



## Investing in the Future: HCBS Settings requirements and beyond.

Aimee Rumpza, Human Services Program Representative, Aging & Adult Services

Jennifer Stevens, Human Services Program Consultant, Aging & Adult Services

Leah Zoladkiewicz, Waiver Policy & HCBS Settings Rule Lead, Disability Services Division

Stephen Horn, Human Services Program Consultant, Disability Services Division

- Home and Community Based Services (HCBS) Rule Refresher
- Status of MN's Statewide Transition Plan (STP)
- STP Implementation Progress to date
- Identifying and supporting settings “Presumed Not To Be HCBS”
- Ongoing monitoring of HCBS compliance
- Investing in the future of HCBS services

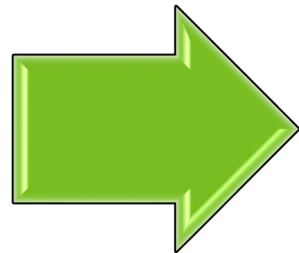
# HCBS Settings Rule Refresher

- In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published regulations that changed the definition of home and community-based settings for the Medicaid HCBS waivers.
- The purpose of the rule is to maximize opportunities for people who receive HCBS. The HCBS rule is not about taking away services or closing down programs.
- The rule raises expectations around what is possible for older adults and people with disabilities.

# Past and present of settings for people with disabilities and older adults

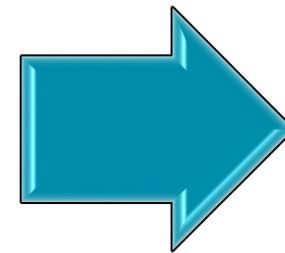
## Institutional Settings

- Limited opportunities for interaction with the community,
- Schedules are controlled by the institution,
- Setting restricts rights



## Past Emphasis of HCBS Settings

- Focus on protection of people's health, welfare and rights
- May have had limited person-centered supports
- The norm for support is in group settings



## Present/Future Direction of HCBS Settings

- People choose services based on informed options (including where to live and work),
- Person-centered practices are at the forefront of service delivery
- People have full access to the community

# Home and Community-Based settings requirements

The home and community-based setting requirements apply to all settings where people receive HCBS. The requirements focus on the quality of a person's experiences. They maximize opportunities for people to have access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate to meet their needs. (See handout)

## **Examples of HCBS Rights, people have the right to:**

- Seek employment and work in competitive integrated settings
- Engage in community life and control personal resources
- Privacy in their sleeping or living unit, including a lock on the door
- Choose a roommate, if sharing a unit.

# Support Planning Requirements

We provide training and resources for our case managers/care coordinators to implement HCBS settings specific support planning requirements and to promote new services

- Offer choice of settings including non-disability settings, adhering to the case management requirements in [256B.49, subd. 13 \(a\) \(3\)](#) and assure community integration at the forefront of service planning
- HCBS Rights Modification process and tools

# HCBS Rights Modification process

The HCBS settings rule allows the following rights to be modified when people live in settings where they receive customized living, foster care or supported living services.

- A. Have personal privacy (including the use of the lock on the bedroom door or unit door)
- B. Take part in activities that he/she chooses and have an individual schedule that includes the person's preferences supported by the service provider (this right cannot be modified in customized living settings.)
- C. Have access to food at any time
- D. Choose his/her own visitors and time of visits.

The modification must be:

- Necessary to ensure the health, safety and well-being of the person
- Based on a specific and individualized assessed need that is justified in the support plan
- Approved by the person through informed consent

# HCBS Rights Modification tools and resources

- DHS developed an [HCBS rights-modification support plan attachment form \(PDF\)](#) for case managers/care coordinators, providers, people who receive services and their legal guardian (if applicable) to document and coordinate rights modifications.
- DHS also created a video, [Tutorial for the Home and Community Based Services Rights Modification Support Plan Attachment](#), and a [rights modification FAQ webpage](#).



# Status of Minnesota's Statewide Transition Plan (STP)

- MN's statewide transition plan received **FINAL** approval on February 12th, 2019
- Our statewide transition plan is a document that outlines how Minnesota will ensure compliance with the HCBS Settings Rule. For final approval, CMS required the following:
  - Site-specific assessment and validation outcomes
  - Remediation strategies to resolve areas of non-compliance
  - Detailed plans for identifying settings presumed to have institutional/isolating characteristics and plan for preparing submissions for CMS heightened scrutiny review
  - Processes for ongoing monitoring to ensure all settings remain fully compliant in the future

# Statewide Transition Plan Implementation



# Assuring compliance with ALL HCBS settings



**Assessment**



**Validation**



**Remediation**



**Ongoing  
Monitoring**

# Assessment

We (DHS) administered a provider attestation to assess compliance for 100% of provider owned/controlled settings to self-report compliance

All settings were required to submit supporting documentation as evidence of compliance. Examples of supporting documentation submitted include:

- provider policies and procedure manuals,
- staff training documentation,
- activity program calendars,
- resident handbooks,
- leases or other setting specific information.



# Validation

We conducted desk audits for

**100% of the 5,991**

provider-submitted supporting documentation to  
validate setting compliance.



# Remediation

We implemented “transition plans” for all settings that were determined “not yet compliant”, re-reviewed supporting documentation, provided a significant amount of technical assistance (email and phone calls) and developed assurance statements.

- **Top 3 areas requiring a transition plan:**
- Employment
- Community Life
- Independent Choices

We responded to over **7,000 +** requests for technical assistance via phone and through our dedicated email box.



# Remediation continued...

- We developed provider tools and resources, improved licensing policy templates and forms and developed provider expectation guidance to assist providers with their transition to compliance
- We conducted targeted outreach to providers on a monthly basis



# Outcome

- **99%** of settings are compliant with the HCBS settings requirements.
- The 1% of settings that remain non-compliant will be prioritized for revalidation through provider enrollment



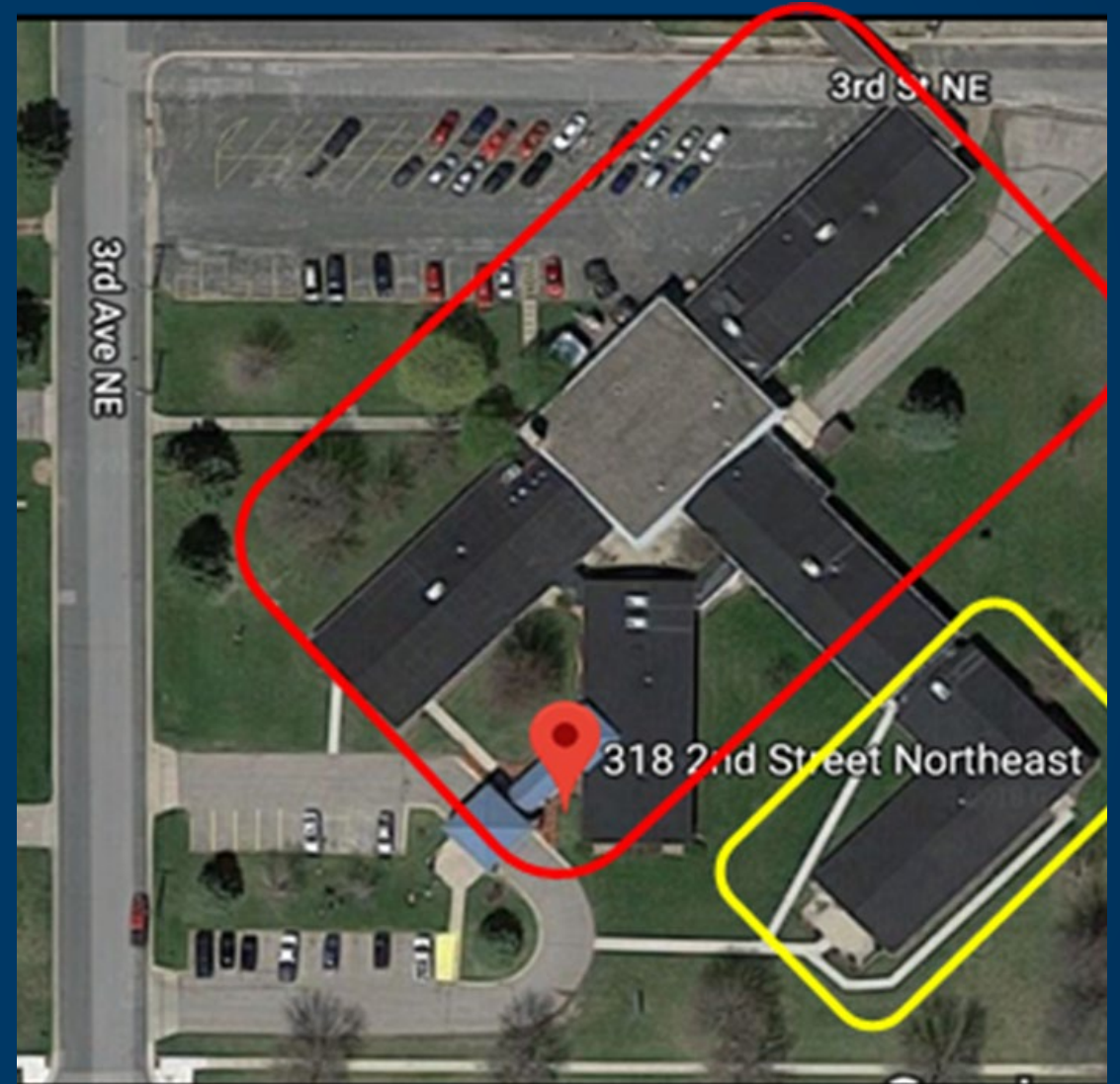
# Identifying and supporting settings “Presumed Not To Be HCBS”

The rule identifies settings “presumed” to have the characteristics of an institution and/or have the effect of isolating individuals: In MN, we categorize these settings as Prong 1, 2 or 3:

- **Prong 1:** Located “in” a public or privately owned institution that provides inpatient institutional treatment;
- **Prong 2:** Located in a building on the grounds of, or immediately adjacent to a public institution; or
- **Prong 3:** Isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

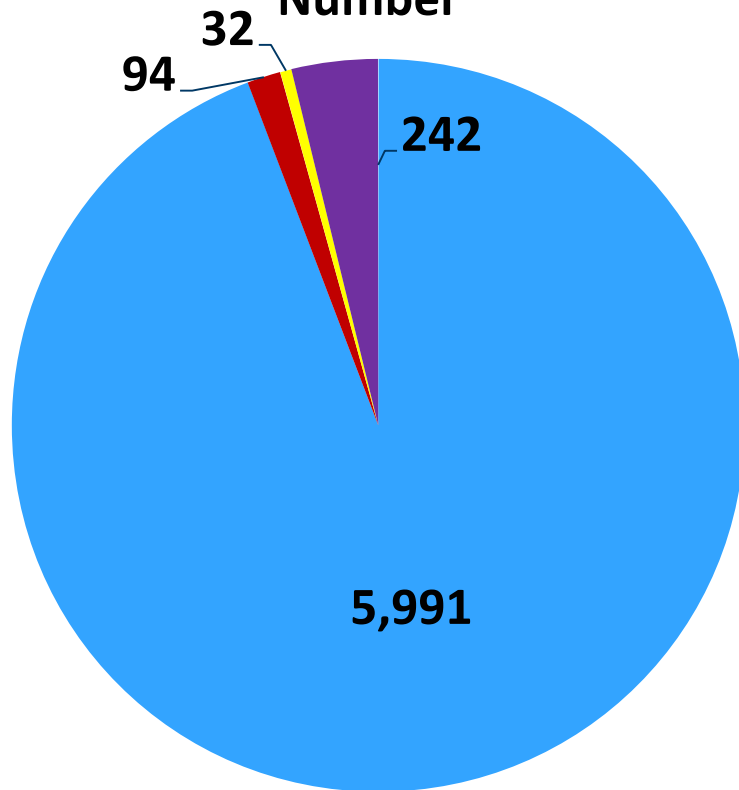
# Presumed Not-To-Be HCBS

We identified 368 settings



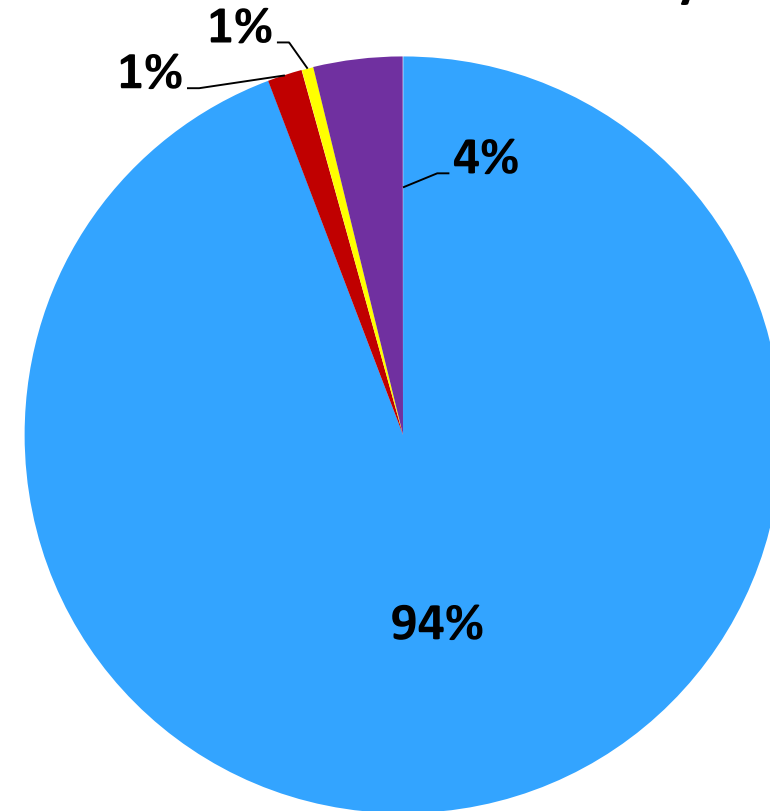
# How many settings are “Presumed Not-To-Be HCBS” in Minnesota?

### Presumed not to be HCBS by Number



■ Total number of HCBS settings ■ Prong 1 settings  
■ Prong 2 settings ■ Prong 3 settings

### Presumed not to be HCBS by Percentage



■ Total number of HCBS settings ■ Prong 1 settings  
■ Prong 2 settings ■ Prong 3 settings

# Overcoming the presumption

**CMS must agree that the state has provided evidence that the setting:**

- **Does not have institutional or isolating characteristics AND**
- **Does have the qualities of a home and community-based setting**

- We have conducted site visits to gather evidence that these settings do not have institutional or isolating characteristics and do have the qualities of HCBS
- Site visits included observations, interviews with administration, staff and people receiving services
- An evidentiary package must be written for each setting DHS supports as HCBS. Evidentiary packages must go out for 30 day public comment

# On-site visit outcomes

Over the course of a year we have conducted over 300 site visits (between the Disability Services Division and the Aging and Adult Services Division).



Most providers clearly meet the definition of HCBS, some of which are stand-out providers demonstrating that person-centered planning is at the forefront of service delivery. Some providers have needed to make changes in order for us to fully support them as HCBS.

# Partnership with Providers- Practice changes

If DHS determines, as a result of on-site assessment, that a setting in prong 1, 2 or 3 has characteristics that make it institutional or isolating in nature, the provider has the opportunity to remedy these characteristics through a Transition Plan process that:

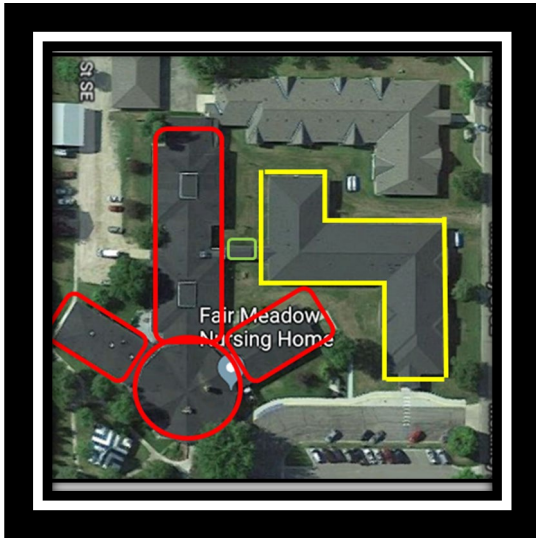
- Indicates what changes the provider will need to make to receive state support that the setting is HCBS.
- Provides resources and examples of practices that sufficiently address the transition area (s) (e.g. institutional/isolating characteristics)
- Instructs the provider to complete an action plan with steps the setting will take or has taken to remedy each of the institutional or isolating qualities identified on the form.
- The provider may also be asked to submit additional supporting information for DHS review.

# Partnership with providers- Promising Practices

Many providers are doing excellent work to ensure their services are person-centered, that people have opportunities to engage in their communities, and people supported to have the highest possible quality of life. Some examples of what we have seen in the field:

- People are offered a number of ways to communicate what they want to do—through surveys, forums with provider staff and upper management, and monthly council meetings. One provider posts “ideas sheets” for different topics, such as food, sports, health and the arts. People can sign up for activities based on ideas shared and then create a schedule that is fulfilling and meaningful to them.

# Evidentiary Packages



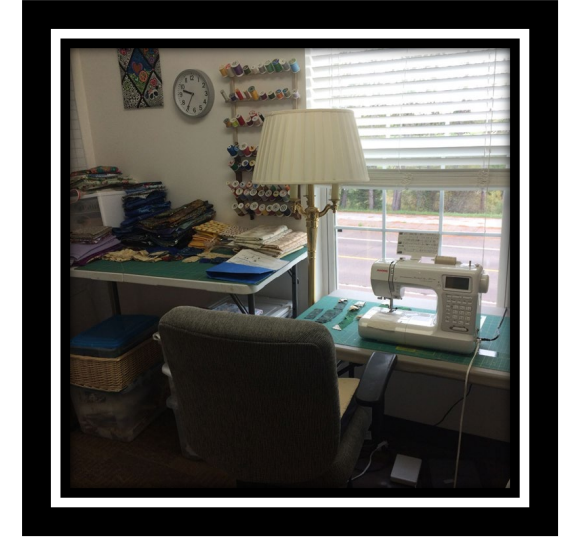
Meaningful distinction between the institution and the HCBS setting



Community Integration



HCBS qualities and characteristics



Person-Centered practices



# Evidentiary Packages – Public Comment

CMS requires states to submit evidentiary packages for settings that CMS presumes are not home and community-based.

- **We encourage everyone to stay involved in the process and provide public input:**
  - Submit comments on HCBS settings evidentiary packages
  - Encourage people receiving services to comment on HCBS settings evidentiary packages

# Evidentiary Package Public Comment Schedule

We are submitting batches of evidentiary packages to CMS quarterly. We send out an [eList announcement](#) at the start of each 30-day public comment period. We post copies of evidentiary packages to the [HCBS settings evidentiary packages webpage](#).

- Batch 1: Public comment period held from Feb. 6, 2019, to March 7, 2019
- Batch 2: Public comment period scheduled for April-May 2019
- Batch 3: Public comment period scheduled for August-September 2019
- Batch 4: Public comment period scheduled for November-December 2019
- We will post a final version of each evidentiary package including a summary of the public comments on the HCBS settings webpage and announce the publication via eList.

# Implement transition protocols/notice of appeal rights

**DHS has no indication that any providers will not become compliant with the HCBS rule requirements.**

- If any setting remains noncompliant after all validation and remediation strategies are exhausted, or the heightened-scrutiny process determines a setting is institutional in nature, DHS will implement transition protocols for people receiving services beginning in March 2020.

# Transition Protocols

- The Person-Centered, Informed Choice and Transition Protocol is a guide that lead agencies (counties, tribal nations and managed-care organizations) must use to implement person-centered practices during transitions of moving people from services/settings that do not comply with the HCBS settings requirements.
- Instructions for the lead agency to begin transition planning for affected people using the [Person-Centered, Informed Choice and Transition Protocol \(PDF\)](#) and the [My Move Plan Summary, DHS-3936 \(PDF\)](#).

# Ongoing Monitoring

We have implemented systemic changes to ensure that all HCBS settings continue to remain fully compliant



# Ongoing monitoring continued

- Revised state licensing and housing with services requirements to align with the rule. Ongoing monitoring for compliance will be conducted by these regulatory entities
- Chapter 60 (House File 90) was passed in May 2019. As part of this bill, the new Assisted Living licensure will become effective 8/1/2021.
- We launched an assessment to gather information about a person's experience with HCBS qualities.
- We developed an HCBS specific assurance statement and added an HCBS settings requirements module to [Waiver 101 training](#) for new providers



# HCBS and Minnesota's New Assisted Living License

In May 2019, the legislature passed the new vulnerable adult and assisted living licensure bill (Chapter 60, House File 90).

- New Assisted Living license will become effective 8/1/2021.
- The HCBS settings requirements are built into the requirements of this licensure
- New Assisted Living Bill of Rights

# New HCBS Providers – Provider Enrollment

In August, 2018, MN DHS implemented a process to evaluate new providers for HCBS compliance upon their request to enroll as a waiver provider.

- New providers are asked to attest to their compliance with the HCBS settings requirements when they enroll with MN DHS.





# New Providers – Licensing Review

We also use the licensing review process to conduct ongoing monitoring of providers.

- Setting requirements for the CMS rule are included in state licensing standards (i.e., home and community-based service license, residential and day service setting licenses, foster care license, home care license) to allow licensors to assure ongoing compliance for individual settings.
- We will use the results from each year of licensing reviews to inform the state if additional changes to the system are needed.

# Person Experience Assessments

Assess people's experience with HCBS services/supports

- We will use the person's experience assessment to trigger remediation at an individual level when a person's experience differs from the requirements of the settings rule.
- The case manager will discuss individual remediation options with the person and document the person's desired remediation action.
  - For people in the MnCHOICES support plan: Use the [LTSS Improvement Tool](#)
  - For people not in the MnCHOICES support plan: DHS Form 3428Q, [Person's Evaluation of Foster Care, Customized Living, or Adult Day Service](#). The responses will be entered into MMIS in the Long Term Care Screening Document

# Investing in the Future of HCBS 1

DHS is working on these initiatives:

- Promote HCBS waiver provider best practices (Best Practices Video project)
  - DHS had a nugget session available at Odyssey for viewing.
  - The link to view the HCBS videos is available on our [HCBS settings transition plan](#) webpage.
- Provide targeted technical assistance to small, rural, diverse provider communities related to HCBS expectations and person-centered change
  - DHS is developing a provider toolkit to assist with technical assistance efforts (August 2019)
  - DHS will engage in a contract to provide technical assistance (targeted start date September 2019)
  - Providers will apply to receive technical assistance (September 2019-August 2021)

# Investing in the Future of HCBS 2

DHS is working on these initiatives:

- Training on person-centered planning targeted to small, rural, diverse provider communities
  - In FY 2020 DHS will conduct a focus group session to help develop content for person-centered organization practices and create new or revise existing training content that connects with the College of Direct Support
- Elderly Waiver quality improvement grant
  - \$500,000 in permanent ongoing funding for competitive grant
  - Providers must have 75% or more EW/Medicaid enrolled residents to qualify

# Investing in the Future of HCBS 3

DHS is working on these initiatives:

- We are developing new licensing standards for adult day services currently governed under Minnesota Rules, parts 9555.9600 to 9555.9730.
  - Update licensing standards for adult day services.
  - Enrich adult day services standards to align with the person-centered services practices.
- We are developing higher standards for future settings (Tiered Standards) that serve people on the disability waivers to encourage the development of alternative approaches that support more inclusive community models.

# Tiered Standards for BI, CAC, CADI, and DD waivers

- New setting standards will address the intent of HCBS standards more fully and support community-inclusive service models.
- The following new developments/settings will be subject to a higher state standard:
  - Day training and habilitation (DT&H) services
  - Adult day services
  - Integrated Community Supports
  - Customized Living

# Employment Services

- Legislation went into effect on July 1, 2018, removing the community employment components out of the current DT&H service and separated supported employment services to create three distinct services (exploration, development and support) that are available across the BI, CAC, CADI and DD waivers (aka “Disability Waivers”)
  - Employment: [Employment First Resource Page](#) and [Employment Services CBSM pages](#)

# Day Services

- New Day Support Service will focus on skill development related to community access. DHS will consider size limits and possible moratoriums on new DT&H, prevocational or structured day services
- Adult Day services will only be available to people on the disability waivers for people 55 and older
- Prevocational services will be limited to 3 years for new enrollments and paired with the new day support service or Employment Exploration service
- In 2019-2020, DHS will continue to engage stakeholders to finalize day support service definitions and standards



# Tiered Standards – Customized Living

Creating tiered standards for customized living – a three stage process

1. Align HCBS waiver services to a person's living arrangement
2. Implement integrated community supports
  1. January 2021 for BI and CADI
  2. January 2023 for CAC and DD
3. Tier customized living at implementation date of integrated community supports
  1. Existing customized living settings are Tier 1
  2. New customized living settings are tier 2

# Individualized home support

- [Individualized Home Support CBSM page](#) launched July 1, 2018
- New 245D licensed service for adults (18+) on the BI, CAC, CADI or DD waivers
- Delivery of service in a person's own home via in-person or real-time two way communication (i.e. report support)
- Provides support and/or training in four **community living service areas**:
  - (1) community participation,
  - (2) health and safety, and wellness,
  - (3) household management, and
  - (4) adaptive skills

# Tiered Standards – New Service Integrated Community Supports

- New 245D licensed service for adults (18+) on the BI, CAC, CADI or DD waivers
- Provides supervision, assistance, and skill development **for adults (18+)** in a provider controlled multi-family housing building
- May deliver up to 24 hours of service support in a day.
- Support and/or training in four **community living service areas**:
  - (1) community participation,
  - (2) health and safety, and wellness,
  - (3) household management, and
  - (4) adaptive skills.

# Integrated Community Supports Reviewing for the Effects of Isolation

- The HCBS provider that controls the setting must complete a setting-specific review, reviewed by DHS, when 25 percent of a setting's BI, CAC, CADI and DD waiver recipients receive Integrated Community Supports
- The setting-specific review includes information demonstrating the setting:
  - Meets the basic HCBS setting characteristics;
  - Does not have the effects of isolating; and
  - Additional criteria developed with stakeholders

# Tiered Standards – Customized Living

## Customized Living – **Tier 1**

- May continue as customized living provider
- Provider may choose to transition to Integrated Community Supports

## Customized Living – **Tier 2**

- For BI / CADI, new customized living settings developed are limited to people 55 years of age and older

# Summary points

- DHS received CMS's final approval of our Statewide Transition Plan.
- DHS partnered with providers to change practices to promote and increase community participation and deliver person-centered services.
- DHS partnered with stakeholders to develop more community inclusive service options.
- DHS changed existing licensing standards and helped develop new licensing standards to align with the HCBS rule and improve person-centered outcomes.

# Minnesota HCBS information and resources

**We encourage our stakeholders and people receiving waiver services to educate themselves and stay up to date on the HCBS settings rule**

- Minnesota's [HCBS Settings Transition webpage](#)
- [What does the HCBS rule mean for me?](#)
- [Home and community-based services rule overview video](#)
- [Person-centered practices](#)
- [A provider's guide to putting the hcbs rule into practice](#)
- [Hcbs settings rule rights modification FAQ](#)

## Questions

