

Minnesota's Statewide Transition Plan

Introduction

Minnesota has developed a Statewide Transition Plan to address new rules governing home and community-based services funded through Medical Assistance. The federal Centers for Medicare and Medicaid Services (CMS) issued the new rules in January 2014. The rules outline the mandatory requirements for person-centered planning and home and community-based settings. In general, it is intended to give participants receiving home and community-based services increased choice and integration into the community. CMS requires each state to create a transition plan detailing how the state will come into compliance with the requirements by March 17, 2019. This document offers the framework Minnesota will use to ensure compliance with the final Rule.

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

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

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

Preliminary work

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

1. **March 2014 to June 2014: Planning phase** – DHS released a process plan document for public review and comment. It identified the steps DHS would take over the summer and fall to prepare a transition plan to submit to CMS.
2. **June 2014 to September 2014: Public input phase** – DHS established an advisory committee to advise on the public input process used in the development of the transition plan. From June until September 2014, DHS collected stakeholder input that was used to inform the transition plan. DHS accomplished this through focus groups and in-person meetings with seniors, people with disabilities, and family members. DHS used the focus groups and in-person meetings as mechanisms to inform people of the new rule and to get their initial input on how the rule would affect their lives. DHS also provided information to and sought input from other stakeholders, such as providers, lead agencies, advocacy organization and other interested

parties through videoconferences and in-person meetings. In addition to the meetings, DHS established an email address for anyone to submit questions or comments related to the development of the transition plan. In addition to these strategies for input specific to the new federal rule, DHS also reviewed input collected from seniors and people with disabilities from other initiatives with similar focuses. This assured a broader look at input on the topic.

3. **September 2014 to December 2014: Plan development phase** – On Sept. 29, 2014, DHS issued a state register notice of a draft transition plan available for public comment, as requested by CMS. DHS refined the transition plan based on public input and analysis to prepare this statewide transition plan.

Assessment process and remediation strategies

DHS will complete an assessment process to determine Minnesota’s current level of compliance with the home and community-based setting requirements outlined in the CMS rule. There are two components to the assessment:

- A regulatory review
- A setting review.

Each assessment component includes remediation strategies DHS will use to comply with the CMS rule.

Regulatory review

Assessment start date: June 2014

Assessment end date: December 2014

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

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

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

Remediation start date: October 2014

Remediation end date: December 2018

Once DHS staff identifies the gaps in regulatory requirements, DHS will propose changes to statute, submit waiver amendments and make changes to DHS policy manuals to align regulatory requirements, service descriptions and provider standards with federal rule requirements. DHS will propose the changes to statute in phases over the next several legislative sessions, concluding in the 2018 legislative session. Phasing the language changes over several legislative sessions allows opportunity to work with

stakeholders, especially in areas that are more complicated to address. The remediation timelines also provide the necessary time to submit necessary waiver plan amendments and make related changes to policy manuals. The timelines also will allow adequate time for stakeholder input on specific remediation strategies. DHS will propose the bulk of the legislative changes prior to and during the 2017 legislative session. If, necessary, policy staff will use the final legislative session in 2018 to address necessary changes and to clean up previous changes.

Setting identification and review

Assessment start date: October 2014

Assessment end date: June 2015

The setting identification and review process will include several components. There will be an initial data analysis to determine:

- Settings that may not comply with the rule
- Settings that may fall under the category of presumed not to be home and community-based.

This analysis will generate a list of settings that are not home and community-based settings, as well as settings that are presumed not to be home and community-based.

DHS will require all providers of residential, day, and employment services to complete a self-assessment of their compliance with the CMS rule. DHS will send the self-assessment to providers by April 1, 2015, with a response expected by June 1, 2015. The providers will receive training and information on how to complete the self-assessment from DHS Provider Relations. This all will be used as an opportunity to educate the providers on the requirements of the CMS rule. The information gathered through this process will determine the list of settings that are not home and community-based settings, as well as settings that are presumed not to be home and community-based. DHS will use additional data sources to verify the information collected through the provider self-assessment process.

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

Remediation start date: January 2015

Remediation end date: December 2018

At the same time as the provider self-assessment, DHS will require providers who are not in compliance with any component of the CMS rule to establish a setting-specific transition plan. The setting-specific transition plan will identify:

- Any component of the rule the provider currently is not in compliance with
- Steps the provider will take
- Timelines for completion of each action step.

DHS will use the setting-specific transition plans to monitor compliance of all settings, with full implementation completed by December 2018.

Settings that are either on the list of settings that are not home and community-based or on the list of settings that are presumed not to be home and community-based will require different actions that will vary by the setting. The table below summarizes the possible settings and action steps.

Table: Possible settings and action steps

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

DHS assumes most of the necessary transitions will occur by Jan. 1, 2019. DHS will verify compliance of the settings through March 17, 2019, and begin steps of on-going compliance.

On-going compliance

Minnesota will use several strategies at the provider, lead agency and individual recipient levels to assure on-going compliance with the home and community-based settings requirements. To assure on-going compliance with the requirements at a provider-level, DHS will use mechanisms already in place, to the extent possible, with some necessary revisions to accomplish the requirements of the CMS rule. The primary mechanisms are Medical Assistance Provider Enrollment and DHS Licensing. In 2017 and 2018, DHS will require all home and community-based services providers to re-enroll, which includes submitting assurance statements that providers meet the waiver requirements. DHS will add assurances to this process related to compliance with the CMS rule at the provider level. Setting requirements for the CMS rule will be included in Minnesota Statute 245D to allow licensors to assure on-going compliance for individual settings. Minnesota also will use on-site reviews by lead agency case managers to assure settings are in compliance and individual outcomes are being realized.

Minnesota conducts waiver reviews of all five Medicaid waiver programs and the Alternative Care Program in each lead agency (counties, tribes and health plans). Information collected during a multi-day site visit includes review of participant case files, interviews and focus groups with staff, and a review of lead agency specific data. The reports include feedback about promising practices and identification of program strengths, areas needing improvement, and areas requiring corrective action. DHS will develop protocols so this process monitors compliance with the CMS rule.

DHS will use the existing gaps analysis and waiver review initiative processes to assure that individuals have a choice between fully integrated and more segregated settings. The gaps analysis, developed by DHS, reports on the current capacity and gaps in long-term services and supports and housing to support older adults, people with disabilities, children and youth with mental health conditions and adults living with mental illnesses in Minnesota. DHS will ask counties to respond to questions about the availability of choice of type of residential, day and employment settings in their county beginning with the 2015 Gaps Analysis Survey.

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

Appendix: Statewide Transition Plan work plan grid

Key

CCA – Continuing Care Administration

CMS – Centers for Medicare and Medicaid Services

MDH – Minnesota Department of Health

DHS – Minnesota Department of Human Services

GRH – Group Residential Housing

HCBS – Home and community-based services

MHCP – Minnesota Health Care Programs

MMIS – Medicaid Management Information System

A: Assessment process – Regulatory review

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

B: Assessment process – Setting identification and review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Identify settings that may not be HCBS and may be “presumed not to be HCBS”	Conduct an initial data analysis to determine settings that may be in an institutional setting, or meet the criteria of presumed not to be HCBS	Oct. 2014	Dec. 2014	State data bases including housing with services registration data, provider enrollment records, MMIS, Uniform Consumer Information Guide	DHS staff	Identified number and types of settings that will require further analysis	In process
Collect provider self-assessment	Develop and distribute a provider self-assessment to all providers of residential, day and employment services to determine their compliance with the CMS rule. The development of the survey will include testing by providers and trade associations. Providers will have 60 days to complete and submit the self-assessment	Oct. 2014	June 2015	MMIS, MN-ITS (provider communication)	DHS staff, advocates, consumers, HCBS providers, trade associations, lead agencies	Information on providers’ current level of compliance with CMS rule	In process
Verify provider self-assessment results	Develop and implement mechanisms to gather data necessary to independently validate provider surveys results	Jan. 2015	June 2015	Surveys, assessment tools, individual planning tools	Seniors, people with disabilities, advocates, lead agencies	Verify overall HCBS settings’ level of compliance with CMS rule	Determining mechanisms for independent verification of setting compliance.

C: Remedial strategies – Regulatory review

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

D: Remedial strategies – Settings identification and review

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status
Collect HCBS site-specific transition plans	Providers will develop site-specific transition plans with tasks and timelines to address all areas of non-compliance.	Oct. 2014	June 2015	MMIS, MN-ITS (provider communication)	DHS staff, HCBS providers, trade associations, lead agencies	Setting-specific transition plans	In process
Evaluate overall status of compliance with CMS rules	Aggregate data on HCBS settings; Develop training needed for providers, lead agencies and consumers; Develop mechanism for tracking compliance over time.	April 2014	June 2015	HCBS specific site assessment and transition plans	DHS will aggregate data and develop provider and lead agency training/ support in consultation with stakeholders	Detailed training and support plans and mechanism to track compliance will be developed.	Not started
Monitor HCBS settings to assure compliance with requirements	DHS will assure HCBS settings are in compliance	July 2015	December 2018	DHS licensing reviews and case manager feedback	DHS licensing, HCBS case managers	Settings comply with HCBS requirements	Not started
Finalize compliance	Assure that transition is complete by verifying compliance of all settings	Jan. 2019	March 2019	Data gathered	DHS staff, providers, seniors, people with disabilities, lead agencies	Final compliance	DHS will develop

E: Public input

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Establish advisory group	Establish an advisory group to advise DHS on the process used to develop the transition plan. The group will include representatives from advocacy organizations (including self-advocacy), providers and lead agencies.	May 2014	Dec. 2014	HCBS Partners Panel and other stakeholders	Advocates, providers, lead agencies	Process that includes input from a variety of stakeholders, with a primary focus on seniors and people with disabilities.	Group began meeting in June 2014 and continues to meet once or twice each month.
Establish email address and use as means for gathering input and questions	Establish an email address (hcbsettings@state.mn.us) for this project.	May 2014	March 2019	DHS staff	Any stakeholders	One point of contact for all questions, comments and notes related to the development and implementation of the transition plan.	DHS set up the email address in May 2014, and staff monitors it several times a week.
Solicit input on HCBS site-specific assessment and transition plan	Engage providers, lead agencies, consumers and advocates in reviewing and providing feedback on the draft tool.	December 2014	April 2015	DHS staff	Providers, lead agencies, consumers and advocates	Final HCBS site specific assessment and planning tool will result in measurable assessment criteria and transition action plans.	In process
Determine mechanisms for on-going communication with the public about the status of the transition plan	Identify ways, with the help of stakeholders, to communicate the status of the plan throughout the transition process.	Nov. 2014	March 2019	To be determined	DHS staff, advisory group, seniors, individuals with disabilities	Service recipients, and other interested stakeholders, receive regular updates on the status of the implementation of the transition plan	In process

Action item	DHS responsibilities	Proposed start date	Proposed end date	Sources	Key stakeholders	Outcome(s)	Progress status and notes
Ask for on-going public input throughout the implementation of the transition plan	Identify ways, with the help of the stakeholders, to receive public input throughout the transition process.	Nov. 2014	Mar. 2019	To be determined	DHS staff, advisory group, seniors, individuals with disabilities	Service recipients provide information to DHS to help evaluate the success of the transition plan	In process