

## North Dakota Statewide Transition Plan HCBS Settings Under 1915(c) Waivers Final Approval Obtained February 1, 2019

### Ongoing Monitoring and Compliance

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

The Department will ensure that the experiences of individuals receiving HCBS in non-residential settings are consistent with how those settings would be experienced by individuals who are not HCBS service recipients, such as access to food. Appropriate policies and procedures will reflect this requirement.

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

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

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

The Department may make a presumption that privately owned or rented homes and apartments of people living alone or with family comply. The state will assure compliance through ongoing monitoring of the client's experience. This can be accomplished through ongoing consumer and family training and contact with case or program managers trained on the HCBS setting requirements. Any individual living in a private residence owned by an unrelated caregiver has a lease agreement and the setting will be assessed as a provider owned or controlled setting. If there is a presumption that a privately-owned setting is institutional in nature the case or program managers will be required to report that to the Department who will take steps to conduct a review to assure compliance.

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

## HCBS Medicaid Waiver (Serves aged & disabled)

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

The Department conducted statewide trainings with HCBS Case Managers in August and October 2014, December 2016, March and September 2017, and May, August and September 2018, and annually thereafter on the home and community-based setting requirements and the person-centered service planning requirements. Person-centered service plans have been updated and comply with the federal requirements as of July 2015.

Setting requirements were added to the provider standards for enrollment. Department staff will conduct site visits of adult residential facilities upon initial enrollment and at renewal (every two years) to assure compliance. A summary of site visits results will be posted on Department's website. In addition, the HCBS setting rule requirements have been incorporated into the licensing criteria for all Adult Foster Care homes. Compliance will be assured initially upon licensure and then annually during first year of licensure and biannually thereafter.

The HCBS Case Managers will be responsible to assure ongoing compliance with all Medicaid recipients through monitoring done during their required quarterly visit to conduct the person-centered care plan meeting. Case Managers are required to monitor during their quarterly face-to-face contacts to ensure an individual is being afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint (including the limited use of restraints that are allowable under Adult Residential Services). Any violation of a waiver recipient's rights must be reported as a complaint to the Department, Vulnerable Adult Protective Services or both. One of the quarterly visits must include a completion of a HCBS Comprehensive Assessment submitted to the Department to review.

In addition, the HCBS case managers must complete an annual resident setting experience interview using a standardized State Form Number (SFN) 636 with all adult foster care recipients living in licensed facilities. This includes both Medicaid, State, and private pay recipients. The completed form must be sent to the Department. Any issue identified in the client experience interview must be reported to the Department who will be responsible to work with the licensed provider to remediate any issues or violations related to the setting rule.

The Long-Term Care Ombudsman also make a quarterly visit to all adult residential care facilities. The Ombudsman will be training in the HCBS settings criteria and will help educate and advocate for consumers rights. Any systemic issues can be reported to the Department.

Department staff have worked with the North Dakota Department Health and Human Services Health Facilities Section (licensing and surveying Health Facilities staff) to update regulatory documents to assure compliance with HCB characteristics. Health Facilities will assure compliance through the scheduled onsite survey process.

Training of Department staff, HCBS Case Managers, and the LTC Ombudsman has already been conducted and will continue annually. The HCBS settings criteria has been incorporated into the HCBS Case Manager training was added into the initial training for the LTC Ombudsman by January 2019.

Department staff will utilize the CMS PowerPoint materials, FAQ's etc. that are available online to assist in the training. The Adult Foster care licensing rules and the Adult Residential assessment tool will also be used as training materials. Additional training for foster care providers and licensers was conducted by January 2019.

Any changes in state standards that require providers to make any adjustments or modifications to comply with the federal HCBS rule will be completed by the Department through written communications, educational materials, policy issuances, or face to face trainings as appropriate.

### Traditional IID/DD Waiver

At the recipient level; the current person-centered planning process will be utilized along with The Council on Quality and Leadership (CQL) Personal Outcome Measures and the required annual self-assessment.

The Self-Assessment is a personal interview conducted with the individual prior to the service plan meeting to best identify the person's desired outcomes, goals, community involvement, who and what is important to them, likes, dislikes, etc. based on the individual strengths, interests, values, aspirations, and choices. The self-assessment was modified to specifically identify people's experiences which relate to the home and community-based requirements. The self-assessment must address individual experiences that incorporate the CMS HCBS Final Rule regulations to ensure on-going compliance with the requirements. This self-assessment will capture this information initially and on an annual basis. The Council on Quality and Leadership (CQL) Personal Outcome Measures may be utilized for this purpose. Regional DD Program Managers review the self-assessment and through the service planning process, assure that individual outcomes are being realized, services meet participant's needs, and plans are developed according to needs and preferences.

The Department requires all DD Licensed providers to be accredited by The Council on Quality and Leadership (CQL). According to North Dakota Developmental Disabilities Licensing rule NDAC 75-04-01-15, the Department adopts, for all licensees, the current standards used for accreditation. CQL developed a Toolkit for States which provides detailed support on how CQL's quality measurement tools and data elements comply with the home and community-based requirements and CMS reporting requirements. CQL Basic Assurances<sup>®</sup> ensures accountabilities for health, safety and human security within service provider organizations. Data collected is analyzed to identify trends and gaps and to make recommendations for improvements. CQL's Personal Outcome Measures<sup>®</sup> is a tool that focuses on the choices and control people have in their lives. This process also evaluates the quality of life for people and the degree to which organizations individualize supports to facilitate outcomes. Data is gathered, aggregated, and analyzed to identify trends, including what is going well for people, and opportunities for improvement. The data can be used to assist the person's planning teams, and to select priorities and focus efforts for quality assurance and improvement.

In addition, DD Program Managers conduct face-to-face visits every ninety days in which the DD Program Manager monitors satisfaction with services, plan implementation, health and safety, and provider interactions. If concerns are expressed during the face-to-face visits or at any other time, the concern will be resolved through the team process, with the Department, or Protection and Advocacy. The monitoring during these visits includes observations and discussions with the individual and guardian to ensure all HCBS Rule characteristics and experiences are present, including but not limited

to: people's rights to dignity, privacy, respect and freedom of coercion; right to have visitors anytime; community involvement; optimizing individual autonomy and independence in making life choices; access to personal money and possessions; and supporting individuals to control their own resources and schedules. The face-to-face visit also includes an annual assessment of the physical characteristics of the person's home or day activity setting. This annual assessment was enhanced by July 2019 to further ensure compliance with the federal HCBS rule.

For Adult Foster Care, the HCBS case managers must complete an annual resident setting experience interview using a standardized State Form Number (SFN) 636 with all adult foster care recipients living in licensed facilities. This includes both Medicaid, State, and private pay recipients. The completed form must be sent to the Department. Any issue identified in the client experience interview must be reported to the Department who will be responsible to work with the licensed provider to remediate any issues or violations related to the setting rule.

The DD Program Manager, an employee of the State Medicaid agency, is responsible to ensure that the plan contains all the required components and approves the plan once all requirements are met. These assurances are completed annually or as changes are needed to the plan. Overall Service Plan (OSP) Instructions provide detailed directions on completing the plan template according to HCBS requirements, which include the individual's setting options and any modifications of additional conditions which are justified and supported by a specific assessed need. The modifications, including a Contingency Admission Plan, are incorporated into the person-centered team process and integrated into any programming. Modifications require participant and/or guardian consent along with approval by behavior management and human rights committees. A checklist is available for the DD Program Manager to use when assessing compliance. The checklist contains the plan template sections and the information required to be contained in the plan for compliance. Person centered service plans have been updated to comply with the federal requirements by December 2016.

The use of the person-centered planning process, CQL's Personal Outcome Measures<sup>®</sup>, self-assessment, and face-to-face visits are each used collectively in determining all settings (which also include group residential, group non-residential, and individual private homes) comply and to assure ongoing compliance with the federal HCBS rule in the future. The state implemented a case file review process by July 2019 that provides ongoing quality assurance checks to make sure that verification of setting compliance is being conducted consistently throughout the state. The case file review process completed by the state office will ensure the Department is meeting state assurances, plan development and documentation, and face to face visit requirements that include the federal HCBS rule characteristics and experiences. Any findings will be remediated at the individual level, and trends will be identified to address targeted training needs regionally/statewide or by provider.

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

DD providers are required to be licensed initially and on an annual basis. The CMS rules are incorporated into the provider licensing requirements and applied to all new and renewed licenses. In March 2018, a

new provider orientation process was implemented for agencies interested in becoming a licensed provider in North Dakota. During the orientation process they are trained on the federal HCBS rule and the requirements to be compliant as an agency. Additionally, the initial and annual licensure includes a form the provider completes and signs that they understand their responsibilities as a provider to comply with the Home and Community Based Services (HCBS) regulations. Providers who have provider owned settings must submit the lease policy and lease template as part of the licensure requirements initially and as changes occur. When completing the licensure application provider must identify what settings are provider owned, facility based or both. When a provider requests to enroll or add a setting that may trigger the need for heightened scrutiny, the Department will utilize a setting assessment tool to identify any institutional characteristics. Department staff will work with the providers to complete the assessment tool and identify any areas of noncompliance, remediation efforts, and timelines for completion.

The Department conducted various trainings statewide for DD Program Managers, providers, and stakeholders educating on the federal HCBS rule, person-centered service planning requirements, and changes in state standards that require adjustments or modifications system wide such as lease requirements and lockable doors for provider owned settings. Trainings occurred: August 2014, September 2014, October 2014, January 2015, June 2015, September 2015, February 2016, March 2016, September 2016, October 2016, April 2017 and July 2017. The Department requires initial and on-going training of the federal HCBS rule to various personnel responsible for case management, service coordination, and assessing and validating setting to assure compliance. In April 2015, the Department included the federal HCBS rule training at new DD Program Administrator/DD Program Manager orientation and in April 2018, the Department updated the provider staff training policy to require the federal HCBS rule training during new staff orientation at the licensed provider level. The Department developed training materials that are used for these initial and ongoing trainings. Beginning July 2019, the Department provides ongoing opportunities for re-occurring or annual training through various methods and entities. This will include utilizing virtual platforms, the provider association, Protection and Advocacy, re-occurring DD Program Management meetings, and DD licensed providers annual staff trainings. The case file review process will be utilized for quality assurance.

Any changes in state standards that require providers to make any adjustments or modifications to comply with the federal HCBS rule will be completed by the Department through written communications, educational materials, policy issuances, or face to face trainings as appropriate. The Department's website includes fact sheets, training materials, and transition plan activities.

### Technology Dependent Medicaid Waiver

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

The Department conducted statewide trainings with HCBS Case Managers in August and October 2014, December 2016, March and September 2017, and May, August and September 2018 on the home and community-based setting requirements and the personcentered service planning requirements. Person-centered service plans have been updated and comply with the federal requirements as of July 2015.

Setting requirements will be added to the provider standards for enrollment. The HCBS Case Managers will be responsible to assure ongoing compliance with all Medicaid recipients through monitoring done during their required quarterly visit to conduct the personcentered care plan meeting. Case Managers are required to monitor during their quarterly face to face contacts to ensure an individual's is being afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint. Any violation of a waiver recipient's rights must be reported as complaint to the HCBS Case Manager, Vulnerable Adult Protective Services or both. One of the quarterly visits must include a completion of a Medicaid Waiver Quality review, State Form Number (SFN) 1154. The completed form must be sent to the Department. Any issue identified must be reported to the Department who will be responsible to work with the provider to remediate any issues or violations related to the setting rule.

Training of Department staff, HCBS Case Managers has already been conducted and will continue annually. The HCBS settings criteria has been incorporated into the HCBS Case Manager training. Department staff will utilize the CMS PowerPoint materials, FAQ's etc. that are available online to assist in the training. Additional training for foster care providers and licensers will be conducted no later than January 2019.

Any changes in state standards that require providers to make any adjustments or modifications to comply with the federal HCBS rule will be completed by the Department through written communications, educational materials, policy issuances, or face to face trainings as appropriate.

### Medically Fragile, Children's Hospice and Autism Waivers

At the recipient level; the Department will monitor and ensure compliance to the HCBS settings criteria within the family home by monitoring all person-centered service plans and completing home visits to ensure the participant is being provided for and included within the parental home the same as any other child within the home. Case Managers will ensure the individual age-appropriate choice within their lives.

## Grievance Policy

### ND Department of Health and Human Services

### Bismarck, North Dakota

### 1915c Waiver

Members and their legal decision maker, who are receiving services that are authorized through a 1915c waivers by Medical Services and funded through Medicaid, have the right to submit a grievance/complaint. The types of grievances/complaints that a member and/or legal decision maker may submit includes, but is not limited to issues with provider staff, provider performance, service delivery, and non-compliance with Home and Community Based Setting (HCBS) rules. Providers must ensure that people experience the benefits of living, working, and participating in the most integrated setting; have maximum choice and control over their lives; and rights are respected and promoted. This includes dignity, privacy, and respect; freedom from restraints; right to have visitors anytime;

community involvement; making own life choices; access to personal money and possessions; decorate home as they wish; choice in daily schedules, services, roommates, and where they live.

### Medical Services Division

At any time, preferably within 30 days, a member and/or legal decision maker can submit a grievance/complaint to Medical Services by telephone, mail, in person, or email. Within ten (10) business days, Medical Services will review and determine the information needed to resolve the grievance/complaint and other entities who may need to be involved to assist in resolution. Information may include contact with other entities, investigation, on-site visits, licensure status change, and state improvement and monitoring plan. Entities may include Protection and Advocacy, Child Protection Services, the provider accreditation entity, the provider agency, and Regional Human Services Centers. The roles and responsibilities of other entities may include, but is not limited to, information exchange, remediation, plan revision, service change, etc.

#### Contact Information:

**State Autism Coordinator**  
**600 East Boulevard Ave Dept 325**  
**Bismarck, ND 58505-0250**  
**701.328.4630**  
**Toll Free:**  
**dhsasd@nd.gov**

Case Managers monitor satisfaction with services, plan implementation, health and safety, and provider interactions. The monitoring includes observations, discussions, and assessment of the physical characters of the home or day activity setting to ensure all HCBS rule characteristics and experiences are present. If concerns are expressed to the Case Manager, the concern will be resolved through the team process, with administration, or Protection and Advocacy when appropriate.

The Case Manager will notify members and/or legal decision makers of their rights to submit a grievance/complaint, at a minimum, initially and annually during the development of the service plan process, and whenever a person communicates concern regarding services. The rights are also provided during the yearly eligibility process. The Case Manager aids the member and/or legal decision maker in the grievance/complaint process. Operation of this system does not preclude the person from requesting a fair hearing to address problems that fall under the scope of the fair hearing process.

### Developmental Disabilities Section

Clients with intellectual or related disabilities, receiving services that are authorized by Developmental Disabilities (DD) and funded through Medicaid, have the right to submit a grievance/complaint.

At any time, preferably within 30 days, a client and/or legal decision maker can submit a grievance/complaint to DD by telephone, mail, in person, or email. Within ten (10) business days, DD will review and determine the mechanisms that are needed to resolve the grievance/complaint and other entities who may need to be involved to assist in resolution. Mechanisms may include contact with other entities, investigation, on-site visits, licensure status change, and state improvement and monitoring plan. Entities may include Protection and Advocacy, Child Protection Services, the provider

accreditation entity, the provider agency, and Regional Human Services Centers. The roles and responsibilities of other entities may include, but is not limited to, information exchange, remediation, plan revision, service change, etc.

**Contact Information:**

**DD Quality Assurance Administrator**  
**1237 W Divide Ave-Ste 1A**  
**Bismarck, ND 58501**  
**701.328.8930**  
**Toll Free: 800.755.8529**  
**dhsddreq@nd.gov**

DD Program Managers monitor satisfaction with services, plan implementation, health and safety, and provider interactions. The monitoring includes observations, discussions, and assessment of the physical characters of the home or day activity setting to ensure all HCBS rule characteristics and experiences are present. If concerns are expressed to the DD Program Manager, the concern will be resolved through the team process, with DD, or Protection and Advocacy.

The DD Program Manager will notify clients and/or legal decision makers of their rights to submit a grievance/complaint, at a minimum, initially and annually during the development of the service plan process, and whenever a person communicates concern regarding services. The DD Program Manager provides assistance to the client and/or legal decision maker in the grievance/complaint process. Operation of this system does not preclude the person from requesting a fair hearing to address problems that fall under the scope of the fair hearing process.

## [Aging Services Section](#)

**Grievances:**

At any time, preferably within 30 days, a client and/or legal decision maker can submit a grievance/complaint to Adult & Aging Services by telephone, mail, in person, or email. Within ten (10) business days, Adult & Aging Services will review and determine the mechanisms that are needed to resolve the grievance/complaint and other entities who may need to be involved to assist in resolution. Mechanisms may include contact with other entities, investigation, on-site visits, licensure status change, and state improvement and monitoring plan. Entities may include Protection and Advocacy, Vulnerable Adult Protective Services, the provider accreditation entity and the provider agency. The roles and responsibilities of other entities may include, but is not limited to, information exchange, remediation, plan revision, service change, etc.

**Contact Information:**

Aging Services Section Director  
1237 W Divide Ave, Ste. 6  
Bismarck, ND 58501-1208  
Toll-Free ADRL 855.462.5465  
[Aging Services Section](#)



Adult & Aging Services Case Managers monitor satisfaction with services, plan implementation, health and safety, and provider interactions. The monitoring includes observations, discussions, and assessment of the physical characters of the home or day activity setting to ensure all HCBS rule characteristics and experiences are present. If concerns are expressed to the Adult & Aging Services Case Manager, the concern will be resolved through the team process, with Adult & Aging Services, Qualified Service Provider Complaints, Long Term Care Ombudsman and/or Vulnerable Adult Protective Services.

The Adult & Aging Services Case Manager will notify clients and/or legal decision makers of their rights to submit a grievance/complaint, at a minimum, initially and annually during the development of the service plan process, and whenever a person communicates concern regarding services. The Adult & Aging Services Case Manager provides assistance to the client and/or legal decision maker in the grievance/complaint process. Operation of this system does not preclude the person from requesting a fair hearing to address problems that fall under the scope of the fair hearing process.