



North Dakota Provisional Transition Plan for the HCBS (elderly and disabled) Medicaid Waiver

Purpose

On March 17, 2014, the Center for Medicare and Medicaid Services (CMS) issued a final rule for home and community based services that require states to review and evaluate Home and Community-Based Services (HCBS) Settings, including residential and nonresidential settings. States are required to ensure all HCBS Settings comply with the new requirements, and analyze all settings where HCBS participants receive services to determine if current settings comply with the Final Rule. The ND Department of Human Services (Department) has created a preliminary Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule as it relates to the HCBS (elderly and disabled) waiver only. This is required because the Department is seeking a new service that would be available to HCBS recipients.

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

This **preliminary** HCBS (aged and disabled) waiver Transition Plan is open for public comment for 30 days to allow all HCBS consumers, providers and stakeholders an opportunity to provide input to the plan. A statewide Transition Plan that applies to all North Dakota 1915c waivers will be released for public comment and submitted to CMS at a later date.

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

The Department of Human Services has done a review and analysis of all settings where HCBS (aged and disabled) services are provided to eligible recipients. The analysis included review of North Dakota Century Code, North Dakota

Administrative Code, Home and Community Based Services policy, on-site visits to residential service providers, provider calls, and review of licensing rules and regulations. Through this process, the state has determined the following waiver services fully comply with the regulatory requirements because they are individualized services provided in the client's home:

- Case Management: An individualized process that assesses a client's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers.
- Chore Service: Snow removal and heavy cleaning.
- Emergency Response System: A telephone emergency response system.
- Extended Personal Care/Nurse Education: Education given by a nurse to an enrolled qualified service provider who provides medical care specific to a client's needs.
- Family Personal Care: Provides for the provision of extraordinary care payments to the legal spouse of a recipient for the provision of personal care or similar services.
- Home Delivered Meals: Healthy meals delivered to a person's home.
- Homemaker Services: Housecleaning, laundry and/or cooking meals.
- Non-medical Transportation: Provides a ride and if needed, a person to go with clients to essential services.
- Respite Care: Short-term relief to full-time caregivers.
- Institutional Respite: Short-term relief to full-time care givers provided in a nursing home or hospital - Complies per 42 CFR 441.301(c)(4)-(5).
- Specialized Equipment and Supplies: Equipment and supplies to help recipients/clients live more independently.
- Supported Employment: Support and training to help recipients/clients maintain a job.
- Transitional Living Services: Teaches skills to live independently in client/recipient home.
- Environmental Modification: Physical adaptations to the home which will enable the individual to function with greater independence.

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

- Adult Family Foster Care: Assistance with personal care and other supportive services provided in a licensed private single family home by a care provider that lives in the home and provides care to no more than four individuals.
- Adult Residential Services: Care in a residential setting focusing on people with memory loss and traumatic brain injury.
- Adult Day Care: Minimum of three hours per day of supervised care in a group or congregate setting. The state will defer making a determination on adult day care until further guidance is issued by CMS.

Section 2: State’s Proposed Remedial Strategies and Timeline

With Changes, Setting will Comply with Home and Community-Based (HCB) Characteristics					
Name of Service/ Setting	Total # of Settings	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies	Timeline for Completion	Assuring Compliance
Adult Family Foster Care (AFFC)	38 AFFC Homes - No more than 4 recipients	Changes are needed in regard to improve the living experience of the recipient to allow for more control of client schedules, access to funds, choice of meals, access to phone at any time, access to visitors day or night, curfews, and entrance doors to private areas that lock.	<ol style="list-style-type: none"> 1. State Medicaid Agency will conduct training for AFFC licensing entities and case managers. 2. State Medicaid Agency will conduct training for licensed AFFC providers and require modified house rules to be sent to State licensing agency (Department of Human Services). 3. State licensing agency (Department of Human Services) will promulgate AFFC rules to modify licensing standards to match HCB setting requirements. 4. State Medicaid agency will update policy to reflect changes in administrative rule. 	<ol style="list-style-type: none"> 1. Aug 2014 2. Jan 2015 3. Oct 2015 4. Oct 2015 	<ol style="list-style-type: none"> 1. Roster of attendees and dates of training. 2. Roster of attendees and dates of training, State licensing agency (Department of Human Services) will review all licensing documents to assure compliance. 3. Publish modified rules on ND.gov 4. Publish modified policy on ND.gov

With Changes, Setting will Comply with HCB Characteristics					
Name of Service/ Setting	Total # of Settings	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies	Timeline for Completion	Assuring Compliance
Adult Family Foster Care		Changes are needed to comply with the need for a lease or legally enforceable agreement that provides protection to address the eviction process and appeals comparable to ND landlord tenant laws.	<ol style="list-style-type: none"> 1. State Medicaid agency will provide training and sample lease agreements that comply with ND law to AFFC providers. 2. 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) 	<ol style="list-style-type: none"> 1. Jan 15 2. Jan 15 	<ol style="list-style-type: none"> 1. Roster of attendees and dates of training. 2. Require legally enforceable agreements to be sent to State Medicaid Agency. Agreements will be reviewed by Department staff, with guidance from the Legal Advisory Unit, for compliance with ND landlord/tenant law.

With Changes, Setting will Comply with HCB Characteristics					
Name of Service/ Setting	Total # of Settings	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies	Timeline for Completion	Assuring Compliance
Adult Residential Services	12 Adult Residential Service Providers	Changes are needed in regard to improve the living experience of the recipient to allow for more control including, access to food /snacks at any time, access to phone at any time, allowing for entrance doors to recipients private areas that lock.	<p>1. State Medicaid agency will provide training to the Case Managers and Adult Residential providers on the person centered planning process. Training will assure they understand that any deviation from the HCB setting requirements must be based on the abilities of the recipients and documented in the plan.</p> <p>2. State Medicaid Agency will work with the Department of Health (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics.</p>	<p>1. Jan 15 2. Aug 17</p>	<p>1. Roster of attendees and dates of training. 2. Publish modified Documents on ND.gov; ND Department of Health would assure compliance through the scheduled survey process.</p>
	<u>Recipients/Facilities</u>				
	0-10 1				
	11-20 5				
	21-30 3				
31-36 3					

With Changes, Setting will Comply with HCB Characteristics					
Name of Service/ Setting	Total # of Settings	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies	Timeline for Completion	Assuring Compliance
Adult Residential Services		Changes are needed to comply with the need for a lease or legally enforceable agreement that provides protection to address the eviction process and appeals comparable to ND landlord tenant laws.	1. Adult Residential Service providers will secure a signed lease or other written rental agreement that includes the eviction process, which must be compliant with ND eviction law (NDCC chap. 47-32).	1. Jan 15	1. Require legally enforceable agreements to be sent to Department of Human Services; Agreements will be reviewed by Department staff with guidance from Legal Advisory unit, for compliance with ND landlord/tenant law.

Section 3: Public Input Process

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

A summary of all comments received during the public comment period will be added to the provisional Transition Plan and submitted to CMS with the waiver amendment.

The state will provide a summary of public comments, including comments that agree/disagree with the State's determinations about whether types of settings meet the HCBS requirements. A summary of the modifications made to the provisional Transition Plan resulting from response to the public comment will be provided by the Department. If the Department determination differs significantly from the public comment, the information the state used to confirm its determination will be included.

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

Comments and public input on this preliminary transition plan can be submitted to North Dakota Department of Human Services during the comment period of July 2, 2014 - August 1, 2014 in the following ways:

Email: DSHCBS@ND.GOV

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

Fax 701-328-4875

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