting Identification and Review

Assessment start date: October 2014

Assessment end date: June 2015

The process to identify and review settings will include several components. There will be an initial data analysis to identify those settings that may not comply with the rule and settings that may fall under the category of presumed not to be home and community-based.

DHS will require all providers of residential, day, and employment services to complete a self-assessment of their compliance with the CMS rule. The self-assessment will be sent to providers by May 1, 2015, with a response expected by June 1, 2015. The providers will receive training and information on how to complete the self-assessment. This training will also provide opportunity to educate the providers on the CMS rule. The information gathered through this process will further inform the list of settings that are not home and community-based settings, as well as settings that are presumed not to

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be home and community-based. Additional data sources will be used to verify the information that is collected through the provider self-assessment process.

For residential settings in which the provider has direct or indirect relationship (through an arrangement with the landlord) with the provider of housing, DHS will use a heightened scrutiny process to determine whether the setting meets the criteria of a home and community-based setting. While DHS gathers information to assist with determining the criteria to identify settings that isolate people from the broader community, DHS will use an initial criterion in residential settings in which people receive home and community based services from the service provider affiliated with the housing provider. This initial criterion is when people receiving Medicaid home and community-based services are living in more than 25% of the units in a building. 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 to not be home and community-based due to the concentration levels alone. Information obtained during the assessment phase will determine what the ongoing evaluation criteria will be, and will be submitted through the waiver amendment process.

DHS is aware that there is a lack of affordable housing for people in Minnesota, which impacts seniors and people with disabilities receiving services through home and community-based services waivers. Some buildings receive funding through the U.S. Department of Housing and Urban Development, which may require a building to be specifically designed for people with disabilities. DHS will work with Minnesota's Housing Finance Agency to provide information to these housing providers about the setting requirements included in home and community-based services rule, to determine whether these settings meet the requirements, and to determine what resources will be necessary to assist these settings with coming into compliance with the rule.

For settings in which day and employment services are provided solely to individuals receiving home and community-based services, a heightened scrutiny process will be used to determine whether the setting meets the criteria.

Using the information gathered to determine the list of settings that are presumed not to be home and community-based; DHS will review data from on-site assessments of a statistically significant sample of settings.

Remediation start date: January 2015

Remediation end date: December 2018

Concurrently with the provider self-assessment, DHS will require providers who are not in compliance with any component of the CMS rule to establish a transition plan specific to each site of service. The transition plan will identify any component of the rule the provider is not currently in compliance with, identify steps the provider will take and the timelines for completion of each action step. The transition plans will be used to monitor compliance of all settings, with full implementation completed by December 2018.

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Settings that are listed as either presumed non-compliant or non-compliant will require remediation, which will naturally vary by the setting and the nature of the problem. Examples of possible settings and action steps are summarized in the table below.

Setting type	Why doesn't meet rule criteria	Actions	End Date
Service is provided in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	Presumed not to be HCBS because services are in a facility providing inpatient treatment	<p>Provider/setting must provide information on how the setting meets the criteria of a home and community-based setting</p> <p>-or-</p> <p>Providers indicate that they will not take necessary steps to comply with HCBS setting requirements.</p> <p>DHS will implement plans to assist individuals in transitioning to other HCBS services and settings</p>	<p>June 2017</p> <p>June 2018</p>
Service is provided in a setting that is adjacent or attached to a public institution (i.e., county-owned, city-owned, state-	Presumed not to be HCBS	Provider/setting must provide information on how the setting meets the criteria of a home and	June 2017

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<p>owned nursing facility, hospital, ICF/DD or IMD)</p>		<p>community-based setting.</p> <p>Individuals receiving services will receive information on options for other services and support on making choices.</p>	
<p>Service is provided in a setting that has the effect of isolating people from the broader community of people not receiving Medicaid HCBS</p>	<p>Presumed not to be HCBS</p>	<p>Provider/setting must provide information on how the setting meets the criteria of a home and community-based setting.</p> <p>Individuals receiving services will receive information on options for other services and support on making choices.</p>	<p>June 2017</p>
<p>Service is provided in a nursing facility, hospital, ICF/DD, or IMD and is part of the institutional services</p>	<p>Institutions are not home and community-based</p>	<p>Provider could choose to seek a separate license or separate services from the institutional setting and provide information on how the settings meets the criteria of a home and community-based setting.</p> <p>If the provider chooses to not continue to provide HCBS, individuals receiving services will receive information on options for other services and support on making choices.</p>	<p>December 2018</p>

It is assumed that most of the necessary transitions will occur by January 1, 2019. DHS will verify compliance of the settings through March 17, 2019, and begin to take steps to ensure compliance.

X. On-going compliance

Minnesota will use several strategies at the provider, lead agency, and individual recipient levels to assure on-going compliance with the home and community based settings requirements. To assure on-going compliance with the requirements at a provider level, DHS will use mechanisms that are already in place, to the extent possible, with some necessary revisions to accomplish the requirements of the CMS rule. The primary mechanisms are the provider enrollment process and licensing. In 2017 and 2018, all home and community-based services providers will be required to re-enroll as a Medicaid provider, which includes submitting assurances of compliance with the waiver requirements. DHS will add assurances to this process related to compliance with the CMS rule at the provider level. Setting requirements for the CMS rule will be included in Minnesota Statutes, Chapter 245D to allow licensors to assure on-going compliance for individual settings. Minnesota will also use on-site reviews by lead agency assessors or case managers to assure that settings are in compliance and that individual outcomes are being realized.

Minnesota conducts waiver reviews of all five Medicaid waiver programs and the Alternative Care Program in each lead agency (counties, tribes and health plans). Site visits include a review of participant case files, interviews and focus groups with staff, and a review of lead agency data. The reports include feedback about promising practices and identification of program strengths, areas needing improvement, and areas requiring corrective action. We plan to incorporate into this lead agency review process the elements necessary to monitor and enforce compliance with the settings rule.

DHS will use the existing Gaps Analysis and waiver review processes to assure that individuals have a choice between settings. The Gaps Analysis, developed by DHS, reports on the current capacity and gaps in long-term services and supports and housing to support older adults, people with disabilities, children and youth with mental health conditions and adults living with mental illnesses in Minnesota. Counties will be asked to respond to questions about the availability of choice of type of residential, day and employment settings in their county beginning with the 2015 Gaps Analysis Survey.

The experience of individuals will be monitored through the MnCHOICES comprehensive assessment and service planning tool. Questions in the tool will address a person's choice of where they live and work. Minnesota is also exploring mechanisms to get direct input from seniors and people with disabilities outside of the assessment process.

Appendix: Statewide Transition Plan work plan grid

XI. Key

CCA – Continuing Care Administration

CMS – Centers for Medicare and Medicaid Services

MDH – Minnesota Department of Health

DHS – Minnesota Department of Human Services

GRH – Group Residential Housing

HCBS – Home and community-based services

MHCP – Minnesota Health Care Programs

MMIS – Medicaid Management Information System

A: Assessment process – Regulatory Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Analyze current Minnesota regulatory requirements governing non-residential services including employment	Complete a comparison of the rule requirements with current requirements in state statute, waiver plans and Minnesota’s Olmstead Plan.	June 2014	April 2015	MN Statutes, MN Rules, Community-Based Services Manual, Olmstead Plan, HCBS waiver plans	DHS staff, Minnesota Employment Learning Community, Olmstead Sub-cabinet, Dept. of Health	Identified gaps in regulations	In process
Analyze applicability of state landlord-tenant law requirements to all HCBS regulatory settings	Complete an analysis of current statutory requirements of landlord-tenant law and how this complies with the rule. This analysis will include individuals outside of DHS with expertise in this area of law.	July 2014	Oct. 2014	MN Statutes	Disability Law Center, Legal Aid, attorneys representing provider organizations, ombudsman, DHS staff	Identified HCBS settings where landlord-tenant law or comparable protections does/does not apply	DHS completed the initial analysis of settings in which Minnesota landlord tenant law currently does/does not apply.
Analyze current Minnesota regulatory requirements governing HCBS settings for residential services	Compare current Minnesota regulations with federal HCBS rule requirements regarding HCBS residential settings.	Sept. 2014	April 2015	Minnesota statutes and rules and HCBS waiver plans	DHS staff	Identified gaps between federal HCBS requirements and Minnesota’s current regulations	In process

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Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Analyze current Minnesota regulatory requirements governing all other waiver services, provider standards, and setting requirements	Compare current Minnesota regulations with CMS rule requirements regarding HCBS settings.	Oct. 2014	April 2015	Minnesota statutes, rules and HCBS waiver plans	DHS staff	Identified gaps between CMS rule requirements and Minnesota’s current regulations	In process

B: Assessment process – Setting Identification and Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Identify settings that may not be HCBS and may be “presumed not to be HCBS”	Conduct an initial data analysis to determine settings that may be in an institutional setting, or meet the criteria of presumed not to be HCBS	Oct. 2014	Dec. 2014	State data bases including housing with services registration data, provider enrollment records, MMIS, Uniform Consumer Information Guide	DHS staff	Identified number and types of settings that will require further analysis	In process
Train providers on completing the provider self-	Provide training to providers that will be completing the provider self-assessment. The training will include assisting providers with identifying the	March 2015	June 2015	MMIS, MN-ITS (provider communication	DHS staff, HCBS providers, lead agencies, trade associations, service		

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Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
assessment	appropriate person within the agency to complete the assessment, providing the list of questions to providers, and walking through the self-assessment process			mechanism)	recipients		
Collect provider self-assessment	Develop and distribute a provider self-assessment to all providers of residential, day and employment services to determine their compliance with the CMS rule. The development of the survey will include input from stakeholders, as well as testing by providers and trade associations. Providers will have 30 days to complete and submit the self-assessment	Oct. 2014	June 2015	MMIS, MN-ITS (provider communication mechanism)	DHS staff, advocates, service recipients, HCBS providers, trade associations, lead agencies	Information on providers' current level of compliance with CMS rule	In process
Verify provider self-assessment results	Develop and implement mechanisms to gather data necessary to independently validate provider surveys results	Jan. 2015	June 2015	Surveys, assessment tools, individual planning tools	Seniors, people with disabilities, advocates, lead agencies	Verify overall HCBS settings' level of compliance with CMS rule	Determining mechanisms for independent verification of setting compliance.
Review settings that are presumed not to be home and community based	Conduct an analysis of the settings that are presumed not to be home and community-based, including reviewing additional evidence and input received from people receiving services at that setting	Jan. 2015	June 2015	Surveys, assessment tools, comments, individual planning tools	Seniors, people with disabilities, providers, advocates, lead agencies	Verify overall HCBS settings' level of compliance with CMS rule	

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C: Remedial strategies – Regulatory Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status
Align state regulatory requirements with CMS rule standards	Propose changes to align state regulatory requirements with CMS Rule standards.	Oct. 2014	July 2018	MN Statute and rules, policy analysis	DHS staff, MDH staff, advisory committee, legislators, legislative staff, other stakeholders	Minnesota regulatory requirements will comport with the requirements in the federal rule	DHS will identify areas of regulatory changes needed in its 2015 report to the legislature
Adopt provider standards that align with federal HCBS regulations	Submit waiver amendments to CMS aligning provider standards with federal HCBS regulations.	Jan. 2015	Dec. 2018	Waiver guidelines and federal HCBS regulation and CMS guidance	DHS staff	HCBS waiver provider standards that align with federal HCBS regulations	Changes will be determined by regulatory analysis and legislation
Address changes needed to policy manuals and website content	Make changes to DHS policy manuals and websites to address language that conflicts with the rule, as identified in the assessment process.	Dec. 2014	Dec. 2018	Community-Based Services Manual, MHCP Provider Manual, DHS public website	DHS staff, other stakeholders	DHS policy manuals and websites that align with the requirements in the federal rule.	Changes will be based on legislation and waiver amendments

D: Remedial strategies – Settings Identification and Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status
Collect HCBS site-specific transition plans	Providers will develop site-specific transition plans with tasks and timelines to address all areas of non-compliance.	Oct. 2014	June 2015	MMIS, MN-ITS (provider communication)	DHS staff, HCBS providers, trade associations, lead agencies	Setting-specific transition plans	In process
Evaluate overall status of compliance	Aggregate data on HCBS settings; Develop training needed for providers,	April 2014	June 2015	HCBS specific site assessment and	DHS will aggregate data; provider and	Detailed training and support plans and	Not started

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with CMS rules	lead agencies and service recipients; Develop mechanism for tracking compliance over time.			transition plans	lead agency training and support developed in consultation with stakeholders	mechanism to track compliance will be developed.	
Monitor HCBS settings to assure compliance with requirements	DHS will assure HCBS settings are in compliance	July 2015	December 2018	DHS licensing reviews and case manager feedback	DHS licensing, HCBS case managers	Settings comply with HCBS requirements	Not started
Finalize compliance	Assure that transition is complete by verifying compliance of all settings	Jan. 2019	Mar. 2019	Data gathered	DHS staff, providers, seniors, people with disabilities, lead agencies	Final compliance	To be developed

E: Public Input

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Establish advisory group	Establish an advisory group to advise DHS on the process used to develop the transition plan. The group will include f representatives from advocacy organizations (including self-advocacy), providers and lead agencies.	May 2014	Dec. 2014	HCBS Partners Panel and other stakeholders	Advocates, providers, lead agencies	Process that includes input from a variety of stakeholders, with a primary focus on seniors and people with disabilities.	Group began meeting in June 2014 and continues to meet once or twice each month.

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Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Establish email address and use as means for gathering input and questions	Establish an email address (hcbs.settings@state.mn.us) for this project.	May 2014	Mar. 2019	DHS staff	Any stakeholders	One point of contact for all questions, comments and notes related to the development and implementation of the transition plan.	DHS set up the email address in May 2014, and staff monitors it several times a week.
Solicit input on HCBS site-specific assessment and transition plan	Engage providers, lead agencies, service recipients and advocates in reviewing and providing feedback on the draft tool.	December 2014	April 2015	DHS staff	Providers, lead agencies, service recipients and advocates	Final HCBS site specific assessment and planning tool will result in measurable assessment criteria and transition action plans.	In process
Determine mechanisms for on-going communication with the public about the status of the transition plan	Identify ways, with the help of the stakeholders, to communicate the status of the plan throughout the transition process.	Nov. 2014	Mar. 2019	To be determined	DHS staff, advisory group, seniors, individuals with disabilities	Service recipients, and other interested stakeholders, receive regular updates on the status of the implementation of the transition plan	In process
Ask for on-going public input throughout the implementation of the transition plan	Identify ways, with the help of the stakeholders, to receive public input throughout the transition process.	Nov. 2014	Mar. 2019	To be determined	DHS staff, advisory group, seniors, individuals with disabilities	Service recipients provide information to DHS to help evaluate the success of the transition plan	In process