



Minnesota Department of **Human Services**

Minnesota's Home and Community-Based Services Final Rule Statewide Transition Plan

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Background – Home and Community-Based Services Rule

What is the federal HCBS Rule?

In January 2014, the federal government released the Home and Community-Based Services (HCBS) Rule, which says that people receiving publicly paid long-term services and supports must receive those supports in the most integrated setting and have full access to the benefits of community living. The rule has requirements for person-centered planning, service settings and opportunities for involvement in the community.

What does the rule mean for people receiving public long-term services and supports?

The new rule is about certain home and community-based services. These services are sometimes called “HCBS” for short. HCBS are services that people receive in a community setting and are a different option from institutional services such as a hospital, nursing facility or intermediate care facility for people with developmental disabilities (ICF-DD).

The rule requires that you:

- Have enough information to make informed choices about the type of services you receive
- Are treated with respect and in a person-centered way so that you make decisions about how, when and where you get your services
- Have the opportunity to be involved in your community, including living and working in integrated settings and coming and going where and when you want.

The rule may mean your services will change to be more person-centered. Where you live and where you work may change to give you more opportunities to interact directly with your community.

Who is affected by the HCBS rule?

This rule applies to people who receive services through the following programs:

- Alternative Care (AC) program

- Brain Injury (BI) waiver
- Community Alternative Care (CAC) waiver
- Community Access for Disability Inclusion (CADI) waiver
- Developmental Disabilities (DD) waiver
- Elderly waiver (EW)

Why was this rule made?

The reason for the new rule is to be sure that home and community-based services are provided differently than institutional services. Even though the service is not provided by an institution, the setting may have qualities that feel like an institution to the person receiving the services. The new rule looks carefully at whether the setting for a service isolates the person from the community. Generally, being isolated means that a person is separated or treated differently from other people who live in the greater community.

What kind of changes may happen?

The new rule requires Minnesota to look at all settings and decide if they have institutional qualities. The federal government has given some guidance and examples about what this means. States must look at things like the location of the setting and other qualities that isolate people from the broader community.

If the State decides some settings are like an institution, it can either:

- Present information to CMS about why the setting should be allowed for waiver recipients. In some cases, the provider may be able to make changes to meet the rule.
- If a setting is unable to meet the new standards, provide a process to support the person while he or she identifies other service/setting options

What additional requirements apply to residential settings?

There are additional standards that apply to provider-owned or -controlled residential settings. These standards relate to qualities such as:

- Eviction and appeals protection processes
- Individual autonomy with life choices
- Privacy protections

Are there any person-specific exceptions to the standards?

All existing settings must comply with the new rule; however, in some cases these requirements may be changed or modified if:

- Supported by a specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan.

Can states set higher standards for home and community-based settings?

The regulations set the minimum requirements. States may elect to set higher standards for what constitutes an acceptable HCBS setting.

What is the HCBS Rule Transition Plan?

The federal government is allowing states until March 17, 2019, to come into full compliance with the rule for the new requirements for settings. All states, including Minnesota, submitted a transition plan to CMS and are working to refine and agree to steps in the plan. The plan includes reviewing current settings as well as all related state regulations and policies to determine what changes need to be made to comply with the rule.

How can I provide input and stay current on the HCBS Transition Plan progress?

- Sign up for the [Disability Services Division \(DSD\) Stakeholder E-List](#) or the [Aging and Adult Services Lead Agency E-List](#) to receive notifications of 30-day requests for public comments on updates to the HCBS Transition Plan.
- View the [Minnesota's HCBS Settings Transition website](#) for more information.
- View [CMS's website](#) for current information on the HCBS rule

Minnesota's statewide transition plan

Minnesota submitted an initial, statewide transition plan on Jan. 8, 2015, to address the new rule governing home and community-based services funded through Medical Assistance. The Centers for Medicare & Medicaid Services (CMS) issued the new rule in January 2014. CMS requires each state to create a transition plan detailing how the state will come into compliance with the requirements for home and community-based settings by March 17, 2019. This document offers the framework Minnesota will use to ensure compliance with the final rule.

In Minnesota, this statewide transition plan applies to the following 1915(c) home and community-based services waivers and 1115 demonstration program:

Waivers for people with disabilities:

- [Brain Injury \(BI\) waiver](#)
- [Community Alternative Care \(CAC\) waiver](#)
- [Community Access for Disability Inclusion \(CADI\) waiver](#)
- [Developmental Disabilities \(DD\) waiver](#)

Waivers for people over 65:

- [Alternative Care \(AC\) program](#)
- [Elderly Waiver \(EW\)](#)

Amended statewide transition plan

This amended statewide transition plan builds upon the originally proposed statewide transition plan submitted on Jan. 8, 2015.

Amendments include:

- Updated approach and milestones to accomplish requirements
- A progress report on milestones, including findings from the state's systemic assessment

- Additional information in response to CMS’s [Oct. 8, 2015](#), and [April 26, 2016](#), correspondences (PDF) and subsequent conference calls.
- An effort to reformat and simplify information so the public may better understand the purpose and intent.

Accomplishments and lessons learned

Provider self-assessment survey: In April 2015, DHS launched a provider self-assessment survey for providers of day and provider-owned and -controlled residential settings with the original goal of using the information to determine site-specific compliance per CMS’s guidance. The survey results:

- **Did not determine site-specific compliance** because we learned that service standards and expectations required under the rule needed clearer definition. Providers also needed an opportunity to transition practice into compliance.
- **Provided** valuable information on the training and technical assistance needed to support providers as they worked to comply with the rule.
- **Informed** the development of new service standards.

Systemic assessment: In June 2015, DHS completed a systemic assessment to analyze the state’s current level of compliance with HCBS settings criteria. The systemic assessment identified that some waiver services will need regulatory and/or practice changes to comply with the rule.

Minnesota’s approach moving forward

Minnesota will change the HCBS system using the following strategies:

- Revise state licensing standards
- Amend 1915c waiver plans: modify service descriptions; develop new services; streamline services
- Support provider transitions to HCBS rule requirements
- Align with other relevant state activities
- Modify existing systems to assure ongoing compliance

Minnesota will assess and use the following validation strategies to ensure compliance with rule requirements:

- Provider attestation requirement for each setting (initial assessment)
- Desk audit/reviewing provider-submitted supporting documentation of compliance (validation)
- Provider site-specific compliance plans and technical assistance (remediation)
- Person’s experience assessments (validation and remediation)
- On-site visits and technical assistance (validation)
- Tiered standards for new settings (remediation)

Public engagement

HCBS advisory group

A significant component of DHS’s public engagement efforts includes collaboration with the HCBS rule advisory group. The advisory group represents experts from county government, service providers, managed care organizations and advocates. [Organizations represented in HCBS Advisory Group.](#)

- 2014: Provided recommendations on the public input process used in the development of Minnesota’s HCBS settings rule statewide transition plan. The advisory group represents experts from county government, service providers, managed care organizations and advocates.
- 2015-2016: Developed recommendations to DHS on policy expectations and practice considerations. This was accomplished by reviewing the HCBS rule standards and discussing expectations, responsibilities of case managers, care coordinators and providers and the licensing authority responsible to the standard. The standards developed by the advisory group will inform system changes and how settings will be assessed via the provider attestation.

We will engage the advisory group regularly throughout the remainder of the transition period to provide input as we make the transition plan part of our operations.

Communication strategies

DHS has and will continue to use a number of strategies to provide information and seek input from stakeholders throughout the transition period. These stakeholders include people who receive services and their family members, providers, lead agencies (counties, health plans and American Indian tribes), advocacy organizations and other interested parties. We will use the following communication strategies:

- Community meetings
- Direct mailing
- Electronic mailing lists
- HCBS Advisory Group
- On-demand videos
- Provider focus groups
- Speaking engagements
- Videoconferences and webinars
- Outreach through advocacy organizations, the Area Agencies on Aging, and others.

DHS will use the [HCBS transition plan webpage](#) as the centralized location for sharing information, tools and resources related to the HCBS settings rule. There, all stakeholders can access the same current information, such as:

- Status updates
- Results of completed activities
- Upcoming activities
- The statewide transition plan
- Video trainings
- Resources and tools
- Frequently asked questions (FAQs)
- DHS HCBS transition team contact information:
 - Email hcbs.settings@state.mn.us

- Call (651) 431-4300
- Mail Minnesota Department of Human Services, Disability Services Division, Attention: HCBS Rule Transition Plan, P.O. Box 64967, St. Paul, MN 55164-0967

During 2014-2016, we conducted the following outreach efforts:

- Videoconferences and webinars
 - DHS hosted a series of videoconferences and webinars including:
 - [HCBS Lead Agency Input Sought on Minnesota’s Development of a Compliance and Transition Plan to Comply with New CMS Rule \(PDF\)](#)
 - [Medicaid Home and Community-Based Services Final Rule \(PDF\) Questions for Lead Agencies \(PDF\)](#)
 - [HCBS Adult Foster Care and Community Residential Support Provider Input Sought on Minnesota's Development of a Compliance and Transition Plan to Comply with New CMS Rules \(PDF\)](#)
 - [HCBS Employment and Day Supports \(DT&H, Prevocational Services, Structured Day Program and Adult Day Services\) Input Sought on Minnesota’s Development of a Compliance and Transition Plan to Comply with New CMS Rules \(PDF\)](#)
 - [Customized Living Service Input Sought on Minnesota’s Development of a Compliance and Transition Plan to Comply with New CMS Rules \(PDF\)](#)
 - [HCBS Self-Assessment and Plan Webinar Series \(6 sessions\)](#)

- Targeted communication to people and families
 - 2014: DHS held **seven** in-person listening sessions across the state to inform people of the HCBS rule, to get initial input on how the rule would affect their lives and inform the transition plan. The target audience for the listening sessions included seniors, people with disabilities and family members.

 - 2015-2016: DHS held **21** in-person community meetings across the state to inform people of the HCBS rule, to get feedback on how specific elements of the rule would affect their lives and to provide feedback on new standards recommended by the HCBS advisory group. The target audience for the community meetings included people with disabilities and family members.

Table 1: 2015-2016 Community meeting dates and locations

Date	City	Number of people in attendance
4/6/16	Albert Lea	21
4/14/16	Rochester	15
4/21/16	Willmar	36
6/28/16	Austin	24

Date	City	Number of people in attendance
7/15/16- 2 meetings	Brooklyn Park	30
7/19/16- 2 meetings	Minneapolis	20
7/25/16- 2 meetings	Brainerd	15
7/28/16- 2 meetings	Roseville	43
8/1/16	Edina	70+
8/8/16- 2 meetings	Bemidji	14
8/12/16	Duluth	7
8/15/16- 2 meetings	Moorhead	7
8/17/16- 2 meetings	Rochester	9
8/22/16	Mankato	10

We will use the following strategies to provide targeted outreach to people receiving services and their families throughout the remainder of the transition period:

- Self-advocate meetings
- Direct mailing
- Fact sheets
- On-demand videos
- Electronic updates
 - [March 16, 2015, HCBS Rule Transition plan](#)
 - [May 21, 2015, Deadline for HCBS provider self-assessments is May 29, 2015](#)
 - [June 26, 2015, DHS seeks public feedback on changes to waiver employment services for people with disabilities](#)
 - [Nov. 12, 2015, Update on Minnesota's HCBS rule statewide transition plan](#)
 - [March 29, 2016, Status of Minnesota HCBS statewide transition plan](#)
 - [Aug. 4, 2016, New person-centered practices content available on the DHS website](#)
- Provider focus groups
 - Association of Residential Resources in Minnesota

- Coalition for Choice and Housing
- Leading Age Minnesota
- Lutheran Social Services
- Minnesota Organization for Habilitation and Rehabilitation

- Speaking engagements
 - Care Providers of Minnesota
 - Minnesota Adult Day Services Association
 - Minnesota Age and Disability Odyssey Conference
 - Minnesota Association for County Social Service Administrators
 - HCBS Partners Panel (counties, service providers and advocates)
 - County-state work group
 - State Quality Council
 - Advocacy organizations, including the Minnesota Self Advocacy Network
 - Meetings and conferences, as invited

Systemic assessment and remediation

Step 1: Initial settings analysis

Minnesota examined the settings associated with the services available in each of the state's HCBS programs in order to guide the state's approach to further assessment activities.

- **Disability waiver residential settings** under the Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI) and Developmental Disabilities (DD) waivers in which individuals are receiving HCBS. Those settings included individual/family homes, shared living and congregate settings in which two or more individuals share services.
- **Disability waiver day service settings** under the Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI) and Developmental Disabilities (DD) waivers in which individuals are receiving HCBS. Those settings included group day service settings and individual and group supported employment settings.
- **Aging and Adult Services waiver residential settings** under the Elderly Waiver (EW) in which individuals are receiving HCBS. Those settings included individual/family homes, shared living and congregate settings in which two or more individuals share services.
- **Aging and Adult Services waiver day service setting** under the Elderly Waiver (EW) and the Alternative Care (AC) 1115c Demonstration Project in which individuals are receiving HCBS. Those settings included adult day service and family adult day settings.

You can find a list of services by waiver and a description of services in the [provider manual for Elderly Waiver/AC program](#) and the [community based program manual for disability waivers](#)

Table 2: HCBS rule service analysis

Status	Description of status
No modifications needed	Settings where these services are provided fully comply with the regulation because the services by their nature are individualized, provided in the community or the member’s private home and allow full access to the broader community according to individual needs and preferences. Individuals choose which services and supports they receive and who provides them. Providers of these services will not undergo the site-specific assessment process.
Modifications needed	Certain settings where these services are provided may require changes to fully comply with the regulation. Providers of these services will undergo the assessment process and, when necessary, the remediation or heightened scrutiny processes.
Not applicable	The service is not offered through that program.

Table 3: Compliance status by service and program

Waiver service	AC	EW	BI	CAC	CADI	DD
24-hour emergency assistance	Not applicable	Not applicable	No modifications needed	No modifications needed	No modifications needed	No modifications needed
Adult companion services	No modifications needed	No modifications needed	No modifications needed	Not applicable	No modifications needed	Not applicable
Adult day care	No modifications needed	No modifications needed	Modifications needed	Modifications needed	Modifications needed	Modifications needed
Adult day care bath	No modifications needed	No modifications needed	Not applicable	Not applicable	Not applicable	Not applicable
Adult foster care (corporate)	Not applicable	Modifications needed	Modifications needed	Modifications needed	Modifications needed	Not applicable
Adult foster care (family)	Not applicable	Modifications needed	Modifications needed	Modifications needed	Modifications needed	Not applicable
Assistive technology	Not applicable	No modifications needed				

Behavioral support	Not applicable	Not applicable	No modifications needed	No modifications needed	No modifications needed	Not applicable
Case management	No modifications needed					
Chore	No modifications needed					
Child foster care	Not applicable	Not applicable	Modifications needed	Modifications needed	Modifications needed	Not applicable
Consumer directed community support	No modifications needed					
Crisis respite	Not applicable	Not applicable	No modifications needed	Not applicable	No modifications needed	No modifications needed
Customized living services/24 hour	Not applicable	Modifications needed	Modifications needed	Not applicable	Modifications needed	Modifications needed
Day training and habilitation	Not applicable	Modifications needed				
Environmental adaptations	No modifications needed					
Home health aide (HHA)	No modifications needed					
Extended nursing services (LPN & RN)	No modifications needed					
Extended therapies (OT, PT, Speech and RT)	No modifications needed					
Extended personal care assistance	No modifications needed					
Extended home care nursing	No modifications needed					

Family adult day services (FADS)	No modifications needed	No modifications needed	Modifications needed	Modifications needed	Modifications needed	Modifications needed
Family caregiver coaching and counseling (including assessment)	No modifications needed	No modifications needed	Not applicable	Not applicable	Not applicable	Not applicable
Family caregiver training and education	No modifications needed	No modifications needed	Not applicable	Not applicable	Not applicable	Not applicable
Family training and counseling	Not applicable	Not applicable	No modifications needed	No modifications needed	No modifications needed	No modifications needed
Home delivered meals	No modifications needed					
Homemaker	No modifications needed					
Housing access coordination	Not applicable	Not applicable	No modifications needed	No modifications needed	No modifications needed	No modifications needed
ILS therapies	Not applicable	Not applicable	No modifications needed	Not applicable	Not applicable	Not applicable
Independent living skills (ILS) training	Not applicable	Not applicable	No modifications needed	No modifications needed	No modifications needed	Not applicable
Night supervision services	Not applicable	Not applicable	No modifications needed	Not applicable	Not applicable	Not applicable
Non-medical transportation	No modifications needed					
Nutrition	No modifications needed	Not applicable				
Personal support	Not applicable	No modifications needed				

Prevocational services	Not applicable	Not applicable	Modifications needed	Not applicable	Modifications needed	Modifications needed
Residential care services. Note: DHS plans to discontinue this service by June 30, 2018; we sent an amendment to CMS.	Not applicable	Modifications needed	Modifications needed	Not applicable	Modifications needed	Not applicable
Residential habilitation – in-home family support services (child and adult)	Not applicable	No modifications needed				
Residential habilitation – supported living service (child and adult)	Not applicable	Modifications needed				
Respite (in-home and out-of-home)	No modifications needed					
Specialist services	Not applicable	No modifications needed				
Specialized equipment and supplies	No modifications needed					
Structured day program	Not applicable	Not applicable	Modifications needed	Not applicable	Not applicable	Not applicable
Supported employment services	Not applicable	Not applicable	No modifications needed	No modifications needed	No modifications needed	No modifications needed
Transitional services	Not applicable	No modifications needed				

Step 2: Further assessment activities

Process

The state conducted a systemic assessment of the following state standards for settings that group or cluster people together for purposes of receiving HCBS (see [Table 4](#)):

- State statutes, administrative rules
- Service specifications and provider standards for all five 1915c waivers including the Brain Injury (BI) waiver, Community Alternative Care (CAC) waiver, Community Access for Disability Inclusion (CADI) waiver, Developmental Disabilities (DD) waiver, Elderly Waiver (EW) and the 1115 Demonstration Alternative Care (AC) program
- Case management standards
- Administrative and operational processes
- Monitoring and operational oversight activities

Table 4: Settings that group people together

Day settings	Residential settings
<ul style="list-style-type: none">• Family/center adult day• Day training and habilitation• Prevocational• Structured day	<ul style="list-style-type: none">• Customized living• Adult foster care• Child foster care• Supported living services

Status

We based the status for each state standard we reviewed on the following criteria:

Complies

- State standards are fully consistent with federal requirements

Does not comply

- State standard conflicts with or is inconsistent with the federal requirement

Partially complies

- State standards need to be enhanced to be fully consistent with federal requirements

Silent

- There is no state standard in place to address the federal requirement

The state's assessment was validated by the Department of Human Services, the Department of Health, vulnerable adult policy and Minnesota housing law experts.

Summary of systemic assessment

1) Revisions to state statute/rules

- **Minnesota Rules, chapter 9555, and Minnesota Statutes, chapter 245A, governing adult foster care for EW,** need to be strengthened to assure that there is a legally enforceable agreement that addresses eviction protections; and that people have the right to:
 - Privacy in their bedrooms, including a lockable door
 - Choice of roommate
 - Furnish and decorate their bedrooms or living units
 - Access to their personal possessions
 - Have visitors at any time
 - Have access to food at any time
 - Come and go at will.

These revisions will be placed in 245A, which governs the licensing standards of AFC for the EW programs.

- **Minnesota Statutes, chapters 144D, 144G and 144A, governing customized living services,** need to be strengthened to ensure that people are supported to fully access and engage in the community and that people have the right to:
 - Privacy in their bedrooms, including a lockable door
 - Choice of roommate
 - Furnish and decorate their living spaces
 - Have visitors
 - Access to food at any time
 - Choose a roommate.
- **Minnesota Statutes, chapter 245D, governing foster care, supported living services, day training and habilitation services, prevocational services and structured day services,** needs to be strengthened to assure that people are supported to fully access and engage in the community, and in addition, for residential services, have the right to:
 - Furnish and decorate their living spaces
 - Have visitors of their choosing

- A legally enforceable agreement that addresses eviction protections
- Privacy in their bedrooms, including a lockable door.
- **Minnesota Statutes, chapters 256B.49, 256B.0911 and 256B.092**, the areas of assessment/reassessment and support planning need to be strengthened to assure that people’s informed choice of settings includes:
 - Non-disability-specific residential and non-residential settings
 - Assessment of needs related to a person’s engagement in community life
 - Assignment and documentation of services to meet these needs.

2) Amendments to 1915c Waivers

- Service definitions, provider specifications and provider qualifications
 - Strengthen current service definitions to support people with fully accessing their communities
 - Add services to other waivers or develop new service options to support people as they:
 - Gain full access to the community
 - Live in their own home
 - Find and maintain paid employment in community businesses.

3) Training and technical assistance

- Provider training, tools and resources must be developed and implemented to help providers to become fully compliant with HCBS standards and expectations
- Develop protocols for lead agency partners (counties, tribes, health plans and contracted providers) to implement person-centered principles and practices.

Step 3: Systemic remediation

Our approach to remediating our HCBS foundation consists of aligning regulations to the rule, new service development, service modification and training. In order to assess and identify areas of alignment and differences in the services delivered by the disability and aging waivers, we assessed the services separately by waiver, but collaboratively. This process allows DHS to align outcomes and remediation strategies, regardless of any age, when appropriate and to identify different outcomes and remediation strategies due to the differences in the needs of the populations served.

You can find detailed remediation strategies and key milestones in the [Disability Waivers Systemic Assessment Crosswalk](#) and the [Aging and Adult Services Waivers Systemic Assessment Crosswalk](#).

The proposed remediation plan for the three 1915c waivers uses four primary strategies:

1) Revise state licensing standards

DHS will propose changes to statute and federal waiver plans to align regulatory requirements, service descriptions and provider standards with the federal rule to address gaps identified through the regulatory review process. We will propose the changes to statute in phases over the 2017 and 2018 legislative sessions. We will propose the bulk of the legislative changes during the 2017 legislative session. The 2018 legislative session will be used, if necessary, to address any final refinements. Phasing the proposals over two legislative sessions allows us the opportunity to work with stakeholders, especially for issues that are more complicated.

2) Amend 1915c waiver plans

DHS will continue to streamline, redesign and develop new services to:

- Increase a person's choices and options of how and where services are delivered to meet individual needs
- Support people in their own homes with an emphasis on community access
- Assist people with experiencing and learning more about working competitively at jobs in the community
- Support people with maintaining paid employment in community businesses.

We will implement the following remedial strategies:

1. Add new service to Elderly Waiver and Alternative Care program:
 - **Individual community living support (EW and AC):** Individual community living support (ICLS) is a bundled service that offers verbal, visual and/or tactile guidance, assistance and support to EW and AC participants who need cuing, or intermittent or moderate physical assistance to remain in their own homes and in their community. ICLS will be delivered in a single-family home or apartment owned or rented by the recipient as demonstrated by a lease agreement. The service may also be delivered in an apartment or home that is leased or owned by a friend or family member who has no financial interest in the service.
2. Implement tiered standards for day and employment services: For additional details see [Tiered Standards for Disability Waivers](#)
3. Implement tiered standards for Customized Living services and own home definition/services: For additional details see [Tiered Standards for Disability Waivers](#)

Provide training and technical assistance:

- Develop provider preparatory tools and resources
 - Enhance licensing policy templates and forms
 - Provider expectation guidance
 - Residency agreement template
 - HCBS standards frequently asked questions
 - Train providers on tools and resources
 - Conduct webinars
 - On-demand video training
 - Open office hours
 - [College of Direct Support](#) (56 online lessons to train direct support workers)
 - [TrainLink](#) (DHS clinical instruction/coursework for some providers)

- [Aging and Related Topics Training](#)
 - [Community Based Services Manual](#)
- Develop/modify existing provider training to support HCBS requirements in the following areas:
- Community inclusion
 - Dignity and respect

Alignment with other relevant state activities

1) *Comprehensive Assessment*

Minnesota's [Long Term Care Consultation \(LTCC\)](#) service is a variety of functions designed to help people make decisions about long-term care needs and choose services and supports that reflect their needs and preferences. The LTCC is a responsibility of lead agencies. Lead Agencies consist of counties, tribes and managed care organizations throughout the state.

The intention of the LTCC program is the following:

- Ensure people of all payer sources are aware of available home and community-based options
- Prevent long-term placement of people in nursing facilities, hospital swing beds and certified boarding care facilities
- Provide options to people so they can make informed decisions about where they want to live

The LTCC assessment process identifies:

- Level of care
- Need for supports and services
- Natural and informal caregiver supports
- Person's preferences and goals
- Strengths and functional skills
- Service options and alternatives in support of informed choice
- Financial resources including all third party payers

MnCHOICES is a new comprehensive assessment and support planning web-based application for long-term services and supports in Minnesota launched by DHS on Nov. 4, 2013. We are transitioning by region and target groups across the state with the goal of statewide utilization. MnCHOICES uses a person-centered planning approach to help people make decisions about long-term services and supports. It is one assessment process for people of all ages, abilities and financial statuses that:

- Promotes choice
- Promotes integrated community living
- Provides a common data collection tool
- Includes person-centered planning principles
- Focuses on people and not programs
- Determines service eligibility

2) *Implement Minnesota's Olmstead Plan person-centered planning protocol*

[Person-centered planning protocols](#) provide guidance for support planners as to what is good practice and what is expected. We will revise it over time as we learn from the experience of following the protocol and maintain best practices in the field of person-centered practices.

Person-centered practices are based on five key areas. Services for and interactions with people should be judged by their ability to help people:

- Share ordinary places and activities
- Make choices
- Contribute
- Be treated with respect and have a valued social role
- Grow in relationships

➤ Bulletin Series on Person-Centered Planning

- [Lead Agency Requirements for Person-Centered Principles and Practices- Part 1](#)
- [Lead Agency Requirements for Person-Centered Principles and Practices- Part 2](#)
- [Lead Agency Requirements for Person-Centered Principles and Practices-Part 3](#)

➤ Support Planning Professionals Learning Community

- February 24, 2016 - Person-centered practices five common elements part 2 of 5
- March 30, 2016 - Person-centered practices five common elements part 3 of 5
- April 27, 2016 - Person-centered practices five common elements part 4 of 5
- May 25, 2016 - Person-centered practices five common elements part 5 of 5
- June 29, 2016- Person-centered planning implementation/ oversight and employment first implementation

3) *Implement Minnesota Employment First policy*

[Minnesota’s Employment First policy](#) promotes the opportunity for people with disabilities to make **informed choices about employment**. This policy views competitive, integrated employment as the first and preferred option for individuals with disabilities.

Site specific assessment and remediation

Initial assessment of setting compliance, validation and remediation plan

Minnesota will have an assessment and multi-layered validation strategies to ensure compliance with rule requirements.

Table 5: Site-specific assessment and remediation plan

STRATEGY	INITIAL ASSESSMENT	VALIDATION	REMEDATION
1. Provider attestation requirement for each setting	X		-
2. Desk audit/ review provider submitted supporting documentation of compliance	-	X	-
3. On-site visits and outreach	-	X	-

STRATEGY	INITIAL ASSESSMENT	VALIDATION	REMEDATION
4. Person's experience assessments	-	X	X
5. Provider site-specific compliance plans and outreach	-	-	X
6. Tiered standards for new settings	-	-	X

Provider attestation:

The purpose of the required provider attestation is 1) to identify settings that are presumed not HCBS due to institutional proximity or having the effects of isolating and 2) for providers to report status of compliance and provide supporting evidence. The attestation will be administered electronically, but will be available in a paper copy upon request and may be submitted by fax or mail.

All providers of day programs and provider-owned and -controlled residential settings, approximately 6,659 settings, will be required to submit a provider attestation.

- A.** Providers will be required to complete attestation that will contain questions to identify whether they comply with HCBS characteristics or are settings that are “presumed not-to-be HCBS” including:
1. Prong 1 settings: In a public or private institution that also provides inpatient treatment
 2. Prong 2 settings: Adjacent to public institutions
 3. Prong 3 settings: Settings that have characteristics for having the effects of isolating

Settings identified through the provider attestation as a prong 1, 2 or 3 setting will be tracked and receive a closer state assessment described in the [presumed not-to-be HCBS section](#).

- B.** Providers will be required to attest that each setting is in compliance, plan to come into compliance and may need technical assistance, or opting out. Providers will submit the attestation and also supporting documents as evidence of compliance.
1. 100% comply with rule requirements. Settings that report compliance will submit supporting documentation as evidence of compliance that may include: provider policies, training documentation, manuals or other information.
 2. Require a site-specific compliance plan. Providers reporting they are not in 100% compliance will be offered technical assistance and be required to submit a site-specific compliance plan.
 3. Are opting out because they are unwilling or unable to comply with requirements. State planned outreach to people receiving services will occur following the [transition protocol](#) as soon as settings are identified as opting out or are determined not able to meet 100 percent compliance by March 2019.
 4. Did not respond. There will be a robust and focused outreach to non-responsive providers. If engagement efforts are unsuccessful and there is a continued lack of response, it will be assumed that the setting is not compliant and the process for beneficiary relocation will commence.

Desk audit/reviewing provider-submitted supporting documentation

State staff will review the attestation and submitted supporting documents for 1,119 submissions, a statistically significant sample of submissions determined by setting type. Day training and habilitation, prevocational services and structured day services will have 100 percent of attestation and supporting documentation reviewed and further state assessed (see section on redefining [employment services](#)).

Table 6: Number of desk audits by setting type

Setting type	Number of Desk Audit	Total number of settings
Foster care	356	4,775
Customized living	296	1,278
Adult day	163	280
DTH, prevocational, structured day	304	304

The state will track settings that report compliance and have sufficient supporting documentation. If the state determines the documentation did not support setting-specific compliance, the setting will receive technical assistance and submit a site-specific compliance plan.

Person's experience assessment:

Case managers will assess annually the experience of people receiving HCBS services compared to rule requirements. This assessment will evaluate whether a person's experience is consistent with the standards and expectations under the rule and also validate compliance of the provider attestation.

The person's experience assessment will be administered at the person's mid-year support plan review or annual reassessment. We are developing the person's experience assessment as part of the LTCC reassessment and as a component of the new electronic support plan that is targeted to launch in June 2017.

This is a new initiative and will be a requirement of case managers ongoing to assess all persons receiving HCBS. The person's experience assessments will result in data collected for all people receiving HCBS services. We anticipate the proportion of assessments received will increase over time (in 2017 and 2018) as case managers receive training and as more case managers transition to using the electronic support plan as part of their ongoing practice.

We expect initial assessment data to be available in late 2017. We will compare the data with provider attestation submissions to validate provider compliance. The person's experience assessment will consist of questions that mirror the provider setting attestation and broader expectations under the rule that can be compared to identify discrepancies. If the person's experience differs from the requirements and/or the provider attestation, the case manager will discuss individual remediation options with the person and support/document the person's desired remediation action. If there are broader themes, the state will focus education and communication efforts around these identified areas. The person's experience assessment will become a routine part of the annual and mid-year visits and will also provide data for ongoing compliance. We will analyze the data more frequently during the transition period to allow

for necessary remediation actions. As part of our ongoing compliance, we plan to analyze data and trend over time how a person's experience changes, for example, is a person more satisfied with community integration?

Case manager training is essential to implement rule requirements and expectations of the HCBS system. As part of the training, we will instruct case managers that any modification to the rule requirements will be based on a plan that includes the following:

- Specific and 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 limits for periodic review of modifications
- Individual's informed consent
- Assurance that interventions and supports will not cause harm.

Provider site-specific compliance plans and outreach:

Providers that do not meet 100 percent compliance from the attestation and submitted evidence will be required to complete a site-specific compliance plan. We will develop a site-specific compliance plan template for providers to have a uniform method of documenting remediation. Providers under a site-specific compliance plan will need to transition to compliance by March 2018 and will be required to report progress toward compliance goals monitored by state staff. Site-specific compliance that extends beyond March 2018 will need additional approval by DHS.

Outreach activities to support providers in remediation will include:

- Training and education specific to provider types and/or statewide identified through desk audit/document review
- Focus groups to problem-solve barriers to achieving compliance
- Provider mentors and quality improvement providers who can share best practices
- One-on-one technical assistance outreach.

In summary, the state will monitor HCBS rule compliance through multiple approaches and evaluate:

- A person's experience through an annual assessment administered by his or her case manager
- Compliance at the setting and of the service provider through state staff and state licensing entities
- Lead agency/case manager roles and responsibilities for person-centered planning through lead agency reviews.

Tiered standards for Disability Waivers

We are working with existing HCBS settings to meet, at minimum, the basic requirements of the HCBS rule, but will require higher standards for designated new service settings. New setting standards will more fully meet HCBS standards and support community-inclusive service models.

The following new developments/settings serving people with disabilities on the BI, CAC, CADI, and DD (DSD) waivers will be subject to a higher state standard:

Customized living for people with disabilities on the BI and CADI waivers

The customized living (CL) service provides a package of individualized health-related and support services to a person in congregate settings. The service design focuses on supporting older adults as part of the continuum of community service options. CL services have a variety of living arrangement characteristics, including single site, congregate site, scattered site and clustered site living arrangements. Each of these settings has a different level of provider control. As the state, community of providers, families and people with disabilities have sought ways to support living independently within the community, CL's original service design is being stretched to fill the gaps in the waiver service spectrum. The CL service is not designed to provide the level of treatment, support and behavioral services that adults receiving CADI and BI waiver services may need to live in the community.

DHS recognizes why CL is used to fill in the identified gaps of the service spectrum. But doing so highlights the confusion caused by the lack of a clear distinction between the services delivered in different types of living arrangements.

DHS plans to address these gaps and the spectrum of service needs by:

- Creating a tiered standard approach for customized living services
- Creating a new service (yet to be named) to address the gaps in the service continuum
- Clarifying the definition of a person's own home.

Throughout the development of the new service, there will be broad stakeholder engagement, including people with disabilities, families, advocates, community providers, lead agencies and state agencies.

Tier 1: For current customized living (CL) settings that comply with the HCBS Settings Rule, the setting may continue to deliver CL services to adults on the BI and CADI waivers.

Tier 2: New CL service settings will be limited to people age 55 and older on BI and CADI waivers. The new CL service setting must comply with Minnesota's Elderly Waiver service standards serving older adults. People age 55 and older may choose CL or other service options to meet their needs.

New HCBS service for BI, CAC, CADI and DD waivers: To provide a new option for people 18 to 54 years old, as well as people 55 and older, DHS will develop a new HCBS waiver service to replace CL growth. To support the spectrum of residential setting options, the new service will support people living in a self-contained living unit that does not meet the definition of a person's "own home." This means a service provider has a level of control over the self-contained living unit that does not meet the requirements of a residential program. Settings where this new service is developed will be limited to 25 percent of residents that receive HCBS services funded by disability waivers in order to ensure that settings, by their nature, do not isolate or create a stigma for people living there. The new service:

- Will provide supervision, assistance and, as needed, skill development
- Will be licensed under Minnesota Statutes, chapter 245D
- Can deliver up to 24 hours of service in a day

In order to assure settings do not isolate or create a stigma, DHS will consider exceptions under certain conditions if the setting is designed to serve more than 25 percent of people with disabilities using home and community-based services. The exception process will review whether basic HCBS setting characteristics are met, and additional requirements (as developed through stakeholder input) are met. Housing that is developed, funded or designed specifically for people with disabilities receiving HCBS will require an exception to be granted before a provider can deliver the new service in this setting.

Clarifications to the definition of the person's own home

To provide a clearer expectation of what a person's own home means, DHS began developing a standard definition of the [Requirements for a person's own home](#), published in our on-line manual, the [Community Based Services Manual \(CBSM\)](#). Over the past several years, to support new living options for people, the community of providers arranged or developed available service options that were not recognized by the policy definition of a person's own home or a residential service because the provider maintained some level of influence over the housing. During this same time, DHS was in process of analyzing the different definitions of a person's own home in our waiver plans, statutes and policy guidance. To develop the new HCBS waiver service (to replace CL for people age 18-54) for BI, CAC, CADI and DD and to support the full service continuum, DHS will continue to develop further clarification to the definition of a person's own home.

The current requirements for a person's own home require the person to:

- Sign a lease agreement that outlines the responsibilities of the person and the responsibilities of the landlord
- Select a service provider(s), based on individual assessed needs and preferences
- Maintain the home (as outlined in the lease agreement) independently, through natural supports or through a provider(s) chosen and paid to assist with home maintenance
- Pay for all room and board costs (i.e., rent/mortgage, food, home maintenance, etc.) with personal resources and/or public funding.

To clarify the definition of a person's own home in order to receive HCBS-funded services, DHS will include in the definition that a person's own home:

- Must be an open market rental
- Does not require a person to have a disability, specific disability or expectation to have services funded with HCBS.
- Does not market or advertise that the apartment building is designed for people with disabilities or promote specific programming for people with disabilities.

DHS will be adding or expanding, through the waiver-amendment process, the following service options supporting people who live in their own homes.

- **Individualized home supports (BI, CAC, and CADI waivers):** Individualized home supports (IHS) is designed to support holistically a person in his or her own home and within his or her community by providing support (e.g. supervision, cuing) and training in four broad community living service areas. With multiple service-delivery methods, IHS increases a person's choices and options of how and where services are delivered to meet their community living service needs. To support community access, an IHS service provider cannot have any financial interest in the property or housing in which services are delivered.
- **Personal support (expanding to BI, CAC and CADI waivers):** Personal support services are non-medical care, supervision and assistance provided to a participant in his or her home or in the community to achieve increased independence, productivity and inclusion in the community. Personal support services may provide supervision and assistance to a participant in accessing community services and participating in community activities.
- **In-home family support (expanding to BI, CAC and CADI waivers):** In-home family support services are residential habilitation services provided to participants and their families, including extended family members, to enable the participant to remain in or return to the home. Habilitation services are directed toward increasing and maintaining physical, intellectual, emotional and social functioning and to assist participants in acquiring, retaining and improving the skills necessary to live successfully in the community.

Non-residential services

Tier 1: DHS will be adding or expanding, through the waiver amendment process, the following non-residential service options.

Day training and habilitation services: To ensure this service truly encompasses what it means to be a home and community-based service and aligns with the goals set forth in Minnesota's Olmstead Plan and Employment First policy, we recognize that substantial changes must be made to our DT&H service. We have been working with stakeholders on a plan that will unbundle DT&H services to make it easier to make clear choices about services to increase community integration and inclusion and increase competitive employment outcomes across all the disability waivers. DT&H services are currently considered bundled services due to the multitude of services covered under DT&H, such as skills development, therapies, behavioral supports, transportation, community integration, paid on-the-job training and supported employment.

As part of our plan, we have proposed legislation that will pull the employment components out of the current DT&H service, creating three distinct services that will be available across the disability waivers:

- **Employment exploration** (BI, CAC, CADI, DD waivers): Employment exploration services (EES) is an orientation and experience-based service that introduces a person to the world of work. We intend it to occur predominantly in the community. EES is designed to assist people with learning more about and making an informed choice about competitive employment. This service is only for those who are undecided about working competitively; it is not a prerequisite for employment development (EDS). People who already know they want to work will go directly into EDS.
- **Employment development** (BI, CAC, CADI, DD waivers): Employment development services (EDS) is an individualized service that actively supports a person to achieve competitive employment in his or her community that is consistent with his or her strengths and interests. Services are 1:1 and culminate with the person either successfully obtaining competitive employment within a community business, becoming self-employed or establishing microenterprise businesses in his or her community.
- **Employment support** (BI, CAC, CADI, DD waivers): Employment support services (ESS) is a community-immersed, individualized assistance and support service that helps people maintain their competitive employment in a community business, their self-employment or their microenterprise business. ESS will also include training and support for time-limited, community-based group employment.

This change will further Minnesota's mission to provide people the opportunity to seek employment and work in competitive, integrated settings. It will promote inclusion in the community and ensure people receive enough information about employment, through exposure and actual experiences, to make an informed choice. Individual service plans will reflect more accurately the services people receive and lead to better outcomes.

Tier 2: The second part of our plan to bring DT&H into compliance with the goals of the HCBS services as outlined in the HCBS rule has included working with various stakeholders to redefine our DT&H service. We are bringing clarity to the service definition so people can identify what they want from the provider to meet their goals and lead to the outcomes they are seeking. That will allow people to be more integrated in their communities. The focus needs to be on developing and maintaining essential and personally enriching life skills, along with the necessary therapies, support and training needed for people to participate fully in their preferred activities and communities. Through a person-centered planning process, people will work with their teams, who will help them to identify things that are important to and important for each person. Providers will then develop opportunities for people to work on the skills needed to access their communities independently and/or provide the support necessary for people to engage in those typical community activities they desire. Current structure around staffing ratios will need to be adapted to fit the more individualized needs of the service.

People across all disability waivers will be able to access the redesigned DT&H services while receiving any of the new employment services. This will further support people as they explore, seek or maintain competitive employment freely by providing them the option to increase their engagement in community life at the same time. It will also serve as a valuable resource for people who are not interested in employment, or for whom it's not the right time for work (e.g., instability in a person's health). People will benefit from the service in a wide variety of ways based on their individual interests, needs and levels of ability. We will work with stakeholders to develop a process that ensures people continue to receive employment-related counseling, information and experiences to make certain they have the best service options to meet the person's needs and to ensure a continued informed choice.

To manage growth of our current DT&H services, Minnesota has long had a needs-determination process in place that requires lead agencies to complete an application any time they are proposing to develop new, expand or increase DT&H services. As part of our DT&H redesign effort, we will continue to revise our needs-determination process to include a greater emphasis on community inclusion. As part of this effort, we will consider size limits and a possible moratorium on new DT&Hs; it would include an exception process that would take into account the unique characteristics of the local community for each county.

- **Supported employment:** We developed a plan with our stakeholders and proposed legislation to separate this service into three separate services: employment exploration services, employment development services and employment support services. Employment support services (ESS) will provide ongoing support to people working in both group and individual employment positions. The rate will be different based on which type of employment it is, with preference given to individual employment.

DHS staff visited job sites where these services were being provided to gain a better understanding of the types of work arrangements that are occurring. We also held focus groups with stakeholders to share our findings and get input from them, which helped to define group and individual employment as it looks now, as well as how it might look in the future. For example, after a date yet to be determined, only employment that meets the definition of competitive employment could be considered individual employment.

- **Prevocational services:** We will be working with stakeholders to develop a plan for transitioning the paid on-the-job skills-training component out of DT&H and into prevocational services. The functions of this service that fall under the service definitions for EES, EDS and ESS will move to those respective services. We will expand prevocational services to include people on the DD waiver. At the same time, we will be working with stakeholders to define and establish criteria for prevocational services that would include time limits for the service. We will also develop a process that requires that people receive employment-related counseling, information and experiences both before enrollment and while receiving this service to ensure continued informed choice. This approach will allow people to explore what employment might mean for them. It might look very different from one person to the next.
- **Structured day:** Through our continued work with the people using the service, Minnesota's Brain Injury Advisory Group and other interested stakeholders, we will identify ways in which we can strengthen the focus of this service on the development of the essential skills needed for the person to experience community inclusion. During phase 2, we will consider size limits and identify characteristics that would be needed for new sites to be considered fully integrated into their communities. Factors associated with each county's geographic location will be taken into account. Further discussions will help to determine whether this service should remain a distinct service or if it could become part of the modified DT&H service.

Adult day service for people with disabilities on the disability waivers

The adult day service (ADS) provides supervision, care, assistance, training and activities based on the participant's needs and directed toward the achievement of specific outcomes as identified in the community support plan. Services must be designed to meet both the health and social needs of the participant, including their appropriateness in providing care and supervision.

To ensure compliance with the HCBS rule requirements, DHS will set criteria for participating in adult day that incorporate informed choice; individualized, age-appropriate need for the service; a person's desired outcomes and assessed goal(s). Regardless of age, people on the disability waivers will be able to make informed choices about their schedules, community integration, activities and other services that may meet their needs in addition to or instead of this service.

Tier 1: People receiving one of the disability waivers (CADI, BI or DD)

People currently using the adult day services, regardless of age, may continue to use adult day if they are assessed to need the service and if they choose it. The case manager must ensure all people have information about the continuum of services available to them.

Tier 2: People receiving one of the disability waivers (CADI, BI or DD)

Future new authorizations for the service may only occur when:

- a. Following the informed-choice process, which includes exploration of employment and day training and habilitation, the person did not choose employment and DT&H
- b. The service is age-appropriate
- c. The service meets outcomes desired by the person. Outcomes may include opportunities to: socialize with people chosen by the person, be integrated in his or her community or participate in activities in his or her community of choice. A person's desired and anticipated outcomes and goal(s) must be documented in the community-support plan. Services must be designed to meet both health and social needs, including appropriateness to provide care and supervision. The decision is made through informed choice, with documentation of his or her informed choice. When appropriate, a goal to reduce isolation may be used in addition to the goals of the current definition for Adult Day Services.

Table 7: Tiered standards for employment and day services for people with disabilities

Current employment and day services	Waivers affected	Tier 1 Changes to current services	Tier 2	Stakeholder involvement and other work
Day training and habilitation (DT&H)	DD	Separate DT&H services: <ul style="list-style-type: none"> • Strengthen focus on essential skill development for individual to experience community inclusion • As appropriate, move related functions to prevocational service, EES, EDS and ESS • Expand day training service to CADI and BI 	Continue changes made to Tier 1 and: <ul style="list-style-type: none"> • Limit size of new DT&H sites • New site locations would need to be considered fully integrated into their community taking geographic location into account • Work with stakeholders to develop a process that requires people to receive employment-related counseling , information and experiences prior to enrollment and while receiving services to ensure informed choice • Revise needs-determination process to include greater emphasis on community inclusion and consider possibility of a moratorium on new DT&Hs 	For the past two years, stakeholders have been involved in discussions about moving the employment functions from DT&H to the new employment services. Recently began meetings with DT&H stakeholders to discuss redefining DT&H to strengthen community-inclusion experiences. Continue work with stakeholders on: <ul style="list-style-type: none"> • Strengthening community inclusion focus, and Tier 2 standards
Supported employment	BI, CAC, CADI and DD	Separate supported employment into three new services: <ol style="list-style-type: none"> A. Employment exploration service (EES) B. Employment development service (EDS) 	Continue changes from Tier 1 and work with stakeholders to define further what would be considered group employment under Tier 2.	We have shared new employment service descriptions with stakeholders (including people with disabilities and families) over the past year.

Current employment and day services	Waivers affected	Tier 1 Changes to current services	Tier 2	Stakeholder involvement and other work
		<p>C. Employment supports services (ESS)</p> <p>Define group and individual employment under ESS as follows:</p> <p>Group</p> <ul style="list-style-type: none"> • Cluster of people working together in group, job sharing • Earning sub-minimum wages • Job is contracted through provider • Group size limited to six <p>Individual</p> <ul style="list-style-type: none"> • Position is distinct/not shared • Not isolated/working alongside other employees without disabilities • Paid minimum wage or higher • Can be contracted; direct hire preferred 	<p>Only employment that meets the definition of competitive employment will be considered individual employment under Tier 2.</p> <p>Definition as follows:</p> <ul style="list-style-type: none"> • Full-time, part-time, or self-employment with or without supports • In the competitive labor force • On payroll of a competitive business • Pays at least minimum wage, but not less than customary wage and benefits paid to workers without a disability performing same or similar work 	<p>Continue meetings with stakeholders to work through possible Tier 2 standards and implementation strategies.</p> <p>Secure additional funding to increase rates for new services.</p>
Prevocational service	BI and CADI	<p>Changes to current prevocational service:</p> <ul style="list-style-type: none"> • Move related functions to three new services: EES, EDS and ESS • Define criteria for center-based training and time limits • Expand to DD waiver. 	<p>Continue changes from Tier 1 and work with stakeholders to develop possible Tier 2 standards including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Work with stakeholders to develop a process that requires people to receive employment-related counseling, information and experiences prior to enrollment and while receiving service to ensure informed choice 	<p>We have shared new employment service descriptions with stakeholders (including people with disabilities and families) over the past year.</p> <p>Work with stakeholders to define and establish criteria for prevocational services and possible Tier 2 standards.</p>

Current employment and day services	Waivers affected	Tier 1 Changes to current services	Tier 2	Stakeholder involvement and other work
Structured day	BI	Changes to structured day service: Strengthen focus on essential skill development for individual to experience community inclusion	Continue changes made to Tier 1 and: <ul style="list-style-type: none"> • Limit size of new structured day service sites • New site locations must be considered fully integrated into their community, taking geographic location into account • Work with stakeholders to determine what is unique about this service or if it can be blended with the modified DT&H service 	Begin work with stakeholders for the BI waiver to: <ul style="list-style-type: none"> • Strengthen community-inclusion experiences • Limit size and locations of new sites.
Adult day	BI, CAC, CADI and DD	People currently using the adult day service, regardless of age, may continue to use adult day if they are assessed to need the service and if they choose it. The case manager must ensure all people have information about the continuum of services available to them.	Future new authorizations for the service may only occur when: <ol style="list-style-type: none"> a. Following the informed choice process, which includes exploration of employment and day training and habilitation, the person did not choose employment and DT&H b. The service is age-appropriate c. The service meets outcomes desired by the person. Outcomes may include opportunities to: socialize with people chosen by the person, be 	

Current employment and day services	Waivers affected	Tier 1 Changes to current services	Tier 2	Stakeholder involvement and other work
			<p>integrated in his or her community or participate in activities in his or her community of choice. A person's desired and anticipated outcomes and goal(s) must be documented in the community support plan. Services must be designed to meet both health and social needs, including their appropriateness in providing care and supervision. The decision is made through informed choice, with documentation of his or her informed choice. When appropriate, a goal to reduce isolation may be used in addition to the goals of the current definition for adult day service.</p>	

Presumed not to be HCBS – assessing compliance

This section of the statewide transition plan describes the internal review process DHS used to identify settings that are presumed not to be HCBS. First, we will outline the process to identify settings based on proximity to institutions, followed by the process to identify settings that have the effect of isolating. Following that is a description of the evaluation and assessment plan for settings that are presumed not to be HCBS.

Prong 1 and 2 – Proximity to institutions

- Prong 1: Settings in a publicly or privately owned facility that provide inpatient treatment
- Prong 2: Settings on the grounds of or adjacent to a public institution

Process:

DHS conducted an analysis to determine which settings are presumed not to be HCBS and may need further evaluation to determine compliance with the HCBS rule. DHS compared the location of HCBS services to the location of institutions, using mapping software. The analysis was strictly for those settings based on physical criteria; settings with the effects of isolating will be evaluated and outlined below.

DHS collected paid claims from fiscal year 2015 that include provider address, then cross-referenced the unique services and setting addresses to a list of institutions. The institutions included nursing facilities, hospitals, community behavioral health hospitals (CBHH), intermediate care facilities (ICF-DD) and institutes for mental disease (IMD).

The grid below shows the number of settings that meet the presumed not to be HCBS criteria as defined by prong 1 and 2.

Prong 1 is a setting that shares an address or a common wall with an institution.

Prong 2 is a setting that is next to and abuts the public institution or its property. “Abuts” means that the setting is contiguous or touching the public institution or its property with no intervening parcel of land between the two settings. The list of publicly owned institutions included city, county, state, tribal and federal institutions.

In the provider attestation, providers will be asked to identify whether their setting meets the definition for either Prong 1 or Prong 2. The responses from the attestation will be cross-checked with the results of the geo-mapping analysis as a method to validate the setting location.

Table 8: Number of settings in proximity to institutions

Number of settings in a publicly or privately operated facility that provides inpatient institutional treatment	Number of settings in a building on the grounds of, or adjacent to, a public institution
130	13

Prong 3 - Effects of isolating

CMS has also identified settings that are presumed not to be home and community-based because they have the effect of isolating people from the broader community of people who do not receive Medicaid home and community-based services. DHS will identify, through provider attestation responses and review of supporting documentation, settings that may have the effect of isolating.

Criteria identified in groups 1 and 2 will be used to identify settings that isolate people with disabilities and older adults. For settings that provide disability waiver services, the additional characteristics in group 3 will also be used to identify settings that may isolate.

People with disabilities may have limited experiences and options on which to base decisions or to inform their choices. Older adults who need assistance have a lifetime of experiences to draw from when making life choices. Also, older adults of various income levels access similar services within a community, and services for older adults are typically funded with multiple funding sources, including private pay, waiver funding and other sources.

Group 1: The state will identify day and residential settings providing services funded by disability and aging waivers that meet requirements under the rule, but still may have the effects of isolating people. The settings that may have the effects of isolating will be identified by provider attestation responses and review of supporting documentation.

The following settings will be submitted to CMS for a heightened-scrutiny review:

- Farmsteads or disability-specific farm communities
- Residential schools
- Gated or secured community for people with disabilities

Group 2: The state will identify and develop criteria to determine if heightened CMS scrutiny is needed for the following identified settings:

- A setting designed to provide people with disabilities or older adults multiple types of services and activities on-site, including any two of the following: 1) residential, 2) day services and 3) medical without the option to receive these services off-site.
- A residential setting where the provider also owns/operates multiple homes on the same street or adjacent property (does not include duplex or multiplex houses, unless there is more than one on the same street).

Settings identified in group 2 will be evaluated further to determine whether they meet criteria of having the effect of isolating. Settings will be reviewed further to determine the extent to which people have choice of community services when multiple services are on-site and the extent to which there is shared staffing and programming when there are multiple properties on the same street or adjacent property.

Group 3: The state will identify and develop criteria for settings that may have the effects of isolating:

The state will conduct a more-extensive review of settings that have the following characteristic or trigger:

- The setting (with a capacity of six or more people) is primarily or exclusively for people with disabilities or 25 percent or more of the total setting capacity are people with disabilities under the age of 55.

Further review of these settings will determine whether the setting meets the following criteria:

- People have limited, if any, interaction with the broader community or
- Daily activities are typically designed to take place on-site

Settings identified in group 3 will be further reviewed and required to submit additional supporting documentation for review that describe how:

- Opportunities are present and people are interacting with the broader community individually and in groups, as desired
- People may individually choose to come and go to various activities; not everyone has the same activities/schedule
- People may choose off-site community service providers

In summer 2016, we conducted on-site visits to select residential settings to explore best practices in current settings designed for people with disabilities. We used the learnings from these visits to develop service standards and expectations for similar type of settings that would increase community inclusion, opportunities and choice for people in these settings and offset any isolating factors within the existing congregate setting. The learnings from these visits also informed the [tiering](#) for future settings.

Future settings, for people with disabilities, will not be allowed if the settings meet the definition of presumed not HCBS or group 1, 2 or 3, unless an exception has been granted. We are developing an exception process (with input from stakeholders) and are developing criteria that settings must meet for state approval.

Assessing compliance

DHS will evaluate each setting that is presumed not to be HCBS based on institutional proximity and effects of isolating criteria to determine if there is evidence the setting can overcome this presumption.

DHS will evaluate all settings by assembling results from:

- Provider attestation
 - Site-specific compliance plans from the provider attestation
- Person's experience assessments
- The analysis from settings identified as presumed not to be HCBS

The DHS review process may include one-on-one outreach and/or an on-site visit. If the setting is unable to take the necessary steps to comply with the HCBS requirements, DHS will begin to implement the relocation protocol.

Once we have assembled the setting evidence, DHS will determine which settings the state believes overcome the presumption and are in fact HCBS, then submit an evidentiary package for each setting to CMS for heightened scrutiny. Proposed submissions to CMS for heightened scrutiny will be announced publicly. The public will have an opportunity to comment about the settings in question. A summary of public comments will be submitted as part of the updated transition plan.

Relocation protocol:

If the setting is unable to take the necessary steps to comply with the HCBS requirements, DHS will begin to implement the transition protocol (see [Person-Centered, Informed Choice, and Transition Protocol](#), approved Feb. 10, 2016 by the Olmstead sub-cabinet.

DHS will begin sending notices to beneficiaries in March 2017, notifying them of the settings' inability to meet compliance by March 2019.

The notice will include contact information for their lead agencies, LTCC Ombudsman Office, Senior Linkage Line, HCBS website and contact information.

When people make transitions, the state will take affirmative steps to provide an informed choice about setting and service options. We will do this by using person-centered planning to ensure that the individual's preferences and needs are the focal point of the service plan; that the individual or the individual's representative directs services and supports; and by providing meaningful information about and exposure to integrated options.

One way we will accomplish this is to establish protocols that adhere to the following principles:

- Involvement of the individual and family: Each person, the person's family and/or legal representative and any others chosen by the person shall be permitted to be involved in any evaluation, decision-making and planning processes, to the greatest extent practicable, using whatever communication method the person prefers.
- Use of person-centered principles and processes: To foster each person's self-determination and independence, the state shall ensure the use of person-centered planning principles at each stage of the process to facilitate the identification of the person's specific interests, goals, likes and dislikes, abilities and strengths, as well as support needs.
- Expression of choice and quality of life: Each person shall have the opportunity to choose preferred activities that contribute to a quality of life.
- Life options and alternatives: The state agencies shall undertake best efforts to provide each person with reasonable alternatives for living, working and education.
- Provision of adequate services in community settings: It is the goal that all people be served in integrated community settings with adequate supports, protections and other necessary resources, which are identified as available by service coordination.

Ongoing setting compliance

Minnesota will use several strategies at the provider, lead agency and individual recipient levels to assure initial and on-going compliance with the home and community based settings requirements.

To assure initial and on-going compliance with the requirements at a provider level, DHS will use mechanisms that are already in place, to the extent possible, with some necessary revisions to accomplish the requirements of the CMS rule. The primary mechanisms are the provider enrollment process and licensing.

Licensure: Setting requirements for the CMS rule are or will be 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 initial and on-going compliance for individual settings. Once all standards are established through statute, rule and waiver amendments, DHS will use the existing licensing process to conduct site-specific assessments.

We will use the results from each year of licensing reviews to inform the state if additional changes to the system are needed. The licensing-review process will be used to assure initial and ongoing compliance and will also be used as an opportunity to provide technical assistance to providers. DHS will prioritize settings that have been determined to need additional assistance. The following approaches may be used to assure initial and ongoing compliance:

- Desk audits: policy review (DHS/MDH licensing)
- On-site visits: observation, interviews (DHS/County licensing)

On-site visits and outreach:

All identified day and residential service settings are licensed by the state. The table below provides information on the licensing process and anticipated number of licensing visits in 2017-2019 that will provide outreach, communication and validate setting compliance with the HCBS rule. As we add new provider standards, licensing will include the standards in ongoing compliance visits.

Table 9: Licensing process and number of anticipated visits in 2017-2019

Type of setting	Brief description of licensing process	Links to more licensing information	Number of licensing visits in 2017	Number of licensing visits in 2018	Number of licensing visits in 2019
Foster care / Supportive living services	The HCBS licensing-review process includes a review of the license holder’s compliance with applicable laws and rules. We review documentation for compliance, including a review of the service recipient records and staff records, including orientation, training and background studies. The licensing review also includes a review of a variety of required administrative records, including policies and procedures. As indicated, the licensing review includes observation of services being provided to the service recipient in his or her home or community and inspection of licensed facilities.	Foster care licensing information Supportive living services licensing information	1,068	1,068	1,068
Customized living	The Minnesota Department of Health, Home Care and Assisted Living Program (HCALP) conducts unannounced on-site licensing surveys at least once every three years to determine substantial compliance of comprehensive licensed home care providers. The surveys include: review of reporting maltreatment; orientation to home care bill of rights; statement of home care services; initial evaluation of clients and initiation of services; client review and monitoring; service plan implementation and changes; client complaint and investigation process; competency of unlicensed personnel; infection control; delegation to unlicensed personnel; assessment, monitoring and reassessment of clients; medication, treatment and therapy management.	Customized living service license information	355	355	355

Type of setting	Brief description of licensing process	Links to more licensing information	Number of licensing visits in 2017	Number of licensing visits in 2018	Number of licensing visits in 2019
Adult day	<p>Unannounced on-site licensing reviews every other year.</p> <p>The process includes a review of the license holder's compliance with applicable standards, including an inspection of the facility, observation of services being delivered and a document review, which includes participant records, personnel records including background studies and a variety of required administrative records</p>	Adult day licensing information	84	85	86
DTH, prevocational, structured day	<p>The HCBS licensing-review process includes a review of the license holder's compliance with applicable laws and rules. Documentation is reviewed for compliance, including a review of the service recipient records and staff records, including orientation, training and background studies. The licensing review also includes a review of a variety of required administrative records, including policies and procedures. As indicated, the licensing review includes observation of services being provided to the service recipient in their home or community and inspection of licensed facilities.</p>	DTH licensing information	75	75	75

Provider enrollment/revalidation: All home and community-based services providers will be required to submit evidence (assurances of compliance with waiver requirements) of meeting provider standards as part of new enrollment (new provider record), re-enrollment (inactive to active) or revalidation (review of enrollment documents of currently active record) as a Medicaid provider. DHS will add assurances to this process related to compliance with the CMS rule at the provider level. Re-validation of providers occurs every five years.

Assessing people's experience: Case managers will assess annually the experience of people receiving HCBS services compared to rule requirements. This assessment will determine whether a person's experience is consistent with the standards and expectations under the rule.

The person's experience assessment will be administered annually at mid-year support plan review and annual reassessment. We are developing the person's experience assessment as part of the long term care consultation (LTCC) reassessment and as a component of the new electronic support plan that we expect to launch in June 2017.

We will expect case managers to assess all people receiving HCBS going forward. The person's experience assessments will provide data for all people receiving HCBS services. We expect the number of assessments to increase as more case manager's transition to using the electronic support plan as part of their ongoing practice.

The person's experience assessment will become a routine part of the annual and mid-year visits and will also provide data for ongoing compliance. As part of our ongoing compliance, we plan to analyze data and trend over time how a person's experience changes. For example, is a person more satisfied with community integration?

Assessing lead agencies: Minnesota conducts waiver reviews of all five Medicaid waiver programs and the Alternative Care Program in each lead agency responsible for administering these programs (counties, tribes and health plans).

HCBS lead agency reviews of counties and tribes:

- Site visits include a review of participant case files, interviews and focus groups with staff and a review of lead agency data. DHS developed this review to monitor compliance with state and federal requirements, identify promising practices that improve the quality of service to HCBS participants, track local improvements and obtain feedback about DHS.
- The lead agency review evaluates components of person-centered planning and practices in HCBS programs. Per the [Person-Centered, Informed Choice and Transition Protocol](#), lead agencies must provide people with increased choices and opportunities for community inclusion.
- We share performance measures and operational indicators during the HCBS lead agency review site visit.

We plan to incorporate into this process the elements necessary to monitor and enforce compliance with the settings rule.

Managed care audits:

Managed care organizations (MCOs) conduct annual audits of all of their enrollees' care plans, including people on the Elderly Waiver (EW), through the care plan audit protocol. MCOs have incorporated requirements of the [Person-Centered, Informed Choice and Transition Protocol](#) into the audit protocol. At the completion of each annual audit, MCOs report their findings to DHS.

Assessing the system:

DHS uses the gaps analysis process to monitor capacity at a systems level. The gaps analysis provides information on the current capacity and gaps in long-term services and supports and housing to support older adults, people with disabilities, children and youth with mental health conditions and adults living with mental illnesses in Minnesota.

DHS will use the existing national core indicator process to capture quality-of-life and community engagement data to inform quality-assurance activities and quality-improvement priorities across the system.

Appendix A- Milestones

<u>Systemic assessment and remediation milestones</u>	End date	Status/notes
Compare state standards to HCBS standards	1/1/16	100% Complete
Identify gaps: determine whether or not state standards comply, do not comply, partially comply or are silent	4/1/16	100% Complete
Identify remedial actions to address gaps	8/1/16	100% Complete
Complete systemic assessment	9/1/16	100% Complete
Revise state licensing standards	7/1/17	75% Complete: Legislative policy proposals drafted.
Amend policy manuals, provide training and technical assistance	9/1/17	Not started
Implement new licensing standards	11/1/17	

<u>Site specific assessment and remediation milestones</u>	End date	Status/notes
Design provider site-specific assessment tool (provider attestation) to assess site specific compliance	11/1/16	50% Complete: Form created, working with IT
Develop provider expectation guide and other tools to support provider with completion of provider attestation	11/1/16	25% Complete: Guide development in progress
Instruct providers on how to complete provider attestation	12/31/16	Not started
Launch provider attestation	1/1/17	Not started
Analyze data to identify settings that have reported 100% compliance, require a site-specific transition plan, are opting out or did not respond.	9/1/17	Not started
Review supporting evidence submitted by provider to validate provider attestation response.	9/1/17	Not started

<u>Site specific assessment and remediation milestones- continued</u>	End date	Status/notes
Develop questions for person's experience assessment that mirror provider attestation	8/1/16	100% complete
Train case managers on how to conduct the person's experience assessment and expectations for remediating discrepancies	3/1/17	Not started
Launch person's experience assessment	6/1/17	Not started
Analyze provider experience assessment data to validate compliance and track remediation	6/31/17	Not started
Develop a site-specific compliance plan template	6/1/17	25% complete
Conduct outreach activities to support providers	12/31/17	Not started: In planning phase for provider outreach
Track provider progress toward compliance goals and assure site-specific compliance of all settings	6/1/18	Not started
Develop a framework for tiered standards for designated new service settings	12/31/16	50% complete: Working with stakeholders for input to finalize tiered standards
Propose legislation to implement tiered standards framework for customized living services, day training and habilitation services, new employment services and adult day services	7/1/18	25% complete: Legislative proposals drafted for employment services
Submit waiver plan amendments to redefine existing services, tiered standards or add new services that do not add costs	12/31/17	Not started
Submit waiver plan amendment to redefine existing services, tiered standards or add new services that add costs	9/1/18	Not started
Implement waiver amendment changes	3/1/2019	Not started
Submit second set of waiver plan amendments to continue to redefine existing services, tiered standards or add new services that add costs	9/1/18	Not started

<u>Heightened scrutiny milestones</u>	End date	Status/notes
Compare service locations to location of institutions using mapping software <ul style="list-style-type: none"> • Prong 1: Settings in a publicly or privately owned facility that provide inpatient treatment • Prong 2: Settings on the grounds of or adjacent to a public institution 	7/1/16	100% complete
Develop assessment questions (via provider attestation) to validate geo-mapping data to further identify: <ul style="list-style-type: none"> • Prong 1: Settings in a publicly or privately owned facility that provide inpatient treatment • Prong 2: Settings on the grounds of or adjacent to a public institution 	8/1/16	100% complete
Develop effects of isolating criteria and develop assessment questions for provider attestation	9/1/16	100% complete
Launch provider attestation	1/1/17	Not started
Analyze data and review supporting documentation	6/31/17	Not started
Identify settings that are presumed not to be HCBS: <ul style="list-style-type: none"> • Prong 1: Settings in a publicly or privately owned facility that provide inpatient treatment • Prong 2: Settings on the grounds of or adjacent to a public institution • Prong 3: Have the effect of isolating 	6/31/17	50% complete: Geo-mapping complete for settings in proximity to institutions. Attestation will validate geo-mapping proximity results and identify effects of isolating settings.
Develop on-site visit protocol to gather provider-specific evidence to overcome institutional presumption	1/31/17	50% complete: Draft tool developed
Conduct site visits for all settings presumed not to be HCBS	12/31/2017	Not started
Identify settings that overcome the institutional presumption and will be submitted for heightened scrutiny	1/15/18	Not started
Prepare evidentiary package and implement notification protocol (public comment) and prepare for settings for heightened scrutiny submission	2/15/18	Not started
Incorporate list of settings requiring heightened scrutiny and information and evidentiary package into the final STP and submit to CMS	3/31/18	Not started

<u>Relocation of people milestones</u>	End date	Status/notes
Implement transition protocol to give people the opportunity to make informed choices of new services/settings	02/28/18	Not started
Complete notifying people, guardians, case managers, providers and any other responsible parties that the setting is not in compliance.	02/28/18	Not started
Provide technical assistance to providers and lead agencies regarding relocation of individuals	03/16/19	Not started
Provide case management reassessment and transition assistance to people needing relocation of services and/or settings	03/16/19	Not started

<u>Ongoing compliance milestones</u>	End date	Status/notes
Identify the type of system(s) that must be modified/created for monitoring ongoing compliance	4/1/16	100% complete
Identify gaps in current monitoring systems and need for new systems	8/1/16	100% complete
Modify current monitoring systems, create new systems and train.	12/1/17	50% complete <ul style="list-style-type: none"> • Legislative proposals to revise licensing standards drafted • Individual experience assessment questions developed, system changes in development • Revalidation protocols in development • Person-centered planning protocols are developed for lead agency reviews
Implement ongoing monitoring systems	1/1/18	Not started

Appendix B – HCBS Advisory Group – Organizations represented

- ARRM
- Care Providers of Minnesota
- Dakota County
- HIV Housing Coalition/Coalition for Choice in Housing/Clare Housing
- Leading Age Minnesota
- Managed Care Organizations
- Mental Health Minnesota
- Minnesota Association of County Social Service Administrators
- Minnesota Organization for Habilitation and Rehabilitation
- Minnesota State Council on Disability
- NAMI Minnesota
- Office of Ombudsman for Long-term Care
- Office of Ombudsman for Mental Health and Developmental Disabilities
- The Arc Minnesota
- The Minnesota Governor’s Council on Developmental Disabilities
- Touchstone Mental Health, Minnesota Association of Community Mental Health Programs
- University of Minnesota & Minnesota Employment First Coalition
- Washington County