

Transition Plan Implementation for Home and Community-Based Settings

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I. Executive summary

A. Home and community-based rule overview

On Jan. 16, 2014, the Centers for Medicare & Medicaid Services (CMS) issued a new rule that governs the home and community-based services (HCBS) for all states. The rule took effect on March 17, 2014. CMS requires the Minnesota Department of Human Services (DHS) to submit a transition plan for approval. The plan will guide the state in complying with CMS regulations.

The HCBS rule raises expectations around what is possible for older adults and people with disabilities. It requires assurances that all people have information and experiences with which to make informed decisions. It also requires the services they receive to meet a prescribed set of standards.

The HCBS rule complements the goals and values of Minnesota's Olmstead Plan. The HCBS rule is a federal rule that further supports people's rights to make informed choices and decide what is important both *to* them and *for* them. The rule requires:

- Person-centered service planning
- Conflict-free case management
- Settings to have characteristics that are home and community-based.

Minnesota has until March 17, 2019, to bring existing programs into compliance with the characteristics of settings that are home and community-based. New programs, such as community first services and supports (CFSS), which will replace personal care assistance (PCA), must meet HCBS settings requirements at the time of implementation. The rule requirements apply to both residential and non-residential settings for people who receive Medicaid funding for HCBS.

For Minnesota, the HCBS rule applies to the following current home and community-based service waivers and programs:

- Brain Injury (BI) Waiver
- Community Alternative Care (CAC) Waiver
- Community Access for Disability Inclusion (CADI) Waiver
- Developmental Disabilities (DD) Waiver
- Elderly Waiver (EW)
- Alternative Care (AC) program, 1115 demonstration waiver

CMS's home and community-based settings requirements (42 CFR §441.301(c)(4)/441.710(a)(1)/441.530(a)(1)) define home and community-based settings based on the person's experience and outcomes, in addition to a setting's location, geography or physical characteristics.

DHS is committed to working with our partners, including lead agencies (counties, tribes and health plans) and providers, as well as the people who receive the services. Together, we will identify and plan for needed changes to ensure people who receive waiver services have a high-

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quality home and community experience. We have a strong network of partners who are willing to make the necessary changes to improve experiences for people and comply with the federal rule requirements.

We will provide information and technical assistance to lead agencies and case managers as they implement the rule. We will work with providers who want and are able to make the necessary changes and support them to achieve compliance with the rule. Providers have indicated a need for additional funding and resources to meet the rule requirements.

We also will:

- Develop and implement a tiered-standards option for disability waivers. This will maintain current settings that meet the basic standards and create a higher standard for new settings and services
- Encourage the development of alternative approaches that support inclusive community models.

B. 2016 transition plan activities

Minnesota is using a statewide transition plan to move existing home and community-based settings into compliance with the federal rule by March 17, 2019. During 2016, we worked on the following:

- Redesigning the statewide transition plan
- Stakeholder engagement
- Remedial and compliance implementation strategies.

DHS submitted an initial statewide transition plan to CMS on Jan. 8, 2015, in response to the HCBS rule. In late 2015, CMS provided feedback on our initial statewide transition plan. During 2016, CMS provided all states with additional, and more detailed, guidance and technical assistance trainings that made their expectations more specific. Based on this updated information, Minnesota rewrote the statewide transition plan to incorporate the new guidance and address gaps in the initial plan from CMS. We resubmitted the plan to CMS on Dec. 2, 2016.

The amended 2016 statewide transition plan builds on the plan submitted in January 2015. The amendments include updated approaches to site-specific assessment and compliance, progress on milestones and additional information in response to CMS correspondence.

In 2016, we continued to discuss the intent of the HCBS rule and transition plan progress with stakeholders. We coordinated multiple community meetings and continued our collaboration with the HCBS advisory group on transition plan activities and goals. The advisory group developed recommendations for DHS on policy expectations and practice considerations for the new service standards and expectations. DHS also held 21 in-person community meetings across the state for people with disabilities and family members. The purpose of these meetings was to share information about the HCBS rule, gather feedback on how the rule would affect their lives and to receive feedback on new standards recommended by the HCBS advisory group. DHS considered

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these recommendations and feedback in developing the provider-attestation process for providers to submit evidence to demonstrate compliance.

In addition to the community meetings across the state, we reached out to people who receive services and other interested stakeholders through:

- Community presentations
- Stakeholder feedback sessions
- Conferences
- Provider news and correspondence
- HCBS webpage updates
- Email notices.

The HCBS rule might mean significant changes for some providers in how they deliver services, and for some people, in how they receive services. After almost 30 years of very diverse and inconsistent policies across the country, it is setting a standard for the next generation of services. It raises hopes and expectations for changes in the lives of older adults and people with disabilities, while also generating some fear of losing what is known.

DHS acknowledges that various changes need to take place within the HCBS system to meet the federal rule requirements. These changes include aligning regulations, refining service standards, policy and practice and, if needed, redefining service functions to meet the new requirements. To align regulatory requirements, we have identified changes to state licensing standards that need to be made to comply with the HCBS rule.

II. Legislation

The 2015 Minnesota Legislature required DHS to submit an annual report beginning in 2016. The law requires DHS to report on the status of the implementation of the community-based settings transition plan for the HCBS waivers.

Specifically, 2015 Laws of Minnesota, Chapter 78, Article 6, Section 30 states:

“Upon federal approval, the department of human services must take initial steps to come into compliance with the home and community-based settings transition plan for the home and community-based services waiver authorized under sections 256B.0915, 256B.092, and 256B.49. By January 15, 2016, and annually during the transition period ending by March 17, 2019, the department of human services must report on the status of the implementation to the chairs and ranking minority members of the house of representatives and senate policy and finance committees with jurisdiction over health and human services for seniors and people with disabilities.”

III. Introduction

DHS submits this report to the chairs and ranking minority members of the policy and finance committees, which have jurisdiction over health and human services for older adults and people with disabilities pursuant to 2015 Laws of Minnesota, Chapter 78, Article 6, Section 30.

The Aging and Adult Services and Disability Services divisions at the Department of Human Services (DHS) prepared this report. It includes updates on the Centers for Medicare & Medicaid Services' (CMS) review of the transition plan for implementation of the HCBS rule and 2016 implementation activities within the transition plan. It includes:

- Statewide transition plan redesign process
- Stakeholder engagement activities
- Remediation and compliance implementation strategy

On Jan. 16, 2014, CMS issued a final home and community-based services (HCBS) rule, effective March 17, 2014. The rule requires person-centered planning, conflict-free case management and settings to have characteristics that are home and community-based. The rule requires states to assess settings that receive funds through HCBS waivers. All HCBS settings must comply with the federal requirements that ensure people:

- Have opportunities to participate in community life
- Are integrated in and have full access to their communities
- Have the opportunity to seek employment and work in integrated environments

In Minnesota, the rule affects all HCBS waivers and programs, which are:

- Brain Injury (BI) Waiver
- Community Alternative Care (CAC) Waiver
- Community Access for Disability Inclusion (CADI) Waiver
- Developmental Disabilities (DD) Waiver
- Elderly Waiver (EW)
- Alternative Care (AC) Program, Section 1115 demonstration waiver

The rule also affects the community first services and supports (CFSS) option, which will replace personal care assistance (PCA). CFSS will comply with the rule upon implementation.

The purpose of the rule is to maximize opportunities for people who receive HCBS. The HCBS rule is not about taking away services or closing down programs. The rule raises expectations around what is possible for older adults and people with disabilities. It requires that all people:

- Have information and experiences with which to make informed decisions
- Are treated with respect and are empowered to make decisions about how, when and where to receive services
- Have opportunities to be involved in the community, including living and working in integrated settings

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DHS is committed to working with our partners, which include lead agencies (counties, tribes and health plans) and providers, as well as people who receive services, to identify and plan for the changes needed to ensure people who receive waiver services have a high-quality home and community experience. We acknowledge that various changes need to take place within the HCBS system to meet the federal requirements.

DHS will focus on refining service standards, policies and practices. In addition, we will modify service descriptions and develop new services, as needed, to meet the HCBS rule requirements. We have a strong network of partners willing to make the necessary changes to improve experiences for people and comply with the rule's requirements.

We are developing tools and information for lead agencies and case managers on implementation of the rule. We are working with providers who are willing and able to make the necessary changes that will support them to achieve compliance with the rule. Providers continue to express the need for additional funding and resources to meet the rule requirements.

A higher standard for future settings, or "tiered standards," will encourage the development of alternative approaches that support more inclusive community models. DHS proposed tiered-standards for designated future settings under the BI, CAC, CADI, and DD waivers and is working with stakeholders to define exception criteria further. We are working with current settings to meet the basic requirements of the HCBS rule and create a higher standard for new settings/services.

Implementation of Minnesota's HCBS transition plan to comply with the home and community-based setting requirements in the rule will also help Minnesota to promote the goals expressed in the [Olmstead Plan](#).

The values expressed in the rule and the Olmstead Plan have similarities that will lead to comparable outcomes, which include:

- Person-centered planning
- Choice for people of where to live and work
- Inclusion of people with disabilities into their community.

The HCBS rule allows for a five-year transition plan for existing programs to come into compliance with its home and community-based setting requirements. States are required to develop transition plan for the HCBS waivers in order to comply with the rule by March 17, 2019. Based on early CMS guidance, DHS submitted an initial [Minnesota statewide transition plan \(PDF\)](#) to CMS in January 2015. CMS provided feedback on Minnesota's initial plan and, like all other states across the nation, we were required to revise our plan to include additional detailed information on our approach to meeting the rule requirements. Over the course of 2016, CMS provided new guidance and expectations. Based on this additional guidance, DHS rewrote the Minnesota statewide transition plan, sent it out for public comment on Oct. 4, 2016, and submitted the [amended statewide transition plan \(PDF\)](#) to CMS on Dec. 2, 2016.

IV. Overview of the home and community-based services final rule

The two areas of the CMS rule that have the most impact on Minnesota are:

- Person-centered planning requirements
- Home and community-based settings requirements that include both residential and non-residential settings.

A. Person-centered planning requirements

The rule requires that the person-centered planning process reflect what is important to the person who receives HCBS services. It must address personal preferences and ensure health and welfare. The rule also establishes requirements for conflict-free case management.

In 2016, DHS, consistent with Minnesota's Olmstead Plan, published the [Person-Centered, Informed Choice and Transition Protocol \(PDF\)](#), providing guidance for support planners on expectations and best practices. Following the release of the person-centered planning protocols, DHS published a three-part bulletin series of Lead Agency Requirements for Person-Centered Principles and Practices, which included:

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

DHS also held a five-part series of support planning professional learning community trainings, focusing on person-centered practices that support people contributing to their community, making choices and having a valued social role.

B. Home and community-based setting requirements

Requirements for all settings

The HCBS rule requirements apply to all new and existing Minnesota waiver programs. These programs and services must comply with the rule by March 17, 2019. The home and community-based setting requirements in the rule contain general requirements that apply to all settings where people receive HCBS services.

The requirements focus on the quality of a person's experiences. They maximize opportunities for people to have access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate to meet their needs.

According to the rule, a home and community-based setting must:

- Ensure a person's right to privacy, dignity, respect and freedom from coercion and restraint
- Ensure the person receives services in the community to the same degree of access as people who do not receive Medicaid HCBS services
- Facilitate individual choice about services and supports, and who provides them
- Be integrated in, and support full access to the greater community

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- Be selected by the person from among other setting options, including non-disability-specific settings and the option of a private unit in a residential setting. (The person-centered plans must document the options available and choice made by the person)
- Optimize individual initiative, autonomy and independence in making life choices
- Provide opportunities to seek employment and work in competitive integrated settings, engage in community life and control personal resources.

Home and community-based settings include both residential and non-residential settings. In Minnesota, residential settings include:

- Adult and child waiver foster care
- Customized living (often referred to as assisted living for older adults)
- Supported living services (when provided in a licensed foster care or supervised living facility)
- Residential care waiver services.

In Minnesota, non-residential settings include:

- Adult day services
- Day training and habilitation
- Pre-vocational services
- Structured day services

The rule is clear that home and community-based settings do not include:

- Hospitals
- Institutions for mental disease (IMD)
- Intermediate care facilities for people with developmental disabilities (ICF/DD)
- Nursing facilities.

Requirements for residential settings

The rule includes additional requirements for residential services provided in a provider-owned or -controlled setting. Minnesota waiver services that are provider-owned or -controlled residential settings include, but may not be limited to:

- Adult and child waiver foster care
- Customized living (often referred to as assisted living for older adults)
- Supported living services (when provided in a licensed foster care or supervised living facility)
- Residential care waiver services.

NOTE: DHS is discontinuing the residential care waiver service by June 30, 2018. The DHS [Residential care waiver service update](#) webpage provides additional details regarding the process of discontinuing the residential care waiver service.

The rule requires all units or dwellings to have a lease, or similar legally enforceable agreement. That lease, or legal document, must include the same protections from eviction as all tenants under landlord-tenant law of state, county, city or other designated entity. If tenant laws do not apply, the

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written residency agreement must address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law.

Other requirements are included to ensure:

- Each person has privacy in his or her sleeping or living unit
- Units have lockable entrance doors, with the person and appropriate staff having keys to doors, as needed
- People who share units have a choice of roommate(s)
- People have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- People have the freedom and support to control their schedules and activities
- People have access to food at any time
- People may have visitors at any time
- The setting is physically accessible to the person.

In some of these settings, the unit described in these requirements may be the person's bedroom. In other settings, the unit may be the person's apartment or other private living space.

The rule requirements may be modified for an individual person based on a person's specific assessed need. If the requirements are modified, it must 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.

Settings presumed not to be HCBS

The rule also identifies settings that CMS presumes are not home and community-based. The settings identified by CMS as settings that are presumed not to be home and community-based include:

- Settings in a publicly or privately owned facility that provide inpatient treatment
- Settings on the grounds of, or adjacent to, a public institution
- Settings with the effect of isolating people from the broader community of people who do not receive Medicaid HCBS services.

States may choose to submit evidence to CMS to demonstrate that a setting is, in fact, home and community-based, after a site-specific assessment, including onsite observation, person-experience assessments, supporting documentation submitted by the provider through the provider attestation

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and/or through public comment. The information submitted will be subject to a heightened-scrutiny review by CMS.

CMS issued additional [guidance to states on settings that have the effect of isolating \(PDF\)](#) people who receive HCBS services from the broader community, and, therefore, are presumed not to be home and community-based. This additional guidance applies to both residential and non-residential settings. CMS has identified the following characteristics that may have the effect of isolating people from the broader community:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them
- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities
- People in the setting have limited, if any, interaction with the broader community
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

See [Appendix A](#) on Minnesota's approach to identify settings that may have the effect of isolating people from the broader community.

V. 2016 Minnesota statewide transition plan activities

A. Statewide transition plan redesign

Based on early CMS guidance, DHS developed and submitted to CMS an [initial HCBS settings rule statewide transition plan \(PDF\)](#) on Jan. 8, 2015. After CMS requested supplemental information in an [Oct. 8, 2015, correspondence \(PDF\)](#), CMS began issuing new guidance and new expectations over the course of 2016. CMS provided targeted technical assistance phone calls with multiple small groups of states in which Minnesota participated. During the calls, CMS shared current strategies and guidance for implementing the HCBS settings rule. The information in the calls was more detailed and specific. The topics of these technical assistance calls were:

- Public engagement, systemic assessment and remediation
- Setting-specific assessment and remediation process
- Heightened scrutiny
- Ongoing monitoring, which includes beneficiary communication and milestone charting.

CMS guidance emphasized that states must evaluate every setting where people are grouped together to receive services to determine whether the setting meets CMS requirements. Based on this additional 2016 CMS guidance, DHS rewrote the statewide transition plan to address gaps in the initial plan, specifically in the areas of site-specific assessment, validation and remediation. The amended statewide transition plan was posted for public comment and submitted to CMS on Dec. 2, 2016, and builds upon the originally proposed statewide transition plan submitted on Jan. 8, 2015. The 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 \(PDF\)](#), and [April 26, 2016 \(PDF\)](#), correspondences and subsequent conference calls
- An effort to simplify information so the public may better understand the purpose and intent.

Minnesota's approach moving forward is to change the HCBS system using the following primary strategies:

- Revise state licensing standards
- Amend 1915(c) 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

B. Remedial and compliance implementation strategy

The additional CMS guidance provided in 2016 identifies the responsibilities the state has to assess, validate and remediate each setting where people are grouped together to receive home and

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community-based services. This guidance requires multiple ways to validate compliance of settings. Minnesota will assess each setting through a provider attestation. DHS will validate that the information from providers is accurate in multiple ways, including through desk audits and site visits, and experience of people receiving services. For any provider that is not in compliance with the rule, DHS will remediate issues and support the provider to be in compliance with the rule through site-specific compliance plans, and through individual remediation based on a person's experience assessment. To accomplish this work, DHS must provide site-specific technical assistance, including compliance assessments, review and implementation of provider site-specific compliance plans, and prepare evidentiary packages to CMS.

DHS is evaluating the administrative resources that will be necessary to accomplish this work. To the extent possible, DHS will use mechanisms that are already in place to assure initial and ongoing provider compliance with the requirements. Because of the overall requirements and timelines for implementing the rule, however, DHS must conduct additional work that is outside the scope of current work.

To determine whether a setting meets the HCBS rule requirements, Minnesota will use the following multi-layered strategies to ensure compliance with HCBS qualities and characteristics.

STRATEGY	INITIAL ASSESSMENT	VALIDATION	REMEDICATION
Provider attestation requirement for each setting	X	-	-
Desk audit/ review provider submitted supporting documentation of compliance	-	X	-
On-site visits and outreach	-	X	-
Person's experience assessments	-	X	X
Provider site-specific compliance plans and outreach	-	-	X

Provider attestation requirement for each setting (initial assessment)

The purpose of the required provider attestation is 1) to identify settings that are presumed not to be HCBS because they are near an institution or have the effect of isolating and 2) for providers to report status of compliance with new service standards and to provide supporting evidence.

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DHS will require providers to complete an attestation for each setting. The attestation will contain questions to identify whether they comply with HCBS characteristics or are settings that are “presumed not to be HCBS” because they:

- Are in a public or private institution that also provides inpatient treatment
- Are adjacent to a public institution
- Have characteristics that could have the effect of isolating.

All providers of day programs and residential settings (approximately 6,659 settings) will be required to submit a provider attestation. Settings identified as “presumed not to be HCBS” will be tracked and receive a closer state assessment.

Minnesota will use the provider attestation as a key strategy to collect documentation to validate that providers are compliant with the HCBS settings rule. For settings that are presumed not to be HCBS, the collected information will be part of the package of evidence submitted to CMS to demonstrate that the setting is, in fact, home and community-based. Additional strategies to build the package of evidence include a site-specific assessment, including on-site observation, person-experience assessments, supporting documentation submitted by the provider through the provider attestation and/or through public comment. The submitted information will be subject to a heightened scrutiny review by CMS.

Desk audit/reviewing provider-submitted supporting documentation of compliance (validation)

State staff will review completed attestations and supporting documents for 926 settings, which is a statistically significant sample of submissions, determined by setting type. Staff will conduct additional desk audits for settings identified as presumed not to be HCBS. We anticipate the majority of day training and habilitation, prevocational services and structured day services will need further state assessment, including a desk audit. These settings are typically designed specifically for people with disabilities or for people with a certain type of disability and may have the effect of isolating people from the broader community.

Person’s experience assessments (validation and remediation)

Case managers will assess annually, at the person’s mid-year support plan review or annual reassessment, the person’s experience assessment. This assessment will evaluate whether a person’s experience is consistent with the standards and expectations under the rule. It will also validate compliance of the provider attestation.

DHS must compare the data of the person’s experience assessment with provider attestation submissions to validate provider compliance. Questions in the person-experience assessment will mirror those in the provider-setting attestation and broader expectations under the rule.

DHS is developing the person-experience assessment as part of reassessment and as a component of the new electronic support plan that is targeted to launch in June 2017. We will require case managers to perform ongoing assessments of all people receiving HCBS. The person-experience assessments will produce data for all people receiving HCBS services. The state is working with

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the University of Minnesota Institute of Community Integration (ICI) to develop the experience questions.

Provider site-specific compliance plans and technical assistance (remediation)

Providers who do not comply fully with the requirements of the HCBS rule will be required to complete a site-specific compliance plan. Providers under a site-specific compliance plan will need to comply with the rule by March 2018. We will also require them to report progress toward compliance. 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 identified as a statewide need through desk audits/document reviews
- Focus groups to help overcome barriers to compliance
- Provider mentors and quality-improvement providers who can share best practices
- One-on-one technical assistance outreach.

In summary, the state must 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 of the setting and of the service provider through review by state staff and state licensing entities
- Lead agency/case manager roles and responsibilities for person-centered planning through lead agency reviews.

C. Stakeholder engagement

A significant component of DHS's public engagement includes collaboration with the HCBS rule advisory group. The advisory group represents experts from county government, service providers, managed care organizations and advocates. See [Appendix B - Members of the HBCS advisory group](#) for a list of organizations that participate.

The advisory group developed recommendations on policy expectations and practice considerations for DHS. The group reviewed the HCBS rule standards and discussed expectations and responsibilities of case managers, care coordinators and providers, as well as the licensing authority responsible to enforce the service standard. The advisory group also supported DHS in identifying characteristics of settings that may have the effect of isolating. 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.

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During 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 input and feedback to weave into the recommendations of the HCBS advisory group.

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
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

The target audience for these community meetings were people and their families. Some case managers, service providers and others attended.

DHS 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 mailings
- Fact sheets
- On-demand videos
- Electronic updates

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- Provider focus groups
- Speaking engagements
- Outreach through advocacy organizations, the Area Agencies on Aging and others

The DHS also held multiple focus groups with stakeholders, including the HCBS advisory group, on the plan to develop tiered standards for new settings funded through the BI, CAC, CADI and DD waivers. We will continue to engage stakeholders throughout the development and implementation of tiered standards.

VI. Status of statewide transition plan and 2017-2019 activities

A. Plan status

DHS rewrote the [Minnesota statewide transition plan \(PDF\)](#) to address gaps in the initial plan, specifically in areas of site-specific assessment, validation and remediation. DHS submitted the revised statewide transition plan for the 30-day public comment period on Oct. 5, 2016. DHS submitted the [updated statewide transition plan \(PDF\)](#) to CMS on Dec. 2, 2016.

While the statewide transition plan is the overarching plan to transition Minnesota to federal compliance, federal guidelines also require us to include the transition plan information in each of the five waiver-specific renewals or amendments.

B. Tiered standards for disability waivers

We are working with existing HCBS settings to meet, at minimum, the basic requirements of the HCBS rule. But we will require higher standards for designated new service settings. New setting standards will meet HCBS standards more fully and further support community-inclusive service models. We will work closely with stakeholders to establish and define criteria to implement the tiered standards.

At the time of this report, the following new developments/settings serving people with disabilities on the BI, CAC, CADI and DD waivers will be subject to a higher state standard:

- Day training and habilitation (DT&H) services
- Adult day services
- Customized living services

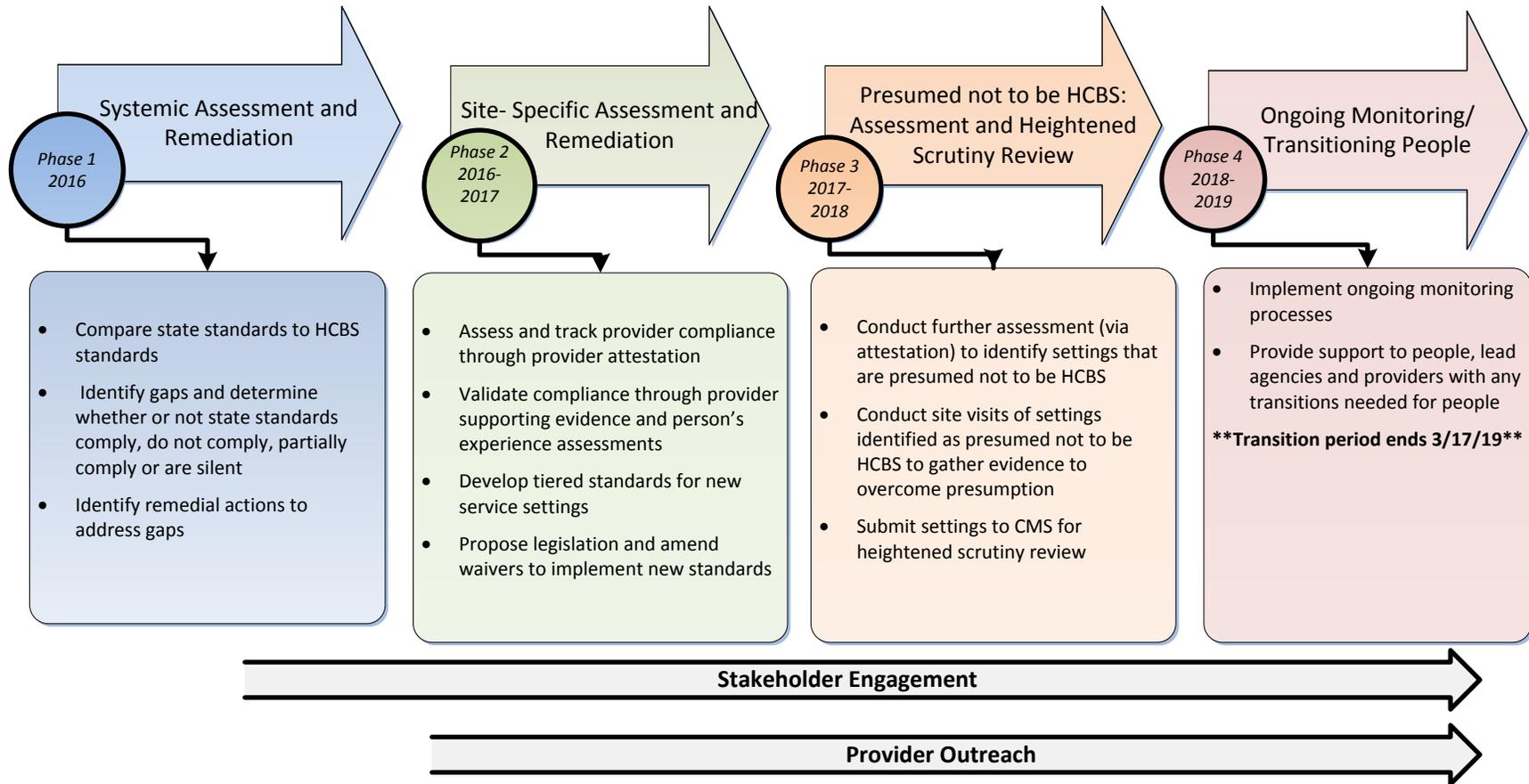
The Minnesota statewide transition plan has additional details about the tiered standards for disability waivers.

C. Presumed not to be HCBS – Assessing compliance

DHS will evaluate each setting that is presumed not to be HCBS. We will identify settings that need to be evaluated based on how close a setting is to an institution and effects-of-isolating criteria. The evaluation will determine if there is evidence the setting can overcome this presumption. The process for identifying settings that are presumed not to be HCBS based on proximity to institutions or that have the effect of isolating can be found in the [updated Minnesota statewide transition plan \(PDF\)](#).

Settings that may have the effect of isolating will not be determined to have the effect of isolating solely because of concentration levels. No provider will be determined not to be home and community-based because of the concentration levels alone. 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.

D. 2017-2019 activities



2017 Activities – operationalizing the plan:

CMS requires multiple methods to validate compliance of settings. We will use the majority of 2017 to complete assessments. We will launch the provider attestation (after a small group of provider stakeholders pilot the tools) to perform setting-specific assessment and remediation.

We will provide outreach activities, monitoring, focus groups and technical assistance to support providers as they complete and implement site-specific compliance plans. We will continue to hold focus groups and stakeholder meetings to refine tiered standards, revise licensing standards and develop amendments to the 1915(c) waiver plans.

We will conduct closer assessments of settings presumed not to be home and community-based and prepare evidentiary packages for settings that are ready for submission to CMS for heightened scrutiny assessments at the end of 2017 and early 2018. We will provide trainings, information, resources, technical assistance and education to providers and people receiving services throughout the implementation the HCBS rule as described in the statewide transition plan.

To assure initial and ongoing provider compliance with the requirements, DHS will use mechanisms that are already in place, to the extent possible. However, additional work will be required initially to accomplish the requirements of the CMS rule. Once all standards are established through statute, rule and waiver amendments, we will use the existing processes at the provider, lead agency and individual person levels to assure initial and ongoing compliance with the HCBS rule.

VII. Appendices

Appendix A: Identification of settings that may have the effect of isolating

DHS will identify, through provider attestation responses and reviews of supporting documentation, settings that may have the effect of isolating. Three criteria groups are used to identify settings that are presumed not to be HCBS because they may have the effect of isolating people from the broader community. These three groups are outlined below. We will use criteria identified in groups 1 and 2 to identify settings that isolate people with disabilities and older adults. For settings that provide disability waiver services, we will use the additional characteristics in group 3 to identify settings that may isolate.

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 effect of isolating people. We will identify the settings that may have the effect of isolating by provider attestation responses and review of supporting documentation.

We will submit the following settings 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:

- A setting designed to provide multiple types of services and activities to people with disabilities or older adults 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).

We will evaluate settings identified in group 2 further to determine whether they meet criteria of having the effect of isolating. We will also 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 effect of isolating.

Step 1 - Identify settings that may have the effect of isolating

The state will use the following trigger to assess further settings for the effect of isolating:

- 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.

Step 2 - Demonstrating that settings do not have the effect of isolating

Settings that meet the trigger in step 1 will be required to demonstrate that the following characteristics are present and submit supporting documentation that the setting does not have the effect of isolating:

- 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.

Step 3 - Effect-of-isolating assessment

Settings that are not able to ensure characteristics and provide supporting documentation in step 2 will need an effect-of-isolating assessment. The state will assess to determine if 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.

If the setting meets the criteria in step 3, the state will identify and communicate to the provider changes needed to transition the setting into one that does not have the effect of isolating. The state will provide tools and information to support the provider with any needed changes.

If the setting is unable to make changes, it may:

- Be determined not HCBS by the state or
- Receive state support as HCBS and be sent for CMS heightened-scrutiny review.

If the setting is unable to make changes, it will be determined not HCBS by the state.

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 not to be home and community-based because of the concentration levels alone. Information obtained during the assessment will determine what the ongoing evaluation criteria will be, and will be submitted through the waiver-amendment process.

Appendix B: Members of the HCBS advisory group

- Association of Residential Resources in Minnesota (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
- National Alliance on Mental Illness (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