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Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

October 15, 2014

Mr. Scott Davis, Executive Director
ND Indian Affairs Commission
600 E Boulevard Avenue
Bismarck ND 58505

Re: Tribal Consultation on the Statewide 1915 (c) Home & Community Based Services (HCBS) Waiver Transition Plan.

Dear Mr. Scott Davis,

This letter is regarding the Tribal Consultation Policy established between the North Dakota Department of Human Services and the North Dakota Indian Tribes. This consultation process was established to ensure Tribal governments are included in the decision making processes when changes in the Medicaid or Children's Health Insurance Program (s) will affect items such as cost or reductions and additions to the program. The North Dakota Department of Human Services engages Tribal consultation when a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal directly impacts the North Dakota Tribes and/or their Tribal members.

This letter is specific to the proposed Statewide Transition Plan that is now open for public comment through November 14, 2014.

On March 17, 2014, the Center for Medicare and Medicaid Services (CMS) issued a final rule for Home and Community Based Services that require states to review and evaluate Home and Community Based Services (HCBS) Settings, including residential and nonresidential settings. States are required to ensure all HCBS Settings comply with the new requirements, and analyze all settings where HCBS participants receive services to determine if current settings comply with the Final Rule. The ND Department of Human Services (Department) has created a draft Statewide Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule.

The federal citation for the new rule is 42 CFR 441.301 (c) (4)-(5), and more information on the rules can be found on the CMS website at: <http://www.medicaid.gov/Medicaid->

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[CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html](#)

A draft Statewide Transition Plan is attached for your review.

The Department will provide opportunities for public comment on the Statewide Transition Plan during the 30 day public comment period beginning October 15 through November 14, 2014. The plan is also available for public comment online and upon request at <http://www.nd.gov/dhs/info/pubs/medical.html>.

Comments and public input on this proposed Statewide Transition Plan will be accepted in the following ways:

Email: DSHSCBS@ND.GOV

Phone 800-755-2604 or 701-328-4602

Fax 701-328-4875

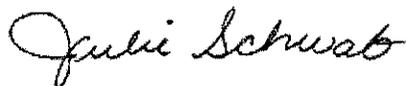
Mail: ND DHS Medical Services Division, 600 E Boulevard Ave Dept. 325, Bismarck, ND 58505 -0250

If you have any comments, questions or concerns about the proposed Statewide Transition Plan, please contact Karen Tescher at ktescher@nd.gov calling 701.328.2324 or by mailing a written response to:

ND Dept of Human Services
600 East Boulevard Avenue
Department 325
Bismarck, ND 58505

The Department appreciates the continuing opportunity to work collaboratively with you to achieve the Department's mission, which is: "To provide quality, efficient, and effective human services, which improve the lives of people."

Sincerely,



Julie Schwab, Director
Medical Services Division



North Dakota Statewide Transition Plan for the HCBS Settings Under 1915(c) Waivers

Purpose

The Center for Medicare and Medicaid Services (CMS) issued a final rule that became effective on March 17, 2014 and requires states to review and evaluate Home and Community-Based Services (HCBS) settings, including residential and nonresidential settings that are paid for with funding through North Dakota's six Medicaid 1915(c) waivers. States are required to ensure all HCBS settings comply with the new federal requirements to ensure that all individuals receiving HCBS are integrated in and have full access to their communities, including opportunities to engage in community life, work in integrated environments, and control their own personal resources. The ND Department of Human Services (Department) has created a draft statewide Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule.

The federal citation for the new rule is 42 CFR 441.301(c) (4)-(5), and more information on the rules can be found on the CMS website at:

www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html

A draft Statewide Transition Plan that applies to all of North Dakota's 1915(c) waivers will be open for public comment for 30 days from October 15, 2014 through November 14, 2014 to allow all consumers, providers and stakeholders an opportunity to provide input to the plan. The final plan will be submitted to CMS on November 28, 2014.

North Dakota HCBS Background

While North Dakota is the third least populous state, it has the fastest growing population. The U.S. Census Bureau estimates that North Dakota experienced the largest growth in population between 2010 and 2011, increasing by 7.6 percent. North Dakota has five federally recognized tribes within the boundaries of North Dakota which have independent, sovereign relationships with the federal government and territorial reservations.

North Dakota is in the middle of an oil boom from the Bakken formation located in western North Dakota. This boom has led to job growth and a population influx, but has also caused a rapid increase in housing costs in some areas and a shortage of affordable housing for moderate and low income individuals. The rapid population growth has placed increased demand on social service and human service systems that are trying to assist individuals who have moved to the State without family supports or adequate housing.

North Dakota offers six 1915(c) waivers through its Medicaid program. The six waivers are:

- **Aged and Disabled Waiver:** This waiver helps eligible individuals who would otherwise require nursing home services to remain in their homes or communities.
- **Autism Spectrum Disorder (ASD) Waiver:** Provides services for children with ASD (birth through age seven) living with a primary caregiver. The goal of the waiver is to support the primary caregiver to maximize the child's development and preventing out of home placements.
- **Children's Hospice Waiver:** The goal of the Children's Hospice waiver is to keep children, who have a life limiting diagnosis that maybe less than one year, between the ages of 0 through 21, in their home as much as possible, avoiding lengthy hospital stays and delay or divert institutional care.
- **Medically Fragile Waiver:** The purpose of the waiver for medically fragile children ages 3-18 to provide assistance for families who require long-term supports and services to maintain their medically fragile child in the family home while meeting their child's unique medical needs.
- **Technology Dependent Waiver:** The goal of the Technology Dependent waiver is to adequately and appropriately sustain ventilator-dependent individuals in their own homes and communities and to delay or divert institutional care.
- **Traditional Individuals with Intellectual Disabilities/Developmental Disabilities (IID/DD) Waiver:** Provides an array of provider managed and participant directed services for individuals with intellectual disabilities and related conditions in order to provide individuals of all ages the opportunity to receive community alternatives to institutional placement.

Assessment Process

From April through October 2014, the Department conducted a review and analysis of all settings where HCBS are provided to eligible recipients. The Department

conducted surveys of all providers of HCBS residential and non-residential services that focused on each setting's physical location, surroundings, community integration, and other environmental characteristics. In addition, the Department conducted a survey of recipients in the Traditional IID/DD Waiver to assess whether the residential and non-residential settings meet home and community-based (HCB) requirements. For example, the survey asked if recipients are able to access the community as they choose, choose their schedules, freely access their money and food, decorate their residence as they choose, and choose their setting, services, and supports.

In addition, DD Program Managers provided input on each setting to validate the providers' responses. The Department will conduct site visits of IID/DD waiver settings for which the State is utilizing the heightened scrutiny process. The Department has conducted site visits to all Aged and Disabled Waiver adult residential service providers and adult day care settings that were not located in a hospital or nursing facility.

The Department reviewed North Dakota Century Code, North Dakota Administrative Code, licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

Based on this review, the Department identified the settings that:

- a) Fully comply;
- b) With changes, will fully comply;
- c) Presumptively do not comply but North Dakota believes to be community-based (through heightened scrutiny); or
- d) Do not/cannot meet HCB settings requirements

The Division of Developmental Disabilities held two public stakeholder meetings in September 2014 to educate providers and stakeholders about the federal rules and the transition planning process, as well as to discuss preliminary survey results and answer questions. Final results of the surveys and transition plan will be presented to stakeholders at a public meeting on October 15, 2014.

Section 2: Summary of Settings Assessment Results

Table 1: Aged and Disabled Waiver

Service	Service Description
<p><i>Services that fully comply with the regulatory requirements because they are individually provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.</i></p>	
Case Management	An individualized process that assesses a recipient's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers
Chore Services	Snow removal and heavy cleaning
Emergency Response System	A telephone emergency response system
Environmental Modification	Physical adaptations to the home which will enable the participant to function with greater independence
Extended Personal Care/Nurse Education	Education given by a nurse to an enrolled qualified service provider who provides medical care specific to a recipient's needs
Family Personal Care	Provides for the provision of extraordinary care payments to the legal spouse of a recipient for the provision of personal care or similar services
Home Delivered Meals	Healthy meals delivered to a person's home
Homemaker Services	Housecleaning, laundry and/or cooking meals
Non-Medical Transportation	Provides non-medical transportation and, if needed, a person to go with participants to essential services
Respite Care	Short-term relief provided to full-time caregivers
Specialized Equipment and Supplies	Equipment and supplies to help people live more independently
Transitional Living	Teaches participants skills to live independently in their own home

<p><i>Services that are not provided in the waiver participant's private home, but also fully comply. Institutional Respite complies per 42 CFR 441.301(c)(4)-(5). Supported employment fully complies because services can only be provided in competitive work settings. Receiving this service does not restrict a recipient's full access to community living. Waiver funds are not used to support employment in group homes, training centers or any setting that isolates individuals from the community. Recipients are free to seek competitive employment and receive supports to sustain that employment. Recipients can engage in community life and control their personal resources as they see fit.</i></p>	
Institutional Respite	Short term relief to full time care givers provided in a nursing home or hospital
Supported Employment	Support and training to help people maintain a job
<p><i>Services that, with changes to certain settings, will fully comply with the regulatory requirements because the Department will require remedial strategies and timelines for providers to come into full compliance.</i></p>	
Adult Family Foster Care	Assistance with personal care and other supportive services provided in a licensed private single family home by a care provider that lives in the home to no more than four individuals
Adult Residential Care	Care in a residential setting focusing on people with memory loss and traumatic brain injury. The size of the settings range from a capacity to serve between 10 and 36 individuals
<p><i>Services that do not / cannot comply with the regulatory requirements because they are provided in a hospital or nursing facility.</i></p>	
Adult Day Care	Minimum of three hours per day of supervised care in a group setting. Eight of the ten currently enrolled adult cares do not comply because they are provided in a hospital or nursing facility. Please note: two adult day care settings fully comply because recipients receive services in a way that allows access to the greater community. Recipients are free to choose what services and activities they want to participate in and who provides them. The setting does not restrict a recipient's full access to community living.

Table 2: Autism Spectrum Disorder Waiver

Service	Service Description
<p><i>Settings within these services fully comply with the regulatory requirements because they are individualized services provided in the recipient's private home and allow full access to community living according to their needs and preferences. Recipients or their primary caregiver get to choose what services and supports they want to receive and who provides them.</i></p>	
Assistive Technology	Equipment and supplies to help people live more independently
Program Design and Monitoring	Communicates with family, observes child's needs, and designs programming fit for in-home implementation. Writes the behavioral intervention plan
Respite	Short-term relief provided to full-time caregivers
Service Management	An individualized process that assesses a participant's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers
Skills Training	Direct service designed to assist participants in acquiring, retaining and generalizing the self-help, socialization, cognitive, communication, organizational skills and the positive behaviors necessary to function successfully in home and community settings

Table 3: Children’s Hospice Waiver

Service	Service Description
<p><i>Settings within these services fully comply with the regulatory requirements because they are individualized services provided in the recipient’s private home and allow full access to community living according to their needs and preferences. Recipients or their primary caregiver get to choose what services and supports they want to receive and who provides them.</i></p>	
Bereavement Counseling	Counseling for individual and family in dealing with and adjusting to the possible loss of child to death and the aftercare of family due to the death of child (this service can be provided either in the participant’s home or within the community, based on the choice of the participant and/or legal guardian; both settings are fully compliant with the regulatory requirements)
Case Management	Service to assist the individual and family by providing information, referral and support
Equipment and Supplies	Focus of equipment is for easing of pain, assisting with child’s independence, or strength building supplies are those needs that are not covered under State Plan
Hospice	This service mirrors traditional hospice services within an individual’s home, except for the continued curative measures would also be available
Palliative	Supportive medical, health and other care provided to child and their family to meet the special needs arising out of the physical, emotional, spiritual and social stresses experienced during the final stage of illness and during dying and bereavement so that when and where possible the child may remain at home
Respite	Child must be residing in legally responsible care givers home and service of respite must occur within this home. Service provides temporary relief to the legally responsible care giver.
Skilled Nursing	This nursing service is completed by a LPN or a RN and is available once the State Plan service has been maximized. This service is utilized if the individuals’ needs are greater than those completed by Home Health Aides yet not as encompassing as Hospice nursing or Palliative nursing needs.
<p><i>Services that are not provided in the waiver participant’s private residence, but also fully comply</i></p>	
Expressive Therapies	The use of art practices that give a child the ability to express and explore their own medical conditions by the use of their imagination and multiple creative expressions. Focus is on living with and coping with diagnosis - siblings of individual are also able to attend sessions.

Table 4: Medically Fragile Waiver

Service	Service Description
<p><i>Settings within these services fully comply with the regulatory requirements because they are individualized services provided in the recipient's private home and allow full access to community living according to their needs and preferences. Recipients or their primary caregiver get to choose what services and supports they want to receive and who provides them.</i></p>	
Case Management	Provides a variety of activities such as intake, case planning, on-going monitoring and review of supports, services to promote quality and outcomes and planning for and implementing changes in supports and services for the family / recipient while in their home
Dietary Supplements	Supplements provided up to 51% of recipient nutritional intake or disease specific while the child is in their home
Environmental Modification	Provides assistance in modifying the family home/ vehicle to enhance the eligible child's ability to function as independently as possible in their home
Equipment and Supplies	Provides adaptive items for daily living, environmental control items, personal care items and such to enhance their home for better independence of recipient
In-Home Supports	Enables a child who has a serious medical condition to remain in and be supported in their family home
Individual and Family Counseling	Address needs related to the stress associated with the child's extraordinary medical needs which will support the continued integration of the child in their home
Transportation	Enables individuals to access essential community resources or services in order to maintain themselves in their home
<p><i>Services that are not provided in the waiver participant's private residence, but also fully comply</i></p>	
Institutional Respite	Provide temporary relief to the recipient's legally responsible caregiver (complies with the setting rules per 42 CFR 441.301(c) (4)-(5))

Table 5: Technology Dependent Waiver

Service	Service Description
<p><i>Services that fully comply with the regulatory requirements because they are individually provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.</i></p>	
Attendant Care Service	Hands-on supportive and medical care specific to a recipient who is ventilator dependent for a minimum of 20 hours per day. Attendant care services include nursing activities that have been delegated by the nurse manager.
Case Management	An individualized process that assesses a recipient's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers
Non-medical Transportation	Provides a ride to essential services
Specialized Equipment and Supplies	Equipment and supplies to help people live more independently

Table 6: Traditional IID/DD Waiver

Service	Service Description
<p><i>Settings within these services fully comply with the regulatory requirements because they are individualized services provided in the recipient's private home and allow full access to community living according to their needs and preferences. Recipients or their primary caregiver get to choose what services and supports they want to receive and who provides them. Recipients, who are age-appropriate, are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.</i></p>	
Behavioral Consultation	Expertise, training and technical assistance in natural environments (home, grocery store, community) to assist primary caregivers, and other natural supports to develop an intervention plan designed to address target behaviors
Environmental Modifications	Physical adaptations to the home or vehicle which will enable the individual to function with greater independence
Equipment and Supplies	Equipment and supplies to help participants to remain in and be supported in their home
Extended Home Health Care	Service provides skilled nursing tasks that cannot be delegated to unlicensed personnel. Nursing assessment and care plan are required.
Family Care Options	The participant is in another family home meeting the licensing standards for Family or Adult Foster Care on a part-time or full-time basis. The participant's family retains all rights and this service is used when eligible waiver participants less than 21 years of age cannot remain in their natural family home on a full-time basis. This is not considered boarding care according to the definition of the ND Department of Public Instruction and not considered child deprivation according to Child Protective Services.
Homemaker Services	Housecleaning, laundry and/or cooking meals
In-Home Supports	In-home supports that assist the primary caregiver by providing relief care (respite) when the primary caregiver is not present or when the primary caregiver is present and needs a second pair of hands to assist the participant in activities of daily living and maintaining health and safety
Infant Development	Home-based, family focused service that provides information, support and training to assist primary caregiver(s) in maximizing the child's development utilizing a parent-coaching model
Parenting Support	Assists participants who are or will be parents in developing appropriate

	parenting skills
Transportation Costs for the Financially Responsible Caregiver	Reimburses financially responsible caregivers for expenses incurred due to necessary medical appointments outside their community, such as mileage, lodging, etc. identified in the participant's plan
<i>Certain settings within these services will require changes to fully comply with the regulatory requirements because the Department will require remedial strategies and timelines for providers to come into full compliance</i>	
Adult Family Foster Care	Assistance with personal care and other supportive services provided in a licensed private single family home by a care provider that lives in the home and provides care to no more than four individuals
Extended Services	On- or off-the-job employment-related support for individuals needing intervention to assist them in maintaining employment, including job development, or replacement in the event of job loss.
Residential Habilitation	Includes the following services: Congregate Care, Minimally Supervised Living Arrangements, Transitional Community Living Facility, Supported Living Arrangement, Individualized Supported Living Arrangements, and Family Care Option III; services are provided in licensed/unlicensed community residential settings that include group homes and homes leased, owned or controlled by individuals.
<i>Certain settings within these services are presumptively non-home and community based, but North Dakota believes they are community-based and will provide justification to show these settings do not have the characteristics of an institution and do have the qualities of home and community based settings (heightened scrutiny)</i>	
Day Supports	Habilitation services for individuals with developmental disabilities furnished in a non-residential setting, separate from the home where the individual resides, but may be furnished in the individual's home if the individual's needs preclude traveling from the home on a regular basis
Residential Habilitation	Service is described above
<i>Certain settings within these services do not / cannot comply with the regulatory requirements because they are in an institutional setting</i>	
Adult Day Health	Minimum of three hours per day of supervised care in a group or congregate setting
Day Supports	Service is described above

Section 3: Assessment Results, Proposed Remedial Strategies and Timelines

The three tables below summarize the results of North Dakota's assessment of HCBS settings that were not already determined to be compliant.

- Table 7 lists the settings that, with changes, will comply with HCBS requirements, and the remedial strategies that will be employed to bring the settings into compliance.
- Table 8 lists the settings that, while presumed by CMS to be non-compliant, the Department believes are in fact community-based and provides justification for why these settings should be considered HCBS, and how the State has come to its determination.
- Table 9 lists the settings that are not and cannot become HCB settings and the Department's plans to relocate individuals if necessary in these settings to other HCB settings.

Table 7: Settings that, With Changes, Will Comply with HCBS Requirements

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p>Adult Family Foster Care (AFFC) (Aged/Disabled Waiver and Traditional IID/DD Waiver)</p>	<p>38 AFFC Homes (No more than 4 residents per home)</p>	<p>Changes are needed in regard to the experience of the residents to allow for more control of recipient schedules, access to funds, choice of meals, access to phone at any time, access to visitors day or night, curfews, and entrance doors to private areas that lock</p>	<p>The Department will conduct training for licensing entities, case managers, and licensed AFFC providers on settings requirements.</p>	<p>Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients. Case managers will work with waiver recipients who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The AFFC provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.</p>	<p>Aug 2014</p>	<p>The Department will keep a roster of attendees and dates of training to track attendance.</p> <p>The Department will review AFFC house rules submitted by AFFC providers:</p> <p>Modified rules and policy will be published on State website.</p>	<p>The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Family Foster Care Providers</p>	<p>Licensing entity will conduct home visits required for licensure & re-licensure. Re-licensure occurs every two years.</p> <p>New rules will be incorporated into the AFFC licensing requirements and will be applied to all new and renewed licenses.</p> <p>Case Managers will monitor recipient experience and setting requirements at face to face quarterly visits.</p>
			<p>The Department will require modified AFFC house rules to be sent to the Department.</p>		<p>Jan 2015</p>			
			<p>The Department will promulgate AFFC Administrative Rules to modify licensing standards to match HCB setting requirements. State Medicaid Agency (SMA) will update policy to reflect changes in administrative rule. Once rules are finalized State will conduct training with licensing entities to assure understanding of new rules and licensing requirements.</p>		<p>Oct 2016</p>			

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
	38 AFFC Homes	Changes are needed to comply with the need for a lease or legally enforceable agreement that provides protection to address the eviction process and comply with ND landlord-tenant laws	<p>The Department will provide training and sample lease agreements that comply with ND law to AFFC providers</p> <p>AFFC providers will secure a signed lease or other written rental agreement that includes the eviction process, which must be compliant with ND eviction law (NDCC chap. 47-32)</p>	Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients. Case managers will work with Waiver recipients who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The AFFC provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.	<p>Jan 2015</p> <p>Jan 2015</p>	<p>The Department will keep a roster of attendees and dates of training to track attendance.</p> <p>Require legally enforceable agreements to be sent to The Department. Agreements will be reviewed by SMA staff, with guidance from the Legal Advisory Unit, for compliance with ND landlord/tenant law.</p>	The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Family Foster Care Providers	<p>Lease agreements will be required to be submitted as part of the requirements for new and renewed AFFC licenses.</p> <p>Case Managers will assure that lease agreements are in place for all recipients when they initially begin using services and during annual assessments conducted in the AFFC home.</p>
<p>Adult Residential Services</p> <p>(Aged/Disabled Waiver)</p>	12 Adult Residential Service Providers	Changes are needed in regard to the experience of the recipient to allow for more control including, access to food /snacks at any time, access to phone at any time,	State will conduct training with licensing entities to assure understanding of new rules and licensing requirements	Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA	Jan 2015	<p>The Department will keep a roster of attendees and dates of training</p> <p>ND Department of Health will assure</p>	State Medicaid Agency, Department of Health, Long Term Care Association, HCBS Case Managers,	Setting requirements will be added to the Adult Residential provider standards for enrollment. State staff will conduct site

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	<p># Recipient/Fac</p> <table border="1"> <tr><td>0-10</td><td>1</td></tr> <tr><td>11-20</td><td>5</td></tr> <tr><td>21-30</td><td>3</td></tr> <tr><td>31-36</td><td>3</td></tr> </table>	0-10	1	11-20	5	21-30	3	31-36	3	<p>allowing for entrance doors to recipients private areas that lock.</p>	<p>The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics.</p>	<p>recipients. Case managers will work with Waiver recipients who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The Adult Residential provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.</p>	<p>Aug 2017</p>	<p>compliance through the scheduled survey process. Modified rules will be published on State website.</p>	<p>Adult Residential Service Providers</p>	<p>visits upon initial enrollment and at renewal (every 2 years). Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits. Department of Health would assure compliance through the scheduled onsite survey process.</p>
0-10	1															
11-20	5															
21-30	3															
31-36	3															
	<p>12 Adult Residential Service Providers</p>	<p>Changes are needed to comply with the need for a lease or legally enforceable agreement that provides protection to address the eviction process and comply with ND landlord-tenant laws</p>	<p>Adult Residential Service providers will secure a signed lease or other written rental agreement that includes the eviction process, which must be compliant with ND eviction law (NDCC chap. 47-32).</p>		<p>Jan 2015</p>	<p>Require legally enforceable agreements to be sent to Department of Human Services; Agreements will be reviewed by Department staff with guidance from Legal Advisory unit, for compliance with ND landlord/tenant law.</p>	<p>State Medicaid Agency, Department of Health, Long Term Care Association, HCBS Case Managers, Adult Residential Service Providers, ND Housing Authority</p>	<p>Case Managers will be responsible to assure there is a current lease agreement for all recipients when they initially begin using the services and annually thereafter during home visits.</p>								

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p>Extended Services (Traditional IID/DD Waiver)</p>	<p>2 Settings</p>	<p>Changes are needed in regard to the experience of the recipient to allow more community interaction</p>	<p>The Department will provide Technical Assistance and training to providers to ensure more community interaction.</p>	<p>Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients.</p>	<p>September 2015</p>	<p>The Department will keep a roster of attendees and dates of training to track attendance.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers</p>	<p>The DD Program Managers will monitor recipient community interactions during their face to face visits.</p>
			<p>The Department will conduct statewide training for providers and DD Program Managers on the new rules.</p>	<p>DD Program Managers will work with individuals who receive services in these settings to explore options to move to a setting that does comply or to choose other services.</p>	<p>Code updates: Dec 2016; Policy updates: beginning Jan 2016</p>	<p>The DD Program Managers will conduct site visits to assess compliance with community interaction during their face to face visits.</p>		<p>New rules will be incorporated into the licensing requirements and will be applied to all new and renewed licenses.</p>
			<p>The Department will update licensing Administrative Code, policies, and manuals.</p>					<p>As additional guidance for non-residential settings is provided by CMS, the Department will ensure</p>

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
			<p>The Department plans to add additional IID/DD waiver services that will incentivize providers to expand opportunities for individuals to work in integrated, competitive employment settings, by partnering with local business and providing the necessary training and support for individuals.</p>		December 2015			<p>these services and settings comply with regulations.</p>
<p>Residential Habilitation (Traditional IID/DD Waiver)</p>	96 Provider-Owned Community Residences	<p>Changes are needed to ensure that all provider-owned residential settings:</p> <p>a) Provide a lease or legally enforceable agreement that complies with ND landlord-tenant laws (NDCC chap. 47-32).</p> <p>b) Have lockable bedroom doors</p>	<p>The Department will update licensing Administrative Code, policies, and manuals.</p> <p>The Department will provide sample lease agreements and information about ND's landlord-tenant laws to providers.</p> <p>Providers will submit lease policies and a sample lease template to the Department.</p>	<p>Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients.</p> <p>DD Program Managers will work individuals who receive services in these settings to explore options to move to a setting that does comply</p>	<p>Code updates: Dec 2016; Policy updates: beginning Jan 2016</p> <p>June 2015</p> <p>July 2016</p>	<p>New providers will submit lease policies and a template lease as part of their License application.</p> <p>The Department will review providers' lease templates for compliance with ND landlord/tenant law.</p> <p>The Department will conduct site visits to assure changes were made (e.g., locks added to doors).</p>	DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units	<p>The Department will strengthen licensing renewal procedures to ensure ongoing compliance.</p> <p>The Department will update the Environmental Scan Checklist to include lockable doors.</p>

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
			Providers that do not demonstrate compliance will be required to submit a Plan of Correction to the Department.	or to choose other services. The Residential Habilitation provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.	September 2016	The Department will keep a roster of attendees and dates of training to track attendance.		
			The Department will conduct statewide training for providers and DD Program Managers on the new rules.		Sept 2015			

Table 8: Settings that are Presumably Not HCBS for Which the State is Submitting Justification to Refute Presumption

Name of Service (Applicable Waiver)	Total # of Settings	Reason for Presumed Noncompliance	Justification that Setting is In Fact Community-Based	Assuring Compliance	Timeline
<p>Residential Habilitation</p> <p>(Traditional IID/DD Waiver)</p>	<p>4 settings with 8 individuals</p>	<p>Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF)</p>	<p>While these settings are located on the grounds of, or adjacent to, a State ICF, individuals at these settings all have full access to the community according to their needs and preferences. The Department conducted surveys of a sample of residents in each setting, and has determined that their location does not have the effect of isolating the residents from the community. Individuals participate in community events, take trips, have hobbies, belong to local clubs, or work in the community. Resident survey results indicate that they are afforded maximum independence, control of their schedules, and access to food / visitors at any time.</p>	<p>The Department collected input from DD Program Managers and providers regarding the community-based nature of each setting and has determined that their location does not have the effect of isolating the residents from the community.</p>	<p>June–August 2014</p>
			<p>Staff is provided by independent DD Providers in three of the four settings. These settings serve individuals who are not able to find housing elsewhere due to high need behavioral or legal challenges. The residents all receive housing assistance. These settings are used as a stepping stone for individuals whose needs exceed the resources of the community at this time. The settings are either single family homes or an apartment. Some of the homes are located among homes whose occupants do not have disabilities.</p>	<p>The individuals who currently reside in these settings are assessed at least annually to determine if alternative service settings in the community are appropriate.</p>	<p>August – September 2014</p>
			<p>The grounds of the State ICF are no longer used solely for individuals with intellectual and developmental disabilities. Two buildings have been converted into apartment buildings, are owned by private landlords and utilized by the general public. Other businesses are also integrated throughout. There are public clinics, offices, and day care centers for children. Two additional buildings are currently being projected for community use as well. Additionally, the fitness center, which is operated by the center, is open and very well utilized by the community.</p>	<p>The Department will conduct site visits of each setting to verify provider survey, results of DD Program Manager assessments and resident interviews.</p>	<p>October – November 2014</p>

Name of Service (Applicable Waiver)	Total # of Settings	Reason for Presumed Noncompliance	Justification that Setting is In Fact Community-Based	Assuring Compliance	Timeline
Day Supports (Traditional IID/DD Waiver)	1 Day Facility with 17 individuals	Located on the grounds of, or adjacent to, an ICF	<p>While this day facility is on the grounds of the State ICF, individuals are active in the community throughout the day with a focus on social roles and volunteering. The day program is located in a building separate from the residential settings. The grounds of the State ICF are no longer used solely for individuals with intellectual and developmental disabilities. Two buildings have been converted into apartment buildings, are utilized by the general public and owned by private landlords. Other businesses are also integrated throughout. There are public clinics, offices, and day care centers for children, Two additional buildings are currently being projected for community use as well. Additionally, the fitness center, which is operated by the center, is open and very well utilized by the community.</p>	<p>The Department collected input from DD Program Managers and providers regarding the community-based nature of each setting and has determined that their location does not have the effect of isolating the residents from the community.</p>	<p>June-August 2014</p>
			<p>The Department conducted surveys of a sample of recipients regarding the experiences and environmental characteristics of the Day Facility, and has determined that recipients have frequent community interaction and are afforded maximum independence. The individuals access the community frequently throughout the day based on their preferences and needs. Community experiences include volunteering with elderly and children groups, church functions, civic organizations and boards, food pantry, local fairs and celebrations, and numerous other community events. The provider maintains close involvement with the city, and economic partners in the community.</p>	<p>The individuals who currently access this day program are assessed at least annually to determine if alternative settings in the community are appropriate.</p>	<p>August – September 2014</p>
				<p>The Department will conduct site visits of each setting to verify the results of the provider survey, DD Program Manager assessments and resident interviews.</p>	<p>October – November 2014</p>

Table 9: Settings that Do Not/Cannot Meet HCBS Requirements

Name of Service (Waiver)	Total # of Settings Not Compliant	Remedial Strategies for Providers Who Are Not Able to Meet Requirements	Remedial Strategies for Recipients Receiving Services in Non-Compliant Settings	Key Stakeholders	Timeline for Completion	Assuring Compliance	Ongoing Monitoring
<p>Adult Day Care (Aged/Disabled Waiver)</p>	<p>8</p>	<p>Policy will be updated and providers and case management entities will be informed that services cannot be authorized for Medicaid waiver recipients in these settings.</p>	<p>No remediation necessary as no waiver recipients are currently utilizing waiver services in non-compliant adult day care settings located in a hospital or nursing home.</p>	<p>State Medicaid Agency, HCBS Case Managers, Adult Day Care Providers</p>	<p>December 2014</p>	<p>State will monitor care plans to assure that recipients are not authorized services in non-complaint settings.</p>	<p>State will monitor care plans to assure that recipients are not authorized services in non-complaint settings.</p>
<p>Day Supports (Traditional IID/DD Waiver)</p>	<p>4 settings with 5 individuals</p>	<p>Providers and DD Program Managers will be informed that services cannot be authorized for Medicaid waiver recipients in ICF settings</p>	<p>The individuals receiving day supports in these settings will be relocated to other community-based settings. They will be provided with reasonable written notice and a choice among alternative Day Support services and providers that meet the individual's needs, preferences, and HCB setting requirements. Individuals will have the opportunity to interview and tour potential providers to make an informed decision.</p> <p>Once a new setting/provider is selected, an admission plan will be developed according to assist in a seamless transition.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units</p>	<p>March 2017</p>	<p>The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings</p>	<p>The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings</p>
<p>Adult Day Health (Traditional IID/DD Waiver)</p>	<p>0 settings with 0 individuals</p>	<p>Providers and DD Program Managers will be informed that services cannot be authorized for Medicaid waiver recipients in a hospital or nursing facility. No waiver recipient has utilized this service since 2011.</p>	<p>No remediation necessary as no waiver recipients are currently utilizing waiver services.</p> <p>The Department will amend the Traditional IID/DD waiver to no longer include this service.</p>	<p>DD Division, DD Program Administrators</p>	<p>December 2015</p>	<p>The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings.</p>	<p>The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings.</p>

Section 3: Public Input Process

The Department will provide opportunities for public comment on the proposed Statewide Transition Plan during the 30 day public comment period beginning October 15, 2014 through November 14, 2014. The proposed Statewide Transition Plan will be sent to tribal entities and other stakeholders. The plan will also be available for public comment online and upon request at <http://www.nd.gov/dhs/info/pubs>

A summary of all comments received during the public comment period will be added to the proposed Statewide Transition Plan and submitted to CMS by November 28, 2014. The state will provide a summary of public comments, including comments that agree/disagree with the State's determinations about settings that do/do not meet the HCBS requirements. A summary of the modifications made to the proposed Statewide Transition Plan resulting from response to the public comment will be provided by the Department. If the Department determination differs significantly from the public comment, the information the state used to confirm its determination will be included.

The state will post the final Statewide Transition Plan with any modifications after the public comment to the Department's web site no later than November 28, 2014. All public comments on the provisional Transitional Plan will be retained and available for CMS review for the duration of the transition period or approved waiver.

Comments and public input on this proposed Statewide Transition Plan accepted in the following ways:

Email: [DSHCBS@ND.GOV](mailto:DSHCBCS@ND.GOV)

Phone: (800)-755-2604 or (701)-328-4602

Fax: (701)-328-4875

Mail: ND DHS Medical Services Division, 600 E Boulevard Ave Dept. 325, Bismarck, ND 58505-0250

10/15/2014