North Dakota Proposed Transition Plan for the HCBS Settings under the Traditional IID/DD 1915(c) Waiver

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 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 proposed draft of the Traditional IID/DD Waiver specific Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule.

The federal citation for the new rule is 42 CFR 441.301(c) (4)-(5), and more information on the rules can be found on the CMS website at: www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html

A proposed draft Traditional IID/DD Waiver specific Transition Plan was open for public comment for 30 days from October 22, 2014 through November 20, 2014 to allow all consumers, providers and stakeholders an opportunity to provide input to the plan. The proposed plan which included changes that were made as result of the public comment was submitted to CMS on November 26, 2014.

North Dakota HCBS Background

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

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

Assessment Process

From April through October 2014, the Department conducted a review and analysis of all settings where HCBS are provided to eligible recipients. The Department conducted surveys of all providers of HCBS residential and non-residential services that focused on each setting's physical location, surroundings, community integration, and other environmental characteristics. In addition, the Department conducted a survey of recipients in the Traditional IID/DD Waiver to assess whether the residential and non-residential settings meet home and community-based (HCB) requirements. For example, the survey asked if recipients are able to access the community as they choose, choose their schedules, freely access their money and food, decorate their residence as they choose, and choose their setting, services, and supports.

In addition, DD Program Managers provided input on each setting to validate the providers' responses. The Department conducted site visits of IID/DD waiver settings for which the State is utilizing the heightened scrutiny process.

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

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

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

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

Assessment of Setting Process

North Dakota offers fifteen services through its Home and Community Based Services (Traditional IID/DD) 1915(c) waiver. Approximately 37 DD providers are enrolled to provide DD HCBS services. There are 29 providers enrolled to provide Residential Habilitation, 22 providers enrolled to provide Extended Services, 28 providers enrolled to provide Day Support services, and 38 providers enrolled to provide Adult Day Health services.

The majority of waiver residential services is provided in individualized settings either in the home of a primary caregiver, or apartment, or home owned or leased by the participant and comply with the HCB settings requirements. Adult Family Foster Care is provided in a private residence owned by the licensed provider.

Ninety-Six Residential Habilitation settings, two Extended Service settings, and 38 Adult Family Foster Care settings 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.

One Day Support setting and four Residential Habilitation settings are presumptively non-home and community based, because they are on the grounds of or adjacent to a public institution. The Department 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.

There is zero Adult Day Health setting and four Day Supports settings that do not/cannot comply with Federal requirements because they are provided in institutions (e.g. hospital or skilled nursing facility) and requires a relocation plan. Currently, the Traditional IID/DD waiver does not have any individual enrolled in the Adult Day Health service.

Section 2: Summary of Settings Assessment Results

Table 6: Traditional IID/DD Waiver

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

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

Section 3: Assessment Results, Proposed Remedial Strategies and Timelines

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

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

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

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
Adult Family Foster Care (AFFC)	38 AFFC Homes (No more than 4 residents per home) 32 Recipients are Receiving AFFC Statewide	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	The Department will conduct training for licensing entities, case managers, and licensed AFFC providers on settings 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 will work with waiver recipients who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The AFFC provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.	Aug 2014	The Department will keep a roster of attendees and dates of training to track attendance. The Department will review AFFC house rules submitted by AFFC providers: Modified rules and policy will be published on State website.	The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Family Foster Care Providers, Consumers, Advocacy Organizations	Licensing entity will conduct home visits required for licensure & re-licensure. Re-licensure occurs every two years. Licensing visits will include HCBS setting experience interviews with all AFFC recipients. New rules will be incorporated into the AFFC licensing requirements and will be applied to all new and renewed licenses. Case Managers will monitor recipient experience and setting requirements at face to face quarterly visits.
			The Department will require modified AFFC house rules to be sent to the Department.		Jan 2015			
			The Department will promulgate AFFC Administrative Rules to modify licensing standards to match HCB setting requirements. State Medicaid Agency (SMA) will update policy to reflect changes in administrative rule. Once rules are finalized State will conduct training with licensing entities to assure understanding of new rules and licensing requirements.		Oct 2016			

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
	38 AFFC Homes 32 Recipients and Receiving AFFC Statewide	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	The Department will provide training and sample lease agreements that comply with ND law to AFFC providers	Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients. Case managers will work with Waiver recipients who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The AFFC provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.	Jan 2015	The Department will keep a roster of attendees and dates of training to track attendance. Require legally enforceable agreements to be sent to The Department. Agreements will be reviewed by SMA staff, with guidance from the Legal Advisory Unit, for compliance with ND landlord/tenant law.	The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Family Foster Care Providers, Consumers, Advocacy Organizations	Lease agreements will be required to be submitted as part of the requirements for new and renewed AFFC licenses. Case Managers will assure that lease agreements are in place for all recipients when they initially begin using services and during annual assessments conducted in the AFFC home.
			AFFC providers will secure a signed lease or other written rental agreement that includes the eviction process, which must be compliant with ND eviction law (NDCC chap. 47-32)		Jan 2015			

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
Extended Services	2 Settings	Changes are needed in regard to the experience of the recipient to allow more community interaction	The Department will provide Technical Assistance and training to providers to ensure more community interaction. The training will address the specific non-compliance identified at the provider location. The Department will conduct statewide training for providers, individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules. 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. 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.	September 2015 Code updates: Dec 2016; Policy updates: beginning Jan 2016	The Department will keep a roster of attendees and dates of training to track attendance. The DD Program Managers will conduct site visits to assess compliance with community interaction during their face to face visits.	DD Division, DD Program Administrators, DD Program Managers, DD Providers, Guardians, Individuals	The DD Program Managers will monitor recipient community interactions during their face to face visits. New rules will be incorporated into the licensing requirements and will be applied to all new and renewed licenses. As additional guidance for non-residential settings is provided by CMS, the Department will ensure these services and settings comply with regulations.

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
			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. 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.		December 2015			
Residential Habilitation	96 Provider-Owned Community Residences	Changes are needed to ensure that all provider-owned residential settings a) Provide a lease	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	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	The Department will strengthen licensing renewal procedures to ensure

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		or legally enforceable agreement that complies with ND landlord-tenant laws (NDCC chap. 47-32).	The Department will provide sample lease agreements and information about ND's landlord-tenant laws to providers.	longer eligible to accept MA recipients. 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	June 2015	The Department will review providers' lease templates for compliance with ND landlord/tenant law.	Legal Service units, families/guardians, individuals	ongoing compliance. The Department will update the Environmental Scan Checklist to include lockable doors.
			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 will keep a roster of attendees and dates of training to track attendance.		

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
		b) Have lockable bedroom doors	The Department will conduct statewide training for providers, individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.	the recipient, per landlord-tenant laws, that they will need to find alternative housing.	Sept 2015			
			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			
			The Department will conduct statewide training for providers, individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.		Sept 2015			

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

Name of Service (Applicable Waiver)	Total # of Settings	Reason for Presumed Noncompliance	Justification that Setting is In Fact Community-Based	Assuring Compliance	Timeline
Residential Habilitation	4 settings with 8 individuals	Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF)	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 individuals) 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 individuals were all positive, including indicating they were	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.	June–August 2014
				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.	August – September 2014

Name of Service (Applicable Waiver)	Total # of Settings	Reason for Presumed Noncompliance	Justification that Setting is In Fact Community-Based	Assuring Compliance	Timeline
			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 three of the four settings. Not all residents receive housing assistance. These settings are used as a stepping stone for individuals who are 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.	The Department will conduct site visits of each setting (observations and visits with individuals) to verify provider survey, results of DD Program Manager assessments and resident interviews.	October – November 2014

Name of Service (Applicable Waiver)	Total # of Settings	Reason for Presumed Noncompliance	Justification that Setting is In Fact Community-Based	Assuring Compliance	Timeline
Day Supports	1 Day Facility with 17 individuals	Located on the grounds of, or adjacent to, an ICF	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 individuals) 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 needs and preferences, and consumer choice of activities. In addition to the on-site visits, some plans were reviewed and individual's choice of services was documented.	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.	June-August 2014
				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.	August – September 2014
				The Department will conduct site visits of each setting (observations and visits with individuals) to verify the results of the provider survey, DD Program Manager assessments and resident interviews.	October – November 2014

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

Name of Service (Waiver)	Total # of Settings Not Compliant	Remedial Strategies for Providers Who Are Not Able to Meet Requirements	Remedial Strategies for Recipients Receiving Services in Non-Compliant Settings	Key Stakeholders	Timeline for Completion	Assuring Compliance	Ongoing Monitoring
Day Supports	4 settings with 5 individuals	Providers and DD Program Managers will be informed that services cannot be authorized for Medicaid waiver recipients in ICF settings	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.	DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units, Individuals, Guardians	March 2017	The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings	The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings
Adult Day Health	0 settings with 0 individuals	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.	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.	DD Division, DD Program Administrators	December 2015	The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings.	The Department will monitor individual service plans to assure that recipients are not authorized services in non-compliant settings.

Section 3: Public Input Process

The Department provided opportunities for public comment on the proposed Amendment of the Traditional IID/DD Waiver\Transition Plan during the 30 day public comment period beginning October 22, 2014 through November 20, 2014. The proposed amendment was sent to tribal entities and other stakeholders. The amendment\transition plan was available for public comment online and upon request at http://www.nd.gov/dhs/services/disabilities/dd.html

A summary of all comments received during the public comment period were added to the proposed Amendment of the Traditional IID/DD waiver\Transition Plan and submitted to CMS on November 26, 2014. The state provided a summary of public comments, including comments that agree/disagree with the State's determinations about settings that do/do not meet the HCBS requirements. A summary of the modifications made to the proposed Amendment of the Traditional IID/DD waiver\Transition Plan resulting from response to the public comment will be provided by the Department. If the Department determination differed significantly from the public comment, the information the state used to confirm its determination is included.

The state posted the proposed Amendment of the Traditional IID/DD waiver\Transition Plan with modifications made after the public comment to the Department's web site on November 26, 2014. All public comments on the provisional Amendment of the Traditional IID/DD waiver\Transition Plan will be retained and available for CMS review for the duration of the transition period or approved waiver.

Comments and public input on this proposed Amendment of the Traditional IID/DD waiver\Transition Plan were accepted in the following ways:

Email: mkrein@nd.gov

Phone: (701)-328-8977

ND Relay TTY: 800-366-6888

Mail: ND DHS Department of Human Services, Attn: Developmental Disabilities Division/Marella Krein, 1237 W. Divide Ave., Suite 1A, Bismarck, N.D. 58501

Summary of Public Comments

The following information contains a summary of the public comments collected in response to the proposed Amendment of the Traditional IID/DD waiver\Transition Plan and the proposed Statewide Transition Plan. The Department of Human Services (DHS) received comments from six organizations or individuals.

Based on the waiver specific and Statewide Transition Plan public comment, the Department made changes to the Amendment of the Traditional IID/DD waiver\Transition Plan.

Public comments were received from the following individuals or organizations as they related to the proposed Traditional IID/DD Waiver:

- The Arc of North Dakota
- Protection and Advocacy Project
- AARP North Dakota
- Pathfinder Parent Center
- Designer Genes
- 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 Preliminary Transition Plan for the HCBS Settings under the Traditional IID/DD 1915(c) Waiver, and comments that did not result in changes to the Preliminary Transition Plan for the HCBS Settings under the Traditional IID/DD 1915(c) Waiver. 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

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 consumer and advocacy organizations be included as key stakeholders for the remediation of IID/DD AFFC 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 Family Foster Care. The Department will modify AFFC licensing rules to require the licensing entity to conduct on site interviews with AFFC 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 AFFC 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 AFFC homes.

One commenter requested that the final transition plan regarding IID/DD AFFC 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 AFFC 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. 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 AFFC provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing. 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 asked if information gathered from the 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 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 IID/DD AFFC house rules. Commenter questioned if setting does not comply what will happen?

- DHS Response: DHS has minimum licensing standards for AFFC providers. As stated in the Statewide Transition Plan, the Department will promulgate AFFC 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. 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 AFFC provider will be required to give a 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.

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 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 appreciates 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.

11/26/2014