

Minnesota's Statewide Transition Plan

Introduction

Minnesota developed a statewide transition plan to address new rules governing home and community-based services funded through the Medical Assistance Program. The Centers for Medicare & Medicaid Services (CMS) issued the new rules in January, 2014. The rule is intended to afford participants receiving home and community-based services increased choice and integration into the community and outlines the requirements for person-centered planning and home and community-based settings. 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.

The new federal rule applies to programs authorized under sections 1915(c), 1915(i) and 1915(k) of the Social Security Act. The rule requires immediate compliance for person-centered planning requirements for all programs, and for home and community-based setting requirements for new programs. The rule allows a transition period of up to five years from the effective date of the rule for the home and community-based setting requirements for existing programs.

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

- Brain Injury (BI) waiver
- Community Alternative Care (CAC) waiver
- Community Alternatives for Disabled Individuals (CADI) waiver
- Developmental Disabilities (DD) waiver
- Elderly Waiver (EW)

Minnesota is required to develop and implement an Olmstead Plan. The Olmstead Plan is an effort to ensure that Minnesotans with disabilities will have the opportunity, both now and in the future, to live close to their families and friends, to live more independently, to engage in productive employment and to participate in community life. The implementation of this transition plan to come into compliance with the home and community-based setting requirements in the rule will help Minnesota further the goals expressed in the Olmstead Plan. The rule impacts a subset of the population of people covered by the Olmstead Plan; however, the values expressed in the rule and the Olmstead Plan are similar and will lead to similar outcomes.

Preliminary work

The Minnesota Department of Human Services (DHS) sought input on the development of the transition plan from stakeholders at many points in the process and will continue to do so as the plan is implemented. Major phases that have been completed include:

1. **March 2014 to June 2014: Planning phase** – DHS released a document for public review and comment that identified the steps DHS would take over the summer and fall to prepare a transition plan to submit to CMS.
2. **June 2014 to September 2014: Public input phase** – DHS established an advisory committee to advise on the public input process used in the development of the transition plan. From June until September 2014, DHS collected stakeholder input which was used to inform the transition plan. This was accomplished through focus groups and other in-person meetings with seniors, people with disabilities, and family members, which were used as mechanisms to inform people of the new rule and to get their initial input on how the rule would impact their lives. DHS also provided information to and sought input from other stakeholders, such as providers, lead agencies, advocacy organizations and other interested parties through videoconferences and in-person meetings. DHS also established an email address to allow interested parties to submit questions or comments related to the development of the transition plan. In addition to these strategies for input specific to the new federal rule, DHS also reviewed input collected from seniors and people with disabilities from other initiatives with similar focuses, in order to assure a broader look at input on the topic.
3. **September 2014 to December 2014: Plan development phase** – On September 29, 2014, DHS issued a notice in the *State Register* of a draft transition plan available for public comment, as requested by CMS. DHS refined the transition plan based on public input and analysis.

Assessment Process and Remediation Strategies

DHS will complete an assessment process to determine Minnesota's current level of compliance with the home and community-based setting requirements outlined in the CMS rule. There are two components to the assessment – a regulatory review and a settings review. Each assessment component includes remediation strategies that will be used to comply with the CMS rule.

Regulatory Review

Assessment start date: June 2014

Assessment end date: April 2015

The regulatory review includes a comparative analysis of the setting requirements in the home and community-based services rule with Minnesota's current statute, rule, and federally-approved waiver plans. Topics covered by this analysis will include, but are not limited to:

- Regulatory requirements governing non-residential services, including employment and day services

- Regulatory requirements governing residential services
- Applicability of state and local landlord-tenant law
- Regulatory requirements governing any home and community based services, provider qualifications and settings

The analysis is in the process of being conducted by DHS staff.

Remediation start date: October 2014

Remediation end date: December 2018

Once the gaps in regulatory requirements are identified, DHS will propose changes to state statute, federal waiver plans, and DHS policy manuals to align regulatory requirements, service descriptions and provider standards with the federal rule. The changes to statute will be proposed in phases over the next several legislative sessions, concluding in the 2018 legislative session. Phasing in the statutory changes over several legislative sessions allows the opportunity to work with stakeholders, especially for issues that are more complicated. The timeline for remediation also allow for the necessary time to amend the waiver plans and policy manuals. The timelines will also allow adequate time for stakeholder input on specific remediation strategies. The bulk of the legislative changes will be proposed prior to and during the 2017 legislative session. The final legislative session in 2018 will be used, if necessary, to address any final refinements.

Setting Identification and Review

Assessment start date: October 2014

Assessment end date: June 2015

The process to identify and review settings will include several components. There will be an initial data analysis to identify those settings that may not comply with the rule and settings that may fall under the category of presumed not to be home and community-based.

DHS will require all providers of residential, day, and employment services to complete a self-assessment of their compliance with the CMS rule. The self-assessment will be sent to providers by May 1, 2015, with a response expected by June 1, 2015. The providers will receive training and information on how to complete the self-assessment. This training will also provide opportunity to educate the providers on the CMS rule. The information gathered through this process will further inform the list of settings that are not home and community-based settings, as well as settings that are presumed not to be home and community-based. Additional data sources will be used to verify the information that is collected through the provider self-assessment process.

For residential settings in which the provider has direct or indirect relationship (through an arrangement with the landlord) with the provider of housing, DHS will use a heightened scrutiny process to determine whether the setting meets the criteria of a home and community-based setting. While DHS gathers information to assist with determining the criteria to identify settings that isolate people from the broader community, DHS will use an initial criterion in residential settings in which people receive home

and community based services from the service provider affiliated with the housing provider. This initial criterion is when people receiving Medicaid home and community-based services are living in more than 25% of the units in a building. All providers will have the opportunity to demonstrate that the setting meets the requirements of a home and community-based setting, as defined by the CMS rule. No provider will be determined to not be home and community-based due to the concentration levels alone. Information obtained during the assessment phase will determine what the ongoing evaluation criteria will be, and will be submitted through the waiver amendment process.

DHS is aware that there is a lack of affordable housing for people in Minnesota, which impacts seniors and people with disabilities receiving services through home and community-based services waivers. Some buildings receive funding through the U.S. Department of Housing and Urban Development, which may require a building to be specifically designed for people with disabilities. DHS will work with Minnesota's Housing Finance Agency to provide information to these housing providers about the setting requirements included in home and community-based services rule, to determine whether these settings meet the requirements, and to determine what resources will be necessary to assist these settings with coming into compliance with the rule.

For settings in which day and employment services are provided solely to individuals receiving home and community-based services, a heightened scrutiny process will be used to determine whether the setting meets the criteria.

Using the information gathered to determine the list of settings that are presumed not to be home and community-based; DHS will review data from on-site assessments of a statistically significant sample of settings.

Remediation start date: January 2015

Remediation end date: December 2018

Concurrently with the provider self-assessment, DHS will require providers who are not in compliance with any component of the CMS rule to establish a transition plan specific to each site of service. The transition plan will identify any component of the rule the provider is not currently in compliance with, identify steps the provider will take and the timelines for completion of each action step. The transition plans will be used to monitor compliance of all settings, with full implementation completed by December 2018.

Settings that are listed as either presumed non-compliant or non-compliant will require some action, which will naturally vary by the setting and the nature of the problem. Examples of possible settings and action steps are summarized in the table below.

Setting type	Why doesn't meet rule criteria	Actions	End Date
Service is provided in a	Presumed not to be HCBS	Provider/setting must	June 2017

building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	because services are in a facility providing inpatient treatment	<p>provide information on how the setting meets the criteria of a home and community-based setting -or-</p> <p>Providers indicate that they will not take necessary steps to comply with HCBS setting requirements.</p> <p>DHS will implement plans to assist individuals in transitioning to other HCBS services and settings</p>	June 2018
Service is provided in a setting that is adjacent or attached to a public institution (i.e., county-owned, city-owned, state-owned nursing facility, hospital, ICF/DD or IMD)	Presumed not to be HCBS	<p>Provider/setting must provide information on how the setting meets the criteria of a home and community-based setting.</p> <p>Individuals receiving services will receive information on options for other services and support on making choices.</p>	June 2017
Service is provided in a setting that has the effect of isolating people from the broader community of people not receiving Medicaid HCBS	Presumed not to be HCBS	<p>Provider/setting must provide information on how the setting meets the criteria of a home and community-based setting.</p> <p>Individuals receiving services will receive information on options for other services and support on making choices.</p>	June 2017
Service is provided in a nursing facility, hospital, ICF/DD, or IMD and is part of the institutional services	Institutions are not home and community-based	<p>Provider could choose to seek a separate license or separate services from the institutional setting and provide information on how the settings meets the criteria of a home and community-based setting..</p> <p>If the provider chooses to not continue to provide HCBS, individuals receiving services will receive</p>	December 2018

		information on options for other services and support on making choices.	
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It is assumed that most of the necessary transitions will occur by January 1, 2019. DHS will verify compliance of the settings through March 17, 2019, and begin to take steps to ensure compliance.

On-going compliance

Minnesota will use several strategies at the provider, lead agency, and individual recipient levels to assure on-going compliance with the home and community based settings requirements. To assure 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. In 2017 and 2018, all home and community-based services providers will be required to re-enroll as a Medicaid provider, which includes submitting assurances of compliance with the waiver requirements. DHS will add assurances to this process related to compliance with the CMS rule at the provider level. Setting requirements for the CMS rule will be included in Minnesota Statutes, Chapter 245D to allow licensors to assure on-going compliance for individual settings. Minnesota will also use on-site reviews by lead agency assessors or case managers to assure that settings are in compliance and that individual outcomes are being realized.

Minnesota conducts waiver reviews of all five Medicaid waiver programs and the Alternative Care Program in each lead agency (counties, tribes and health plans). Site visits include a review of participant case files, interviews and focus groups with staff, and a review of lead agency data. The reports include feedback about promising practices and identification of program strengths, areas needing improvement, and areas requiring corrective action. We plan to incorporate into this lead agency review process the elements necessary to monitor and enforce compliance with the settings rule.

DHS will use the existing Gaps Analysis and waiver review processes to assure that individuals have a choice between settings. The Gaps Analysis, developed by DHS, reports 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. Counties will be asked to respond to questions about the availability of choice of type of residential, day and employment settings in their county beginning with the 2015 Gaps Analysis Survey.

The experience of individuals will be monitored through the MnCHOICES comprehensive assessment and service planning tool. Questions in the tool will address a person's choice of where they live and work. Minnesota is also exploring mechanisms to get direct input from seniors and people with disabilities outside of the assessment process.

Appendix: Statewide Transition Plan workplan grid

Key

CCA – Continuing Care Administration
CMS – Centers for Medicare and Medicaid Services
MDH – Minnesota Department of Health
DHS – Minnesota Department of Human Services
GRH – Group Residential Housing
HCBS – Home and community-based services
MHCP – Minnesota Health Care Programs
MMIS – Medicaid Management Information System

A: Assessment process – Regulatory Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Analyze current Minnesota regulatory requirements governing non-residential services including employment	Complete a comparison of the rule requirements with current requirements in state statute, waiver plans and Minnesota's Olmstead Plan.	June 2014	April 2015	MN Statutes, MN Rules, Community-Based Services Manual, Olmstead Plan, HCBS waiver plans	DHS staff, Minnesota Employment Learning Community, Olmstead Sub-cabinet, Dept. of Health	Identified gaps in regulations	In process
Analyze applicability of state landlord-tenant law requirements to all HCBS regulatory settings	Complete an analysis of current statutory requirements of landlord-tenant law and how this complies with the rule. This analysis will include individuals outside of DHS with expertise in this area of law.	July 2014	Oct. 2014	MN Statutes	Disability Law Center, Legal Aid, attorneys representing provider organizations, ombudsman, DHS staff	Identified HCBS settings where landlord-tenant law or comparable protections does/does not apply	DHS completed the initial analysis of settings in which Minnesota landlord tenant law currently does/does not apply.
Analyze current Minnesota regulatory requirements governing HCBS settings for residential services	Compare current Minnesota regulations with federal HCBS rule requirements regarding HCBS residential settings.	Sept. 2014	April 2015	Minnesota statutes and rules and HCBS waiver plans	DHS staff	Identified gaps between federal HCBS requirements and Minnesota's current regulations	In process
Analyze current Minnesota regulatory requirements governing all other waiver services, provider standards, and setting requirements	Compare current Minnesota regulations with CMS rule requirements regarding HCBS settings.	Oct. 2014	April 2015	Minnesota statutes, rules and HCBS waiver plans	DHS staff	Identified gaps between CMS rule requirements and Minnesota's current regulations	In process

B: Assessment process – Setting Identification and Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Identify settings that may not be HCBS and may be “presumed not to be HCBS”	Conduct an initial data analysis to determine settings that may be in an institutional setting, or meet the criteria of presumed not to be HCBS	Oct. 2014	Dec. 2014	State data bases including housing with services registration data, provider enrollment records, MMIS, Uniform Consumer Information Guide	DHS staff	Identified number and types of settings that will require further analysis	In process
Train providers on completing the provider self-assessment	Provide training to providers that will be completing the provider self-assessment. The training will include assisting providers with identifying the appropriate person within the agency to complete the assessment, providing the list of questions to providers, and walking through the self-assessment process	March 2015	June 2015	MMIS, MN-ITS (provider communication mechanism)	DHS staff, HCBS providers, lead agencies, trade associations, service recipients		
Collect provider self-assessment	Develop and distribute a provider self-assessment to all providers of residential, day and employment services to determine their compliance with the CMS rule. The development of the survey will include input from stakeholders, as well as testing by providers and trade associations. Providers will have 30 days to complete and submit the self-assessment	Oct. 2014	June 2015	MMIS, MN-ITS (provider communication mechanism)	DHS staff, advocates, service recipients, HCBS providers, trade associations, lead agencies	Information on providers' current level of compliance with CMS rule	In process
Verify provider self-assessment results	Develop and implement mechanisms to gather data necessary to independently validate provider surveys results	Jan. 2015	June 2015	Surveys, assessment tools, individual planning tools	Seniors, people with disabilities, advocates, lead agencies	Verify overall HCBS settings' level of compliance with CMS rule	Determining mechanisms for independent verification of setting compliance.
Review settings that are presumed not to	Conduct an analysis of the settings that are presumed not to be home	Jan. 2015	June 2015	Surveys, assessment tools,	Seniors, people with disabilities,	Verify overall HCBS settings' level of compliance with CMS rule	

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
be home and community based	and community-based, including reviewing additional evidence and input received from people receiving services at that setting			comments, individual planning tools	providers, advocates, lead agencies		

C: Remedial strategies – Regulatory Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status
Align state regulatory requirements with CMS rule standards	Propose changes to align state regulatory requirements with CMS Rule standards.	Oct. 2014	July 2018	MN Statute and rules, policy analysis	DHS staff, MDH staff, advisory committee, legislators, legislative staff, other stakeholders	Minnesota regulatory requirements will comport with the requirements in the federal rule	DHS will identify areas of regulatory changes needed in its 2015 report to the legislature
Adopt provider standards that align with federal HCBS regulations	Submit waiver amendments to CMS aligning provider standards with federal HCBS regulations.	Jan. 2015	Dec. 2018	Waiver guidelines and federal HCBS regulation and CMS guidance	DHS staff	HCBS waiver provider standards that align with federal HCBS regulations	Changes will be determined by regulatory analysis and legislation
Address changes needed to policy manuals and website content	Make changes to DHS policy manuals and websites to address language that conflicts with the rule, as identified in the assessment process.	Dec. 2014	Dec. 2018	Community-Based Services Manual, MHCP Provider Manual, DHS public website	DHS staff, other stakeholders	DHS policy manuals and websites that align with the requirements in the federal rule.	Changes will be based on legislation and waiver amendments

D: Remedial strategies – Settings Identification and Review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status
Collect HCBS site-specific transition plans	Providers will develop site-specific transition plans with tasks and timelines to address all areas of non-compliance.	Oct. 2014	June 2015	MMIS, MN-ITS (provider communication)	DHS staff, HCBS providers, trade associations, lead agencies	Setting-specific transition plans	In process
Evaluate overall	Aggregate data on HCBS settings;	April 2014	June 2015	HCBS specific site	DHS will aggregate	Detailed training and	Not started

status of compliance with CMS rules	Develop training needed for providers, lead agencies and service recipients; Develop mechanism for tracking compliance over time.			assessment and transition plans	data; provider and lead agency training and support developed in consultation with stakeholders	support plans and mechanism to track compliance will be developed.	
Monitor HCBS settings to assure compliance with requirements	DHS will assure HCBS settings are in compliance	July 2015	December 2018	DHS licensing reviews and case manager feedback	DHS licensing, HCBS case managers	Settings comply with HCBS requirements	Not started
Finalize compliance	Assure that transition is complete by verifying compliance of all settings	Jan. 2019	Mar. 2019	Data gathered	DHS staff, providers, seniors, people with disabilities, lead agencies	Final compliance	To be developed

E: Public Input

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Establish advisory group	Establish an advisory group to advise DHS on the process used to develop the transition plan. The group will include f representatives from advocacy organizations (including self-advocacy), providers and lead agencies.	May 2014	Dec. 2014	HCBS Partners Panel and other stakeholders	Advocates, providers, lead agencies	Process that includes input from a variety of stakeholders, with a primary focus on seniors and people with disabilities.	Group began meeting in June 2014 and continues to meet once or twice each month.
Establish email address and use as means for gathering input and questions	Establish an email address (hcbs.settings@state.mn.us) for this project.	May 2014	Mar. 2019	DHS staff	Any stakeholders	One point of contact for all questions, comments and notes related to the development and implementation of the transition plan.	DHS set up the email address in May 2014, and staff monitors it several times a week.

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Solicit input on HCBS site-specific assessment and transition plan	Engage providers, lead agencies, service recipients and advocates in reviewing and providing feedback on the draft tool.	December 2014	April 2015	DHS staff	Providers, lead agencies, service recipients and advocates	Final HCBS site specific assessment and planning tool will result in measurable assessment criteria and transition action plans.	In process
Determine mechanisms for on-going communication with the public about the status of the transition plan	Identify ways, with the help of the stakeholders, to communicate the status of the plan throughout the transition process.	Nov. 2014	Mar. 2019	To be determined	DHS staff, advisory group, seniors, individuals with disabilities	Service recipients, and other interested stakeholders, receive regular updates on the status of the implementation of the transition plan	In process
Ask for on-going public input throughout the implementation of the transition plan	Identify ways, with the help of the stakeholders, to receive public input throughout the transition process.	Nov. 2014	Mar. 2019	To be determined	DHS staff, advisory group, seniors, individuals with disabilities	Service recipients provide information to DHS to help evaluate the success of the transition plan	In process