

Minnesota's documentation of state and provider compliance with regulatory criteria

Minnesota's STP status:

Minnesota's Statewide Transition Plan was approved by CMS on February 12, 2019.



Minnesota's
Approved HCBS STP



CMS-MN-STP-Final-
Approval-Letter.pdf

CMS requirement: All states should ensure the following information is submitted to CMS no later than **January 1, 2023** to document state and provider compliance with the regulatory criteria that must be met by the end of the transition period.

1) Description of how the state's oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations

The following information can be found on pages 24-26 of Minnesota's approved STP.

Systemic remediation

Our approach to remediating our current HCBS system consisted of aligning regulations to the rule, new service development, service modification and technical assistance. In order to assess and identify areas of alignment and differences in the services delivered by the disability and aging waivers, we assessed the services separately by waiver, but collaboratively. This process allowed us to align outcomes and remediation strategies, regardless of a person's age, when appropriate and to identify different outcomes and remediation strategies because of differences in the needs of the populations served.

Revised state-licensing standards:

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

- Contract requirements related to resident rights for providers of housing with services (Minnesota Statutes, chapter 144D)
- Licensing requirements for providers of adult foster care for people on Elderly Waiver (Minnesota Statutes, chapter 245A and section 256.045)
- Licensing requirements for providers of adult foster care and supported living services for people on the BI, CAC, CADI and DD waivers (Minnesota Statutes, chapter 245D)

Licensing requirements for providers of customized living for people on the BI, CADI and EW waivers (Minnesota Statutes, chapter 144G and 256S)

- Requirements for long-term care consultations to help people identify potential providers, including services provided in non-disability-specific settings (Minnesota Statutes, chapter 256B.0911)

Developed new services

Minnesota created or modified several services to create more options to ensure people have access to services in non-disability-specific settings among their service options for both residential and non-residential services.

- Individual community living support (EW/AC): Individual community living support (ICLS) is a bundled service that offers verbal, visual and/or tactile guidance, assistance and support to EW and AC participants who need cuing, or intermittent or moderate physical assistance to remain in their own homes and in their communities. ICLS services are delivered in a single-family home or apartment owned or rented by the recipient as demonstrated by a lease agreement. The service may also be delivered in an apartment or home that is leased or owned by a friend or family member who has no financial interest in the service.
- Integrated community support (CAC/CADI/BI): ICS covers [training](#) and [support](#) to meet the person’s individualized assessed needs and goals in at least one [community living service category](#) to adults age 18 and older who reside in a living unit of a provider-controlled ICS setting (e.g., apartment in a multi-family housing building).
- Individualized home support (BI, CAC, CADI, DD): Individualized home supports are designed to support a person in his or her own home and within his or her community holistically by providing support (e.g. supervision, cuing) and training in four broad community living service areas. With multiple service-delivery methods, individualized home support increases a person’s choices and options for how and where services are delivered to meet his or her Customized Living service needs. To support community access, an individualized home supports service provider cannot have any financial interest in the property or housing in which services are delivered.
- Employment exploration (BI, CAC, CADI, DD): Employment exploration services (EES) is an orientation and experience-based service that introduces a person to the world of work. We intend it to occur predominantly in the community. EES is designed to help people to learn more about and make an informed choice about competitive employment. This service is for those who are undecided about working competitively; it is not a prerequisite for employment development services (EDS). People who already know they want to work should go directly into EDS.
- Employment development: Employment development services (EDS) is an individualized service that helps a person to achieve competitive employment in the community based on his or her strengths and interests. Services are 1:1 and culminate with the person
- Employment support (ESS): Individualized services and supports that help people maintain paid employment in community businesses/settings. Employment support services occur in integrated community settings.

Provided training and technical assistance

- Developed provider tools and resources
- Trained on provider tools and resources
- Improved licensing policy templates and forms
- Developed provider expectation guidance, toolkit and rights handbook
- Developed a residency agreement template
- HCBS Rights Modification Support Plan Attachment template and video tutorial
- Developed HCBS standards frequently asked questions

- Held webinars and open office hours
- Aging and Related Topics Training
- Community Based Services Manual
- Developed on-demand video training
- Modified the College of Direct Support (56 online lessons to train direct support workers)

2) Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance

The following information can be found on pages 56-59 of Minnesota’s STP.

Assessment for initial compliance

The following information can be found on pages 31-36 of Minnesota’s STP.

Minnesota is using a multilayered validation strategy to ensure that all identified were compliant with the HCBS final rule requirements.

Initial assessment- Provider attestation

The purpose of the provider attestation was to:

- To identify settings that are presumed not to be HCBS because they are near an institution or because the setting might have the effect of isolating people who receive HCBS from the broader community (Effect of isolating).
- For providers to report compliance status for every HCBS setting and provide supporting evidence.

Settings that completed an attestation self-reported either full compliance with HCBS requirements or not yet in full compliance with one or more HCBS requirements. All settings were required to submit supporting documentation as evidence of compliance. Examples of supporting documentation submitted include: provider policies and procedure manuals, staff training documentation, activity program calendars, resident handbooks, leases or other setting specific information. Settings that reported they are not yet in full compliance with one or more HCBS requirements were provided MN DHS technical assistance, instructional guidance, resources and one-to-one outreach.

Validation of compliance- Desk Audit

To validate setting compliance, MN DHS conducted desk audits for 100 percent of the 5,937 provider-submitted attestations, including review of all supporting documents submitted by the setting.

MN DHS developed HCBS service-specific desk audit protocols, training curriculum and oversight to ensure that we trained each auditor to conduct attestation desk audits in a factual and consistent method. After the training, we assigned auditors to groups focused on specific services. Each auditor group met regularly with the service’s subject matter expert. We initially assigned the service-specific auditor groups “training attestation” files to review. We then compared these findings to the cohort of auditors’ findings and to the subject expert’s findings of the same file. We repeated this method with different audit files until the cohort and individual consistency thresholds were met. Each service-specific auditor group met with the subject matter expert regularly to answer questions. The subject matter expert for each group also conducted unannounced auditing of setting files to monitor ongoing consistency and validity of the audit outcomes. We created a complex Access database to maintain an electronic file for each of the 5,991 attestations received and the supporting documentation. This allowed us to track notifications sent to and received from each setting and the status of each setting’s attestation submission, desk audit outcome and desk audit reviewer assignments.

We sent an electronic version of the HCBS Provider Attestation Audit Summary Report to those settings that did not fully comply with all HCBS requirements. This report includes electronic links to service-specific, HCBS compliant documents developed by MN DHS. Providers who receive an HCBS Provider Attestation Audit

Summary Report fall into the “Does not comply, but could with modifications” category. Settings were required to respond to the HCBS Provider Attestation Summary Report notification within 30 days of receiving the notice. Settings that responded to the audit report with additional or revised supporting documentation received additional desk audit(s) of the newly submitted supporting documentation. After the subsequent desk audit(s), if all HCBS requirements are met, the provider is then moved to the “Full compliance” category and would follow the ongoing monitoring processes as described below.

We will continue to monitor settings for ongoing compliance through MN DHS oversight processes, such as licensing and provider enrollment and revalidation processes. For example, in order to meet the definition of full compliance related to integration to the broader community, settings were required to submit evidence of offsite community activities offered. If a provider submitted evidence that showed only reverse integration to address the community integration standard, we provided technical assistance to the provider until we received evidence that those changes have been implemented. The following remedial strategies will be used for remaining providers that do not comply but can with modifications:

- a. We sent an electronic version of the HCBS Provider Attestation Audit Summary Report to those settings that did not fully comply with all HCBS requirements. This report includes electronic links to service-specific, HCBS compliant documents developed by MN DHS.
- b. Providers who receive an HCBS Provider Attestation Audit Summary Report fall into the “Does not comply, but could with modifications” category. Settings were required to respond to the HCBS Provider Attestation Summary Report notification within 30 days of receiving the notice. Settings that responded to the audit report with additional or revised supporting documentation received additional desk audit(s) of the newly submitted supporting documentation. After the subsequent desk audit(s), if all HCBS requirements are met, the provider is then moved to the “Full compliance” category

Ongoing monitoring

The following information can be found on pages 56-59 of Minnesota’s STP.

Ongoing setting compliance MN DHS will use several strategies at the provider, lead agency and individual recipient levels to assure ongoing compliance with the home and community-based settings requirements. To assure ongoing provider compliance with the requirements, MN DHS will use mechanisms that are already in place, to the extent possible, with some necessary revisions to accomplish the requirements of the CMS rule. The primary mechanisms are the provider-enrollment process, case management and licensing. MN DHS will use case management to monitor compliance with the HCBS settings requirements for all settings, including individual private homes. Case management is a required service for every person receiving waiver services.

New providers

In August, 2018, MN DHS implemented a process to evaluate new providers for compliance upon their request to enroll as a waiver provider. This process must balance the need for providers to have up-front information with CMS’s requirement that providers be operational before they can be evaluated, with heightened scrutiny conducted as necessary. New providers are asked to attest to their compliance with the HCBS settings requirements when they enroll with MN DHS. New enrollment requests are processed in the order received. MN DHS provides a response within 30 days. More information regarding the enrollment process and timelines can be found on the Home and Community Based Services Provider Enrollment webpage. We will monitor compliance through licensing standards. If a new provider indicates that it meets one of the criteria for a setting that is presumed not to be home and community-based, we will require further evaluation before the provider is able to enroll and deliver waiver services. MN DHS will design a process for this evaluation that can be conducted as quickly as possible. This process must balance the need for providers to have up-front information with CMS’ requirement that providers be operational before they can be evaluated.

In summary, the state will monitor HCBS rule compliance through multiple approaches and evaluate:

- Compliance at the setting and of the service provider through state staff and licensing entities
- A person's experience through an annual assessment administered by his or her case manager
- Roles and responsibilities of case managers and lead agencies for person-centered planning through lead agency reviews.

3) Description of a beneficiary's recourse to notify the state of setting non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.

Case management

Case managers monitor and address service delivery problems and assist participants in selecting providers who can meet their needs. Beneficiaries may notify case managers of concerns regarding setting non-compliance. Case managers may work with the person and provider to remediate the concern at the individual level. Case managers can also support the beneficiary to submit a licensing complaint.

Licensing

Beneficiaries may submit complaints of setting non-compliance to the entity that licenses the provider. The licensing entity has the authority to investigate the complaint and impose corrective actions or other sanctions, depending on their findings. The state monitors licensing actions for trends, in order to determine whether additional training or another intervention is necessary.

Minnesota Health Care Programs

MHCP verifies that waiver providers meet and maintain many program requirements as a condition of initiating and maintaining enrollment.

Disability Service/Aging and Adult Service Divisions

The Disability Services and Aging and Adult Services Divisions receive complaints from lead agency case managers of persistent performance concerns and patterns with waiver service providers. Depending upon the situation, the division may work with lead agencies to conduct an investigation. The division may independently, through the Department's enrollment area, or with the affected lead agency (ies) seek to remedy the situation with the provider.

MN Office of Ombudsman

The Ombudsman is an independent governmental official who receives complaints against government (and government regulated) agencies and/or its officials, who investigates, and who if the complaints are justified, takes action to remedy the complaints.

The Office of Ombudsman assists with the following:

- concerns or complaints about services
- questions about rights
- grievances
- access to appropriate services
- ideas for making services better

In Minnesota we have both an Ombudsman for Long-term Care, as well as an Ombudsman for Mental Health and Developmental Disabilities:

- [About Us / Minnesota Office of Ombudsman for Long-Term Care \(OOLTC\) \(mn.gov\)](#)
- [Office of Ombudsman for Mental Health and Developmental Disabilities / Minnesota.gov \(mn.gov\)](#)