



**North Dakota Statewide Transition Plan  
For HCBS Settings  
Under 1915(c) Waivers  
Revised to address  
Center for Medicare and Medicaid Services  
(CMS) requirements**

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## **North Dakota Statewide Transition Plan for the HCBS Settings Under 1915(c) Waivers- Revised to address Center for Medicare and Medicaid Services (CMS) requirements**

### **Section1: 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](http://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)

North Dakota submitted an initial Statewide Transition Plan that included public comment to CMS on November 28, 2014. CMS has completed a review of the initial plan and provided additional recommendations that are addressed in this document.

Prior to submission this revised plan must be submitted for public comment. The draft Statewide Transition Plan that applies to all of North Dakota's 1915(c) waivers is open for public comment for 30 days from February 19, 2016 through March 20, 2016 to allow all consumers, providers and stakeholders an opportunity to provide

input to the plan. The final plan which may include changes that were made as result of the public comment will be submitted to CMS on March 31, 2016.

**Please note: All revisions to the 11/28/2015 version are indicated in highlighted font.**

## **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.

In 2014, North Dakota was in the middle of an oil boom from the Bakken formation located in western North Dakota. This boom led to job growth and a population influx, but 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 placed increased demand on social service and human service systems.

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

- **Home and Community Based Services Waiver (HCBS Waiver) - Serves Aged & Disabled:** 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 2014 through October 2014, the Department conducted a review and analysis of all settings where HCBS are provided to eligible recipients to create the initial Statewide Transition Plan. 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.

The Traditional (IID/DD) waiver assessment was based on services, conversations with program managers, review of housing eligibility criteria, provider & consumer survey's, which included looking at the service location (i.e. consumer apartment), type (i.e. provider owned) and the building as a whole while assessing the location and other characteristics and qualities that are to be present in a HCB setting. Surveys were sent to all thirty-one DD Licensed Providers who provide HCB services. The survey required the Provider to complete the survey separately for each setting that included specific setting identifying information. The Department received a 100% return response from the Provider Survey. To ensure a 100% Provider survey return, the survey completion was deemed mandatory and the Department tracked responses and were in contact with any Providers who may not have responded within the timeframe.

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. The surveys were completed with the recipients by the Regional DD Program Managers during a face to face visit. Recipients were identified according to a client identifier which were linked to each individual setting. The Department received a 100% return response.

In addition, DD Program Managers provided input on each setting to validate the providers' responses. The data submitted by the Provider Survey was compiled into a report based on each setting on the provider responses and CMS requirements. The DD Program Managers reviewed the preliminary results for all residential and non-residential settings to provide further information where needed, answered additional questions, provide clarification, and/or provide justification if each setting may or may not meet the requirements. Based on the results of the provider survey, DD Program Manager input, and recipient surveys, the Department and an outside consulting firm compiled the information to determine each settings compliance. The Department conducted site visits of IID/DD waiver settings for which the Department is utilizing the heightened scrutiny process.

Department staff completed a site specific assessment of all settings where adult residential services are provided under the HCBS Medicaid waiver that serves the aged and disabled. The assessment included a site visit, interview with key staff, and observation of the provision of services in all settings. The Department also conducted site visits to all HCBS Waiver (serves aged & disabled) adult day care settings that were not located in a hospital or nursing facility.

Based on the responses to the review of the initial Statewide Transition Plan received from CMS on August 11, 2015 & November 17, 2015 the Department conducted additional assessments of the settings where waiver services are provided. Through this process the Department has determined that the settings where Adult Residential Services through the HCBS waiver are provided are the only remaining settings that currently fall under the presumption of having institutional characteristics.

Per CMS's request to assess the Traditional IID/ DD Waiver's Family Care Option settings, the Department administered a survey in November 2015 to determine whether these settings were compliant with the HCBS rules. Surveys were completed on all seven Family Care Option settings that included an identifier to each setting. The survey was mandatory and the Department received a 100% return response. Surveys were completed by the DD Program Manager of the participant in consultation with the legal decision maker, Family Care Option caregiver, Family Care Option provider, and participant. The survey focused on each setting's physical location, surroundings, community integration, and other environmental characteristics. 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 as they choose, and choose their setting, services, and supports. Based on the results of the survey, the Department reviewed the information and determined that each setting was compliant.

The Department mailed a questionnaire to all HCBS Waiver (serves aged & disabled) recipients/ guardians who are receiving adult residential services for which the Department is utilizing the heightened scrutiny process to gather their input on how these settings comply with the new rule. The recipient's surveys and responses were voluntary. The survey results were linked to each specific setting. Department staff consulted with professionals from the Alzheimer's Association to discuss the provision of the HCB setting rule and the delivery of HCBS to individuals with moderate to severe dementia who are in a stage of the disease that may cause wandering, elopement and other behavior issues.

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

## Section 2: Summary of Settings Assessment Results

Table 1: **Medicaid Waiver for Home and Community Based Services (HCBS Waiver- Serves Aged & Disabled)**

Service	Service Description
<p><i>Settings for the services listed below are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being 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>Settings that are not provided within the waiver participant's private residence but are presumed to 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 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>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></p>	
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 for the services listed below are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being 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>	
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 for the services listed below are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being 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>	
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>Settings that are not provided within the waiver participant’s private residence but are presumed to 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 for the services listed below are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being 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	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>Settings that are not provided within the waiver participant's private residence but are presumed to 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>Settings for the services listed below are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being 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 for the services listed below are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being 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>	
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.
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
<p><i>Settings that are not provided within the waiver participant's private residence but are presumed to fully comply.</i></p>	
Family Care Option	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

	<p>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.</p>
<p><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></p>	
Adult Foster Care	<p>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</p>
Extended Services	<p>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.</p>
Residential Habilitation	<p>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.</p>
Day Supports	<p>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</p>
<p><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></p>	
Residential Habilitation	<p>Service is described above</p>
<p><i>Certain settings within these services do not / cannot comply with the regulatory requirements because they are in an institutional setting</i></p>	
Adult Day Health	<p>Minimum of three hours per day of supervised care in a group or congregate setting</p>
Day Supports	<p>Service is described above</p>

### **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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Adult Foster Care (AFC) (HCBS waiver and Traditional IID/DD Waiver)</b></p>	<p><b>30</b> AFC 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 conducted training for licensing entities, case managers, and licensed AFC 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 AFC 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 kept a roster of attendees and dates of training to track attendance.</p>	<p>The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Foster Care Providers, Consumers, Advocacy Organizations</p>	<p>Licensing entity will conduct home visits required for licensure &amp; re-licensure. Re-licensure occurs every two years. Licensing visits will include HCBS setting experience interviews with all AFC recipients.</p> <p>New rules will be incorporated into the AFC 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><b>33</b> Recipients are Receiving AFC Statewide</p>		<p>The Department required modified AFC house rules to be sent to the Department.</p>		<p>Jan 2015</p>	<p>The Department reviewed AFC house rules submitted by AFC providers: The results were linked to each specific setting. If a provider does not respond they would no longer meet the licensing requirements for AFC services.</p>		
	<p>The Department will promulgate AFC 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>		<p>Modified rules and policy will be published on State website.</p>			

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Adult Foster Care (AFC) (HCBS waiver and Traditional IID/DD Waiver) (Cont)</b></p>	<p>30 AFC Homes</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>The Department provided training and sample lease agreements that comply with ND law to AFC providers</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 AFC 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>Jan 2015</p>	<p>The Department kept a roster of attendees and dates of training to track attendance.</p>	<p>The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Foster Care Providers, Consumers, Advocacy Organizations</p>	<p>Lease agreements are required to be submitted as part of the requirements for new and renewed AFC licenses.</p>
	<p>33 Recipients are Receiving AFC Statewide</p>		<p>AFC providers have secured 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>Legally enforceable agreements were sent to the Department. Agreements were reviewed by SMA staff, with guidance from the Legal Advisory Unit, for compliance with ND landlord/tenant law.</p>		<p>Case Managers assure that lease agreements are in place for all recipients when they initially begin using services and during annual assessments conducted in the AFC home.</p>

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Adult Residential Services (HCBS Medicaid Waiver)</b></p>	<p>14 Adult Residential Settings</p> <p>96 Waiver Recipients are Receiving Services Statewide</p>	<p>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 privacy in the living unit including, entrance doors to recipients private areas that lock</p>	<p>State conducted training with licensing entities to assure understanding of new rules and licensing 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.</p>	<p>Jan 2015</p>	<p>The Department kept a roster of attendees and dates of training</p> <p>ND Dept of Health will assure compliance through the scheduled survey process.</p> <p>Modified rules will be published on State website.</p>	<p>State Medicaid Agency, Department of Health, Long Term Care Association, HCBS Case Managers, Adult Residential Service Providers</p>	<p>Setting requirements will be added to the Adult Residential provider standards for enrollment. State staff will conduct site visits upon initial enrollment and at renewal (every 2 years). Summary of site visits results will be posted on Department's website.</p> <p>Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.</p> <p>Dept of Health would assure compliance through the scheduled onsite survey process.</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>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. Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA</p>	<p>Aug 2017</p>			

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Adult Residential Services (HCBS Medicaid Waiver)</b></p>	<p>14 Adult Residential Settings  96 Waiver Recipients are Receiving Services Statewide</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 secured 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). The Department provided sample lease agreements that comply with ND law to adult residential providers upon request.</p>	<p>Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA.  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. Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA.</p>	<p>Jan 2015</p>	<p>Legally enforceable agreements were sent to Department of Human Services; Agreements were 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 are 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>

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Adult Residential Services (HCBS Medicaid Waiver)</b></p>	<p>14 Adult Residential Settings  96 Waiver Recipients are Receiving Services Statewide</p>	<p>Changes are needed to assure recipients are regularly accessing the community as they choose; understand that they have choices in their daily services and supports, can have visitors at any time and that they are not required to adhere to a specific schedule for waking, bathing, eating, activities etc.</p>	<p>Adult Residential Service providers will be required to submit evidence upon enrollment and reenrollment that their service package offers recipients regular and meaningful opportunities to access the broader community and that direct care staff have been provided with training specific to the care of individuals with dementia or traumatic brain injury. Consumer education materials must include information to Medicaid recipients and families that the consumer has choice in their daily activities, can have visitors at any time, and that they are not required to adhere to a specific schedule.</p>	<p>Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA. 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. Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA.</p>	<p>Aug 2017</p>	<p>Require providers to submit evidence i.e. activity calendars etc. upon enrollment and reenrollment that show meaningful ongoing opportunities for community access for recipients.  Require providers to submit consumer education materials that includes policy that affords recipient choice in their daily activities and schedules and allows access to visitors at any time.</p>	<p>State Medicaid Agency, Department of Health, Long Term Care Association, HCBS Case Managers, Adult Residential Service Providers</p>	<p>These requirements will be added to the Adult Residential provider standards for enrollment.  State staff will conduct site visits upon initial enrollment and at renewal (every 2 years).  Summary of site visits results will be posted on Department's website.  Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.</p>

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Extended Services (Traditional IID/DD Waiver)</b></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 provided Technical Assistance and training to providers to ensure more community interaction. The training addressed the specific non-compliance identified at the provider location.</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 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>Sep 2015</p>	<p>The Department kept a roster of attendees and dates of training to track attendance.</p> <p>The DD Program Managers will conduct site visits to assess compliance with community interaction during their face to face visits.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers, Guardians, Individuals</p>	<p>The DD Program Managers will monitor recipient community interactions during their face to face visits.</p>
			<p>The Department conducted statewide training for providers, Individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules</p>		<p>Sep 2015</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>Administrative Code updates: Dec 2016; Policy updates: beginning Jan 2016</p>	<p>As additional guidance for non-residential settings is provided by CMS, the Department will ensure these services and settings comply with regulations.</p>			

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Extended Services (Traditional IID/DD Waiver)</b></p>			<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>		<p>Jan 2017</p>			
			<p>If individuals are in an identified setting that doesn't meet HCB requirements or needs changes, the Department will notify the individual/guardian and if needed Teams will meet to work toward the compliance.</p>					

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<b>Residential Habilitation (Traditional IID/DD Waiver)</b>	96 Provider-Owned Community Residences (which includes the residential settings identified under heightened scrutiny)	Changes are needed to ensure that all provider-owned residential settings:  a) Provide a lease or legally enforceable agreement that complies with ND landlord-tenant laws (NDCC chap. 47-32).  b) Have lockable bedroom doors	The Department will update licensing Administrative Code, policies, and manuals.	Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients.	Administrative Code updates: Dec 2016; Policy updates: beginning Jan 2016	New providers will submit lease policies and a template lease as part of their License application.	DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units, families/guardians, individuals	The Department will strengthen licensing renewal procedures to ensure ongoing compliance.  The Department updated the Environmental Scan Checklist to include lockable doors.
			The Department provided sample lease agreements and information about ND's landlord-tenant laws to providers.		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. 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.	June 2015		
			Providers will submit lease policies and a sample lease template to the Department.	July 2016		The Department will conduct site visits to assure changes were made (e.g., locks added to doors).		
			Providers that do not demonstrate compliance will be required to submit a Plan of Correction to the Department.	September 2016		The Department kept a roster of attendees and dates of training to track attendance.		
			The Department conducted statewide training for providers, individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.	September 2015				

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
Residential Habilitation (Traditional IID/DD Waiver)			If individuals are in an identified setting that doesn't meet HCB requirements or needs changes, the Department will notify the individual/guardian and if needed Teams will meet to work toward the compliance.		July 2016			

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Day Supports (Traditional IID/DD Waiver)</b></p>	<p>1 Day Facility with 14 individuals</p>	<p>As a result of the CMS Heightened Scrutiny visit, this setting will be relocated off the grounds or adjacent to the ICF. Changes will be made to increase community interaction for compliance with the CMS requirements.</p>	<p>The Department provided Technical Assistance to the provider to ensure that the setting is integrated into the community.</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>Through March 2017 and as needed</p>	<p>The DD Program Managers will conduct site visits to assess compliance with community interaction during their face to face visits.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers, Guardians, Individuals</p>	<p>The DD Program Managers will monitor recipient community interactions during their face to face visits.</p>
			<p>The facility based setting on the grounds of the state ICF will be relocated off campus. The new location will be at 600 Hill Ave and 520 Hill Ave, Grafton, ND, which is located downtown among other community businesses.</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>The individuals who currently access these settings are assessed at least annually to determine if alternative service settings in the community are available and are afforded choice; including tours/visits to determine if they would like to receive services at another location.</p>		<p>New rules will be incorporated into the licensing requirements and will be applied to all new and renewed licenses.</p>

**Table 7 (Continued): 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/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p><b>Day Supports (Traditional IID/DD Waiver)</b></p>			<p>The individual will be provided with reasonable notice of the relocation of the setting. Individuals will be afforded the choice among alternate day support providers that meet the individual's needs and preferences. A team meeting will be held prior to the change and the plan will be updated to address a seamless transition. Additionally services and supports relative to the participant's needs and goals will be identified, including community activities according to the extent the individual desires.</p>		<p>Relocations completed by March 2018</p>			
			<p>If individuals are in an identified setting that doesn't meet HCB requirements or needs changes, the Department will notify the individual/guardian and if needed Teams will meet to work toward the compliance.</p>					

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

**Traditional IID/ DD Medicaid Waiver**

Name of Service (Applicable Waiver)	Total # of Settings and Total # Served	Reason for Presumed Noncompliance	Assuring Compliance	Timeline
<p><b>Residential Habilitation</b> (Traditional IID/DD waiver)</p>	<p>5 Settings with 10 individuals</p>	<p>Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF)</p> <p>700 Cottage Road, 716 Cottage Road, 752 Cottage Road, 808 West 5<sup>th</sup> Street (2 units) –Villa De Remer Apartments, Grafton ND</p> <p>As a result of the CMS Heightened Scrutiny visits, these settings were found to be compliant based on the letter received from CMS on 8/11/15.</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>The individuals who currently reside in these settings are assessed at least annually to determine if alternative service settings in the community are available and are afforded choice; including tours/visits to determine if they would like to move.</p> <p>The Department conducted site visits of each setting (observations and visits with individuals) to verify provider survey, results of DD Program Manager assessments and resident interviews.</p> <p>As a result of the CMS heightened scrutiny visit, CMS identified one of the settings did not have a lease signed by the tenant/legal guardian. The Department is working with the provider to ensure compliance.</p> <p>During the CMS heightened scrutiny visit, CMS questioned if all individuals have lockable bedroom doors in one of the settings. The Department verified that every individual does have lockable bedroom doors.</p>	<p>Jun – Aug 2014</p> <p>Aug – Sept 2014</p> <p>Oct- Nov 2014</p> <p>July 2016</p> <p>May 2015</p>

### **Justification that Setting is In Fact Community-Based**

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.

Additionally, the state completed an on-site visit (observation and visits with consumers) which validated the position that these settings do not isolate and have HCB qualities and characteristics. Individuals participate in a variety of community activities off the grounds of the State ICF, their schooling and day supports/work activities are located off the grounds of the State ICF, the homes reflect their individualized personalities, they have full access within their homes, and have visitors as they choose. These settings do not limit the individuals and have full access to the community. Visits with consumers were all positive, including indicating they were happy where they lived and individuals/guardians have made choices. A consumer voiced how he had lived elsewhere before and did not like it-enjoying where he lives now as people are nice and he can get out and do his own things.

Staff is provided by independent DD Providers in four of the five settings. Not all residents receive housing assistance. These settings are used as a stepping stone for individuals who have been unable to successfully secure housing or services off the grounds of the State ICF. The settings are either single family homes or an apartment. Some of the homes are located among homes whose occupants do not have disabilities.

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. There is no physical barrier surrounding buildings and grounds of the State ICF.

Name of Service (Applicable Waiver)	Total # of Settings and Total # Served	Reason for Presumed Noncompliance	Assuring Compliance	Timeline
<p><b>Residential Habilitation- Statewide Transition Plan Revised Addition</b></p> <p>(Traditional IID/DD waiver)</p>	<p>1 setting with 1 individual</p>	<p>Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF)</p> <p>808 West 5<sup>th</sup> Street, Villa De Remer Apartments, Grafton ND</p>	<p>The Department conducted an on-site visit which included observations, visits, and plan review. During the visit, information was collected regarding the community-based nature of the setting from a variety of sources including the individual, DD Program Managers and provider. The Department reviewed the results and determined that the setting does not have the effect of isolating the individual from the community.</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 available and are afforded choice; including tours/visits to determine if they would like to move. The plan will be revised to better reflect the options that were available which led to the individual choice.</p>	<p>Nov 2015</p> <p>Jul 2016</p>

**Justification that Setting is In Fact Community-Based**

The State is submitting a new setting for heightened scrutiny located on the grounds of, or adjacent to, a State ICF since the CMS heightened scrutiny on-visit and review conducted in May 2015.

The setting is an apartment unit in an apartment complex owned by a public landlord who rents to any citizen in the community who are elderly and/or disabled. Staff is provided by an independent DD provider and the setting is not provider owned. The setting is not operationally connected through administrative or financial functions with the State ICF. The home reflects the individual’s heritage, interests, and personality. The individual has full access to all living areas and community rooms in the apartment building with the ability to come and go out of their home freely. People visit anytime and according to the individual’s preference. The setting does not limit full access to the community and transportation is available either through the DD provider or public transportation. The individual chooses and participates in community life activities outside of the setting to the extent desired. The setting affords the individual privacy, dignity, respect, choices in daily activities and access to food. Receiving only 20 hours of staff support per week, the individual has choices in their schedule and makes daily life decisions, including when and what activities staff provide support for. Housing options are limited in the community, however the setting was chosen by

the individual which resulted from desired changes from unsatisfied previous living arrangements and a goal to move to the current community. Living alone is preferred and the setting provides this option.

The grounds of the State ICF are no longer used solely for individuals with intellectual and developmental disabilities. Buildings have been converted and are utilized by the general public, which include apartment buildings, public clinics, offices, and day care centers for children. There is no physical barrier surrounding the grounds and buildings.

Name of Service (Applicable Waiver)	Total # of Settings and Total # Served	Reason for Presumed Noncompliance	Assuring Compliance	Timeline
<p><b>Day Supports</b> (Traditional IID/DD Waiver)</p>	<p>1 day facility with 17 individuals</p> <p>In Nov 2014 when documented was submitted, 2 individuals were not waiver participants and 1 individual no longer receives services in the setting. Brining the current count to 14.</p>	<p>Located on the grounds of, or adjacent to, an ICF</p> <p>828 West Chapel Drive, Grafton ND</p> <p>As a result of the CMS Heightened Scrutiny visit, this setting will be relocated off the grounds or adjacent to the ICF. Changes will be made to comply with the CMS requirements. Refer to Table 7 "Settings that with changes will comply with HCBS requirements".</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>The individuals who currently access this day program are assessed at least annually to determine if alternative settings in the community are available and are afforded the choice, including tours/visits to determine if they would like to receive services at another location.</p> <p>The Department conducted site visits of each setting (observations and visits with individuals) to verify provider survey, results of DD Program Manager assessments and resident interviews.</p>	<p>Jun – Aug 2014</p> <p>Aug – Sept 2014</p> <p>Oct- Nov 2014</p>

### **Justification that Setting is In Fact Community-Based**

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.

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.

Additionally, the state completed an on-site visit (observation and visits with consumers) which validated the position that these settings do not isolate and have HCB qualities and characteristics. There is a focus on social roles, volunteering, meeting the individual needs and preferences, and choice of activities. In addition to the on-site visits, some plans were reviewed and individual's choice of services was documented.

### **HCBS Medicaid Waiver (Serves Aged & Disabled)**

The Department conducted a review and analysis of all settings where HCBS are provided to eligible recipients to determine if the settings had the characteristics of an institution. Department staff completed a site specific assessment of all settings where adult residential services are provided under the HCBS Medicaid waiver that serves the aged and disabled. The assessment included a site visit, interview with key staff, and observation of the provision of services in all settings. The Department mailed a questionnaire to all HCBS Waiver (serves aged & disabled) recipients/ guardians who are receiving adult residential services to gather their input on how these settings comply with the new rule. The recipient's surveys and responses were voluntary. The survey results were linked to each specific setting. Department staff also consulted with professionals from the Alzheimer's Association to discuss the provisions of the HCB setting rule and the delivery of HCBS to individuals with moderate to severe dementia who are in a stage of the disease that may cause wandering, elopement and other behavior issues. Professionals from the Alzheimer's Association agreed that community integration is possible but cautioned that it must be part of a plan to maximize the current abilities of the recipient without causing further anxiety and confusion.

The findings from the assessments of these settings indicate that the setting itself does not limit full access to the community, instead the supports that are provided to mitigate the risk of wandering, elopement, and adverse behaviors can have a significant impact on social relationships and the ability to independently access the broader community. The State feels these supports are appropriate for individuals who require protective oversight due to the current stage and symptoms of their disease. The supports used in this facility are similar to strategies

that would be used in a private home to mitigate the risk of wandering, and elopement. Through the remediation efforts described in the state transition plan, the State believes that these settings can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Service (Applicable Waiver)	Total # of Settings and Total # Recipients Served	Reason for Presumed Noncompliance	Assuring Compliance	Timeline
Adult Residential Services / HCBS Medicaid Waiver- (Serves Aged & Disabled)	14  96 Medicaid Recipients served statewide	These settings are being submitted for heightened scrutiny because they may be considered to have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. Twelve of the settings are secure facilities. All fourteen settings are designed specifically for people with a certain disability i.e. memory loss or traumatic brain injury.	<p>Once the required remediation efforts described in the Statewide Transition Plan are met, the Department will complete the following:</p> <p>Work with the Department of Health (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics. Department of Health would assure compliance through the scheduled onsite survey process.</p> <p>Setting requirements will be added to the Adult Residential provider standards for enrollment. State staff will conduct site visits upon initial enrollment and at renewal (every 2 years) to assure compliance. A summary of site visit results will be posted on the Department’s website.</p> <p>Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.</p>	Oct-17

Name of Setting	Total # Served
<b>Dakota Pointe – HIT, Inc.</b> <b>3503 43rd St NW</b> <b>Mandan, ND 58554</b>	<p style="text-align: center;"><b>10</b></p>

**Justification that Setting is In Fact Community-Based**

Dakota Pointe is a licensed basic care facility that specializes in providing care to individuals with traumatic brain injury who require protective oversight because of behavior, elopement, or wandering issues. The setting is not a secured facility. It is handicap accessible, located in a residential area with access to provider owned and public transportation. There are no physical barriers surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers on a regular basis to a variety of locations. All of the recipients currently work in a competitive employment setting or are actively seeking competitive employment. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Some resident’s independently use public transportation to access the community. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. There are set visiting hours but exception is made upon request. Once the remediation efforts described in the Statewide Transition Plan are complete, guests will be welcome anytime and overnight stays will be allowed. The recipients manage their own personal resources; some with assistance from family, rep payees etc.

The individual’s living area reflects their heritage, interests, and personality. They are treated with dignity and respect. All resident rooms are private and have doors that lock with only appropriate staff having keys. Facility staff report that recipients are free to choose their own schedule and they have a choice in who provides care to them. Some activities are scheduled, but recipients can request other activities and those requests are honored. The recipients do not have access to food at all times due to hoarding and other issues, but they can request food at any time. The setting is chosen by the recipient/guardian.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the all of the recipients do regularly engage in the community and do not feel the setting is isolating. 50% of survey respondents felt that they have choice in their daily services and supports and 50% did not. Once the remediation efforts described in the STP are met, residents/guardians will understand that they have choice in their daily services and supports. They also indicated in the survey that recipients chose the facility, have locks on their doors, access to food upon request, manage their own resources with assistance from staff, participate in care plan meetings, and that the consumer is treated with dignity.

The findings from the assessment of this setting indicate that once the remediation efforts are met, the setting will be integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Ecumen - Evergreens of Fargo 1401 W Gateway Cir S Fargo, ND 58103</b>	<p style="text-align: center;"><b>6</b></p>

**Justification that Setting is In Fact Community-Based**

Evergreens of Fargo is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. There are no physical barriers surrounding the property. The setting is in close proximity to two licensed basic care facilities.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone who exits the building uses a security code that is posted next to the door. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient’s preference.

The individual’s living area reflects their heritage, interests, and personality. They are treated with dignity and respect. All rooms are private, and the door locks with only appropriate staff having keys. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian. Personal resources are managed by the recipient’s family.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do regularly engage in the community but only when accompanied with family. Recipients/ guardians felt that the individual does have choice in their daily services and supports. 50% of the respondents felt that the recipient do have to adhere to a set schedule and 50% felt that they do not. One respondent commented that there is a schedule but, “Staff are very accommodating”. Consumers reported that visitors are welcome but most stated that overnight guests are not allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time.

Survey results specific to this setting also show that the majority of recipients and/or their guardians felt the setting does not isolate. One individual felt the setting was isolating but that it is due to the nature of dementia. Survey results also indicated that they chose the setting, have access to food at all times, participate in care plan meetings, and that the consumer is treated with dignity. Family manages the recipient's personal resources.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Edgewood Bismarck Senior Living LLC</b> <b>3406 Dominion St</b> <b>Bismarck, ND 58503</b>	<b>6</b>

**Justification that Setting is In Fact Community-Based**

Edgewood Bismarck Senior Living is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. The setting is attached to an assisted living facility and basic care units with no physical barriers surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone who exits the building uses a posted security code. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient's preference.

The individual's living area reflects their heritage, interests, and personality. They are treated with dignity and respect. Residents can request a door that locks with only appropriate staff having keys. Once the timelines for remediation in the STP are met, the setting will provide for recipient privacy in their living unit. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian but options to choose a roommate are limited to the other individuals currently living in the setting where they have chosen to live. The recipient's family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community, not because they are prevented from doing so, but because of their need for protective oversight. For example, one family member responded to the question of whether or not their family member regularly accesses the community like this: "No...going out is more confusing to her."

Survey results specific to this setting also showed that recipients and/or their guardians felt the setting isolates a person, but that it is due to the nature of dementia. They felt the impact of the disease limits their activity because an unfamiliar surrounding leads to further confusion. The majority felt that recipients do have choice in their daily services and supports but also reported that recipients are required to adhere to a set schedule. They reported that overnight stays were not allowed or that they were not sure if overnight stays are allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time.

They also indicated in the survey that they chose the setting, have access to food at all times, participate in care plan meetings and that the consumer is treated with dignity. Personal resources are managed by the recipient's family.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
Edgewood Fargo Senior Living LLC 4420 37 <sup>th</sup> Ave S Fargo, ND 58104	0

**Justification that Setting is In Fact Community-Based**

Edgewood Fargo Senior Living is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. The setting is attached to independent living apartments and an assisted living facility.

North Dakota landlord tenant law governs basic care facilities and all recipients must sign a lease or legally enforceable agreement. Recipients have full access to all living areas and community rooms in the building. The facility provides community outings for the consumers. They have freedom to come and go from their home may but need to be accompanied by family, friends, or staff due to their inability to navigate the broader community. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient's preference.

The individual's living area reflects their heritage, interests, and personality. The facility does not provide locks on all rooms; however, there are a few rooms with locked doors if requested. The setting has all single rooms except for one shared room. Options of choosing a roommate are limited to the other individuals already living in the setting where they have chosen to live. Recipients have freedom over their schedule and can choose what they want to eat. The recipient/family chose the setting.

Currently there are no Medicaid recipients being served in this setting so no recipient survey results are available.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Edgewood Mandan Senior Living LLC</b> <b>2801 39<sup>th</sup> Ave SE</b> <b>Mandan, ND 58554</b>	<b>3</b>

**Justification that Setting is In Fact Community-Based**

Edgewood Mandan Senior Living is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. The setting is attached to an assisted living facility.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Staff and visitors have a pass that allows them to enter and exit. There is also a key pad next to the door. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests are allowed to come and go at any time according to the recipient's preference.

The individual's living area reflects their heritage, interests, and personality. There are locks on the doors with only appropriate staff having keys. There is an actual wall between beds in the shared rooms. Staff indicated during the site visit that there is choice in daily schedules. Food is available at all times. The setting is chosen by the recipient/guardian and accommodations are made by the facility to find the best roommate for the recipient. The recipient's family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community, not because they are prevented from doing so, but because of their need for protective oversight. Guardians and family reported that the recipients can only leave the facility with family or friends. Survey results specific to this setting also showed that recipients and/or their guardians did not feel the setting isolates a person. They indicated that there is a set schedule, but the facility allowed flexibility according to the individual's desires. One individual felt there was not a choice in meals. The facility does not have visiting hours but not all of the consumers understood that overnight stays are allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time. They also indicated in the survey that they chose the setting, have access to food at all times, participate in care plan meetings, and that the consumer is treated with dignity. Personal resources are managed by the recipient's family.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
Edgewood Minot Senior Living 800 16 <sup>th</sup> Ave SE Minot, ND 58701-6781	3

**Justification that Setting is In Fact Community-Based**

Edgewood Minot Senior Living is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned transportation.

North Dakota landlord tenant law governs basic care facilities and all recipients must sign a lease or legally enforceable agreement. Recipients have full access to all living areas and community rooms in the building. The facility provides community outings for the consumers. They have freedom to come and go from their home but may need to be accompanied by family, friends or staff due to their inability to navigate the broader community. Everyone who exits the building uses a security code that is posted next to the door. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Visitors are welcome at any time according to the recipient's preference.

The individual's living area reflects their heritage, interests, and personality. Recipients have the option for a locked door. Privacy is assured in shared rooms by a curtain. Staff indicated that recipients have freedom over their schedule and access to food at all times. The consumer/family chose the setting. The recipient's family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the recipients do regularly engage in the community but only with family or on trips with staff.

Survey results specific to this setting also show that recipients and/or their guardians did not feel the setting isolates but that recipients are required to adhere to a set schedule. The facility does not have visiting hours but not all of the consumers understood that overnight stays are allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time.

The survey results stated there is privacy in shared rooms by a curtain separating the two individual's living area. They also indicated in the survey that they chose the setting, have access to food at all times, participate in care plan meetings and that the consumer is treated with dignity. The recipient's family members manage personal resources.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
Emerald Court II. Inc. 520 28 <sup>th</sup> Ave SE Minot, ND 58701	6

**Justification that Setting is In Fact Community-Based**

Emerald Court II is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a

residential area with access to provider owned or public transportation.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone who exits the building uses a security code that is posted next to the door. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient's preference.

The individual's living area reflects their heritage, interests, and personality. They are treated with dignity and respect. Residents can request a door that locks with only appropriate staff having keys. Once the timelines for remediation are met, the setting will provide for recipient privacy in their living unit. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian but options to choose a roommate are limited to the other individuals currently living in the setting where they have chosen to live. The recipient's family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community, not because they are prevented from doing so, but because of their need for protective oversight or increased confusion. Results indicate that the recipients do access the community but that it is limited to facility or family outings.

Survey results specific to this setting also showed that recipients and/or their guardians do not feel that the setting isolates. The majority reported that individuals have choice in their services and supports. 50% of the recipients/guardians feel that consumers are required to adhere to a set schedule and 50% did not. The facility does not have visiting hours but not all of the consumers understood that overnight stays are allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time. They also indicated in the survey that they have access to food at all times, chose the setting, participate in care plan meetings and that the consumer is treated with dignity.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Lakewood Landing Inc.</b> <b>4401 21<sup>st</sup> St SE</b> <b>Mandan, ND 58554</b>	<b>4</b>

**Justification that Setting is In Fact Community-Based**

Lakewood Landing is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. The setting is attached to an assisted living facility and basic care units with no physical barriers surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone who exits the building uses a delayed egress system. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient’s preference.

The individual’s living area reflects their heritage, interests, and personality. They are treated with dignity and respect. All rooms are private and residents can request a door that locks with only appropriate staff having keys. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardians. The recipient’s family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community not because they are prevented from doing so, but because of their need for protective oversight. Respondents reported that recipients do access the community but usually only for appointments or religious services. One family member responded to the question of whether or not their family member regularly accesses the community like this: “No, dementia gets in the way of her doing those things on her own.”

Survey results specific to this setting also showed that recipients and/or their guardians do not feel the setting isolates. The majority reported that the consumers also have choice in their daily services and supports. 50% indicated that recipients are not required to adhere to a set schedule and 50% reported that they do not. Guests can visit at any time but the majority reported that they did not know that overnight stays were allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to

adhere to a set schedule and can have access to visitors at any time. Survey results also indicate that recipients have access to food at all times, chose the setting, participate in care plan meetings and that the consumer is treated with dignity.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Maple View II INC. 4217 Montreal St Bismarck, ND 58503</b>	<b>3</b>

**Justification that Setting is In Fact Community-Based**

Maple View II, Bismarck is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. There are no barriers surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone who exits the building has a 15 second delayed egress. Visitors ring a door bell and the code to exit is posted next to the door. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient's preference.

The individual's living area reflects their heritage, interests, and personality. They are treated with dignity and respect. Residents can request a door that locks with only appropriate staff having keys. The setting is chosen by the recipient/guardian but options to choose a roommate are limited to the other individuals currently living in the setting where they have chosen to live. Once the remediation efforts described in the Statewide transition plan are met, recipients will have privacy in their shared living unit. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian. The recipient's family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community not because they are prevented from doing so, but because of their need for protective oversight.

50% of survey respondents felt that the setting isolates and that they are required to adhere to a set schedule and 50% did not. Recipients/guardians also reported that they do not have choices in the services and supports. Guest are welcome, but respondents either stated that overnight stays were not allowed or that they did not know if they were allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time. Survey results indicate that recipients chose the facility, have access to food at any time, family or the DPOA manage person resources, participate in care plan meetings, and that the consumer is treated with dignity.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Maple View, Fargo</b> <b>4552 36<sup>th</sup> Ave S</b> <b>Fargo, ND 58104</b>	<b>17</b>

**Justification that Setting is In Fact Community-Based**

Maple View, Fargo is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. The setting has no physical barriers surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. The facility has delayed egress, visitors ring a door bell and the code for the door is posted. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit at any time according to a recipient’s preference.

The individual’s living area reflects their heritage, interests, and personality. They are treated with dignity and respect. Residents have a private room and locks on their doors. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian. The recipient’s family members

manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do regularly engage in the community.

Survey results specific to this setting also showed that the majority of recipients and/or their guardians felt the setting isolates a person, but that it is due to the nature of dementia. One family member commented, "She is somewhat isolated because of her dementia." They reported that recipients have choice in their services and supports but believe they must adhere to a set schedule. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time. Survey results indicate that recipients chose the facility, have access to food at any time, family or the DPOA manage person resources, participate in care plan meetings, and that the consumer is treated with dignity.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Maple View, Grand Forks 4650 Washington St Grand Forks, ND 58206</b>	<b>8</b>

**Justification that Setting is In Fact Community-Based**

Maple View, Grand Forks is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone exits using a key pad next to the door. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit at any time according to a recipient's preference.

The individual's living area reflects their heritage, interests, and personality. They are treated with dignity and respect. Residents can

request a door that locks with only appropriate staff having keys. Once the timelines for remediation are met, the setting will provide for recipient privacy in their living unit. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian. All rooms are single. The recipient’s family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do regularly engage in the community, not because they are prevented from doing so, but because of their need for protective oversight. For example, one family member responded to the question of whether or not their family member regularly accesses the community like this: “She has health and memory issues which make it difficult to do activities outside of the facility.” Family did report that consumers sometimes access the community but only with family, friends or staff.

Survey results specific to this setting also showed that some recipients and/or their guardians felt the setting isolates a person, but that it is due to the nature of dementia. One family member stated, “I believe her memory and health issues isolate her and not the facility.” The majority reported that recipients have choice in their services and supports but believe they must adhere to a set schedule. Guests are welcome but respondents reported that overnight stays were not allowed or that they did not know if overnight stays were allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule and can have access to visitors at any time. They also indicated in the survey that recipients chose the facility, have access to food at any time, family or the DPOA manage person resources, participate in care plan meetings, and that the consumer is treated with dignity.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Maple View Memory Care, Minot</b> <b>2805 Elk Drive</b> <b>Minot, ND 58701</b>	<p style="text-align: center;"><b>10</b></p>

**Justification that Setting is In Fact Community-Based**

Maple View Memory Care, Minot is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation. There are no physical barriers

surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone exits using a key pad next to the door and guests are escorted by staff. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient's preference.

The individual's living area reflects their heritage, interests, and personality. They are treated with dignity and respect. Residents can request a door that locks with only appropriate staff having keys. The setting has both single and double rooms. There are separate bedrooms in the double rooms to assure privacy. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian but options to choose a roommate are limited to the other individuals currently living in the setting where they have chosen to live. The recipient's family members manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community, not because they are prevented from doing so, but because of their need for protective oversight. Community events are attended with family, friends, or staff.

Survey results specific to this setting also showed that recipients and/or their guardians did not feel the setting isolates. They indicated the recipients are able to access the broader community, but would need to be accompanied by family or staff due to the need for protective oversight. When asked about choice in their services and supports all of the responders stated that staff assists with the cares and that recipients do not have to adhere to a set schedule. They also indicated in the survey that recipients chose the facility, have access to food at any time, family or the DPOA manage person resources, participate in care plan meetings, and that the consumer is treated with dignity. The majority felt guests are welcome at any time and that overnight stays are allowed.

Through the remediation efforts described in the state transition plan, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Open Door - HI Soaring Eagle Ranch</b> <b>3731 117<sup>th</sup> Ave SE</b> <b>Valley City, ND 58072</b>	<p style="text-align: center;">10</p>

**Justification that Setting is In Fact Community-Based**

Open Door -HI Soaring Eagle Ranch is a licensed basic care facility that specializes in providing care to individuals with traumatic brain injury who require protective oversight because of behavior, elopement, or wandering issues. The setting is not a secured facility. It is handicap accessible and located in a rural area near Valley City, ND with access to provider owned transportation. There are no physical barriers surrounding the property.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building. The facility provides community outings for consumers on a regular basis including opportunities to travel across the United States to places like Hawaii, Florida, Alaska and Arizona. The majority of recipients currently work in a competitive employment setting or are actively seeking competitive employment. They have freedom to come and go from their home but some may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests are welcome, but overnight stays are generally not allowed. Once the remediation efforts described in the STP are met, residents will be able to have access to visitors at any time. The recipients manage their own personal resources with staff assistance. Recipients are offered skills classes on budgeting etc.

The individual’s living area reflects their heritage, interests, and personality. They are treated with dignity and respect. All resident rooms are private and have doors that lock with only appropriate staff having keys. Recipients are free to choose their own schedule and they have a choice in who provides care to them, and choice in daily activities. Meals are scheduled, and other personal care activities are managed by the recipient’s through the use of daily planners that assist the recipient in structuring their day. The recipients do not have access to food at all times due to hoarding and other issues, but they can request food at any time. The facility utilizes a Human Rights Committee and this restriction has been approved through that process. The setting is chosen by the recipient/guardian.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the all of the recipients do regularly engage in the community and that they have choice in their daily services and supports. They reported that some activities are scheduled. Recipients/ guardians do not feel the setting is isolating. They also indicated in the survey that recipients chose the facility, have access to food upon request, manage their own resources with assistance from staff, participate in care plan meetings, and that the consumer is treated with

dignity. Guests are welcome, but some recipients thought overnight stays were allowed and others thought they were prohibited.

The findings from the assessment of this setting indicate that once the remediation efforts to provide for overnight stays is met, the setting will be integrated and support full access to the greater community to the extent desired by each recipient/guardian.

Name of Setting	Total # Served
<b>Roseadele 1505 3<sup>rd</sup> St SE Jamestown, ND 58401</b>	<b>10</b>

**Justification that Setting is In Fact Community-Based**

Roseadele is a licensed basic care facility that specializes in providing care to individuals with memory loss who require protective oversight because of behavior, elopement, or wandering issues. The setting is a secure facility that is handicap accessible and located in a residential area with access to provider owned or public transportation.

North Dakota landlord tenant law governs basic care facilities and all residents must sign a lease or legally enforceable agreement. Residents have full access to all living areas and community rooms in the building with the exception of the laundry area. The facility provides community outings for consumers. They have freedom to come and go from their home but may need to be accompanied by family, friends, or staff due to their inability to independently navigate the broader community. Everyone who exits the building uses a posted security code. Recipients can participate in community activities of their choice and utilize the community for medical care, entertainment, religious activities, beautician services, shopping, and other services to the extent desired. Guests can visit anytime according to a recipient’s preference.

The individual’s living area reflects their heritage, interests, and personality. They are treated with dignity and respect. All recipient rooms are private rooms. Residents can request a door that locks with only appropriate staff having keys. Staff indicated during the site visit that the recipients have a choice in who provides care to them, and choice in daily activities. The recipient has access to food at all times. The setting is chosen by the recipient/guardian, The recipient’s family members/ DPOA manage personal resources.

The Department surveyed the residents and/or their guardians from this setting and the results showed that the majority of recipients do not regularly engage in the community, not because they are prevented from doing so, but because of their need for protective oversight.

Survey results specific to this setting also showed that the majority of recipients and/or their guardians felt the setting does not isolate.

Respondent's answers to the question of choice in who provides the care and choice in daily activities were mixed. Some felt that the clients could not choose because they were unable to make those types of decisions, others reported that clients have choice in who provides the care and that although services are scheduled, that they are flexible and clients can refuse to participate. The majority felt that food is available at any time but some were unsure or felt that snack times were scheduled. Survey respondents also indicate that recipients are unaware they can ask for a lock on the door. Guests are welcome but most felt that overnight stays are not allowed. Once the remediation efforts described in the STP are met, residents/guardians will understand that they cannot be required to adhere to a set schedule, can ask for a lock on their door, and can have access to visitors at any time. Survey results also indicate that recipients chose the facility, family or the DPOA manage person resources, participate in care plan meetings, and that the consumer is treated with dignity.

Through the remediation efforts described in the state transition plan specifically, providing education to recipients and families about freedom in their daily services and supports, the State believes that this setting can become integrated and support full access to the greater community to the extent desired by each recipient/guardian.

**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/ Date of Completion	Assuring Compliance	Ongoing Monitoring
<p><b>Adult Day Care</b> (HCBS Waiver)</p>	<p>8</p>	<p>Policy is updated and providers and case management entities have been 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>Dec 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><b>Day Supports</b> (Traditional IID/DD Waiver)</p>	<p>6 settings with 8 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. Individuals/guardians 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. Once a new setting/provider is selected, an admission plan will be developed according to assist in a seamless transition.</p> <p>Services and supports relevant to the individual's particular needs and goals will be identified. Meetings will occur as needed and the plan will be developed prior to the start of the new location.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units, Individuals, Guardians</p>	<p>Relocation Completed by Mar 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><b>Adult Day Health</b> (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. The Department will amend the Traditional IID/DD waiver to no longer include this service.</p>	<p>DD Division, DD Program Administrators</p>	<p>Jan 2017</p>	<p>The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings. This service has been discontinued in the web-based case management system.</p>	<p>The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings.</p>

#### **SECTION 4: ONGOING MONITORING AND COMPLIANCE**

The Department will ensure continued compliance with the HCBS settings rule in all of the States 1915 (c) Medicaid waivers by implementing and enforcing policy that will ensure the continued integrity of the HCB characteristics that these services provide to waiver recipients. The Department will review all future settings where waiver services will be provided and where waiver participants will reside to ensure that the settings meet the home and community-based settings requirement. The Department will assure continued compliance with all federal regulations.

The Department will use several practices at the recipient, provider, and state level to assure ongoing monitoring and compliance with all home and community based setting requirements.

The Department monitors all individual person-centered service plans, conducts quality reviews to assure clients are free to choose what services and supports they wish to receive and who provides them.

The ongoing monitoring applies to all settings, including settings that are presumed to comply with the HCBS setting rule, and settings that are presumed to have institutional characteristics and are subject to the CMS heightened scrutiny review.

The following additional measures will be used to monitor settings in the HCBS Medicaid Waiver and the Traditional IID/DD Waiver.

#### **HCBS Medicaid Waiver (Serves aged & disabled):**

At the recipient level; the State will monitor all individual person-centered service plans, conduct case management reviews, client interviews/ quality reviews to assure clients are free to choose what services and supports they wish to receive and who provides them. Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.

The Department conducted statewide trainings with HCBS Case Managers in October 2014 on the home and community based setting requirements and the person-centered service planning requirements. Person-centered service plans have been updated and comply with the federal requirements as of July 2015.

Setting requirements will be added to the Adult Residential provider standards for enrollment. State staff will conduct site visits upon initial enrollment and at renewal (every 2 years) to assure compliance. A summary of site visits results will be posted on Department's website.

Department staff will work with the Department of Health (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics. Department of Health will assure compliance through the scheduled

onsite survey process.

### **Traditional IID/DD Waiver:**

At the recipient level; the current person-centered planning process will be utilized along with The Council on Quality and Leadership's (CQL) Personal Outcome Measures and the required annual self-assessment. The self-assessment will be modified to specifically identify people's experiences which relate to the home and community based requirements. Regional DD Program Managers review the self-assessment and through the service planning process, assure that individual outcomes are being realized, services meet participant's needs, and plans are developed according to needs and preferences. In addition DD Program Managers conduct face to face visits every 90 days in which the DD Program Manager monitors satisfaction with services, plan implementation, health and safety, and provider interactions. The DD Program Manager, an employee of the State Medicaid agency, is responsible to ensure that the plan contains all the required components and approves the plan once all requirements are met.

The Department conducted statewide trainings in September 2015 on the home and community based setting requirements and the person-centered service planning requirements. Person-centered service plans will be written or updated to comply with the federal requirements by December 2016.

The Department will develop outcomes within the provider surveyor process, which will conduct reviews of DD licensed provider waiver services to monitor compliance with the CMS rule. The surveyor will collect information through a variety of methods to ensure compliance with state and federal standards. The surveyor report will provide information on provider strengths, recommendations for improvement, and areas requiring a plan of correction.

DD providers are required to be licensed initially and on an annual basis. The CMS rules will be incorporated into the provider licensing requirements and will be applied to all new and renewed licenses. For heightened scrutiny settings identified through the licensure process, the Department will conduct an on-site visit which includes observations, visits, and a plan review to determine the community based nature of the setting. The Department will add an assurance statement with provider licensure that settings comply and the provider implements the requirements.

The ongoing monitoring will be developed by December 2017 and providers required to follow the process in 2018.

The Department requires all DD Licensed providers to be accredited by The Council on Quality and Leadership (CQL). According to ND Administrative Code 75-04-01-

15, the Department adopts for all licensees the current standards used for accreditation. CQL developed a *Toolkit for States* which provides detailed support on how CQL's quality measurement tools and data elements comply with the home and community based requirements and CMS reporting requirements. CQL's Basic Assurances® ensures accountabilities for health, safety and human security within service provider organizations. Data collected is analyzed to identify trends and gaps and to make recommendations for improvements. CQL's Person Outcome Measures® is a tool that focuses on the choices and control people have in their lives. This process also evaluates the quality of life for people and the degree to which organizations individualize supports to facilitate outcomes. Data is gathered, aggregated and analyzed to identify trends, including what is going well for people, and opportunities for improvement. The data can be used to assist the person's planning teams, and to select priorities and focus efforts for quality assurance and improvement.

## **Section 5: Public Input Process**

### **Initial Statewide Transition Plan Public Input:**

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. The Department provided opportunity for public comment on the initial Statewide Transition Plan during the 30 day public comment period beginning October 15, 2014 through November 14, 2014. The proposed Statewide Transition Plan was sent to tribal entities and other stakeholders. The plan was 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 were added to the proposed Statewide Transition Plan and submitted to CMS on November 28, 2014. The state posted the final Statewide Transition Plan with modifications from public comment to the Department's web site on November 28, 2014. All public comments on the provisional Transitional Plan were retained and are available for CMS review for the duration of the transition period or approved waiver.

**Revised Statewide Transition Plan Public Input:**

A public stakeholder meeting will be held at 2:00 pm on February 19, 2016 and public comments will be accepted from February 19, 2016 – through 5:00 PM CT March 20, 2016.

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

Email: dhshcbs@nd.gov

Phone: (701)-328-4602 or (800)-755-2604, or ND Relay TTY 800-366-6888

Fax: (701)-328-4875

Mail: ND DHS Medical Services Division – Department 325, Attn: Karen Tescher, 600 E Boulevard Ave, Bismarck, ND 58505-0250

## Initial Statewide Transition Plan Summary of Public Comment

This document contains a summary of the public comments collected in response to the North Dakota Draft Statewide Transition Plan for the HCBS Settings Under 1915(c) Waivers (the Statewide Transition Plan). The Statewide Transition Plan was submitted to the public on October 15, 2014. In accordance with CMS guidance, the Transition Plan was made available for public comment on this day for 30 days to allow all consumers, providers and stakeholders an opportunity to provide input to the plan. During this time, the Department of Human Services (DHS) received comments from nine organizations or individuals. All comments pertained to the HCBS waiver and/or Traditional IID/DD Waivers. No comments were related to the ASD Waiver, Children's Hospice Waiver, Medically Fragile Waiver, or the Technology Dependent Waiver.

Based on public comment, the Department has made changes to the Statewide Transition Plan and it is posted at <http://www.nd.gov/dhs/info/pubs/medical.html>

The Department assures that modifications made as a result of public input were posted for public information on the same date of submission to CMS and that all public comments on the Statewide Transition Plan will be retained and available for CMS review.

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Public comments were received from the following individuals or organizations:

- The Arc of North Dakota
- Protection and Advocacy Project
- AARP North Dakota
- Pathfinder Parent Center
- Designer Genes
- LTC Association
- Prairie St. Johns, Fargo
- Parents of consumers

The following summary of public comments received by the Department includes comments in disagreement with the Department's determinations about settings that do/do not meet the HCBS requirements, comments for which the Department made updates to the Statewide Transition Plan, and comments that did not result in changes to the Statewide Transition Plan. Any comments that were duplicated or addressed the same topic were summarized and included in one statement.

### Public Comments in Disagreement with the State's Determination

One commenter disagrees with the Department determination that Aged and Disabled adult residential care settings can fully comply while serving between 10-

36 individuals each, contending that even with remedial strategies and timelines just based on size these are "mini-institutions". Commenter believes these settings need heightened scrutiny and that individuals should be able to receive service in their own home or apartment.

- DHS Response: As stated in CMS's summary of these regulations, the intent of the HCBS settings rule is to create a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics. When assessing compliance of adult residential service settings DHS focused on the recipient's experience rather than the size of the facility. Individuals can access other waived services to meet their assessed needs. Consumers and their families make the decisions about what type of services they wish to participate in and who will provide the care; including the decision to use residential services.

Three commenters disagree with the State's determination that the IID/DD HCB residential settings located on the grounds of or adjacent to the State ICF, do not have the effect of isolating. One commenter stated the Statewide Transition Plan indicates individuals are afforded maximum independence, control of their own schedules, and access to food/visitors at any time. Yet the Transition Plan also indicates individuals who currently reside in these settings are assessed at least annually to determine if alternative service settings in the community are appropriate. The commenter wondered why the individuals are not able to live in similar settings off of the campus.

- DHS Response: In addition to the information provided in the Statewide Transition Plan on the settings that are presumed not to be HCB, on-site visits were conducted of the settings in question which validated the Department's position that these settings are not isolating and do have HCBS qualities and characteristics. Some individuals living on the grounds of the State ICF have been unable to successfully secure housing or services off the grounds of the State ICF, which is less restrictive than living in the State ICF. Other individuals\guardians have made the choice to receive services in these settings. The individuals are assessed at least annually to determine if alternate service settings are available and are afforded the choice, including tours/visits, to determine if they would like to move. The Department will enhance this area of the Statewide Transition Plan and will also post a summary of the on-site visits that were conducted on the Department's website.

Two commenters disagree that the IID/DD day settings located on the grounds of the State ICF can be justified as community-based and should be considered as do not/cannot meet HCBS requirements. One commenter stated individuals have maximum independence, have choices to do what they want but are not able to

receive similar service in the community vs. on the institution's campus and through the institution as the provider.

- DHS Response: In addition to the information provided in the Statewide Transition Plan on the setting that are presumed not to be HCB, on-site visits were conducted of the settings in question which validated the Department's position that these settings are not isolating and do have HCB qualities and characteristics. The individuals are assessed at least annually to determine if alternate service settings are available and are afforded the choice, including tours/visits, to determine if they would like to receive services at another location. The Department will enhance this area of the Statewide Transition Plan and will also post a summary of the on-site visits that were conducted on the Department's website.

#### Public Comments that Resulted in Changes to the Statewide Transition Plan

One commenter requested that DHS provide sample lease agreements to all Aged and Disabled Adult Residential providers.

- DHS Response: The Statewide Transition Plan was modified to state that DHS will provide sample lease agreements to all Adult Residential providers.

One commenter requested that consumer and advocacy organizations be included as key stakeholders for the remediation of Aged and Disabled and IID/DD AFC settings. One commenter feels consumers and advocacy organizations should be included in teams who make licensure visits.

- DHS Response: DHS will add consumer and advocacy organizations to the Statewide Transition Plan list of stakeholders for Adult Foster Care. The Department will modify AFC licensing rules to require the licensing entity to conduct on site interviews with AFC recipients about their experience in the home as it relates to the setting requirements. The results of the interviews will be submitted as part of the AFC licensing requirements and any issues will be addressed before an unrestricted license can be issued. ND Century Code dictates that the Department is responsible for licensing AFC homes.

One commenter would like consumer, families, and advocate organizations included in assessing Aged and Disabled Adult Residential Settings compliance with federal regulations.

- DHS Response: DHS will conduct site visits to all Adult Residential sites upon initial enrollment and reenrollment which occurs every two years. The Statewide Transition Plan was updated to say that the Department will post a summary of those visits on the Department's website. Consumers, families and advocacy organizations can monitor these results and provide feedback to the Department.

One commenter requested that the final transition plan regarding Aged and Disabled adult residential settings, and Aged and Disabled/IID/DD AFC settings include additional detail regarding how the plan will impact seniors and disabled populations, how the State will ensure consumers impacted by these changes will receive services in the least restrictive setting, the proposed outcomes of the activities, and the full range of stakeholders who will be involved in implementing the changes.

- DHS Response: The Statewide Transition Plan was modified to include the number of AFC and adult residential recipients who are impacted and to include the full range of stakeholders. The Statewide Transition Plan already states if providers are unable to make necessary changes to comply they will be informed that they are no longer eligible to accept MA recipients. Case Managers/DDPM's 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. All home and community based service options will be considered. The AFC 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. DHS anticipates that most, if not all, providers will be willing and able to make necessary changes to fully comply with the rule.

One commenter requested that parents, guardians and individuals be notified as soon as possible regarding any changes to the IID/DD settings as a result of the transition plan and how these changes will impact their situation. Requested that someone help them craft options using a person-centered model.

- DHS Response: If individuals are in an identified setting that does not meet HCBS requirements, the Department will notify the individual/guardian and if needed, teams will meet to work toward the compliance in a person-centered manner. Clarification will be added to the transition plan to address this process.

One commenter stated for IID/DD Extended Services, the strategies seem vague and are mostly limited to training and updating rules, policies, and manuals. Additionally, another commenter stated the training proposed in the plan appears minimal, and unlikely to support the speed and degree of change needed to help day programs become more community-based. A commenter's daughter loves her job at the day center and does not want it to be "ripped away from her."

- DHS Response: For settings where changes are needed, the training will be developed once the Statewide Transition Plan has been approved by CMS and will include the overall components of the new CMS rules which includes individuals choices, consumer rights, and will address the specific noncompliance identified. For the day program settings that do not comply the Department's proposed timeline to transition individuals to new settings

is March 2017. The Department will enhance this language of the Statewide Transition Plan.

One commenter expressed concern over the use of the phrase “stepping stone” used in the justification of the IID/DD residential settings that are on the grounds of or adjacent to the State ICF.

- DHS Response: The Department's intent in using the phrase “stepping stone” is for individuals who are unable to successfully secure housing or services off the grounds of the State ICF. The HCB settings on the grounds of the State ICF are less restrictive than living in the State ICF. Individuals living in these settings are assessed at least annually to determine if alternate service settings are available and are afforded the choice, including tours/visits, to determine if they would like to move. Language will be added to clarify this in the Transition Plan.

Three commenters request that consumers, family members, and other advocates be included in the IID/DD process and felt the process should be more transparent. One commenter would like to partner with DHS to train consumers, families, and guardians regarding person-centered planning.

- DHS Response: The Department used the guidance provided within the CMS tool kit to develop the process and plan. The Department also conducted two stakeholder meetings that provided information on the rules, process, preliminary results and to obtain feedback from stakeholders towards the transition plan. The purpose of the Statewide Transition Plan is to address setting compliance and does not include the person centered planning process. The Department will add language to the Statewide Transition Plan to include consumers, advocates, and families to the training components of the rules.

#### Public Comments that Did Not Result in Changes to the Statewide Transition Plan

One commenter requested that Aged and Disabled services such as Case Management, Chore Service, Emergency Response Systems, Education Services, Family Personal Care, Meals and Transitional Living Services remain fully funded.

- DHS Response: The Statewide Transition Plan does not impact funding for any of these waiver services.

One commenter asked if information gathered from the Aged and Disabled and IID/DD on-site visits will be made public to give stakeholders an opportunity to comment.

- DHS Response: The Department will post a summary of the site visits that were conducted at adult residential, adult day care, and the settings located on the grounds of the State ICF on the Department's website to develop the Statewide Transition Plan.

One commenter questioned if DHS will have minimum standards for Aged and Disabled and IID/DD AFC house rules. Commenter questioned if setting does not comply what will happen?

- DHS Response: DHS has minimum licensing standards for AFC providers. As stated in the Statewide Transition Plan, the Department will promulgate AFC Administrative Rules to modify licensing standards to match HCB setting requirements. 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/DDPM's 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 AFC 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.

Two commenters requested that the State provide copies of survey results used to make the State's determinations and an explanation of the consumer survey methodologies for the IID/DD Waiver. These commenters expressed dissatisfaction with the consumer survey process. One commenter asked who helped consumers complete the survey, and inquired if the questions were easy to understand and available in alternate format.

- DHS Response: The Department provided a summary of the survey results, which included the number of consumers surveyed, questions asked, and the results of the questions. The survey results will be posted on the DHS website. The Department used the guidance provided within the CMS tool kit to develop the process and plan which included the survey questions. Staff from Human Service Centers interviewed consumers about their experiences in a face to face visit. Prior to the development of the transition plan, the Department also conducted two stakeholder meetings for consumers, advocates, and other stakeholders. The process in which these surveys were conducted was shared at the two September 2014 Public Informational meetings. The meetings provided information on the rules, process, and preliminary survey results and was another opportunity to obtain input from the stakeholders for the development of the transition plan.

One commenter recommended that there be an identified complaint process for individuals to address problems in their settings.

- DHS response: DD Program Managers and HCBS Case Managers conduct quarterly visits with consumers which allow opportunities for individuals to file complaints about their settings. In addition, individuals receive a rights and responsibilities brochure that addresses their right to request a fair hearing and contains contact information for the appeals supervisor.

One commenter expressed support for the future expansion of the IDD/DD Extended Services to allow for more opportunities for integrated employment and

expressed concern that many clients with Down Syndrome currently move into Day Supports and are not given the opportunity to explore competitive employment.

- DHS Response: The Statewide Transition Plan identified the timeline of December 2015 to add additional employment services.

One commenter asked how IID/DD site visits for the heightened scrutiny process will be conducted, given the current large caseloads for DD Program Managers.

- DHS Response: The heightened scrutiny on-site visits process was completed by the State DD Division. The Department continues to monitor DD Program Manager caseloads and will request additional staff as necessary.

One commenter expressed concern over the consequences this transition plan may have on IID/DD services and individual choice, explaining that the plan could limit appropriate placement. Choices should in no way be limited by government-imposed restrictions. If a person decides to live happily in a place that these restrictions could deem as isolating where does our State have a place to say what is appropriate. Limited funding should not dictate where our family member chooses to live.

- DHS Response: The Department supports personal choice based on individualized strengths and interests. The Department is committed to affording waiver recipients choices within the parameters of the new rule.

One commenter shared her daughter has had eight (soon to be nine) roommates since moving into an IID/DD program at the age of 18. She has had no choice in roommates and only of the nine did she know & would have chosen for herself. The transition plan does not seem to address this issue at all.

- DHS Response: The Department is committed to affording waiver recipients choices within the parameters of the new rule.

Two commenters agreed with identified list of IID/DD settings that do not\ cannot meet HCBS requirements.

- DHS Response: Thank you for feedback on the agreement.

Three commenters commended the State for the thoughtful layout design of the transition plan document; it is easy to read and user-friendly.

- DHS Response: Thank you for the comment on the layout and design.

Two commenters appreciate the efforts on the Department to inform the public about what's happening and that the opportunity to provide comment is open.

- DHS Response: Thank you for your comment regarding the efforts on informing the public.

## Section 6: North Dakota Crosswalk of Systemic Assessment

### Autism Spectrum Disorder Birth Through Seven Medicaid Waiver

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

*Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.*

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p><b>1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b></p>	<p><b>Compliant</b></p> <p>There are no adults served in this waiver and thus the custodial parent makes these choices for their child that is eligible and participating in the waiver.</p> <p>The ages of the children served in this waiver are not eligible for employment.</p> <p>Children in the ASD waiver engage in community life and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p> <p>ND Century Code 50-06.2-01 (1) &amp; (3) ND Century Code 50-24.1-20</p>		

<p><b>2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</b></p>	<p><b>Compliant</b> –There are no provider-owned settings. There are no adults served in this waiver and thus the custodial parent makes these choices for their eligible child participating in the waiver.</p>		
<p><b>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Compliant</b> – The state does not permit the use of restraint, restriction, or seclusion as stated in the waiver.</p> <p>ND Century Code 50-06.2-01 (2)  ND Century Code 50-10.2  ND Century Code 50-25.2</p>		
<p><b>4. Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><b>Compliant</b> – Optimizes individual initiative, autonomy, and independence. Children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p> <p>ND Century Code 50-06.2.01 (1) &amp; (3)  ND Century Code 50-06.2-06  ND Century Code 50-24.1-01  ND Century Code 50-24.1-18.1  ND Century Code 50-24.1-20</p>		
<p><b>5. Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Compliant</b>  Stated within Autism Spectrum Disorder Birth Through Seven Medicaid waiver #0842  ND Century Code 50-06.2-06  ND Century Code 50-24.1-20</p>		
<p><b>6. For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable</b></p>	<p><b>Compliant</b> - There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p>		

<p><b>agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</b></p>	<p><b>Compliant</b> – There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p>		
<p><b>7. For provider owned or controlled residential settings –Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Compliant</b> - There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p>		
<p><b>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</b></p>	<p><b>Compliant</b> - There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p>		
<p><b>9. For provider owned or controlled residential settings - Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.</b></p>	<p><b>Compliant</b> - There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.</p>		

<p><b>10. For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.</b></p>	<p><b>Compliant</b> - There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.</p>		
<p><b>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Compliant</b> – There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.</p>		
<p><b>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</b></p>	<p><b>Compliant</b> – There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.</p>		
<p><b>13. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and</b></p>	<p><b>Compliant</b> Stated within Autism Spectrum Disorder Birth through Seven Medicaid waiver #0842 Appendix D 1-8</p>		

<p>supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>			
<p><b>14. Settings that are not home and community-based are as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>A nursing facility;</b></li> <li>• <b>An institution for mental diseases;</b></li> <li>• <b>An intermediate care facility for individuals with intellectual disabilities;</b></li> <li>• <b>A hospital; or</b></li> <li>• <b>Any other locations that have qualities of an institutional setting, as determined by the Secretary.</b></li> </ul>	<p><b>Compliant</b>  There are no adults served in this waiver and thus the custodial parent makes these choices for their child that is eligible and participating in the waiver. Children must reside in their parental home to receive services.</p>		
<p><b>15. Settings that are presumed to have the qualities of an institution:</b></p> <ul style="list-style-type: none"> <li>• <b>any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,</b></li> <li>• <b>any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or</b></li> <li>• <b>any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</b></li> </ul>	<p><b>Compliant</b>  There are no adults served in this waiver and thus the custodial parent makes these choices for their child that is eligible and participating in the waiver. Children must reside in their parental home to receive services.</p>		

**North Dakota Crosswalk of Systemic Assessment**

**Children’s Hospice Medicaid Waiver**

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota Children’s Hospice (CH) Policy & Procedure Manual:

<http://www.nd.gov/dhs/policymanuals/57505/57505.htm>

*Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.*

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p><b>1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b></p>	<p><b>Compliant</b>                      ND Century Code 50-24.1-20                      CH Policy &amp; Procedure Manual 575-05</p>		

<p><b>2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</b></p>	<p><b>Compliant</b>  Child must be residing within their home to receive services.  CH Policy &amp; Procedure Manual 575-05  Eligibility Criteria 575-05-25</p>		
<p><b>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Compliant</b>  ND Century Code 50-06.2-01 (2)  ND Century Code 12.1-20-01 through 12.1-20-07  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>4. Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><b>Compliant –</b>  CH Policy &amp; Procedure Manual 575-05  Parent driven program   Stated within Children’s Hospice Medicaid Waiver #0834</p>		
<p><b>5. Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Compliant</b>  CH Policy &amp; Procedure Manual 575-05   Stated within Children’s Hospice Medicaid Waiver #0834</p>		
<p><b>7. For provider owned or controlled residential settings –Each individual has privacy in their sleeping or living units:  Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>9. For provider owned or controlled residential settings - Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>		

<p><b>10. For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>13. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual’s informed consent; and assurance that interventions and supports will not cause harm.</b></p>	<p><b>Compliant</b>  CH Policy &amp; Procedure Manual 575-05</p>		
<p><b>14. Settings that are not home and community-based are as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>A nursing facility;</b></li> <li>• <b>An institution for mental diseases;</b></li> <li>• <b>An intermediate care facility for individuals with intellectual disabilities;</b></li> <li>• <b>A hospital; or</b></li> <li>• <b>Any other locations that have qualities of an</b></li> </ul>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>	<p>Requirements will be added to CH Policy &amp; Procedure manual 575-05 for clarification.</p>	<p>Aug 2017</p>

<p><b>institutional setting, as determined by the Secretary.</b></p>			
<p><b>15. Settings that are presumed to have the qualities of an institution:</b></p> <ul style="list-style-type: none"> <li>• <b>any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,</b></li> <li>• <b>any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or</b></li> <li>• <b>any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</b></li> </ul>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CH Policy &amp; Procedure Manual 575-05</p>	<p>Requirements will be added to CH Policy &amp; Procedure manual 575-05 for clarification</p>	<p>August 2017</p>

## North Dakota Crosswalk of Systemic Assessment

### Medicaid Waiver for Medically Fragile Children

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota Children Medically Fragile Needs Waiver (CMFW) Policy & Procedure Manual:

<http://www.nd.gov/dhs/policymanuals/58505/58505.htm>

*Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.*

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<b>1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b>	<b>Compliant</b> ND Century Code 50-24.1-20 CMFW Policy & Procedure Manual 585-05		
<b>2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for</b>	<b>Compliant</b> Child must be residing within their home to receive services. CMFW Policy & Procedure Manual 585-05 Eligibility Criteria 585-05-25		

room and board.			
<p><b>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Compliant</b>  ND Century Code 50-06.2-01 (2)  ND Century Code 12.1-20-01  through 12.1-20-07  CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>4. Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><b>Compliant –</b>  CMFW Policy &amp; Procedure Manual 585-05  Parent driven program</p> <p>Stated within Medically Fragile Children's waiver #0568</p>		
<p><b>5. Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Compliant</b>  CMFW Policy &amp; Procedure Manual 585-05</p> <p>Stated within Medically Fragile Children's waiver #0568</p>		
<p><b>6. For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CMFW Policy &amp; Procedure Manual 585-05</p>		

<p><b>7. For provider owned or controlled residential settings –Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Compliant</b> Waiver participant is a minor and resides within parental home. CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</b></p>	<p><b>Compliant</b> Waiver participant is a minor and resides within parental home. CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>9. For provider owned or controlled residential settings - Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.</b></p>	<p><b>Compliant</b> Waiver participant is a minor and resides within parental home. CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>10. For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.</b></p>	<p><b>Compliant</b> Waiver participant is a minor and resides within parental home. CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Compliant</b> Waiver participant is a minor and resides within parental home. CMFW Policy &amp; Procedure Manual 585-05</p>		

<p><b>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</b></p>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>13. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual’s informed consent; and assurance that interventions and supports will not cause harm.</b></p>	<p><b>Compliant</b>  CMFW Policy &amp; Procedure Manual 585-05</p>		
<p><b>14. Settings that are not home and community-based are as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>A nursing facility;</b></li> <li>• <b>An institution for mental diseases;</b></li> <li>• <b>An intermediate care facility for individuals with intellectual disabilities;</b></li> <li>• <b>A hospital; or</b></li> <li>• <b>Any other locations that have qualities of an institutional setting, as determined by the Secretary.</b></li> </ul>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CMFW Policy &amp; Procedure Manual 585-05</p>	<p>Requirements will be added to CMFW Policy &amp; Procedure manual 585-05 for clarification.</p>	<p>Aug 2017</p>
<p><b>15. Settings that are presumed to have the qualities of an institution:</b></p> <ul style="list-style-type: none"> <li>• <b>any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,</b></li> <li>• <b>any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or</b></li> </ul>	<p><b>Compliant</b>  Waiver participant is a minor and resides within parental home.  CMFW Policy &amp; Procedure Manual 585-05</p>	<p>Requirements will be added to CMFW Policy &amp; Procedure manual 585-05 for clarification</p>	<p>August 2017</p>

• any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

## North Dakota Crosswalk of Systemic Assessment

### Traditional IID/DD Waiver

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota DD Division website: <http://www.nd.gov/dhs/services/disabilities/dd.html>

*Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.*

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<b>1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b>	<b>Compliant – receives services that are integrated and supports full access to the community</b> NDCC 25-01.2-02.		
	<b>Compliant-</b> NDCC – 50-06.2-01 (1), (3).		
	<b>Compliant-</b> NDCC – 50-24.1-20.		
	<b>Compliant-supports full access, opportunities to seek employment, engage in community life-</b> NDCC 50-06-05.3 (1), (2).		

	<b>Silent to individualized settings</b> -NDCC 25-01.2-06.	Will amend to address all services/settings.	August 2017
	<b>Silent – opportunities to seek employment and work in competitive integrated settings</b> NDCC 25-01.2-06. (1).	Will amend to further clarify opportunities to seek employment and work in competitive integrated settings.	August 2017
	<b>Silent to individualized settings-</b> NDCC 25-01.2-06. (2),(3), (4),(5).	Will amend to address all services/settings	
	<b>Silent – community living</b> NDAC 75-04-01-20.(1)(d).	Will be amended to add fully participate in the benefits of community living.	December 2016
	<b>Compliant – control personal resources</b> NDAC 75-04-01-20.(1)(g).		
	<b>Compliant – receive services in community</b> NDCC 25-16-14.		
	<b>Compliant – receive services in community</b> NDAC 75-04-01-27.(1),(2),(3),(4).		
	<b>Compliant-</b> NDAC 75-04-01-28. (4).		
	<b>Compliant – control personal resources</b> NDAC 75-04-05-20. (1),(2),(4),(6),(9),(10),(11),(12),(15).		

	<p><b>Silent-engage in community life, opportunities to seek employment and work in competitive integrated settings</b> NDAC 75-04-01-01 (6), (7), (10), (14), (20), (24), (25)</p>	Will revise service definitions to promote community integration and integrated employment.	January 2017
	<p><b>Overall Service Plan Instructions were Silent-integrated settings and full access of community living</b></p>	Overall Service Plan Instructions- added a new section "Individuals choose their services, providers and settings" to further clarify services and supports are to be provided in the most integrated setting and ensure full access of community living.	September 2015 <b>Completed and OSP amendment available on the DD website.</b>
<p><b>2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</b></p>	<p><b>Compliant – non-disability settings and based on individual’s needs and preferences</b> NDCC 25-01.2-02.</p>		
	<p><b>Compliant – based on individual’s needs, preferences</b> NDAC 75-04-01-20. (1)(c).</p>		
	<p><b>Compliant – part of plan development, based on individual’s needs, preferences</b> NDCC 25-01.2-14.</p>		
	<p><b>Compliant – part of plan development, based on individual’s needs, preferences</b> NDAC 75-04-01-20.(1)(a).</p>		
	<p><b>Compliant – based on individual's needs, preferences</b> NDAC 75-04-07-02.</p>		

	<p><b>Compliant – selected by individual among setting options; options identified on person centered plan and are based on the individual’s needs, preferences, and for residential settings, resources available for room and board.</b> NDCC 50-06.2-06.</p>		
	<p><b>Compliant – selected by individual among setting options; options identified on person centered plan and are based on the individual’s needs, preferences, and for residential settings, resources available for room and board.</b> NDCC 50-24.1-20.</p>		
	<p><b>Silent-option for a private unit in a residential setting</b> NDAC 75-03-21 and AFC Policy and Procedure 660-05</p>	<p>Requirements will be added to code and Policy and procedure</p>	<p>October 2016</p>
	<p><b>Overall Service Plan Instructions were Silent – setting is selected from among setting options including non-disability specific settings and option for a private unit, options are identified and documented in the person-centered service plan, and based on individual’s needs and preferences and resources for room and board</b></p>	<p>Overall Service Plan Instructions-added a new section “Individuals choose their services, providers and settings” to clarify the roles and process with Individuals choosing their services, providers and settings according to needs/preferences and include non-disability specific settings.</p> <p>Overall Service Plan Instructions- revised sections “Assessment Review Sections” and “DDPM final review and discussion-Anticipated change in residence,</p>	<p>September 2015 <b>Completed and OSP amendment available on the DD website.</b></p>

		services, supports, provider” to include documentation of setting options, choice of setting, and summarize where a person lives, works, or attends day supports.	
<b>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b>	<b>Compliant – individual's rights</b> NDCC 25-01.2-03.		
	<b>Compliant-</b> NDCC 50-11-02. (1)		
	<b>Compliant-privacy</b> NDAC 75-03-21-04 (2).		
	<b>Compliant-privacy</b> NDAC 75-03-21-06 (4).		
	<b>Compliant-</b> NDAC 75-03-21-09 (4), (5), (7).		
	<b>Compliant-</b> NDAC 75-03-23-07 (2)(d).		
	<b>Silent to individualized settings -NDCC</b> 25-01.2-04.	Will amend to address all services/settings.	August 2017
	<b>Non-Compliant-individual's rights</b> NDCC 25.01.2-04.(1)(b).	Will amend to clarify telephone and visitation rights that comply with the regulation.	August 2017
	<b>Compliant – freedom from coercion and restraint</b> NDCC 25-01.2-08.		

	<b>Compliant – freedom from coercion and restraint</b> NDCC 25-01.2-09.		
	<b>Compliant – individual’s rights</b> NDCC 25-01.2-16.		
	<b>Compliant – individual’s rights</b> NDCC 25-01.2-17.		
	<b>Compliant – individual’s rights</b> NDCC 25-16-03.		
	<b>Compliant – individual’s rights and freedom from coercion and restraint</b> NDAC 75-04-01-20.(1)(a),(b),(f),(h),(i),(u).		
	<b>Compliant – freedom from coercion and restraint</b> NDAC 75-04-01-20.2.		
	<b>Overall Service Plan Instructions were Silent-individual’s rights</b>	Overall Service Plan Instructions-revised section “State ISP section of the OSP” to clarify annual review of rights at the team meeting.	September 2015 <b>Complete and OSP amendment available on the DD website</b>
<b>4. Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</b>	<b>Compliant – part of plan development which addresses independence, self-determination, decision making, etc.</b> NDCC 25-01.2-14.		
	<b>Compliant to requirements -</b> NDCC 50-06-05.3 (1), (2).		

	<p><b>Compliant – part of plan development which addresses independence, self-determination, decision making, etc.</b> NDAC 75-04-01-20.(1)(a).</p>		
	<p><b>Compliant – Optimizes individual initiative, autonomy, and independence in making life choice for daily activities and physical environment.</b> NDCC 50-06.2-06.</p>		
	<p><b>Compliant – Optimizes individual initiative, autonomy, and independence in making life choice for daily activities and physical environment.</b> NDCC 50-24.1-20.</p>		
	<p><b>Compliant – Optimizes individual initiative, autonomy, and independence in making life choice for daily activities and physical environment.</b> NDCC 50-24.1-01.</p>		
	<p><b>Compliant – Optimizes individual initiative, autonomy, and independence in making life choice for daily activities and physical environment.</b> NDCC 50-06.2-01 (1), (3).</p>		
<p><b>5. Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Compliant – individual choice regarding services and supports</b> NDCC 25-01.2-15.</p>		
	<p><b>Compliant-individual choice regarding services and supports, and who provides them -</b> NDCC 50-06-05.3 (2).</p>		
	<p><b>Compliant – individual choice regarding services and supports</b> NDAC 75-04-01-20.(1)(k).</p>		

	<b>Compliant – individual choice who provides services and supports</b> NDAC 75-04-05-21.		
	<b>Compliant –</b> NDCC 50-24.1-20.		
	<b>Compliant-</b> NDCC 50-06.2-06.		
	<b>Compliant – through plan development individual choice regarding services and supports, and who provides them</b> NDCC 25-01.2-14.		
	<b>Compliant – through plan development individual choice regarding services and supports, and who provides them</b> NDAC 75-04-01-20.(1)(a).		

	<p><b>Overall Service Plan Instructions were Silent - individual choice regarding services and supports, and who provides them</b></p>	<p>Overall Service Plan Instructions- added a new section "Individuals choose their services, providers and settings" to clarify individual choice in services, supports, and who provides them.</p> <p>Overall Service Plan Instructions-revised section "DD Program Manger responsibilities prior to Annual OSP" to clarify the roles and process with Individuals in choosing their services, providers, and settings.</p> <p>Overall Service Plan Instructions-revised section "The OSP is a dynamic and ongoing process" to clarify how individuals can make a request anytime to make changes to their plan.</p> <p>Overall Service Plan</p>	<p>September 2015</p> <p><b>Completed and OSP amendment available on the DD website.</b></p>
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		Instructions-revised section "Engaging individuals, family members and legal guardians" to clarify individual participation in their plan and informed choices.	
<p><b>6. For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</b></p>	<p><b>Silent-legally enforceable agreement and the individual has at a minimum the same responsibilities from eviction that tenants have under landlord/tenant law</b></p>	Licensing procedures will be strengthened to require new providers to submit lease material as part of their license application.	December 2017
	<p><b>Silent-</b> NDAC 75-03-21 and AFC Policy and Procedure 660-05</p>	Requirements will be added to code and Policy and procedure	October 2016
<p><b>7. For provider owned or controlled residential settings –Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Non-compliant - doors lockable</b> NDAC 75-04-01-29.(4).</p>	<p>Will amend to include all settings/services and to bring in full compliance.</p> <p>Environmental Scan Checklist-included in the annual checklist</p>	<p>December 2016</p> <p>January 2015 <b>Completed</b></p>

		review that bedroom doors are lockable unless otherwise noted in the individual's plan.	
	<b>Overall Service Plan Instructions were Silent - doors lockable with only appropriate staff having keys</b>	Overall Service Plan Instructions-revised section "Rights Limitation and Due Process" to include the requirement.	September 2015 <b>Completed and OSP amendment available on the DD website.</b>
	<b>Compliant-</b> NDAC 75-03-21-04(2). Adult Foster Care Policy & Procedures 660-05-30-20		
	<b>Compliant-</b> NDAC 75-03-21-06(4). Adult Foster Care Policy & Procedures 660-05-30-30		
<b>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</b>	<b>Overall Service Plan Instructions were Silent – individuals sharing units have a choice of roommates</b>	Overall Service Plan Instructions-revised section "Rights Limitation and Due Process" to include the requirement.	September 2015 <b>Completed and OSP amendment available on the DD website.</b>
	<b>Silent-</b> NDAC 75-03-21 and AFC Policy and Procedure 660-05	Requirements will be added code and Policy and Procedure	October 2016

<p><b>9. For provider owned or controlled residential settings- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</b></p>	<p><b>Compliant – through plan development, freedom to furnish and decorate sleeping or living units</b> NDCC 25-01.2-14.</p>		
	<p><b>Compliant – through plan development, freedom to furnish and decorate sleeping or living units</b> NDAC 75-04-01-20.(1)(a).</p>		
	<p><b>Compliant – individuals have freedom to furnish their sleeping or living unit</b> NDAC 75-04-01-20.(1)(d).</p>		
	<p><b>Silent to individualized settings-</b> NDAC 75-04-01-29.(5).</p>	Will amend to address all services/settings.	December 2016
	<p><b>Silent to individualized settings-</b> NDAC 75-04-01-33.(1),(2).</p>	Will amend to address all services/settings.	December 2016
	<p><b>Silent-</b> NDAC 75-03-21 and AFC Policy &amp; Procedure 660-05</p>	Requirements will be added to code and Policy & Procedure	October 2016
<p><b>10. For provider owned or controlled residential settings- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</b></p>	<p><b>Compliant – through plan development, freedom and support to control own schedules and activities, and have access to food at any time</b> NDCC 25-01.2-14.</p>		

	<p><b>Compliant – through plan development, freedom and support to control own schedules and activities, and have access to food at any time</b> NDAC 75-04-01-20.(1)(a).</p>		
	<p><b>Overall Service Plan Instructions were Silent - freedom and support to control own schedules and activities, and have access to food at any time</b></p>	<p>Overall Service Plan Instructions- revised section "Rights Limitation and Due Process" to include the requirement.</p>	<p>September 2015 <b>Completed and OSP amendment available on the DD website.</b></p>
	<p><b>Non-Compliant –</b> NDAC 75-03-21-12(1), (2). Adult Foster Care Policy &amp; Procedures 660-05-30-45</p>	<p>Requirements will be added/modified to the NDAC 75-03-21 and AFC Policy &amp; Procedure 660-05</p>	<p>October 2016</p>
<p><b>11. For provider owned or controlled residential settings- Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Compliant – to have visitors</b> NDAC 75-04-01-20.(1)(d).</p>		
	<p><b>Compliant – part of plan development, to have visitors of their choosing any time</b> NDCC 25-01.2-14.</p>		
	<p><b>Compliant – part of plan development, to have visitors of their choosing any time</b> NDAC 75-04-01-20.(1)(a).</p>		

	<b>Overall Service Plan Instructions were Silent-to have visitors of their choosing any time</b>	Overall Service Plan Instructions- revised section "Rights Limitation and Due Process" to include the requirement.	September 2015 <b>Completed and OSP amendment available on the DD website.</b>
	<b>Silent-</b> NDAC 75-03-21 and AFC Policy & Procedure 660-05	Requirements will be added to code and Policy & Procedure	October 2016
<b>12. For provider owned or controlled residential settings- The setting is physically accessible to the individual.</b>	<b>Compliant – physically accessible</b> NDAC 75-04-01-20.(1)(o).		
	<b>Silent to individualized settings</b> -NDAC 75-04-01-29. (6).	Will amend to address all services/settings.	December 2016
	<b>Compliant – physically accessible</b> Overall Service Plan Instructions-section "Adaptive, Orthotic, corrective, communication equipment/supplies, augmentative devices"		
	<b>Compliant –</b> NDAC 75-03-21-04.		
<b>13. For provider owned or controlled residential settings- Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized</b>	<b>Compliant –reporting, reviewing, and recording the need and justification of restrictions</b> NDAC 75-04-01-20.(1)(m),(t).		

<p>assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<p><b>Compliant – addressed through plan development</b> NDCC 25-01.2-14.</p>		
	<p><b>Compliant – addressed through plan development</b> NDAC 75-04-01-20.(1)(a).</p>		
	<p><b>Overall Service Plan Instructions were Silent</b></p>	<p>Overall Service Plan Instructions- revised section "Individual and/or guardian approval (Release signed specific to plan restrictions)" to include the requirement.</p>	<p>September 2015 <b>Completed and OSP amendment available on the DD website.</b></p>
	<p><b>Compliant –</b> NDCC 75-03-23-04(7).</p>		
<p><b>14. Settings that are not home and community-based are as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>A nursing facility;</b></li> <li>• <b>An institution for mental diseases;</b></li> <li>• <b>An intermediate care facility for individuals with intellectual disabilities;</b></li> <li>• <b>A hospital; or</b></li> <li>• <b>Any other locations that have qualities of an institutional setting, as determined by the Secretary.</b></li> </ul>	<p><b>Silent -</b></p>	<p>Will update Licensure to reflect the requirement. Providers are required to be licensed initially and annually.</p>	<p>December 2017</p>

<p><b>15. Settings that are presumed to have the qualities of an institution:</b></p> <ul style="list-style-type: none"> <li>• any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,</li> <li>• any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or</li> <li>• any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</li> </ul>	<p><b>Silent to individualized settings</b></p>	<p>Will update Licensure to reflect the requirement. Providers are required to be licensed initially and annually.</p>	<p>December 2017</p>
	<p><b>Compliant-</b> NDAC 75-04-01-28. (4).</p>		

## North Dakota Crosswalk of Systemic Assessment

### **Medicaid Waiver for Home and Community Based Services (Serves Aged & Disabled)**

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota HCBS Policy & Procedure Manual: <http://www.nd.gov/dhs/policymanuals/52505/52505.htm>

Link to North Dakota AFC Policy & Procedure Manual: <http://www.nd.gov/dhs/policymanuals/66005/66005.htm>

Link to Basic Care Interpretive Guidelines: [http://www.ndhealth.gov/HF/PDF\\_files/Basic%20Care/basic\\_care\\_guidelines.pdf](http://www.ndhealth.gov/HF/PDF_files/Basic%20Care/basic_care_guidelines.pdf)

Qualified Service Provider Handbook, Individual, Agency, and Adult Foster Care Versions

<http://www.nd.gov/dhs/services/adultsaging/providers.html>

*Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.*

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline s for Remediation
<b>1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b>	<b>Compliant</b> ND Century Code 50-06.2-01 (1) & (3) ND Century Code 50-24.1-20 ND Admin Code 75-03-23-01 (12) HCBS Policy & Procedure Manual 525-05-15 HCBS Policy & Procedures 525 -05-30-16		

<p><b>2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</b></p>	<p><b>Compliant</b> – Selected by Individual among setting options; options identified on person centered plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.  ND Century Code 50-06.2-06  ND Century Code 50-24.1-20  NDAC 75-03-23-04 (6) &amp; (7)  HCBS Policy &amp; Procedures 525-05-25-10; 525-05-25-12; 525-05-60-10; &amp; 525-05-60-105</p> <p><b>Silent-</b> option for a private unit in a residential setting.</p>	<p>Requirements will be added to AFC Admin Code 75-03-21 &amp; HCBS &amp; AFC Policy &amp; Procedure Manual 525-05 &amp; 660-05</p>	<p>Oct 2016</p>
<p><b>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Compliant</b>  ND Century Code 50-06.2-01 (2)  ND Century Code 50-10.2  ND Century Code 50-11-02 (1)  ND Century Code 50-25.2  ND Admin Code 33-03-24.1-01 (1) &amp; 33-03-24.1-09 (e) &amp; (h)  ND Admin Code 75-03-21-01 (1), (7), (10), (12) &amp;(18)  ND Admin Code 75-03-21-04 (2)  ND Admin Code 75-03-21-06 (4)  ND Admin Code 75-03-21-09 (4), (5) &amp; (7)  ND Admin Code 75-03-23-07 (2) (d)  HCBS Policy &amp; Procedures 525-05-30-05  HCBS Policy &amp; Procedures 525-05-60-100  Qualified Service Provider Handbook, Individual, Agency and Adult Foster Care Versions</p>		
<p><b>4. Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><b>Compliant</b> – Optimizes individual initiative, autonomy, and independence in making life choices for Daily Activities and physical environment  ND Century Code 50-06.2.01 (1) &amp; (3)  ND Century Code 50-06.2-06  ND Century Code 50-24.1-01</p>	<p>Requirements will be added to HCBS Policy &amp; Procedure Manual 525-05</p>	<p>Oct 2016</p>

	<p>ND Century Code 50-24.1-20  ND Admin Code 75-02-02-08 (1) (u)  ND Admin Code 75-03-23-01 (10)  ND Admin Code 75-03-23-04 (6) &amp; (7)  ND Admin Code 75-03-23-17  HCBS Policy &amp; Procedures 525-05-60-100</p> <p><b>Silent – With whom to interact</b></p>		
<p><b>5. Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Compliant</b>  ND Century Code 50-06.2-06  ND Century Code 50-24.1-20  ND Admin Code 75-03-23-04 (6) &amp; (7)  ND Admin Code 75-03-23-06 (15) (b)</p>		
<p><b>6. For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</b></p>	<p><b>Adult Foster Care – Silent</b></p>	<p>Requirements will be added to ND Admin Code 75-03-21 and AFC Policy &amp; Procedure 660-05</p>	<p>Oct 2016</p>
	<p><b>Adult Residential Care – Compliant</b>  HCBS Policy &amp; Procedures 525-05-30-16</p>		
<p><b>7. For provider owned or controlled residential settings –Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Adult Foster Care -Compliant</b>  ND Admin Code 75-03-21-04 (2)  ND Admin Code 75-03-21-06 (4)  Adult Foster Care Policy &amp; Procedures 660-05-30-20  Adult Foster Care Policy &amp; Procedures 660-05-30-30</p>		

	<b>Adult Residential Care – Silent</b>	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents.	Aug 2017
<b>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</b>	<b>Adult Foster Care- Silent</b>	Requirements will be added to ND Admin Code 75-03-21 and AFC Policy & Procedure 660-05	Oct 2016
	<b>Adult Residential Care- Silent</b>	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents.	Aug 2017
<b>9. For provider owned or controlled residential settings - Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.</b>	<b>Adult Foster Care- Silent</b>	Requirements will be added to ND Admin Code 75-03-21 and AFFC Policy & Procedure 660-05	Oct 2016
	<b>Adult Residential Care – Silent</b>	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents	Aug 2017
<b>10. For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.</b>	<b>Adult Foster Care - Out of compliance</b> ND Admin Code 75-03-21-12 (1) & (2) Adult Foster Care Policy & Procedures 660-05-30-45	Requirements will be added/modified to ND Admin Code 75-03-21 and AFFC Policy & Procedure 660-05	Oct 2016
	<b>Adult Residential Care Silent – (Freedom and support to control their schedules)</b>  <b>Compliant (Controlling Activities):</b> ND Admin Code 33-03-24.1-19	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents	Aug 2017

	<p>Basic Care Facility Interpretive guidelines B1910, B1920, B1930, B1940 HCBS Policy &amp; Procedures 525-05-30-16</p> <p><b>Compliant</b> (Access to food) ND Admin Code 33-03-24.1-18 (1-6) Basic Care Facility Interpretive Guidelines B1830</p> <p><b>Out of compliance-</b> (Dictates where meals are served) ND Admin Code 33-03-24.1-18 (7)</p>		
<p><b>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Adult Foster Care – Silent</b></p>	<p>Requirements will be added to ND Admin Code 75-03-21 and AFFC Policy &amp; Procedure 660-05</p>	<p>Oct 2016</p>
	<p><b>Adult Residential Care- Silent</b></p>	<p>The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents</p>	<p>Aug 2017</p>
<p><b>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</b></p>	<p><b>Adult Foster Care – Compliant</b> ND Admin Code 75-03-21-04</p>		
	<p><b>Adult Residential Care – Compliant</b> ND Century Code 54-21.3-04.1 ND Admin Code 33-03-24.2</p>		
<p><b>13. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the</b></p>	<p><b>Compliant</b> ND Century Code 75-03-23-04 (7) HCBS Policy &amp; Procedures 525-05-25-10 HCBS Policy &amp; Procedures 525-05-60-10 HCBS Policy &amp; Procedures 525-05-60-105</p>		

<p>person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual’s informed consent; and assurance that interventions and supports will not cause harm.</p>			
<p><b>14. Settings that are not home and community-based are as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>A nursing facility;</b></li> <li>• <b>An institution for mental diseases;</b></li> <li>• <b>An intermediate care facility for individuals with intellectual disabilities;</b></li> <li>• <b>A hospital; or</b></li> <li>• <b>Any other locations that have qualities of an institutional setting, as determined by the Secretary.</b></li> </ul>	<p><b>Compliant – Excludes Nursing facility, institution for mental disease, intermediate care facility, hospital</b>          HCBS Policy &amp; Procedure Manual 525-05-10</p> <p><b>Silent- Any other locations that have qualities of an institutional setting as determined by the Secretary</b></p>	<p>Requirements will be added to HCBS Policy &amp; Procedure manual 525-05 once State receives results of heightened scrutiny for Adult Residential facilities</p>	<p>Aug 2017</p>
<p><b>15. Settings that are presumed to have the qualities of an institution:</b></p> <ul style="list-style-type: none"> <li>• <b>any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,</b></li> <li>• <b>any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or</b></li> <li>• <b>any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</b></li> </ul>	<p><b>Compliant – Settings located in facility that provides institutional treatment and located or adjacent to public institution</b>          ND Century Code 50-11-00.1 (8)          HCBS Policy &amp; Procedure Manual 525-05-10          HCBS Policy &amp; Procedure Manual 525-05-30-10          HCBS Policy &amp; Procedure Manual 525-05-30-16</p> <p><b>Silent-</b> any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS</p>	<p>Requirements will be added to HCBS Policy &amp; Procedure manual 525-05 once State receives results of heightened scrutiny for Adult Residential facilities</p>	<p>Aug 2017</p>

## North Dakota Crosswalk of Systemic Assessment

### Technology Dependent Medicaid Waiver

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota HCBS Policy & Procedure Manual: <http://www.nd.gov/dhs/policymanuals/52505/52505.htm>

Qualified Service Provider Handbook, Individual and Agency Versions

<http://www.nd.gov/dhs/services/adultsaging/providers.html>

*Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.*

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline s for Remediation
<p><b>1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b></p>	<p><b>Compliant</b>            ND Century Code 50-06.2-01 (1) &amp; (3)            ND Century Code 50-24.1-20            ND Admin Code 75-03-23-01 (12)            HCBS Policy &amp; Procedure Manual 525-05-15</p>		

<p><b>2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</b></p>	<p><b>Compliant</b> – Selected by Individual among setting options; options identified on person centered plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.  ND Century Code 50-06.2-06  ND Century Code 50-24.1-20  NDAC 75-03-23-04 (6) &amp; (7)  HCBS Policy &amp; Procedures 525-05-25-12; 525-05-60-10; &amp; 525-05-60-105</p> <p><b>Silent</b>- option for a private unit in a residential setting.</p>	<p>Requirements will be added to HCBS Policy &amp; Procedure Manual 525-05</p>	<p>Oct 2016</p>
<p><b>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b></p>	<p><b>Compliant</b>  ND Century Code 50-06.2-01 (2)  ND Century Code 50-25.2  ND Admin Code 75-03-23-07 (2) (d)  HCBS Policy &amp; Procedures 525-05-30-05  HCBS Policy &amp; Procedures 525-05-60-100  Qualified Service Provider Handbook, Individual and Agency Versions</p>		
<p><b>4. Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><b>Compliant</b> – Optimizes individual initiative, autonomy, and independence in making life choices for daily activities and physical environment  ND Century Code 50-06.2.01 (1) &amp; (3)  ND Century Code 50-06.2-06  ND Century Code 50-24.1-01  ND Century Code 50-24.1-18.1  ND Century Code 50-24.1-20  ND Admin Code 75-02-02-08 (1) (u)</p>	<p>Requirements will be added to HCBS Policy &amp; Procedure Manual 525-05</p>	<p>Oct 2016</p>

	<p>ND Admin Code 75-03-23-01 (10)  ND Admin Code 75-03-23-04 (6) &amp; (7)  ND Admin Code 75-03-23-17  HCBS Policy &amp; Procedures 525-05-60-100</p> <p><b>Silent</b> – With whom to interact</p>		
<p><b>5. Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><b>Compliant</b>  ND Century Code 50-06.2-06  ND Century Code 50-24.1-20  ND Admin Code 75-03-23-04 (6) &amp; (7)</p>		
<p><b>6. For provider owned or controlled residential settings- The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		
<p><b>7. For provider owned or controlled residential settings – Each individual has privacy in their sleeping or living units:  Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		
<p><b>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		

<p><b>9. For provider owned or controlled residential settings - Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		
<p><b>10. For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		
<p><b>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		
<p><b>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</b></p>	<p><b>Compliant</b> - No recipients are served in provider owned settings</p>		
<p><b>13. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual’s informed consent; and assurance that interventions and supports will not cause harm.</b></p>	<p><b>Compliant</b>  ND Century Code 75-03-23-04 (7)  HCBS Policy &amp; Procedures 525-05-25-10  HCBS Policy &amp; Procedures 525-05-60-10  HCBS Policy &amp; Procedures 525-05-60-105</p>		
<p><b>14. Settings that are not home and community-based are as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>A nursing facility;</b></li> <li>• <b>An institution for mental diseases;</b></li> </ul>	<p><b>Compliant</b> – Excludes Nursing facility, institution for mental disease, intermediate care facility, hospital  HCBS Policy &amp; Procedure Manual</p>	<p>Requirements will be added to HCBS Policy &amp; Procedure manual 525-05</p>	<p>Aug 2017</p>

<ul style="list-style-type: none"> <li>• <b>An intermediate care facility for individuals with intellectual disabilities;</b></li> <li>• <b>A hospital; or</b></li> <li>• <b>Any other locations that have qualities of an institutional setting, as determined by the Secretary.</b></li> </ul>	<p>525-05-10</p> <p><b>Silent-</b> Any other locations that have qualities of an institutional setting as determined by the Secretary</p>		
<p><b>15. Settings that are presumed to have the qualities of an institution:</b></p> <ul style="list-style-type: none"> <li>• <b>any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,</b></li> <li>• <b>any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or</b></li> <li>• <b>any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</b></li> </ul>	<p><b>Compliant – Settings located in facility that provides institutional treatment and located or adjacent to public institution</b>  HCBS Policy &amp; Procedure Manual 525-05-10</p> <p><b>Silent-</b> any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS</p>	<p>Requirements will be added to HCBS Policy &amp; Procedure manual 525-05</p>	<p>Aug 2017</p>