



Purpose

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 preliminary Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule as it relates to the HCBS (elderly and disabled) waiver only. This is required because the Department is seeking to add a new service that would be available to HCBS aged and disabled recipients.

North Dakota Preliminary Transition Plan – Assessment of Settings Process

The [United States Census Bureau](#) estimates that the population of North Dakota was 723,393 on July 1, 2013, a 7.6% increase since the [2010 United States Census](#). This makes North Dakota the state with the largest percentage in population growth since 2011. 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.

With a land area of 70,762 square miles North Dakota is the 19th geographically largest state but the 3rd least populous. Despite the recent population influx the number of persons per square mile is still estimated at 9.7 which attests to the very rural nature of the state.

North Dakota is in the middle of an oil boom from the Bakken formation located in western North Dakota. This has led to job growth and a population influx with some of the lowest unemployment rates in the country. The oil boom has also caused a shortage of affordable housing for moderate and low income individuals as well as placing increased demand on social service systems that are trying to assist individuals who have moved to the State without family supports, adequate housing and an understanding of what it takes to live in a sometimes harsh climate.

North Dakota offers seventeen services through its Home & Community Based Services (aged & disabled) 1915(c) waiver. Approximately 1700 providers are enrolled to provide HCBS services. The majority of waiver services are provided individually in the client's private home and comply with the HCBS settings requirements. The only services

that are provided in institutions (hospital or skilled nursing facility) are adult day care and institutional respite care. Institutional respite care complies with the setting rules per 42 CFR 441.301(c) (4)-(5) and the State Medicaid agency has chosen to defer our decision on adult day care facilities compliance with the HCBS settings rule until further guidance is issued by CMS. Twelve agencies are enrolled to provide adult residential services; none are located in or adjacent to a nursing home and none are located on the grounds of a public facility, but some of these settings may not fully comply with the new requirements.

Section 1: Results of the State's Assessment of Settings

From April through July 2014 the Department of Human Services has done a review and analysis of all settings where HCBS (aged and disabled) services are provided to eligible recipients. The analysis included review of North Dakota Century Code, North Dakota Administrative Code, Home and Community Based Services policy, on-site visits to residential service providers, provider calls, and review of licensing rules and regulations.

Through this process the state has determined the following services fully comply because they are individually provided in the recipient's private residence 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.

- Case Management: An individualized process that assesses a client's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers.
- Chore Service: Snow removal and heavy cleaning.
- Emergency Response System: A telephone emergency response system.
- Extended Personal Care/Nurse Education: Education given by a nurse to an enrolled qualified service provider who provides medical care specific to a client'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 a ride and if needed, a person to go with them to essential services.

- Respite Care: Short term relief to full time caregivers.
- Specialized Equipment and Supplies: Equipment and supplies to help people live more independently.
- Supported Employment: Support and training to help people maintain a job.
- Transitional Living Services: Teaches skills to live independently in their home.
- Environmental Modification: Physical adaptations to the home which will enable the individual to function with greater independence.

The following waiver services are not provided in the individual's private residence but based on our analysis also fully comply.

- Institutional Respite: Short term relief to full time care givers provided in a nursing home or hospital - Comply 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.

Through this process, the state has also determined the following services **with changes**, will fully comply with the regulatory requirements because the state will require remedial strategies and timelines for the providers to come into full compliance:

- 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 Services: Care in a residential setting focusing on people with memory loss and traumatic brain injury.
- Adult Day Care: Minimum of three hours per day of supervised care in a group setting. The state will defer making a determination on adult day care until further guidance is issued by CMS.

Section 2: State's Proposed Remedial Strategies and Timeline

With Changes, Setting will Comply with HCB Characteristics						
Name of Service/ Setting	Total # of Settings	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies	Key Stakeholders	Timeline for Completion	Assuring Compliance
Adult Family Foster Care	38 AFFC Homes - No more than 4 recipients	Changes are needed in regard to the experience of the recipient to allow for more control of client 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.	State Medicaid Agency will conduct training for licensing entities and case management.	State Medicaid Agency, Aging Services Division, Developmental Disability Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Family Foster Care Providers	Aug-14	Roster of attendees and dates of training.
			State Medicaid Agency will conduct training for licensed AFFC providers and require modified house rules to be sent to State licensing agency (Department of Human Services).		Jan-15	Roster of attendees and dates of training, State licensing agency (Department of Human Services) will review all licensing documents to assure compliance.
			State licensing agency (Department of Human Services) will promulgate AFFC rules to modify licensing standards to match HCB setting requirements.		Oct-16	Publish modified rules on ND.gov
			State Medicaid agency will update policy to reflect changes in administrative rule.		Oct-16	Publish modified policy on ND.gov
Adult Family Foster Care	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 appeals comparable to ND landlord tenant laws.	State Medicaid agency will provide training and sample lease agreements that comply with ND law to AFFC providers.	State Medicaid Agency, Aging Services Division, Developmental Disability Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Family Foster Care Providers	Jan-15	Roster of attendees and dates of training.
			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)		Jan-15	Require legally enforceable agreements to be sent to State Medicaid Agency. Agreements will be reviewed by Department staff, with guidance from the Legal Advisory Unit, for compliance with ND landlord/tenant law.

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Adult Residential Services	12 Adult Residential Service Providers <u>#Client/Fac</u> 0-10 1 11-20 5 21-30 3 31-36 3	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, allowing for entrance doors to recipients private areas that lock.	State Medicaid Agency will provide training to the Case Managers and Adult Residential Service providers on the setting requirements.	State Medicaid Agency, Department of Health, Long Term Care Association, HCBS Case Managers, Adult Residential Service Providers	Jan-15	Roster of attendees and dates of training.
			State Medicaid Agency will work with the Department of Health (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics.		Aug-17	Publish modified Documents on ND.gov; ND Department of Health would assure compliance through the scheduled survey process.
Adult Residential Services	12 Adult Residential Service Providers	Changes are needed to comply with the need for a lease or legally enforceable agreement that provides protection to address the eviction process and appeals comparable to ND landlord tenant laws.	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).	State Medicaid Agency, Department of Health, Long Term Care Association, HCBS Case Managers, Adult Residential Service Providers, ND Housing Authority	Jan-14	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.

Section 3: Public Input Process

The state provided opportunity for public comment during the 30 day public comment period beginning July 2 through August 1, 2014. The entire provisional Transition Plan was mailed to all qualified service providers and individuals enrolled in the HCBS (aged and disabled) waiver, tribal entities, and other stakeholders. The plan was also made available for public comment online and upon request at <http://www.nd.gov/dhs/info/pubs/medical.html>.

The state posted the provisional Transition Plan with modifications to the Department's web site after 5:00pm on August 1, 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 preliminary transition plan 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

A statewide Transition Plan that applies to all 1915c waivers will be submitted to CMS at a later date.

Summary of Public Comment

Two contacts were made to the State regarding the preliminary transition plan. One consisted of a phone call from a provider and recipient who did not want to make a comment on the plan, but wanted to express satisfaction with the services. One written comment was received and is summarized below:

ND Protection & Advocacy (P&A) Project - P&A did not have any formal comments regarding the proposed changes to the HCBS aged & disabled waiver and the transition plan identified to implement these changes. They offered a recommendation regarding how the strategies will be implemented as the Department moves forward with this process. They recommended that stakeholders, advocates and people served by the waiver continue to be involved in the implementation process and policy development and offered their assistance.

State Response:

The State Medicaid agency plans to hold stakeholder meetings in October 2014 which will be held in 8 cities in ND to provide consumers, stakeholders, providers and other interested parties an opportunity to provide public input on the statewide transition plan that applies to all 1915(c) waivers in ND.