



Legislative Report

Transition Plan Implementation for Home and Community-Based Settings

**Aging and Adult Services and Disability
Services divisions**

January 2018

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Table of contents

Transition Plan Implementation for Home and Community-Based Settings	1
Aging and Adult Services and Disability Services divisions.....	1
I. Executive summary.....	5
Home and community-based rule overview	5
Minnesota's statewide transition plan.....	6
II. Legislation.....	9
III. Introduction.....	10
IV. Overview of the home and community-based services final rule	13
Person-centered planning requirements	13
Home and community-based settings requirements.....	14
Requirements for all settings	14
Settings presumed not to be HCBS.....	15
V. 2017 Minnesota statewide transition plan activities.....	17
Making the plan part of our standard operations.....	17
HCBS rule legislative policy changes.....	17
HCBS provider attestations and provider implementation of HCBS setting requirements	18
Site-specific validation and remediation plan	19
Communication campaign.....	20
VI. Status of statewide transition plan and 2018-2022 activities.....	22
Plan status	22
Status of tiered standards for disability waivers	23
Tiered standards for customized living services.....	23
Tiered standards for non-residential services	24
Presumed not to be HCBS – assessing compliance	25

2018 planned activities..... 25

2018-2022 planned activities (visual)..... 27

VII. Appendix 28

Appendix A: Identification of settings that may have the effect of isolating..... 28

 Group 1 28

 Group 2 28

 Group 3 29

Appendix B: New laws effective in 2017 30

Appendix C: Members of the HCBS advisory group 31

I. Executive summary

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.

New programs 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:

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

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.

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 diverse and inconsistent policies across the

country, the HCBS final rule 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 Minnesota must make changes to the HCBS system to meet the federal 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, the Department of Human Services and the Minnesota Department of Health collaborated to identify changes to state licensing and regulatory standards that we need to make to comply with the HCBS rule.

We will work with providers who want and are able to make the necessary changes and support them with technical assistance to comply with the rule. Providers have also 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 HCBS standards and create a higher standard for new HCBS settings and services.
- Encourage the development of alternative services that support inclusive community models.

Minnesota's statewide transition plan

The statewide transition plan is a document that outlines how Minnesota will ensure compliance with the HCBS Settings Rule. CMS requires the transition plan to include three main components:

- Systemic and site-specific assessment
- State action steps
- Stakeholder input

The HCBS rule originally allowed a five-year transition plan for existing programs to come into compliance with its home and community-based setting requirements. On May 9, 2017, CMS announced that states have until March 2022 to bring their systems into compliance with the HCBS settings requirements, extending the deadline by three years. To read more, see [Extension of Transition Period for Compliance with Home and Community-Based Settings Criteria \(PDF\)](https://www.medicaid.gov/federal-policy-guidance/downloads/cib050917.pdf) (<https://www.medicaid.gov/federal-policy-guidance/downloads/cib050917.pdf>).

We continue to move forward with redefining new requirements, recognizing the sooner the new requirements are in place, the more time providers will have to transition into full compliance. The extension provides additional time for the state to implement the new service standards fully, and to develop and implement future tiered service standards for day services and customized living for younger people with disabilities.

As outlined in the [January 2017 Transition Plan Implementation for Home and Community-Based Settings Report \(PDF\)](https://mn.gov/dhs/assets/2017-hcbs-leg-report_tcm1053-284396.pdf) (https://mn.gov/dhs/assets/2017-hcbs-leg-report_tcm1053-284396.pdf), DHS rewrote the statewide transition plan to incorporate new guidance issued by CMS in 2016 and to address gaps identified in the initial plan by CMS. We resubmitted the plan on Dec. 2, 2016. We received a [letter from CMS granting initial approval \(PDF\)](https://mn.gov/dhs/assets/060217-CMS-STP-approval_tcm1053-298565.pdf) (https://mn.gov/dhs/assets/060217-CMS-STP-approval_tcm1053-298565.pdf) on June 2, 2017.

Initial approval means CMS approves of Minnesota's systemic assessment, including remediation activities. The details of the systemic assessment are on pages 12 to 24 of [Minnesota's statewide transition plan \(PDF\)](https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf) (https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf). See the section [VI. Status of statewide transition plan and 2018-2022 activities](#) in this report for the next steps required for Minnesota's statewide transition plan to receive final approval.

2017 transition plan activities

During 2017, we worked to make the transition plan part of our standard operations and to bring our system into alignment with the HCBS Settings Rule. These activities included:

- Revisions to state licensing, assessment, and support-planning statutes,
- Assessing all HCBS waiver provider settings to ensure they meet the new regulation requirements, and
- Validating settings to determine whether they meet new requirements through desk audits, site visits and asking people receiving services about their experiences.

In 2017, DHS also undertook a communication campaign to reach people who receive waiver services, HCBS service providers, trade associations and other interested parties. The goal was to help make the plan part of our standard operations. We provided outreach, technical assistance and information through:

- Direct mail for toolkits, resources and guides
- Dedicated e-mail box for technical assistance
- Community presentations
- Stakeholder feedback sessions
- Conferences
- Provider news and correspondence
- Updates to the HCBS rule webpage
- E-List announcements
- Direct email notices

DHS continues to engage people who receive services and other interested stakeholders to share information and develop new services to implement the HCBS rule. We are using several outreach methods, including:

- [Disability Hub MN](http://disabilityhubmn.org) (disabilityhubmn.org) (formerly Disability Linkage Line)
- Letters to people who receive aging and disability services

- Provider-attestation resources through associations, webinars and videos
- In-person stakeholder meeting for tiered standards (non-residential and residential services)
- Conferences
- HCBS Advisory Committee

DHS is committed to working with our partners, including lead agencies (counties, tribal nations 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-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.

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 prepared this report. It includes updates on the Centers for Medicare & Medicaid Services' review of the transition plan for implementation of the HCBS rule and 2017 implementation activities under the transition plan. It includes:

- Revisions to state licensing, assessment and support-planning statutes,
- Assessing all HCBS waiver provider settings to ensure they meet the new regulation requirements, and
- Validating settings to determine whether they meet new requirements through desk audits, site visits and asking people about their experiences

On Jan. 16, 2014, CMS issued a final home and community-based services 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:

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

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

DHS is committed to working with our partners, which include lead agencies (counties, tribal nations 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 are modifying 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 state public policy and the [Olmstead Plan](#) (http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=opc_home).

The values expressed in the rule, state statute and public policy, 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 originally allowed a five-year transition plan for existing programs to come into compliance with its home and community-based setting requirements. On May 9, 2017, [CMS announced \(PDF\)](#) (<https://www.medicare.gov/federal-policy-guidance/downloads/cib050917.pdf>) that states have until March 2022 to bring their systems into compliance with the HCBS settings requirements, extending the deadline by three years.

States are required to develop a transition plan for the HCBS waivers in order to comply with the rule. Based on early CMS guidance, DHS submitted an [initial Minnesota statewide transition plan \(PDF\)](#)

(https://mn.gov/dhs/assets/01072015-HCBS-statewide-transition-plan_tcm1053-321502.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 \(PDF\)](https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf) (https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf) to CMS on Dec. 2, 2016. On June 2, 2017, CMS granted initial approval of the statewide transition plan.

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

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.

Following the release of the [Person-Centered, Informed Choice and Transition Protocol \(PDF\)](#) (<https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-3825-ENG>), DHS began to publish a series of bulletins in 2016 and 2017 outlining lead agency requirements for person-centered principles and practices, which included:

- [Lead Agency Requirements for Person-Centered Principles and Practices – Part 1 \(PDF\)](#) (<http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs-285572.pdf>)
- [Lead Agency Requirements for Person-Centered Principles and Practices – Part 2 \(PDF\)](#) (<http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs-285935.pdf>)
- [Lead Agency Requirements for Person-Centered Principles and Practices – Part 3 \(PDF\)](#) (<http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs-287420.pdf>)
- [Lead Agency Requirements for Person-Centered Principles and Practices – Part 4 \(PDF\)](#) (<http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs-294170.pdf>)

DHS also held a five-part series of support planning professional learning community trainings during 2016 and 2017, focusing on person-centered practices that support people in contributing to their communities, making choices and having valued social roles. Building on the five-part series, DHS lead monthly person-centeredness trainings for the support planning professional learning community ([eList announcement of the September 2017 trainings session](#), <https://content.govdelivery.com/accounts/MNDHS/bulletins/1b85521>) with rotating topics and guest speakers who have subject matter expertise. In 2016 and 2017, more than 5,000 people attended the support planning professional learning community trainings. In 2017, DHS also provided one-day, in-person trainings throughout the state (May to December) to improve person-centered practices and following the Person-Centered, Informed Choice, Transition protocol (see [May 1, 2017, eList announcement](#) of the series, <https://content.govdelivery.com/accounts/MNDHS/bulletins/197cffc>, and [Oct. 12, 2017 eList announcement](#) of additional dates, <https://content.govdelivery.com/accounts/MNDHS/bulletins/1bd1ba9>). DHS also maintains a [Person-centered practices webpage](#) (<https://mn.gov/dhs/partners-and-providers/program-overviews/long-term-services-and-supports/person-centered-practices/>) that supports Minnesota in moving toward person-centered practices in all areas of service delivery.

Home and community-based settings 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 all requirements of the rule by March 17, 2022. 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.

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
- Intermediate care facilities for people with developmental disabilities
- Nursing facilities

According to the rule, all home and community-based settings must meet the following standards:

HCBS standards that apply to all HCBS settings

Setting supports opportunity to seek employment and work in competitive integrated settings

Setting supports engagement in community life

Setting supports control personal resources

Setting supports receiving services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

The person chooses setting from available setting options

Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint

Optimize individual initiative, autonomy and independence in making life choices including daily schedule and with whom to interact

Facilitate individual choice regarding services and supports and who provides them.

Additional Standards that apply to provider-owned or controlled residential settings

The person has a lease or other legally enforceable agreement

Privacy in their bedroom or living unit including lockable doors

Choice of roommates if shared unit

Freedom to furnish and decorate unit

Freedom and support to control schedule and activities including access to food at any time

Able to have visitors at any time

Physically accessible

Modifications of the additional requirements must be:

- Supported by specific assessed need
- Justified and documented in the person-centered service plan
- Documented in the person-centered service plan

Adapted from

<http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/requirements-for-home-and-community-settings.pdf>

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 that includes onsite 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.

CMS issued additional [guidance to states on settings that have the effect of isolating \(PDF\)](https://www.medicare.gov/medicaid/hcbs/downloads/settings-that-isolate.pdf) (<https://www.medicare.gov/medicaid/hcbs/downloads/settings-that-isolate.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 or authorize interventions and 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. 2017 Minnesota statewide transition plan activities

On June 2, 2017, CMS granted initial approval of the statewide transition plan. Initial approval means CMS approves of Minnesota's systemic assessment including our remediation activities. The [statewide transition plan \(PDF\)](#) outlines Minnesota's systemic assessment on pages 12 to 24.

In order to receive final approval, states must assess the level of compliance of each site, validate compliance and describe the plan to remediate areas of non-compliance. See section [VI. Status of statewide transition plan and 2018-2022 activities](#) in this report for the next steps for Minnesota's statewide transition plan to receive final approval.

Making the plan part of our standard operations

In 2017, DHS began to implement the strategies identified in the statewide transition plan to bring our system into compliance. These strategies include:

- HCBS rule legislative policy changes: Revising DHS licensing and housing with services requirements to address our system assessment
- HCBS provider attestations and provider implementation of HCBS setting requirements
- Site-specific validation and remediation plans

HCBS rule legislative policy changes

The legislative changes made during the 2017 legislative session align Minnesota's regulatory requirements and provider standards with the HCBS rule. The changes address the gaps identified through the systemic assessment. These changes reflect the requirements to ensure the provider settings meet the basic requirements of the HCBS rule. Amendments to law include:

- The housing with services contract requirements related to resident rights in 144D
- Adult foster care licensing requirements for people on Elderly Waiver in 245A and 256.045
- Home and community-based services licensing requirements in 245D
- Long-term care consultation service requirements in 256B.0911

A summary of statutory changes made to programs licensed by DHS during the 2017 legislative session are posted to [Licensing's legislative changes in 2017 webpage](https://mn.gov/dhs/general-public/licensing/legislative-changes/#7) (https://mn.gov/dhs/general-public/licensing/legislative-changes/#7). On Aug. 4, 2017, the Minnesota Department of Health issued [Information Bulletin 17-03: Housing with Service \(HWS\) Resident Rights, Contracts and Lodging License](#)

(http://www.health.state.mn.us/divs/fpc/profinfo/ib17_3.html) to inform customized living service providers of the changes to Minnesota Statutes 144D.

For a detailed list of statutory changes related to the HCBS rule, review [Appendix B: New laws effective in 2017](#) in this document.

HCBS provider attestations and provider implementation of HCBS setting requirements

CMS guidance requires states to assess all settings that group people to receive home and community-based services to determine whether the setting meets the HCBS rule requirements. To conduct a site-specific assessment, DHS developed, tested and launched an [online provider attestation](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/attestation-phase-1.jsp) (<https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/attestation-phase-1.jsp>) for designated HCBS settings in 2017.

The purpose of the site-specific provider attestation is:

- For HCBS providers to report each setting's current level of compliance with areas of the HCBS rule
- For DHS to provide information and feedback to help providers with areas that need changes to meet the new requirements

The provider-attestation form requires the HCBS provider to submit documentation to demonstrate compliance in each requirement area. The provider attestation launched on March 27, 2017. Providers had until May 31, 2017, to submit an initial provider attestation with the following information:

- Areas where settings are in full compliance with the rule
- Areas where settings are not yet compliant and will need to make changes
- Whether the provider does not intend to meet the requirements and will not provide HCBS services after March 2022

Providers had until Sept. 1, 2017, to complete any updates and to submit a final attestation, including supporting documentation. A provider could request a [hardship extension](https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7176A-ENG) (<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7176A-ENG>) for additional time, up to Dec. 31, 2017, to make any needed changes and indicate compliance on their attestation.

DHS received 5,981 site-specific final submitted attestations. DHS expected 6,001 attestations for the following services:

- Residential settings, including:
 - Adult foster care or supportive living services provided in a licensed setting
 - Child foster care or child supportive living services provided in a licensed setting
 - Customized living
- Day settings, including:

- Adult day services — family and center-based
- Day training and habilitation
- Prevocational services
- Structured day programs

DHS developed service-specific provider-attestation toolkits, including provider attestation guidebooks to help providers comply with the HCBS rule. Each guidebook has instructions for how to complete an attestation and guidance on what is expected of providers to reach compliance, including helpful tips and tools. DHS developed additional provider-attestation tools and resources that included:

- [A YouTube video on how to use and update the attestation form](https://www.youtube.com/watch?v=FpEFfKeMDJo) (https://www.youtube.com/watch?v=FpEFfKeMDJo)
- DHS-revised supporting documents required by certain licenses
- Sample DHS licensing forms
- [Provider attestation frequently asked questions webpage](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-faq.jsp) (https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-faq.jsp)
- Recorded webinars and PowerPoint presentations
- [Important links for HCBS attestation process webpage](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-links.jsp) (https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-links.jsp)
- Direct outreach mailings to each setting, email to provider contacts, MN.ITS mailbox, Provider News
- Close collaboration with provider associations
- Dedicated email address (hcbs.settings@state.mn.us) for technical assistance with policy staff

Site-specific validation and remediation plan

The next steps in evaluate all HCBS provider settings is to validate each site using a multi-layered strategy to ensure compliance with the rule requirements. Validation strategies include:

- Desk audit/review of provider-submitted supporting documentation of compliance: DHS will conduct desk audits to validate the results of provider attestations. A desk audit includes reviewing the provider attestation and the supporting documentation demonstrating the setting complies with each requirement of the HCBS rule
- Licensing visits: Review of the license-holders' compliance with applicable HCBS laws and rules
- On-site visits: Will be required for settings identified as presumed not to be home and community-based to gather evidence to overcome the presumption.
- Person's experience assessments: In November 2017, DHS added new questions (called the LTSS Improvement Tool) to the electronic support plan and the Long-Term Care Consultation legacy

documents, including MMIS. Case managers will use the tool each year to gauge the experiences of people who receive services compared to the HCBS settings requirements

Providers who do not comply fully with requirements of the settings rule will be required to complete a site-specific compliance plan. We will develop a site-specific compliance plan template for providers so they have a uniform way to document remediation.

Outreach activities to support providers in remediation will include:

- Training and education specific to provider types and/or statewide training on topics identified through desk audits and document review
- Focus groups to help to find ways to eliminate barriers to compliance
- Mentors and providers who can share best practices
- One-on-one technical assistance.

We are working with existing HCBS settings to meet, at minimum, the basic requirements of the HCBS rule. We will, however, require higher (tiered) standards for designated new service settings serving people with disabilities on the BI, CAC, CADI and DD waivers. New setting standards will meet HCBS standards more fully and further support community-inclusive service models. We will continue to work closely with stakeholders to establish and define criteria to implement the higher (tiered) standards for:

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

Communication campaign

DHS designed a series of communications to explain to people who receive services what is changing, why it is changing and what those changes might mean for them. Each communication included resources, such as the flyers [My best life, my way: The HCBS rule \(PDF\)](https://mn.gov/dhs/assets/03072017-HCBS-flyer-What-does-HCBS-rule-mean-for-me-accessible_tcm1053-284054.pdf) (https://mn.gov/dhs/assets/03072017-HCBS-flyer-What-does-HCBS-rule-mean-for-me-accessible_tcm1053-284054.pdf) and [What does person-centered mean for me? \(PDF\)](https://mn.gov/dhs/assets/03072017-HCBS-flyer-My-best-life-my-way-accessible_tcm1053-284056.pdf) (https://mn.gov/dhs/assets/03072017-HCBS-flyer-My-best-life-my-way-accessible_tcm1053-284056.pdf) for the person to learn more about the rule.

DHS designed a separate communication plan to support service providers. The following communication plan has helped 5,981 HCBS settings to complete a provider attestation to comply with the HCBS rule requirement of site-specific assessments. Of the expected settings required to complete an attestation, fewer than 20 settings did not submit one.

DHS also provided attestation tools and resources that included:

- YouTube videos on [how to use the attestation form](https://www.youtube.com/watch?v=YqoUmrSJ5qY) (https://www.youtube.com/watch?v=YqoUmrSJ5qY) and [how to update the attestation form](https://www.youtube.com/watch?v=FpEFfKeMDJo) (https://www.youtube.com/watch?v=FpEFfKeMDJo)
- Revised supporting documents required by certain licenses
- Sample DHS licensing forms
- A [Provider attestation frequently asked questions \(FAQ\) webpage](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-faq.jsp) (https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-faq.jsp)
- Recorded webinars and PowerPoint presentations
- [Important links for HCBS attestation process webpage](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-links.jsp) (https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/hcbs-links.jsp)
- [Provider's guide to putting the HCBS rule into practice \(PDF\)](https://mn.gov/dhs/assets/102517-hcbs-best-practices-guide_tcm1053-318393.pdf) (https://mn.gov/dhs/assets/102517-hcbs-best-practices-guide_tcm1053-318393.pdf)
- Direct outreach – mailings to each setting, email to provider contact, MN.ITS mailbox, Provider News
- Collaboration with provider associations
- Dedicated email address (hcbs.settings@state.mn.us) for policy staff who could provide technical assistance

DHS conducted two provider attestation webinars in March and April of 2017 to help providers to complete a final submitted attestation. For providers unable to attend these trainings, we posted the audio playback of the webinar and PowerPoint material for on-demand viewing in the [online training archives](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_143138) (http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_143138). DHS also provided in-person presentations and targeted HCBS rule training in June through August at trade associations' conferences and DHS's Minnesota Age and Disabilities Odyssey Conference.

Between April and May 2017, DHS responded to more than 1,000 requests for technical assistance through our dedicated email box. The majority of requests received a same-day email or phone response to help providers complete their attestations and begin bringing their settings into compliance with the HCBS rule. By the end of November, DHS responded to more than 1,800 direct requests for technical assistance from providers and conducted seven separate rounds of targeted communication.

DHS continues to engage people who receive services and other interested stakeholders to share information and develop new services to implement the HCBS rule. DHS uses a number of strategies to provide information and seek input from stakeholders throughout the transition period. Stakeholders include people who receive services and their family members, providers, lead agencies (counties, health plans and American Indian nations), advocacy organizations, the HCBS rule advisory group and other interested parties. DHS uses several methods to reach out to our stakeholders, including:

- Self-advocate meetings
- Direct mailings
- Fact sheets
- On-demand videos
- Electronic updates
- Provider focus groups
- Speaking engagements
- Outreach through advocacy organizations, the Area Agencies on Aging and others

VI. Status of statewide transition plan and 2018-2022 activities

Plan status

On June 2, 2017, CMS granted initial approval of the statewide transition plan. Read more in the [June 2 letter from CMS \(PDF\)](https://mn.gov/dhs/assets/060217-CMS-STP-approval_tcm1053-298565.pdf) (https://mn.gov/dhs/assets/060217-CMS-STP-approval_tcm1053-298565.pdf). As outlined in the [January 2017 Transition Plan Implementation for Home and Community-Based Settings Report \(PDF\)](https://mn.gov/dhs/assets/2017-hcbs-leg-report_tcm1053-284396.pdf) (https://mn.gov/dhs/assets/2017-hcbs-leg-report_tcm1053-284396.pdf), DHS rewrote the statewide transition plan to incorporate new guidance issued by CMS in 2016 and to address gaps in the initial plan. We resubmitted the plan on Dec. 2, 2016. Initial approval means CMS agrees with Minnesota’s systemic assessment, including remediation activities. The details of the systemic assessment are on pages 12 to 24 of [Minnesota’s statewide transition plan \(PDF\)](https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf) (https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf).

On May 9, 2017, CMS announced that states have until March 2022 to bring their systems into compliance with the HCBS settings requirements, extending the deadline by three years. Read more in [Extension of Transition Period for Compliance with Home and Community-Based Settings Criteria \(PDF\)](https://www.medicare.gov/federal-policy-guidance/downloads/cib050917.pdf) (https://www.medicare.gov/federal-policy-guidance/downloads/cib050917.pdf). Minnesota has until March 17, 2022, to bring existing programs into compliance with the characteristics of settings that are home and community-based. To receive final approval of Minnesota’s statewide transition plan, DHS will make revisions to the plan and resubmit to CMS. These revisions include:

- Comprehensive site-specific assessment for 100 percent of HCBS settings, including validation strategies for assessment results and outcome measurements
- Site-specific assessment remediation strategies and timelines
- Ongoing monitoring and quality assurance of HCBS compliance

- Detailed plan for identifying settings that are presumed not to be HCBS, evaluation strategies for these settings and preparing site-specific submissions to CMS for heightened-scrutiny review
- Detailed strategy and communication plan for settings that cannot or will not comply with the HCBS rule by March 2022

Status of tiered standards for disability waivers

We are working with existing HCBS settings to meet, at minimum, the basic requirements of the HCBS rule. However, we will require higher standards for new service settings serving people with disabilities on the BI, CAC, CADI and DD waivers. New setting standards will meet HCBS standards more fully and further support community-inclusive service models. We will continue to work closely with stakeholders to establish and define criteria to implement the tiered standards for:

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

Tiered standards for customized living services

[Minnesota’s Home and Community-Based Services Final Rule Statewide Transition Plan \(PDF\)](https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf)

(https://mn.gov/dhs/assets/12022016-HCBS-statewide-transition-plan_tcm1053-284362.pdf) outlines in detail the tiered-standards approach for customized living on pages 27 to 30. Implementing tiered standards for customized living is a multi-step process:

- Designate current customized living settings as Tier 1
- Designate new customized living settings as Tier 2
- Develop a new service to support a full-service continuum based on living arrangements
- Provide further clarification to own-home policy guidance

To support a full-service continuum, the new service will support people living in a living unit (e.g., apartment) that does not meet the definition of a person’s “own home.” This means a service provider has a level of control over the living unit. This new service:

- Will provide supervision, assistance and, as needed, skill development for adults (18+)
- Can deliver up to 24 hours of service support in a day
- Provides support and/or training in four community living service areas:
 - Community participation
 - Health and safety, and wellness
 - Household management
 - Adaptive skills

- Be a 245D-licensed service

HCBS providers that control a service setting have to demonstrate they meet the requirements of the HCBS rule, including that the setting does not have the effects of isolating people from the community. [Appendix A](#) in this document describes the effects of isolating people with disabilities from the community.

DHS continues to meet with our stakeholders to design and implement tiered standards. Until CMS approves a waiver amendment containing the new service, current [requirements](#) (http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs-286286) will remain in place for a person's own home policy guidance and current service policies, including [customized living service](#) (http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_001787) size and location limitations for BI and CADI waivers.

Tiered standards for non-residential services

In conjunction with the goals outlined in our Tier 1 standards, in May 2017, the Minnesota Legislature authorized three new employment services to be added to the Medicaid disability home and community-based waiver. These three services are employment exploration, employment development and employment support. They will help job seekers with disabilities to pursue competitive, integrated employment. These services are the result of efforts (beginning in 2014) by the Minnesota Department of Human Services, day service providers, advocacy organizations and lead agencies. Over the next year, Minnesota will submit these services for approval by the Centers for Medicare and Medicaid Services and make them available for home and community-based waiver services recipients.

These services will also separate community-based employment services from DT&H services. Waiver amendments containing the new employment services establish June 30, 2019, as the date when community-based employment services must not be authorized or provided under DT&H. Instead, they must be authorized and provided under employment exploration services, employment development services or employment support services (depending on the services and supports being provided). In addition, we've worked with stakeholders to develop a new day service to offer flexible supports that will replace the current DT&H service. The new service will provide options to better meet people's non-work-related community-integration goals.

Throughout 2018, DHS will continue to work with stakeholders to develop the new day service and redefine prevocational services. Prevocational service efforts will include moving related functions to the three new employment services (exploration, development and support), defining criteria for center-based training, including time limits, and expanding the service to include people on the DD Waiver.

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 and in [Appendix A](#) of this document.

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.

2018 planned activities

To ensure all providers complete an attestation if they provide HCBS services, DHS is working to identify settings with new claims and new licenses during 2017 and other current settings that have not yet submitted an attestation. We will reach out to these providers starting in January 2018. These providers will also need to complete provider attestations.

DHS must also identify other residential settings in which providers deliver services paid for by BI, CAC, CADI or DD waivers, and group or cluster people with disabilities. DHS developed a residential settings survey to learn more about these settings from people who receive services, as well as from the public. The survey asks where people who receive services live and what regular opportunities they have for work and recreation in the community. It also asks the public to identify settings that may have the effects of isolating people with disabilities from the community. DHS will inform providers if they have been identified as a setting that may have the effect of isolating. DHS will use the attestation process to assess these settings for compliance with the HCBS settings requirements.

We will spend most of 2018 completing desk audits of provider attestations. If a reviewer determines a provider attestation has insufficient evidence to comply with the HCBS rule, the provider will receive a site-specific compliance plan to remediate deficiencies. The goal of a site-specific compliance plan is to provide outreach and identify areas in which the provider needs to make changes to comply. Outreach activities to support providers in remediation will include:

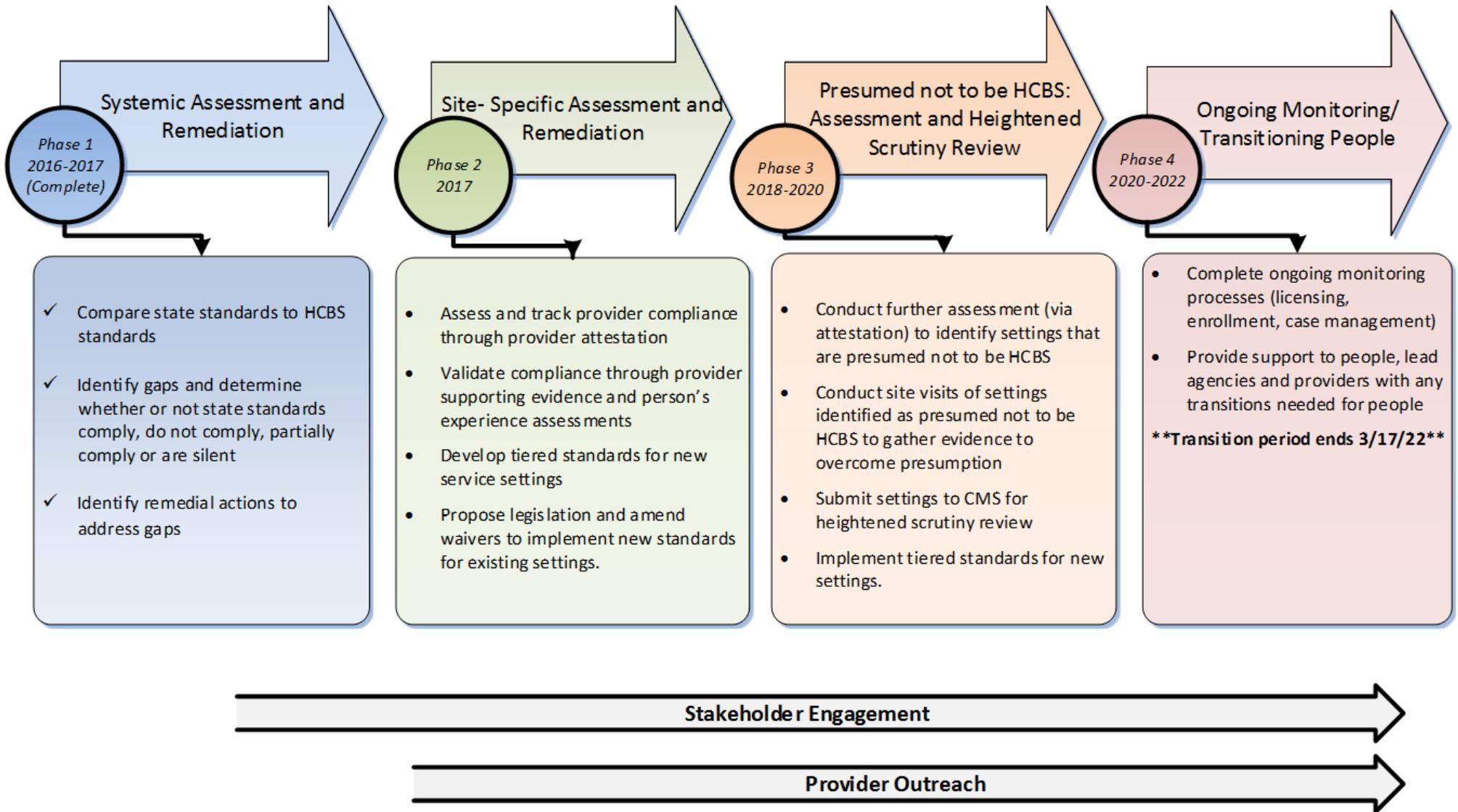
- Training and education specific to provider types
- Focus groups to help overcome barriers to compliance
- Mentors and quality-improvement providers who can share best practices

To assure initial and ongoing provider compliance with the requirements, DHS will use methods already in place when possible. However, current provider settings must complete a provider attestation and be validated before we use existing methods to ensure ongoing compliance. Once all standards are established through statute, rule and waiver amendments, we will use our existing processes at the provider, lead agency and individual levels to assure initial and ongoing compliance with the HCBS rule for new settings.

We will conduct closer assessments (i.e., on-site visits) of settings presumed not to be home and community-based to gather evidence to overcome the presumption. Results of the on-site visits will be included in the information about settings we will submit to CMS for heightened-scrutiny assessments. We are developing on-site visit protocols to test with providers in early 2018. We will provide trainings, information, resources, technical assistance and education to providers and people who receive services throughout the implementation of the HCBS rule as described in the statewide transition plan.

DHS will identify and provide training based on the results of the desk audits, attestation results and areas with hardship extension requests. DHS will continue to communicate with and help providers to meet the HCBS rule

2018-2022 planned activities (visual)



VII. Appendix

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.

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.

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.

Appendix B: New laws effective in 2017

- [Housing with Services Contract Requirements Related to Resident Rights effective May 31, 2017](http://www.health.state.mn.us/divs/fpc/profinfo/ib17_3.html)
(http://www.health.state.mn.us/divs/fpc/profinfo/ib17_3.html)
- Adult foster care licensing requirements for people on Elderly Waiver effective May 31, 2017:
 - 245A.11 amended to add subd. 9 to ensure setting bedroom requirements comply with HCBS rule
 - 245A.11 amended to add subd. 10 to ensure adult foster care rights comply with the HCBS rule
 - 245A.11 amended to add subd. 11 to ensure adult foster care license holder establishes policies and procedures for service termination that comply with the HCBS rule
 - 256.045, subd. 3(a) amended to add item 14 to ensure state agency hearings are available to a person issued a notice of adult foster care service termination
- Home and Community Based Services (245D) licensing requirements effective May 31, 2017:
 - 245D.04, subd. 3, amended to expand the rights of a person receiving services by a licensed provider including the rights to:
 - Use the lock on his or her bedroom or unit door
 - Access to personal possessions at any time, including financial resources
 - Use of and free access to common areas in the residence and the freedom to come and go at will
 - Choose who visits and when they visit and have privacy for visits with the person's spouse, next of kin, legal counsel, religious advisor or others, in accordance with [section 363A.09 of the Human Rights Act](https://www.revisor.mn.gov/statutes/?id=363A.09) (<https://www.revisor.mn.gov/statutes/?id=363A.09>), including privacy in the person's bedroom
 - Freedom and support to access food at any time
 - Furnish and decorate bedroom or living unit
 - 245D.11, subd. 4, amended to require a residency agreement for people who receive foster care or supported living services
 - 245D.24, subd. 3, amended to require each person who receives services to have a choice of roommate
- Long-term care consultation service requirements effective May 31, 2017:
 - 256B.0911, subd. 3a, amended to require the certified assessor to offer the person the option to receive alternative housing, including options for non-disability-specific settings, at the time of reassessment

Appendix C: 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