



**North Dakota Revised
Statewide Transition Plan
For HCBS Settings
Under 1915(c) Waivers
Revised to address
Center for Medicare and Medicaid Services (CMS) requirements**

Table of Contents

3/31/2016
Revised Received Initial Approval 11/01/16
Revised to seek Final Approval 01/31/2019
Final Approval Received 02/01/2019

Section 1: Purpose.....	1
North Dakota HCBS Background.....	1
Systemic Assessment Process.....	2
Site Specific Assessment Process.....	2
Heightened Scrutiny Process	5
Relocation of Waiver Recipients.....	6
Training of Personnel Involved in Site- Specific Assessment and Validation Processes.....	7
Building Statewide Capacity	7
Compliance of Settings.....	8
Table 1: Settings Assessed through the Site-specific Assessment Process	8
Section 2: Summary of Settings Assessment Results	11
Medicaid Waiver for Home and Community Based Services (HCBS Waiver- Serves Aged & Disabled)	11
Table 2: Medicaid HCBS Waiver Recipients Private Home Fully Comply	11
Table 3: Medicaid HCBS Waiver Institutional Respite and Supported Employment Fully Comply	12
Table 4: Medicaid HCBS Waiver Settings That Will Fully Comply with Changes	12
Table 5: Medicaid HCBS Waiver Settings That Do Not or Cannot Comply	13
Table 6: Medicaid HCBS Waiver Settings Under Review.....	13
Autism Spectrum Disorder Waiver.....	13

Table 7: Autism Spectrum Disorder Waiver Recipients Private Home Fully Comply.....	13
Children’s Hospice Waiver.....	14
Table 8: Children’s Hospice Waiver Recipients Private Home Fully Comply.....	14
Table 9: Children’s Hospice Waiver Non-Residential Fully Comply	15
Medically Fragile Waiver.....	15
Table 10: Medically Fragile Waiver Recipients Private Home Fully Comply.....	15
Table 11: Medically Fragile Waiver Non-Residential Fully Comply	16
Technology Dependent Waiver	16
Table 12: Technology Dependent Waiver Recipients Private Home Fully Comply	16
Traditional IID/DD Waiver	17
Table 13: Traditional IID/DD Waiver Recipients Private Home Fully Comply	17
Table 14: Traditional IID/DD Waiver Residential Fully Comply.....	18
Table 15: Traditional IID/DD Waiver Settings That Will Fully Comply with Changes	18
Table 16: Traditional IID/DD Waiver Settings Under Heightened Scrutiny Fully Comply	19
Table 17: Traditional IID/DD Waiver Settings That Do Not or Cannot Comply	20
Section 3: Assessment Results, Proposed Remedial Strategies and Timelines.....	21
Adult Foster Care (AFC) (HSBS waiver and Traditional IID/DD Waiver)	21
Table 18: Adult Foster Care (AFC) (HSBS waiver and Traditional IID/DD Waiver)	21
Table 19: Adult Foster Care (AFC) (HCBS Waiver and Traditional IID/DD Waiver)	23
Extended Services (Traditional IID/DD Waiver) *	27
Table 20: Extended Services (Traditional IID/DD Waiver).....	27
Residential Habilitation (Traditional IID/DD Waiver)	28
Table 21: Residential Habilitation (Traditional IID/DD Waiver)	29

Residential Habilitation (Traditional IID / DD Medicaid Waiver) Settings that have completed the Heightened Scrutiny Review	30
Table 22: Residential Habilitation (Traditional IID / DD Medicaid Waiver)	31
Day Habilitation and Prevocational Service Setting that completed the Heightened Scrutiny Review	32
Table 23: Day Habilitation and Prevocational Service Setting (previously Day Supports Traditional IID/DD Waiver)	33
Adult Residential Services / HCBS Medicaid Waiver (Serves Aged & Disabled)	34
Table 24: Specific Adult Residential Services and Adult Day Services setting details	35
Table 25: Settings that Do Not/Cannot Meet HCBS Requirements	37
Section 4: Ongoing Monitoring and Compliance	40
HCBS Medicaid Waiver (Serves aged & disabled)	41
Traditional IID/DD Waiver	42
Technology Dependent Medicaid Waiver	45
Section 5: Public Input Process	47
Section 6: North Dakota Crosswalk of Systemic Assessment	52
Medicaid Autism Spectrum Disorder Waiver	52
Table 26: Medicaid Autism Spectrum Disorder Waiver	52
Children’s Hospice Medicaid Waiver	57
Table 27: Children’s Hospice Medicaid Waiver Compliance	58
Medicaid Waiver for Medically Fragile Children	63
Table 28: Medicaid Waiver for Medically Fragile Children	64
Traditional IID/DD Waiver	69
Table 29: Traditional IID/DD Waiver	69
Medicaid Waiver for Home and Community Based Services (Serves Aged & Disabled)	105
Table 30: HCBS Medicaid Waiver	105

Technology Dependent Medicaid Waiver 111
 Table 31: Technology Dependent Medicaid Waiver 111
Section 7: Attachments 130
 Attachment 1. Adult Residential Service HCBS Setting Survey 136
 Attachment 2. HCBS Waiver Settings Assessment Tool 138
 Attachment 3. Traditional IID/DD Waiver HCBS Setting Assessment..... 149
 Attachment 4. Traditional IID/DD Waiver Heightened Scrutiny Assessment 154

Section 1: Purpose

The [Center for Medicare and Medicaid Services](#) (CMS) issued a [final rule](#) that became effective on March 17, 2014 that required states to review and evaluate Home and Community-Based Services (HCBS) settings, including residential and nonresidential settings that are paid for with funding through North Dakota's six Medicaid 1915(c) waivers. States are required to ensure that all HCBS settings comply with the new federal requirements to ensure that all individuals receiving HCBS are integrated in and have full access to their communities, including opportunities to engage in community life, work in integrated environments, and control their own personal resources. The ND Department of Human Services (Department) created a draft Statewide Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule.

Review [Contents of Request for a Waiver](#) for information on the new federal rules. Additional information on the [Home & Community Based Settings Requirements](#), is found on the CMS website.

North Dakota submitted an initial Statewide Transition Plan that included public comment to CMS on November 28, 2014. CMS completed a review of the initial plan and provided additional recommendations that are addressed in this document. Prior to submission this revised plan was submitted for public comment. The draft Statewide Transition Plan that applies to all of North Dakota's 1915(c) waivers was open for public comment for thirty days from February 19, 2016 through March 20, 2016 to allow all consumers, providers and stakeholders an opportunity to provide input to the plan. The final plan which included changes that were made as result of the public comment was submitted to CMS on March 31, 2016.

North Dakota received initial approval of its Statewide Transition Plan on November 1, 2016. At that time, CMS provided feedback to the State on the additional information that must be included in a revised Statewide Transition Plan so that the State could be granted final approval. Those revisions are included in this document.

North Dakota HCBS Background

North Dakota offers six 1915(c) waivers through its Medicaid program. The six waivers are:

- [Home and Community Based Services Waiver \(HCBS Waiver\) - Serves Aged & Disabled](#): This waiver helps eligible individuals who would otherwise require nursing home services to remain in their homes or communities.

- **[Autism Spectrum Disorder \(ASD\) Waiver](#)**: Provides services for children with ASD (birth through age eleven) living with a primary caregiver. The goal of the waiver is to support the primary caregiver to maximize the child's development and preventing out of home placements.
- **[Children's Hospice Waiver](#)**: The goal of the Children's Hospice waiver is to keep children, who have a life limiting diagnosis that may be less than one year, between the ages of 0 through twenty-one, in their home as much as possible, avoiding lengthy hospital stays and delay or divert institutional care.
- **[Medically Fragile Waiver](#)**: The purpose of the waiver for medically fragile children, ages three through eighteen, is to provide assistance for families who require long-term supports and services, to maintain their medically fragile child in the family home while meeting their child's unique medical needs.
- **Technology Dependent Waiver**: The goal of the Technology Dependent waiver is to adequately and appropriately sustain ventilator-dependent individuals in their own homes and communities and to delay or divert institutional care.
- **Traditional Individuals with Intellectual Disabilities/Developmental Disabilities (IID/DD) Waiver**: Provides an array of provider managed and participant directed services for individuals with intellectual disabilities and related conditions in order to provide individuals of all ages the opportunity to receive community alternatives to institutional placement.

Systemic Assessment Process

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. See [Section 6](#), North Dakota Crosswalk of Systemic Assessment, for updated information on the Departments efforts in this area.

Site Specific Assessment Process

From April 2014 through October 2014, the Department conducted a review and analysis of all settings where HCBS are provided to eligible recipients to create the initial Statewide Transition Plan. The Department conducted surveys of all providers of HCBS residential and non-residential services that focused on each setting's physical location, surroundings, community integration, and other environmental characteristics.

The Traditional (IID/DD) waiver assessment was based on services, conversations with program managers, review of housing eligibility criteria, provider and consumer survey's, which included looking at the service location (i.e. consumer apartment), type (i.e. provider owned) and the building as a whole, while assessing the location and other characteristics and qualities that are to be present in an HCB

setting. Surveys were sent to all thirty-one Developmental Disabilities (DD) Licensed Providers who provide HCB services. The survey required the Provider to complete the survey separately for each setting that included specific setting identifying information. The Department received a one hundred percent return response from the Provider Survey. To ensure a one hundred percent Provider survey return, the survey completion was deemed mandatory, the Department tracked responses, and were in contact with any Providers who may not have responded within the timeframe.

In addition, the Department conducted a survey of recipients in the Traditional IID/DD Waiver to assess whether the residential and non-residential settings met home and community-based (HCB) requirements. For example, the survey asked if recipients were able to access the community as they chose, choose their schedules, freely access their money and food, decorate their residence as they choose, and choose their setting, services, and supports. The surveys were completed with the recipients by the Regional DD Program Managers during a face-to-face visit. Recipients were identified according to client identifiers which were linked to each individual setting. The Department received a one hundred percent return response.

In addition, DD Program Managers provided input on each setting to validate the providers' responses. The data submitted by the Provider Survey was compiled into a report based on each setting on the provider responses and CMS requirements. The DD Program Managers reviewed the preliminary results for all residential and non-residential settings to provide further information where needed, answered additional questions, provided clarification and justification if each setting may or may not meet the requirements. Based on the results of the provider survey, DD Program Manager input, and recipient surveys, the Department and an outside consulting firm compiled the information to determine each settings compliance. The Department conducted site visits of IID/DD waiver settings for which the Department utilized the heightened scrutiny process.

Per CMS's request to assess the Traditional IID/ DD Waiver's Family Care Option settings, the Department administered a survey in November 2015 to determine whether those settings were compliant with the HCBS rules. Surveys were completed on all seven Family Care Option settings that included an identifier to each setting. The survey was mandatory, and the Department received a one hundred percent return response. Surveys were completed by the DD Program Manager of the participant in consultation with the legal decision maker, Family Care Option caregiver, Family Care Option provider, and participant. The survey focused on each setting's physical location, surroundings, community integration, and other environmental characteristics. For example, the survey asked if recipients were able to access the community as they chose, choose their schedules, freely access their money and food, decorate as they choose and choose their setting, services, and supports. Based on the results of the survey, the Department reviewed the information and determined that each setting was compliant. The Adult Foster Care settings assessment did show changes were needed regarding the control of recipient schedules, access to funds, choice of meals, access to phone at any time and access to visitors. Even though Family Care Option uses the same licensing standards for Family and Adult Foster Care, the recipients receiving Family Care Option were not ND Approved Statewide Transition Plan

experiencing the same limitations due to the age of that population, therefore Family Care Option was found to comply. The licensing standards were updated for Family and Adult Foster Care to incorporate the federal HCBS regulations due to the Adult Foster Care settings not meeting compliance.

With the assistance of the County Social Services adult foster care licensing staff, the Department also conducted site visits, interviews with licensed providers, and observation of the provision of services in all settings where adult foster care services are provided. The Adult Foster Care settings assessment did show changes as described above. The licensing standards were updated for Adult Foster Care to incorporate the federal HCBS regulations. Based on the results of this process, the Department has determined that these setting, with changes, can comply with the rule and is working with the providers to finalize their mitigation efforts and come into full compliance.

Department staff also completed an initial site-specific assessment of all settings where adult residential services are provided under the HCBS Medicaid waiver that serves the aged and disabled. The assessment included a site visit, interview with key staff, and observation of the provision of services in all settings.

The Department then mailed a questionnaire to all HCBS Waiver (serves aged & disabled) recipients/ guardians who are receiving adult residential services to gather their input on how these settings comply with the new rule. The recipient's surveys and responses were voluntary. The survey results were linked to each specific setting. Department staff consulted with professionals from the Alzheimer's Association to discuss the provision of the HCB setting rule and the delivery of HCBS to individuals with moderate to severe dementia who are in a stage of the disease that may cause wandering, elopement and other behavior issues.

The Department is still trying to determine if adult residential settings and the adult day care settings located within those facilities, with changes, can meet all settings requirements or will need to utilize the heightened scrutiny process to refute any presumption of an institutional characteristic because the setting may be considered isolating individuals from the broader community. To assist in this effort, from January 2018 to May 2018, Department staff conducted additional conference calls or site visits with all fourteen adult residential service providers to specifically review the settings rule as it relates to their facility and provide guidance on areas that need to be changed in order comply with the rule. The Department created an adult residential services assessment tool that was completed with each facility to help identify areas of noncompliance. Adult Residential Service providers were given a copy of the results to help them plan their remediation efforts and identify timelines to make the necessary changes.

Since the Department has not yet decided that these settings isolate individuals from the broader community, we will be implementing the following process to make an informed decision about whether the settings can comply with necessary changes or if we need to fully invoke the heightened scrutiny process and request concurrence from CMS. This process will be used with all residential facilities.

Heightened Scrutiny Process

When a provider requests to enroll or add a setting that may fall under one of the three prongs that will trigger the need for heightened scrutiny, the Department will utilize a setting assessment tool to identify any institutional characteristics. The assessment tool is completed onsite for each setting by the Department using observation and discussion with individuals, guardians, and provider staff. The assessment tool includes questions that address the following: the description and location of the setting; lease agreement; provider owned or controlled settings criteria; integration and unrestricted access to the broader community; privacy; individual's right, dignity and respect; freedom of coercion and restraint; individual initiative autonomy, choices, schedules, visitors and access to food; and the person-centered service plan. The assessment tool ensures all HCBS Rule characteristics and experiences are evaluated to identify any setting that may fall in to the three prongs listed below. Department staff will work with the providers to complete the assessment tool and identify any areas of noncompliance, remediation efforts, and timelines for completion.

The three prongs include:

- Settings in a publicly or privately-operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, adjacent to, a public institution;
- Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Once problem areas have been identified, providers will be given time to implement remediation efforts. Once the provider informs the Department that they have implemented the necessary remediation efforts into their daily practice, trained necessary staff, and educated consumers and family, they will be required to submit an evidence package to the Department for review. Once the Department receives the evidence package and concurs that it includes enough evidence that the setting has made the changes identified in the setting assessment tool, Department staff will conduct a site visit, gather consumer feedback with all Medicaid recipients or their family and legal decision makers to assure their experience in the setting is indicative of the HCBS settings rule and supports the information provided to refute the presence of any institutional characteristics. The consumer feedback will be gathered from consumers and legal decision makers in person or over the phone using a survey document administered by Department staff or the HCBS case manager.

Once this process is complete, the information along with the information submitted in the evidence package, will be reviewed by an internal HCBS settings committee. The committee will be comprised of a representative from the State's Aging Services Division, Developmental Disabilities Division, Medical Services Division, and the State Risk Manager.

The committee will decide if the setting:

- Has successfully refuted the presumptively and now fully complies;
- With additional changes will fully comply; or
- Does not or cannot meet HCB settings requirements.

If it is determined that the setting has provided enough evidence that they fully comply, the evidence package will be submitted for public comment for thirty days. After the public comment period, it will be submitted to CMS to see if they concur.

If a decision is made that the provider cannot meet the HCBS settings rule, they will be issued a denial for that setting and a transition plan will be developed with the client(s) and their team to assist with relocation efforts to a setting that complies.

Relocation of Waiver Recipients

Medicaid recipients who live in non-complaint settings who need to be relocated to a complaint setting, will be provided at least thirty days written notice that they will need to find another HCBS setting that fully complies with the rule to continue to receive services. Beneficiaries of any future settings identified that cannot meet the HCBS Rule will be notified by December 31, 2021. All client transition plans must be completed no later than March 17, 2022.

The case or program manager will provide them with additional information and assistance on finding other HCBS options in their community that fully comply with the rule. Individuals will be provided choices among alternative services and providers that meet the individual's needs, preferences, and HCB setting requirements. Individuals will have the opportunity to interview and tour potential providers to make an informed decision.

Once a new setting or provider is selected, a plan is developed to assist in a seamless transition. Services and supports relevant to the individual's needs and goals are identified. Meetings occur as needed, and the plan is developed prior to the start of the new location.

The case or program managers are responsible for notifying individuals and guardians of appeal rights at enrollment, during the annual plan team meeting, and when changes occur with services.

Training of Personnel Involved in Site- Specific Assessment and Validation Processes

Department staff attended the training webinars beginning January 2014 which were provided by CMS regarding the federal HCBS rule; introduction, requirements, site-specific assessment, statewide transition plan process, achieving final approval, etc. The Department provided trainings to the regional Developmental Disabilities (DD) Program Manager staff in January, March, July, and August 2014 on the federal HCBS rule requirements including the site-specific assessment process, providing them the knowledge, skills, and abilities to successfully complete the assessment and validation. DD Provider staff were provided information and resources on the federal HCBS rule and how to complete the self-assessment.

In addition, the HCBS Case Managers were provided training on the HCBS settings rule in August 2014, December 2016, March and September 2017, May, August and September 2018. Department staff presented at the September 2017 Long term Care Conference on the HCBS settings rule to providers and direct service staff, conducted additional conference calls or site visits with all fourteen adult residential service providers to provide guidance on areas that needed to be changed in order to comply with the rule. Department staff also presented to individual facilities upon request. Department staff have attended every National HCBS Conference since 2014 where they attended numerous sessions on the HCBS settings rule conducted by CMS and have shared the information with other Department staff. Information on the HCBS settings rule has been incorporated into the annual HCBS case manager training.

The State will implement quality assurance checks as part of the ongoing care plan review and as part of the case management review process for the HCBS waiver and Technology Dependent waiver participants.

Building Statewide Capacity

The following ongoing efforts will help build access to non-disability specific options across home and community-based services.

- Participants may choose from an array of settings and may choose to receive supports in their own homes, which is a non-disability specific setting. Waiver services promote community integration in the least restrictive environment.
- The department provides site specific technical assistance to providers about the HCBS setting requirements and process.
- The department is a partner in the North Dakota Supportive Housing Collaborative that is working to build housing capacity across the state especially in rural areas.
- The department has invested Money Follows the Person rebalancing funds and staff resources into a workforce development initiative to increase the number of direct service providers in North Dakota.
- North Dakota's provider reimbursement is competitive and encourages providers to provide services to Medicaid beneficiaries.

- North Dakota provides a rural differential rate for some waiver services to encourage providers to offer services in the most rural settings.
- The department is currently seeking technical assistance to enhance the department’s internal and external process as it relates to person centered planning and consumer choice. The technical assistance will also be utilized to provide standardized person-centered training to both the department and provider staff.

Compliance of Settings

The Department reviewed [North Dakota Century Code \(NDCC\)](#), [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

Based on this review, the Department identified the settings that:

- Fully comply;
- With changes, will Fully Comply;
- Presumptively do not comply but North Dakota believes to be community-based (through heightened scrutiny); or
- Do not or cannot meet HCB settings requirements

Table 1: Settings Assessed through the Site-specific Assessment Process

100% of settings were assessed and they are included in this chart.

Table 1 Settings Assessed through Site-specific Assessment Process

Service	Total Number of Settings Assessed	Number of Settings Fully Comply	Settings that comply with changes	Settings that do not comply	Settings reviewed for heightened scrutiny
Adult Day Care (located within adult residential services settings)	3	0	3	0	0
Adult Foster Care IID/DD waiver & HCBS Medicaid waiver	12	0	12	0	0
*Day Supports IID/DD waiver (4/1/18 waiver amendment; name changes to Day Habilitation)	157	150	0	6	1

Service	Total Number of Settings Assessed	Number of Settings Fully Comply	Settings that comply with changes	Settings that do not comply	Settings reviewed for heightened scrutiny
*Extended Services IID/DD waiver (4/1/18 waiver amendment removed this service and replaced with Prevocational Services, Small Group Employment Support, and Individual Employment Support)	154	152	2	0	0
Family Care Option IID/DD waiver	7	7	0	0	0
*Residential Habilitation Congregate Care IID/DD waiver (Effective 4/1/18, the service remained but the subcategories were removed, and Independent Habilitation added)	3	0	3	0	0
*Residential Family Care Option III (FCOIII) IID/DD waiver (Effective 4/1/18, the service remained but the subcategories were removed, and Independent Habilitation added)	11	7	3	0	1
*Residential Habilitation Individualized Supported Living Arrangement (ISLA) waiver (Effective 4/1/18, the service remained but the subcategories were removed, and Independent Habilitation added)	488	438	47	0	3
*Residential Habilitation Minimally Supervised Living Arrangement (MSLA) waiver (Effective 4/1/18, the service remained but the subcategories were removed, and Independent Habilitation added)	50	27	22	0	1
*Residential Habilitation Supervised Living Arrangement (SLA) waiver (Effective 4/1/18, the service remained but the subcategories were removed, and Independent Habilitation added)	38	37	1	0	0
*Residential Habilitation Transitional Community Living Facility (TCLF) waiver (Effective 4/1/18, the service remained but the subcategories were removed, and Independent Habilitation added)	25	7	18	0	0
Adult Residential Services HCBS Medicaid waiver	14	0	13	0	1

*These settings are not new settings. These settings existed previously and were included in the assessment process; only a name change occurred. [Table 13](#), [Table 14](#), [Table 15](#), [Table 16](#) and [Table 17](#) includes the service and service descriptions, which includes these new service names identified above.

For information on how the Department will assure compliance and ongoing monitoring, refer to [Section 4](#): Ongoing Monitoring and Compliance.

Section 2: Summary of Settings Assessment Results

Medicaid Waiver for Home and Community Based Services (HCBS Waiver- Serves Aged & Disabled)

Table 2: Medicaid HCBS Waiver Recipients Private Home Fully Comply

Settings for the services listed in Table 2 are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.

Table 2 Medicaid HCBS Waiver Recipients Private Home Fully Comply

Service	Service Description
Case Management	An individualized process that assesses a recipient's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers.
Chore Services	Snow removal and heavy cleaning.
Community Transition Services	Assist individuals transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence. Community transition services include one-time set-up expenses and transition coordination.
Emergency Response System	A telephone emergency response system.
Environmental Modification	Physical adaptations to the home which will enable the participant to function with greater independence.
Extended Personal Care/Nurse Education	Education given by a nurse to an enrolled qualified service provider who provides medical care specific to a recipient's needs.
Family Personal Care	Provides for the provision of extraordinary care payments to the legal spouse of a recipient for the provision of personal care or similar services.
Home Delivered Meals	Healthy meals delivered to a person's home.
Homemaker Services	Housecleaning, laundry and/or cooking meals.
Non-Medical Transportation	Provides non-medical transportation and, if needed, a person to go with participants to essential services.
Respite Care	Short-term relief provided to full-time caregivers. Respite care is limited to 52.5 hours of in-home respite.

Service	Service Description
Specialized Equipment and Supplies	Equipment and supplies to help people live more independently.
Supervision	Having the knowledge of, and account for, the activity and whereabouts of the recipient at all times to allow immediate provider intervention as necessary to safeguard the individual from harm.
Transitional Living	Teaches participants skills to live independently in their own home.

Table 3: Medicaid HCBS Waiver Institutional Respite and Supported Employment Fully Comply

Settings for the services listed in Table 3 that are not provided within the waiver participant’s private residence but are presumed to fully comply. Institutional Respite complies with [Contents of Request for a Waiver](#). Supported employment fully complies because services can only be provided in competitive work settings. Receiving this service does not restrict a recipient’s full access to community living. Waiver funds are not used to support employment in group homes, training centers or any setting that isolates individuals from the community. Recipients are free to seek competitive employment and receive supports to sustain that employment. Recipients can engage in community life and control their personal resources as they see fit.

Table 3 Medicaid HCBS Waiver Institutional Respite and Supported Employment Fully Comply

Service	Service Description
Institutional Respite	Short term relief to full time care givers provided in a nursing home or hospital. Institutional respite care is limited to 5 days per month.
Supported Employment	Support and training to help people maintain a job. Supported employment services cannot be provided in a group or crew.

Table 4: Medicaid HCBS Waiver Settings That Will Fully Comply with Changes

Settings for the services listed in Table 4 that, with changes to certain settings, will fully comply with the regulatory requirements because the Department will require remedial strategies and timelines for providers to come into full compliance.

Table 4 Medicaid HCBS Waiver Settings That Will Fully Comply with Changes

Service	Service Description
Adult Foster Care	Assistance with personal care and other supportive services provided in a licensed private single-family home by a care provider that lives in the home to no more than four individuals.

Table 5: Medicaid HCBS Waiver Settings That Do Not or Cannot Comply

Settings for the services listed in Table 5 that do not or cannot comply with the regulatory requirements because they are provided in a hospital or nursing facility.

Table 5 Medicaid HCBS Waiver Settings That Do Not or Cannot Comply

Service	Service Description
Adult Day Care (Four settings located in nursing home)	Minimum of three hours per day of supervised care in a group setting. Four of the eight currently enrolled adult care settings do not comply because they are provided in a hospital or nursing facility, comingle nursing home and adult day recipients, share activities, staff, etc. and therefore cannot comply.

Table 6: Medicaid HCBS Waiver Settings Under Review

Settings for the services listed in Table 6 have not been determined to fit into any of the above categories. The Department is utilizing the review process described in this Statewide Transition Plan to make a final determination.

Table 6 Medicaid HCBS Waiver Settings Under Review

Service	Service Description
Adult Day Care (Three settings located in adult residential settings)	Minimum of three hours per day of supervised care in a group setting.
Adult Residential Services	Care in a residential setting focusing on people with memory loss and traumatic brain injury. The size of the setting ranges from a capacity to serve between ten and thirty-six individuals.

Autism Spectrum Disorder Waiver

Table 7: Autism Spectrum Disorder Waiver Recipients Private Home Fully Comply

Settings for the services listed in Table 7 are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being provided in the recipient’s private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.

Table 7 Autism Spectrum Disorder Waiver Recipients Private Home Fully Comply

Service	Service Description
Assistive Technology	Equipment and supplies to help people live more independently.
Respite	Short-term relief provided to full-time caregivers. Respite is limited to twenty, forty or sixty hours per month based on the level of support.
Service Management	An individualized process that assesses a participant's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers.

Children's Hospice Waiver

Table 8: Children's Hospice Waiver Recipients Private Home Fully Comply

Settings for the services listed in Table 8 are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.

Table 8 Children's Hospice Waiver Recipients Private Home Fully Comply

Service	Service Description
Bereavement Counseling	Counseling for individual and family in dealing with and adjusting to the possible loss of child to death and the aftercare of family due to the death of child (this service can be provided either in the participant's home or within the community, based on the choice of the participant and/or legal guardian; both settings are fully compliant with the regulatory requirements).
Case Management	Service to assist the individual and family by providing information, referral and support.
Equipment and Supplies	Focus of equipment is for easing of pain, assisting with child's independence, or strength building supplies are those needs that are not covered under State Plan.
Hospice	This service mirrors traditional hospice services within an individual's home, except for the continued curative measures would also be available.
Palliative	Supportive medical, health and other care provided to child and their family to meet the special needs arising out of the physical, emotional, spiritual and social stresses experienced during the final stage of illness and during dying and bereavement so that when and where possible the child may remain at home.
Respite	Child must be residing in legally responsible care givers home and service of respite must occur within this home. Service provides temporary relief to the legally responsible care giver. Respite is limited to seventy-six hours per year.

Service	Service Description
Skilled Nursing	This nursing service is completed by an LPN or a RN and is available once the State Plan service has been maximized. This service is utilized if the individuals' needs are greater than those completed by Home Health Aides yet not as encompassing as Hospice nursing or Palliative nursing needs.

Table 9: Children's Hospice Waiver Non-Residential Fully Comply

Settings for the services listed in Table 9 that are not provided within the waiver participant's private residence but are presumed to fully comply.

Table 9 Children's Hospice Waiver Non-Residential Fully Comply

Service	Service Description
Expressive Therapies	The use of art practices that give a child the ability to express and explore their own medical conditions by the use of their imagination and multiple creative expressions. Focus is on living with and coping with diagnosis; siblings of individual are also able to attend sessions.

Medically Fragile Waiver

Table 10: Medically Fragile Waiver Recipients Private Home Fully Comply

Settings for the services listed in Table 10 are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.

Table 10 Medically Fragile Waiver Recipients Private Home Fully Comply

Service	Service Description
Case Management	Provides a variety of activities such as intake, case planning, on-going monitoring and review of supports, services to promote quality and outcomes and planning for and implementing changes in supports and services for the family / recipient while in their home.
Dietary Supplements	Supplements provided up to fifty-one percent of recipient nutritional intake or disease specific while the child is in their home.
Environmental Modification	Provides assistance in modifying the family home/ vehicle to enhance the eligible child's ability to function as independently as possible in their home.
Equipment and Supplies	Provides adaptive items for daily living, environmental control items, personal care items and such to enhance their home for better independence of recipient.

Service	Service Description
In-Home Supports	Enables a child who has a serious medical condition to remain in and be supported in their family home.
Individual and Family Counseling	Address needs related to the stress associated with the child's extraordinary medical needs which will support the continued integration of the child in their home.
Transportation	Enables individuals to access essential community resources or services in order to maintain themselves in their home.

Table 11: Medically Fragile Waiver Non-Residential Fully Comply

Settings for the services listed in Table 11 that are not provided within the waiver participant's private residence but are presumed to fully comply.

Table 11 Medically Fragile Waiver Non-Residential Fully Comply

Service	Service Description
Institutional Respite	Provide temporary relief to the recipient's legally responsible caregiver, complies with Contents of Request for a Waiver . Institutional respite is limited to two weeks per month.

Technology Dependent Waiver

Table 12: Technology Dependent Waiver Recipients Private Home Fully Comply

Settings for the services listed in Table 12 are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.

Table 12 Technology Dependent Waiver Recipients Private Home Fully Comply

Service	Service Description
Attendant Care Service	Hands-on supportive and medical care specific to a recipient who is ventilator dependent for a minimum of twenty hours per day. Attendant care services include nursing activities that have been delegated by the nurse manager.
Case Management	An individualized process that assesses a recipient's needs, explores service options, determines eligibility, and provides a link between community resources and qualified service providers.
Non-medical Transportation	Provides a ride to essential services.

Service	Service Description
Specialized Equipment and Supplies	Equipment and supplies to help people live more independently.

Traditional IID/DD Waiver

Table 13: Traditional IID/DD Waiver Recipients Private Home Fully Comply

Settings for the services listed in Table 13 are presumed to fully comply with the regulatory requirements because they are settings where individualized services are being provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.

Table 13 Traditional IID/DD Waiver Recipients Private Home Fully Comply

Service	Service Description
Behavioral Consultation	Expertise, training and technical assistance in natural environments (home, grocery store, community) to assist primary caregivers, and other natural supports to develop an intervention plan designed to address target behaviors.
Environmental Modifications	Physical adaptations to the home or vehicle which will enable the individual to function with greater independence.
Equipment and Supplies	Equipment and supplies to help participants to remain in and be supported in their home.
Extended Home Health Care	Service provides skilled nursing tasks that cannot be delegated to unlicensed personnel. Nursing assessment and care plan are required.
Homemaker Services	Housecleaning, laundry and/or cooking meals.
In-Home Supports	In-home supports that assist the primary caregiver by providing relief care (respite) when the primary caregiver is not present or when the primary caregiver is present and needs a second pair of hands to assist the participant in activities of daily living and maintaining health and safety.
Infant Development	Home-based, family focused service that provides information, support and training to assist primary caregiver(s) in maximizing the child's development utilizing a parent-coaching model.
Parenting Support	Assists participants who are or will be parents in developing appropriate parenting skills.

Service	Service Description
Transportation Costs for the Financially Responsible Caregiver	Effective 1/1/17 removed this service based on guidance received from CMS. Previously this service reimbursed financially responsible caregivers for expenses incurred due to necessary medical appointments outside their community, such as mileage, lodging, etc. identified in the participant's plan.

Table 14: Traditional IID/DD Waiver Residential Fully Comply

Settings for services listed in Table 14 that are not provided within the waiver participant's private residence but are presumed to fully comply.

Table 14 Traditional IID/DD Waiver Non-Residential Fully Comply

Service	Service Description
Family Care Option	The participant is in another family home meeting the licensing standards for Family or Adult Foster Care on a part-time or full-time basis. The participant's family retains all rights and this service is used when eligible waiver participants less than twenty-one years of age cannot remain in their natural family home on a full-time basis. This is not considered boarding care according to the definition of the ND Department of Public Instruction and not considered child deprivation according to Child Protective Services.

Table 15: Traditional IID/DD Waiver Settings That Will Fully Comply with Changes

Settings for the services listed in Table 15 that will require changes to fully comply with the regulatory requirements because the Department will require remedial strategies and timelines for providers to come into full compliance.

Table 15 Traditional IID/DD Waiver Settings That Will Fully Comply with Changes

Service	Service Description
Adult Foster Care	Assistance with personal care and other supportive services provided in a licensed private single-family home by a care provider that lives in the home and provides care to no more than four individuals
Prevocational Services	Formalized training, experiences, and staff supports designed to prepare participants for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Effective 4.1.18: Previously known as "Extended Services" – no changes to services, name change only.

Service	Service Description
Small Group Employment Support	On or off-the job employment related supports for groups of two to eight participants to assist in maintaining paid employment in an integrated setting. Effective 4.1.18: Previously known as “Extended Services” – no changes to services, name change only.
Individual Employment Support	On or off-the job employment related supports to assist participants in obtaining or maintaining paid employment in an integrated setting or self-employment. Effective 4.1.18: Previously known as “Extended Services” – no changes to services, name change only.
Residential Habilitation	Formalized training and supports provided to participants who require some level of ongoing daily support. Services are provided in licensed/unlicensed community residential settings that include group homes and homes leased, owned or controlled by individuals. Effective 4.1.18: Subcategories were removed – no changes to services, name change only. Added a new category “Independent Habilitation.”
Independent Habilitation	Formalized training and staff support provided to participants on a regular, but not on a daily basis for fewer than twenty-four hours per day. Services are provided in licensed/unlicensed community residential settings that include group homes and homes leased, owned or controlled by individuals. Effective 4.1.18: New Category added; services/settings did not change.
Day Habilitation	Habilitation services for individuals with developmental disabilities furnished in a non-residential setting, separate from the home where the individual resides, but may be furnished in the individual’s home if the individual’s needs preclude traveling from the home on a regular basis. Effective 4.1.18: Previously known as “Day Supports” – no changes to services, name change only.

Table 16: Traditional IID/DD Waiver Settings Under Heightened Scrutiny Fully Comply

Settings for the services listed in Table 16 that are presumptively non-home and community based, but North Dakota believes they are community-based and will provide justification to show these settings do not have the characteristics of an institution and do have the qualities of home and community-based settings (heightened scrutiny).

Table 16 Traditional IID/DD Waiver Settings Under Heightened Scrutiny Fully Comply

Service	Service Description
Residential Habilitation	Formalized training and supports provided to participants who require some level of ongoing daily support. Services are provided in licensed/unlicensed community residential settings that include group homes and homes leased, owned or controlled by individuals. Effective 4.1.18 subcategories were removed – no changes to services, name change only. Added a new category “Independent Habilitation.”

Table 17: Traditional IID/DD Waiver Settings That Do Not or Cannot Comply

Settings for the services listed in Table 17 that do not or cannot comply with the regulatory requirements because they are in an institutional setting.

Table 17 Traditional IID/DD Waiver Settings That Do Not or Cannot Comply

Service	Service Description
Adult Day Health	Minimum of three hours per day of supervised care in a group or congregate setting.
Day Habilitation	Habilitation services for individuals with developmental disabilities furnished in a non-residential setting, separate from the home where the individual resides, but may be furnished in the individual's home if the individual's needs preclude traveling from the home on a regular basis. Effective 4.1.18, previously known as "Day Supports," no changes to services, name change only.

Section 3: Assessment Results, Proposed Remedial Strategies and Timelines

The information below summarize the results of North Dakota’s assessment of HCBS settings that were not already determined to be compliant.

Adult Foster Care (AFC) (HSBS waiver and Traditional IID/DD Waiver)

Key Stakeholders are the Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Foster Care Providers, Consumers, and Advocacy Organizations.

Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients. Case managers will work with waiver recipients who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The AFC provider will be required to give a thirty-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.

Twelve AFC homes were non-compliant. There are sixteen Medicaid waiver Recipients receiving AFC Statewide, with no more than four residents per home.

Areas of remediation are:

- Changes are needed in regard to the experience of the residents to allow for more control of recipient schedules, access to funds, choice of meals, access to phone at any time, and access to visitor’s day or night.
- Changes are needed to comply with the need for a lease or legally enforceable agreement that provides protection to address the eviction process and comply with ND landlord-tenant laws.

Table 18: Adult Foster Care (AFC) (HSBS waiver and Traditional IID/DD Waiver)

The following table lists the remediation strategies that will be employed to bring the settings into compliance.

Table 18 Adult Foster Care (AFC) Settings Remediation and Compliance

Remediation Strategies	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
The Department conducted training for licensing entities, case managers, and	August 2014	The Department kept a roster of attendees and dates of training to track attendance.	Licensing entity will conduct home visits required for licensure & re-licensure. Re-licensure occurs every two years.

Remediation Strategies	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
licensed AFC providers on settings requirements.			Licensing visits will include HCBS setting experience interviews with all AFC recipients. Case Managers will monitor recipient experience and setting requirements at face to face quarterly visits.
The Department required modified AFC house rules to be sent to the Department.	January 2015	The Department reviewed AFC house rules submitted by AFC providers: The results were linked to each specific setting. If a provider does not respond they would no longer meet the licensing requirements for AFC services.	New rules will be incorporated into the AFC licensing requirements and will be applied to all new and renewed licenses.
The Department will promulgate AFC Administrative Rules to modify licensing standards to match HCB setting requirements. State Medicaid Agency (SMA) will update policy to reflect changes in administrative rule. Once rules are finalized State will conduct training with licensing entities to assure understanding of new rules and licensing requirements.	October 2016	Modified rules and policy will be published on State website.	Department staff will conduct additional training with AFC providers and licensing staff.
The Department provided training and sample lease agreements that comply with ND law to AFC providers	January 2015	The Department kept a roster of attendees and dates of training to track attendance.	Department staff will conduct additional training with AFC providers and licensing staff no later than Jan 2019
AFC providers have secured a signed lease or other written rental agreement that includes the eviction process, which must be compliant with ND eviction law (NDCC chap. 47-32)	January 2015	Legally enforceable agreements were sent to the Department. Agreements were reviewed by SMA staff, with guidance from the Legal Advisory Unit, for compliance with ND landlord/tenant law.	Lease agreements are required to be submitted as part of the requirements for new and renewed AFC licenses. Case Managers assure that lease agreements are in place for all recipients when they initially begin using services and during annual assessments conducted in the AFC home.

Table 19: Adult Foster Care (AFC) (HCBS Waiver and Traditional IID/DD Waiver)

Settings listed in Table 19 that, with changes, will comply with HCBS requirements, and the remedial strategies that will be employed to bring the settings into compliance.

Table 19 Adult Foster Care (AFC) Settings That Will Fully Comply with Changes

Address	Licensing Capacity	Total Number Residing in Setting	Areas of Remediation	Remediation Strategies	Timeline for Completion/ Date of Completion	Ongoing Monitoring
701 13 th St S New Rockford 58356	4	1	Establish Lease/ legally enforceable agreement, consumer control of schedule including where to eat, bathing, control of personal finances, restrictions on visiting hours, access to phone at any time.	Established Lease/legally enforceable agreement allow control of schedule, visitors at any time, control over who handles the finances, unlimited access to a phone.	January 01, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
615 North 21 st St Bismarck 58501	4	1	Establish Lease/legally enforceable agreement, allow access to the family room for visitors, elimination of check in and check out requirements, control of schedule of when to eat and requiring notification if they intend to skip a meal, allowing access to phone at any time.	Established Lease/legally enforceable agreement, allow unlimited access to home, elimination of check in check out requirements, choice of when to eat meals, phone access.	February 09, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
213 Northridge Hill CT Grand Forks 58201	2	1	Establish Lease/legally enforceable agreement, allow visitors at any time, control of schedule of when to wake and go to bed.	Established Lease/legally enforceable agreement, allow visitors at any time, control over when to wake up and go to bed.	January 13, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.

Address	Licensing Capacity	Total Number Residing in Setting	Areas of Remediation	Remediation Strategies	Timeline for Completion/ Date of Completion	Ongoing Monitoring
1208 Riverside Lane Washburn 58577	4	4	Establish Lease/legally enforceable agreement, eliminating check in and check out process.	Established Lease/legally enforceable agreement, eliminated check in check out requirements.	January 20, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
13801 10 th Ave SE Bismarck 58504	4	1	Establish Lease Agreement/House Rules included visiting hours, requiring notification of visits, access to food at any time, restriction on schedule and lifestyle choices i.e. requiring consent to smoke tobacco.	Established Lease/legally enforceable agreement, allow access to visitors at any time, access to food at any time, establishing a smoke free living environment but not restricting consumer from smoking where it is legal to do so.	January 30, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
103 15 th St NW Jamestown 58401	2	2	Establish Lease/ legally enforceable agreement, not allowing consumer to control personal finances by requiring that the provider act as the consumers rep payee, and overnight restrictions.	Established Lease/legally enforceable agreement, , have access to guests at any time.	<ul style="list-style-type: none"> • August 11, 2016 Established lease & allowed access to guests. • January 31, 2019 Remediation still needed to update policy on consumers ability to control personal resources. 	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.

Address	Licensing Capacity	Total Number Residing in Setting	Areas of Remediation	Remediation Strategies	Timeline for Completion/ Date of Completion	Ongoing Monitoring
608 Dakota Ave Wilton 58579	4	3	Establish Lease/ legally enforceable agreement as it relates to eviction, restrictions on use of phone, consumer control of schedule requiring check in and out process, not allowing consumer to manage own resources	Established Lease/legally enforceable agreement, comply with eviction law, allow access to phone at all times, remove check in check out requirements, allow managing of personal resources	January 08, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
13688 1 st ST Cavalier 58220	2	2	Establish Lease/legally enforceable agreement, access to food at any time, restrictions on schedule restricting where consumers can eat, consumer managing own finances, access to visitors at any time including overnight guests.	Established Lease/legally enforceable agreement, allow access to food at any time, remove restrictions on where to eat, allowing consumer to manage own finances, allowing access to overnight guests.	January 29, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
309 19 th Ave W West Fargo 58078	2	1	Establish Lease/ legally enforceable agreement, not allowing consumer to manage own resources, and restriction on access to food at any time.	Established Lease/legally enforceable agreement, allow consumer to manage finances, have access to food at any time.	January 29, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.

Address	Licensing Capacity	Total Number Residing in Setting	Areas of Remediation	Remediation Strategies	Timeline for Completion/ Date of Completion	Ongoing Monitoring
401 1 st St N. Wilton 58579	4	3	Establish Lease/ legally enforceable agreement included restriction on consumers managing personal resources, and access to visitors at any time including overnight quests.	Established Lease/legally enforceable agreement, allow consumer to manage own resources.	<ul style="list-style-type: none"> January 20, 2015 Established lease removed personal resource restrictions. January 31, 2019 Overnight quests policy still limits access to overnight guests. 	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
10329 County Rd 2 Neché 58265	1	1	Establish Lease/legally enforceable agreement, restriction on access to phone at any time, restriction on consumer schedule for mealtime, restriction on consumers ability to manage own resources, and restrictions regarding visitors.	Established Lease/legally enforceable agreement, allow access to phone at any time, access to food at any time and no restrictions on meal schedule, access to visitors at any time.	<ul style="list-style-type: none"> January 27, 2015 Established lease agreement, removed restrictions on schedule and visitors. January 31, 2019 Policy on consumers ability to manage personal resources still restrictive. 	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.
1823 N Washington Lot 94 Grand Forks 58203	2	1	Establish Lease/ legally enforceable agreement, restrictions on use of phone at any time, restrictions on consumers schedule including activity schedule, and access to the TV.	Established Lease/legally enforceable agreement, allow access to phone at any time, remove schedule restrictions on consumers access to activities including T.V.	January 17, 2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.

Extended Services (Traditional IID/DD Waiver) *

Key Stakeholders are the DD Division, DD Program Administrators, DD Program Managers, DD Providers, Guardians, and Individuals.

Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients. DD Program Managers will work with individuals who receive services in these settings to explore options to move to a setting that does comply or to choose other services.

At the time of the assessment, there were two settings with fifteen individuals. Two individuals no longer receive services in the setting, bringing the current count to thirteen individuals.

Area of remediation: Changes are needed in regard to the experience of the recipient to allow more community interaction.

Table 20: Extended Services (Traditional IID/DD Waiver)

The following table lists the remediation strategies that will be employed to bring the settings into compliance.

Table 20 Extended Services (Traditional IID/DD Waiver)

Remediation Strategies	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
The Department provided Technical Assistance and training to providers to ensure more community interaction. The Department facilitated discussions with the providers and developed specific steps to ensure each setting will come into compliance and provide opportunities for community interaction. The training addressed the specific non-compliance identified at the provider location.	September 2015	The Department conducted an on-site review to conduct observations, meet with individuals, and assess that the identified steps continue to be implemented.	The DD Program Managers will monitor recipient community interactions during their face to face visits.
The Department conducted statewide training for providers, Individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.	September 2015	The Department kept a roster of attendees and dates of training to track attendance.	The DD Program Managers will monitor recipient community interactions during their face to face visits.

Remediation Strategies	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
The Department updated licensing, Administrative Code, Polices and manuals.	January 2017	New rules are incorporated into the licensing requirements and applied to all new and renewed licenses.	New rules are incorporated into the licensing requirements and applied to all new and renewed licenses.
The Department added additional IID/DD waiver services that will incentivize providers to expand opportunities for individuals to work in integrated, competitive employment settings, by partnering with local business and providing the necessary training and support for individuals.	January 2017	As additional guidance for nonresidential settings is provided by CMS, the Department will ensure that these services and settings comply with regulations.	The DD Program Managers will monitor recipient community interactions during their face to face visits.
If individuals are in an identified setting that doesn't meet HCB requirements or needs changes, the Department will notify the individual/guardian and if needed Teams will meet to work toward the compliance.	January 2017	The Department conducted an on-site review to conduct observations, meet with individuals, and assess that the identified steps continue to be implemented.	The DD Program Managers will monitor recipient community interactions during their face to face visits.

*Effective April 01, 2018 the two settings were recategorized as Prevocational Services

Residential Habilitation (Traditional IID/DD Waiver)

Key Stakeholders are the DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Services Unit, Families/Guardians, and Individuals.

Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients. DD Program Managers will work with individuals who receive services in these settings to explore options to move to a setting that does comply or to choose other services. The Residential Habilitation provider will be required to give a thirty-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.

Ninety-six Provider-Owned Community Residences (which includes the residential settings identified under heightened scrutiny for the IID/DD Waiver)

Areas of remediation:

- Changes are needed to ensure that all provider-owned residential settings:

- Provide a lease or legally enforceable agreement that complies with [North Dakota Landlord-Tenant laws](#); and
- Have lockable bedroom doors

Table 21: Residential Habilitation (Traditional IID/DD Waiver)

The following table lists the remediation strategies that will be employed to bring the settings into compliance.

Table 21 Residential Habilitation (Traditional IID/DD Waiver) Remediation and Compliance

Remediation Strategies	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
The Department updated licensing Administrative Code, policies, and manuals.	Administrative Code updates: December 2016; Policy updates: beginning January 2016	The Department strengthened licensing renewal procedures to ensure ongoing compliance.	The Department strengthened licensing renewal procedures to ensure ongoing compliance.
The Department provided sample lease agreements and information about ND's landlord-tenant laws to providers.	June 2015	New providers will submit lease policies and a template lease as part of their License application.	The Department strengthened licensing renewal procedures to ensure ongoing compliance.
Providers will submit lease policies and a sample lease template to the Department.	July 2016	The Department reviewed providers' lease templates for compliance with ND landlord/tenant law.	The Department strengthened licensing renewal procedures to ensure ongoing compliance.
Providers that do not demonstrate compliance will be required to submit a Plan of Correction to the Department.	September 2016	The Department conducted site visits and reviewed service plans to assure changes were made (e.g., locks added to doors).	The Department strengthened licensing renewal procedures to ensure ongoing compliance.
The Department conducted statewide training for providers, individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.	September 2015	The Department kept a roster of attendees and dates of training to track attendance.	The DD Program Managers will monitor recipient community interactions during their face to face visits.
If individuals are in an identified setting that doesn't meet HCB requirements or needs changes, the Department will notify the individual/guardian and if needed Teams will meet to work toward the compliance.	July 2016	The Department conducted site visits and reviewed service plans to assure changes were made (e.g., locks added to doors).	The Department updated the Environmental Scan checklist to include lockable doors.

Residential Habilitation (Traditional IID / DD Medicaid Waiver) Settings that have completed the Heightened Scrutiny Review

- Determined to have the qualities of HCBS. As a result of the CMS Heightened Scrutiny visits, these settings were found to be compliant based on the letter received from CMS on August 11, 2015.

There are five settings providing services to ten individuals that completed the heightened scrutiny review. After the review, three individuals no longer receive services in the settings. The current number of individuals receiving services in the five settings is seven.

Reason for presumed noncompliance

- Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF).

Addresses reviewed under heightened scrutiny:

- 700 Cottage Road, Grafton ND
- 716 Cottage Road, Grafton ND
- 752 Cottage Road, Grafton ND
- 808 West 5th Street (two units), Villa De Remer Apartments, Grafton ND

While these settings are located on the grounds of, or adjacent to, a State ICF, individuals at these settings all have full access to the community according to their needs and preferences. The Department conducted surveys of a sample of residents in each setting and has determined that their location does not have the effect of isolating the residents from the community. Individuals participate in community events, take trips, have hobbies, belong to local clubs, or work in the community. Resident survey results indicate that they are afforded maximum independence, control of their schedules, and access to food and visitors at any time.

Additionally, the Department completed an on-site visit (observation and visits with consumers) which validated the position that these settings do not isolate and have HCB qualities and characteristics. Individuals participate in a variety of community activities off the grounds of the State ICF, their schooling, day supports, and work activities are located off the grounds of the State ICF, the homes reflect their individualized personalities, they have full access within their homes, and have visitors as they choose. These settings do not limit the individuals and they have full access to the community. Visits with consumers were all positive, including indicating they were happy where they lived, and that individuals and guardians have made choices. A consumer voiced how he had lived elsewhere before and did not like it, enjoying where he lives now as people are nice and he can get out and do his own things.

Staff is provided by independent DD Providers in four of the five settings. Not all residents receive housing assistance. These settings are used as a steppingstone for individuals who have been unable to successfully secure housing or services off the grounds of the State ND Approved Statewide Transition Plan

ICF. The settings are either single family homes or an apartment. Some of the homes are located among homes whose occupants do not have disabilities.

The grounds of the State ICF are no longer used solely for individuals with intellectual and developmental disabilities. Two buildings have been converted into apartment buildings, are owned by private landlords and utilized by the general public. Other businesses are also integrated throughout. There are public clinics, offices, and day care centers for children. Two additional buildings are currently being projected for community use as well. Additionally, the fitness center, which is operated by the State ICF/IID, is open and utilized by the community. There is no physical barrier surrounding buildings or grounds of the State ICF.

Table 22: Residential Habilitation (Traditional IID / DD Medicaid Waiver)

The following table lists the actions taken to assure compliance and the timeline for compliance.

Table 22 Residential Habilitation (Traditional IID / DD Medicaid Waiver) Compliance

Assuring Compliance	Timeline for Completion / Date of Completion
The Department collected input from DD Program Managers and providers regarding the community-based nature of each setting and has determined that their location does not have the effect of isolating the residents from the community.	June - August 2014
The individuals who currently reside in these settings are assessed at least annually to determine if alternative service settings in the community are available and are afforded choice; including tours and visits to determine if they would like to move.	August - September 2014
The Department conducted site visits of each setting (observations and visits with individuals) to verify provider survey, results of DD Program Manager assessments and resident interviews.	October - November 2014
As a result of the CMS heightened scrutiny visit, CMS identified one of the settings did not have a lease signed by the tenant or legal guardian. The Department is working with the provider to ensure compliance. The Department verified that leases have been completed and signed by the guardians since CMS’s heightened scrutiny visit	July 2016
During the CMS heightened scrutiny visit, CMS questioned if all individuals have lockable bedroom doors in one of the settings. The Department verified that every individual does have lockable bedroom doors.	May 2015
As individuals continuously choose their place of residence located within these settings that have been reviewed previously for heightened scrutiny, the Department will continue to ensure these settings meet requirements as identified in the ongoing monitoring and compliance section.	On-going

Day Habilitation and Prevocational Service Setting that completed the Heightened Scrutiny Review

*previously Day Supports Traditional IID/DD Waiver

Determined to NOT have the qualities of HCBS. CMS conducted a Heightened Scrutiny visit in August 2015. This setting did not meet the characteristics of home and community-based because the majority of individuals received most of their services at the facility-based program.

There was one Day Facility setting, located at 828 West Chapel Drive, Grafton ND, providing services to seventeen individuals that completed the heightened scrutiny review. In November 2014, when the Statewide Transition Plan was submitted, two individuals were not waiver participants and one individual no longer received services in the setting. After CMS heightened scrutiny review, the Day Facility was relocated to 533 Hill Ave., Grafton, ND. The current number of individuals receiving services in the setting is fourteen.

Reason for presumed noncompliance: Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF).

The information presented below is from the Department Heightened Scrutiny review completed in August 2015.

While this Day Facility is on the grounds of the State ICF, individuals are active in the community throughout the day with a focus on social roles and volunteering. The day program is located in a building separate from the residential settings. The grounds of the State ICF are no longer used solely for individuals with intellectual and developmental disabilities. Two buildings have been converted into apartment buildings, are utilized by the general public and owned by private landlords. Other businesses are also integrated throughout. There are public clinics, offices, and day care centers for children, two additional buildings are currently being projected for community use as well. Additionally, the fitness center, which is operated by the State ICF/IID, is open and utilized by the community.

The Department conducted surveys of a sample of recipients regarding the experiences and environmental characteristics of the Day Facility and determined that recipients have frequent community interaction and are afforded maximum independence. The individuals access the community frequently throughout the day based on their preferences and needs. Community experiences include volunteering with elderly and children groups, church functions, civic organizations and boards, food pantry, local fairs and celebrations, and numerous other community events. The provider maintains close involvement with the city, and economic partners in the community.

Additionally, the Department completed an on-site visit (observation and visits with consumers) which validated the position that this setting does not isolate and does have HCB qualities and characteristics. There is a focus on social roles, volunteering, meeting the

individual needs and preferences, and choice of activities. In addition to the on-site visits, some plans were reviewed, and individual's choice of services was documented.

The information presented below provides an update on the changes completed after CMS conducted a Heightened Scrutiny visit in August 2015.

Based on the Heightened Scrutiny review completed in August 2015 by CMS, the setting did not meet the characteristics of home and community-based because the majority of individuals received most of their services at the facility-based program. In response to the requirement to increase community interactions and achieve compliance with the federal HCBS rule, the Day Facility setting was relocated off the grounds of the ICF. The new location is located in downtown, among other community businesses, at 522 Hill Ave, Grafton, ND. The provider used exploration and discovery procedures to promote people's community opportunities and experiences. The provider explored people's wants and preferences through past experiences, conversations, and using a variety of assessments; encouraged people to experience various and different community activities and utilized sharing of other people's experiences and opportunities. The provider utilized their current relationships and connections within their community and businesses and reached out to those who had connections for other opportunities. Activities are planned where appropriate and other opportunities are continuously sought out. Transportation is available to assist with community activities. There are numerous community activities available for people to experience daily, which include involvement with community businesses such as the grocery store, restaurants, flower shop, library, and thrift store; volunteering at local clubs, church, camps, meals on wheels, and delivering items to community organizations; committee membership with local organizations; and recreational and leisure activities such as going to the movies, picnics, and shopping.

Table 23: Day Habilitation and Prevocational Service Setting (previously Day Supports Traditional IID/DD Waiver)

Table 23 Day Habilitation and Prevocational Service Setting Compliance Actions

Assuring Compliance	Timeline for Completion / Date of Completion
The Department collected input from DD Program Managers and providers regarding the community-based nature of each setting and has determined that their location does not have the effect of isolating the residents from the community.	June – August 2014
The individuals who currently access this day program are assessed at least annually to determine if alternative settings in the community are available and are afforded the choice, including tours/visits to determine if they would like to receive services at another location.	August – September 2014
The Department conducted site visits of each setting (observations and visits with individuals) to verify provider survey, results of DD Program Manager assessments and resident interviews.	October- November 2014

Assuring Compliance	Timeline for Completion / Date of Completion
The Department provided Technical Assistance to the provider to ensure that the setting is integrated into the community. The DD Program Managers conduct site visits to monitor community interactions during their face to face visits.	Ongoing
The individuals were provided with reasonable notice of the relocation of the setting. Individuals will be afforded the choice among alternate day support providers that meet the individual's needs and preferences. A team meeting will be held prior to the change and the plan will be updated to address a seamless transition. Additionally, services and supports relative to the participant's needs and goals will be identified, including community activities according to the extent the individual desires.	Ongoing
The Department reviewed individuals plans which reflects the transition and changes that have occurred. The plan documents the individual's continued choice in settings and services.	Relocations and plan updates completed March 2018
If individuals are in an identified setting that doesn't meet HCB requirements or needs changes, the Department will notify the individual/guardian and if needed Teams will meet to work toward the compliance.	Relocations and plan updates completed March 2018.

Adult Residential Services / HCBS Medicaid Waiver (Serves Aged & Disabled)

There are fourteen settings providing services to one hundred and fourteen Medicaid Recipients statewide where no determination has been made.

Reason for presumed noncompliance

- These settings may be considered to have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.
- These settings may be submitted for heightened scrutiny. The Department has not yet made a determination for HCBS compliance.

Department activities to determine compliance:

- Worked with the Department of Health (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics. Department of Health will assure compliance through the scheduled onsite survey process. Completed October 2017.
- Setting requirements were added to the Adult Residential provider standards for enrollment. State staff will conduct site visits upon initial enrollment and at renewal (every 2 years) to assure compliance. A summary of site visit results will be posted on the Department's website. Completed October 2017.

- Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits. Completed October 2017.
- Department staff will gather evidence from each facility and present the information to the setting committee to make determination if the setting can comply with changes or if the setting may be isolating thus invoking the heightened scrutiny process and submission of the evidence package to CMS to see if they concur. Completion Timeline January 2020.

Table 24: Specific Adult Residential Services and Adult Day Services setting details

Table 24 Specific Adult Residential Services and Adult Day Services setting details

Setting	Licensing Capacity	Total Number Residing in Setting	Compliance
Dakota Pointe-HIT Inc. 3503 43 rd St NW Mandan, ND 58554	10	10	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Ecumen-Evergreens of Fargo 1401 Gateway Cir S Fargo, ND 58103	15	15	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Edgewood Bismarck Senior Living LLC 3406 Dominion St Bismarck, ND 58503	20	20	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Edgewood Fargo Senior Living LLC 4420 39 th Ave SE Fargo, ND 58104	23	23	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Edgewood Mandan Senior Living LLC 2801 39 th Ave SE Mandan, ND 58554	22	22	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Edgewood Minot Senior Living LLC 800 16 th Ave SE Minot, ND 58701	22	22	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Emerald Court II Inc. 520 28 th Ave SE Minot, ND 58701	28	24	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the

Setting	Licensing Capacity	Total Number Residing in Setting	Compliance
			intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Lakewood Landing 4401 21 st St SE Mandan, ND 58554	17	17	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Maple View II Inc. 4217 Montreal St Bismarck, ND 58503	36	36	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Maple View Fargo 4552 36 th Ave S Fargo, ND 58104 *setting used to provide Adult Day Care	36	33	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Maple View Grand Forks 4650 Washington St Grand Forks, ND 58206 *setting also enrolled to provide Adult Day Care	36	35	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Maple View Memory Care Minot 2805 Elk Drive Minot, ND 58701	37	35	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Open Door-HI Soaring Eagle Ranch 3731 117 th Ave SE Valley City, ND 58072	10	9	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Roseadele 1505 3 rd St SE Jamestown, ND 58401 *setting also enrolled to provide Adult Day Care	20	20	Setting has completed initial compliance site visit and assessment. Setting staff are currently working with the state to address any known areas of noncompliance with the intention of coming into full compliance. Final determination will be made as specified in the Statewide Transition Plan.

Table 25: Settings that Do Not/Cannot Meet HCBS Requirements

Table 25 Setting that Do Not/Cannot Meet HCBS Requirements

Name of Service (Waiver)	Total Number of Settings Non-Compliant	Remedial Strategies for Providers	Remedial Strategies for Recipients Receiving Services	Key Stakeholders	Timeline for Completion	Assuring Compliance	Ongoing Monitoring
Adult Day Care Provided in Nursing Home (HCBS Waiver)	4	Policy is updated, and providers and case management entities have been informed that services cannot be authorized for Medicaid waiver recipients in these settings.	No remediation necessary as no waiver recipients are currently utilizing waiver services in non-compliant adult day care settings located in a hospital or nursing home.	State Medicaid Agency, HCBS Case Managers, Adult Day Care Providers	December 2014	State will monitor care plans to assure that recipients are not authorized services in non-complaint settings.	State will monitor care plans to assure that recipients are not authorized services in non-complaint settings.
Day Supports (Traditional IID/DD Waiver) (Effective 4/1/18 name change to Day Habilitation)	6 settings with 8 Individuals total	Providers and DD Program Managers are informed that services cannot be authorized for Medicaid waiver recipients in ICF settings	<ul style="list-style-type: none"> The individuals receiving day supports in these settings have been relocated to other community-based settings. Individuals/guardians were provided with reasonable written notice at a minimum of 30 days prior to beginning the team process, and a choice among alternative Day Support services and providers that meet the individual's needs, preferences, and HCB setting requirements. Individuals have the opportunity to interview and tour potential providers to make an informed decision. 	DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units, Individuals, Guardians	Relocation Completed March 2017	The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings	The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings.

Name of Service (Waiver)	Total Number of Settings Non-Compliant	Remedial Strategies for Providers	Remedial Strategies for Recipients Receiving Services	Key Stakeholders	Timeline for Completion	Assuring Compliance	Ongoing Monitoring
			<ul style="list-style-type: none"> Once a new setting/provider is selected, an admission plan is developed according to assist in a seamless transition. Services and supports relevant to the individual's particular needs and goals are identified. Meetings occurred as needed and the plan is developed prior to the start of the new location. The DD Program Managers are responsible for notifying individuals and guardians of appeal rights at enrollment, during the annual plan team meeting, and when changes occur with services. 				
Adult day Health (Traditional IID/DD Waiver)	0 settings with 0 Individuals	Providers and DD Program Managers are informed that services cannot be authorized for Medicaid waiver recipients in a hospital or nursing facility. No waiver recipient has utilized this service since 2011.	<ul style="list-style-type: none"> No remediation necessary as no waiver recipients are currently utilizing waiver services. The Department amended the Traditional IID/DD waiver to no longer include this service. 	DD Division, DD Program Administrators	January 2017	The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings. This service has been discontinued in the web-based	The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings.

Name of Service (Waiver)	Total Number of Settings Non-Compliant	Remedial Strategies for Providers	Remedial Strategies for Recipients Receiving Services	Key Stakeholders	Timeline for Completion	Assuring Compliance	Ongoing Monitoring
						case management system.	

Section 4: Ongoing Monitoring and Compliance

The Department will ensure continued compliance with the HCBS settings rule in all of the States 1915(c) Medicaid waivers by implementing and enforcing policy that will ensure the continued integrity of the HCB characteristics that these services provide to waiver recipients. The Department will review all future settings where waiver services will be provided and where waiver participants will reside to ensure that the settings meet the home and community-based settings requirement. The Department will assure continued compliance with all federal regulations.

The Department will ensure that the experiences of individuals receiving HCBS in non-residential settings are consistent with how those settings would be experienced by individuals who are not HCBS service recipients, such as access to food. Appropriate policies and procedures will reflect this requirement.

The Department will use several practices at the recipient, provider, and state level to assure ongoing monitoring and compliance with all home and community-based setting requirements.

The Department monitors all individual person-centered service plans, conducts quality reviews to assure clients are free to choose what services and supports they wish to receive and who provides them.

The ongoing monitoring applies to all settings, including settings that are presumed to comply with the HCBS setting rule, and settings that are presumed to have institutional characteristics and are subject to the CMS heightened scrutiny review.

The Department may make a presumption that privately owned or rented homes and apartments of people living alone or with family comply. The state will assure compliance through ongoing monitoring of the client's experience. This can be accomplished through ongoing consumer and family training and contact with case or program managers trained on the HCBS setting requirements. Any individual living in a private residence owned by an unrelated caregiver has a lease agreement and the setting will be assessed as a provider owned or controlled setting. If there is a presumption that a privately-owned setting is institutional in nature the case or program managers will be required to report that to the Department who will take steps to conduct a heightened scrutiny review to assure compliance.

The following additional measures will be used to monitor settings in the HCBS Medicaid Waiver and the Traditional IID/DD Waiver.

HCBS Medicaid Waiver (Serves aged & disabled)

At the recipient level; the Department will monitor all individual person-centered service plans, conduct case management reviews, client interviews and quality reviews to assure clients are free to choose what services and supports they wish to receive and who provides them. Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.

The Department conducted statewide trainings with HCBS Case Managers in August and October 2014, December 2016, March and September 2017, and May, August and September 2018 on the home and community-based setting requirements and the person-centered service planning requirements. Person-centered service plans have been updated and comply with the federal requirements as of July 2015.

Setting requirements will be added to the provider standards for enrollment. Department staff will conduct site visits of adult residential facilities upon initial enrollment and at renewal (every two years) to assure compliance. A summary of site visits results will be posted on Department's website. In addition, the HCBS setting rule requirements have been incorporated into the licensing criteria for all Adult Foster Care homes. Compliance will be assured initially upon licensure and then annually during first year of licensure and biannually thereafter.

The HCBS Case Managers will be responsible to assure ongoing compliance with all Medicaid recipients through monitoring done during their required quarterly visit to conduct the person-centered care plan meeting. Case Managers are required to monitor during their quarterly face-to-face contacts to ensure an individual is being afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint (including the limited use of restraints that are allowable under Adult Residential Services). Any violation of a waiver recipient's rights must be reported as a complaint to the Department, Vulnerable Adult Protective Services or both. One of the quarterly visits must include a completion of a Medicaid Waiver Quality review, [State Form Number \(SFN\) 1154](#), a copy of this review needs to be sent to the Department.

In addition, the HCBS case managers must complete an annual resident setting experience interview using a standardized [State Form Number \(SFN\) 636](#) with all adult foster care recipients living in licensed facilities. This includes both Medicaid, State, and private pay recipients. The completed form must be sent to the Department. Any issue identified in the client experience interview must be reported to the Department who will be responsible to work with the licensed provider to remediate any issues or violations related to the setting rule.

The [Long-Term Care Ombudsman](#) also make a quarterly visit to all adult residential care facilities. The Ombudsman will be training in the HCBS settings criteria and will help educate and advocate for consumers rights. Any systemic issues can be reported to the Department.

Department staff have worked with the [North Dakota Department of Health](#) (licensing and surveying entity) to update regulatory documents to assure compliance with HCB characteristics. Department of Health will assure compliance through the scheduled onsite survey process.

Training of Department staff, HCBS Case Managers, and the LTC Ombudsman has already been conducted and will continue annually. The HCBS settings criteria has been incorporated into the HCBS Case Manager training and will be added into the initial training for the LTC Ombudsman no later than January 2019. Department staff will utilize the CMS PowerPoint materials, FAQ's etc. that are available online to assist in the training. The Adult Foster care licensing rules and the Adult Residential assessment tool will also be used as training materials. Additional training for foster care providers and licensers will be conducted no later than January 2019.

Any changes in state standards that require providers to make any adjustments or modifications to comply with the federal HCBS rule will be completed by the Department through written communications, educational materials, policy issuances, or face to face trainings as appropriate.

Traditional IID/DD Waiver

At the recipient level; the current person-centered planning process will be utilized along with [The Council on Quality and Leadership \(CQL\) Personal Outcome Measures](#) and the required annual self-assessment. The Self-Assessment is a personal interview conducted with the individual prior to the service plan meeting to best identify the person's desired outcomes, goals, community involvement, who and what is important to them, likes, dislikes, etc. based on the individual strengths, interests, values, aspirations, and choices.

The self-assessment was modified to specifically identify people's experiences which relate to the home and community-based requirements. The self-assessment must address individual experiences that incorporate the CMS HCBS Final Rule regulations to ensure on-going compliance with the requirements. This self-assessment will capture this information initially and on an annual basis. [The Council on Quality and Leadership \(CQL\) Personal Outcome Measures](#) may be utilized for this purpose. Regional DD Program Managers review the self-assessment and through the service planning process, assure that individual outcomes are being realized, services meet participant's needs, and plans are developed according to needs and preferences.

The Department requires all DD Licensed providers to be accredited by [The Council on Quality and Leadership \(CQL\)](#). According to [North Dakota Developmental Disabilities Licensing rule NDAC 75-04-01-15](#) on page 10, the Department adopts, for all licensees, the current ND Approved Statewide Transition Plan

standards used for accreditation. CQL developed a [Toolkit for States](#) which provides detailed support on how CQL's quality measurement tools and data elements comply with the home and community-based requirements and CMS reporting requirements. [CQL Basic Assurances](#)® ensures accountabilities for health, safety and human security within service provider organizations. Data collected is analyzed to identify trends and gaps and to make recommendations for improvements. [CQL's Personal Outcome Measures](#)® is a tool that focuses on the choices and control people have in their lives. This process also evaluates the quality of life for people and the degree to which organizations individualize supports to facilitate outcomes. Data is gathered, aggregated, and analyzed to identify trends, including what is going well for people, and opportunities for improvement. The data can be used to assist the person's planning teams, and to select priorities and focus efforts for quality assurance and improvement.

In addition, DD Program Managers conduct face-to-face visits every ninety days in which the DD Program Manager monitors satisfaction with services, plan implementation, health and safety, and provider interactions. If concerns are expressed during the face-to-face visits or at any other time, the concern will be resolved through the team process, with the Department, or Protection and Advocacy. The monitoring during these visits includes observations and discussions with the individual and guardian to ensure all HCBS Rule characteristics and experiences are present, including but not limited to: people's rights to dignity, privacy, respect and freedom of coercion; right to have visitors anytime; community involvement; optimizing individual autonomy and independence in making life choices; access to personal money and possessions; and supporting individuals to control their own resources and schedules. The face-to-face visit also includes an annual assessment of the physical characteristics of the person's home or day activity setting. This annual assessment will be enhanced by July 2019 to further ensure compliance with the federal HCBS rule.

For Adult Foster Care, the HCBS case managers must complete an annual resident setting experience interview using a standardized [State Form Number \(SFN\) 636](#) with all adult foster care recipients living in licensed facilities. This includes both Medicaid, State, and private pay recipients. The completed form must be sent to the Department. Any issue identified in the client experience interview must be reported to the Department who will be responsible to work with the licensed provider to remediate any issues or violations related to the setting rule.

The DD Program Manager, an employee of the State Medicaid agency, is responsible to ensure that the plan contains all the required components and approves the plan once all requirements are met. These assurances are completed annually or as changes are needed to the plan. [Overall Service Plan \(OSP\) Instructions](#) provide detailed directions on completing the plan template according to HCBS requirements, which include the individual's setting options and any modifications of additional conditions which are justified and supported by a specific assessed need. The modifications, including a Contingency Admission Plan, are incorporated into the person-centered team process and integrated into any programming. Modifications require participant and/or guardian consent along with approval by behavior management and human rights committees. A checklist is available for the DD Program Manager to use when

assessing compliance. The checklist contains the plan template sections and the information required to be contained in the plan for compliance. Person-centered service plans will be written or updated to comply with the federal requirements by December 2016.

The use of the person-centered planning process, [CQL's Personal Outcome Measures®](#), self-assessment, and face-to-face visits are each used collectively in determining all settings (which also include group residential, group non-residential, and individual private homes) comply and to assure ongoing compliance with the federal HCBS rule in the future. The state will further implement a case file review process by July 2019 that will provide ongoing quality assurance checks to make sure that verification of setting compliance is being conducted consistently throughout the state. The case file review process completed by the state office will ensure the Department is meeting state assurances, plan development and documentation, and face to face visit requirements that include the federal HCBS rule characteristics and experiences. Any findings will be remediated at the individual level, and trends will be identified to address targeted training needs regionally/statewide or by provider.

The Department developed outcomes within the provider surveyor process, which will conduct reviews of DD licensed provider waiver services to monitor compliance with the CMS rule. The surveyor will collect information through a variety of methods to ensure compliance with state and federal standards. The surveyor report will provide information on provider strengths, recommendations for improvement, and areas requiring a plan of correction.

DD providers are required to be licensed initially and on an annual basis. The CMS rules will be incorporated into the provider licensing requirements and will be applied to all new and renewed licenses. In March 2018, a new provider orientation process was implemented for those agencies interested in becoming a licensed provider in North Dakota. During the orientation process they are trained on the federal HCBS rule and the requirements to be compliant as an agency. Additionally, the initial and annual licensure includes a form the provider completes and signs that they understand their responsibilities as a provider to comply with the Home and Community Based Services (HCBS) regulations. Providers who have provider owned settings must submit the lease policy and lease template as part of the licensure requirements initially and as changes occur. When completing the licensure application provider must identify what settings are provider owned, facility based or both. When a provider requests to enroll or add a setting that may trigger the need for heightened scrutiny, the Department will utilize a setting assessment tool to identify any institutional characteristics. Department staff will work with the providers to complete the assessment tool and identify any areas of noncompliance, remediation efforts, and timelines for completion.

The Department conducted various trainings statewide for DD Program Managers, providers, and stakeholders educating on the federal HCBS rule, person-centered service planning requirements, and changes in state standards that require adjustments or modifications system wide such as lease requirements and lockable doors for provider owned settings. To date, the following trainings have occurred: August 2014, September 2014, October 2014, January 2015, June 2015, September 2015, February 2016, March 2016, September

2016, October 2016, April 2017 and July 2017. The Department will ensure initial and on-going training of the federal HCBS rule to various personnel responsible for case management, service coordination, and assessing and validating setting to assure compliance. In April 2015, the Department included the federal HCBS rule training at new DD Program Administrator/DD Program Manager orientation and in April 2018, the Department updated the provider staff training policy to require the federal HCBS rule training during new staff orientation at the licensed provider level. Beginning July 2019, the Department will provide opportunities for re-occurring or annual training through various methods and entities. This will include utilizing Web-X, the provider association, Protection and Advocacy, re-occurring DD Program Management meetings, and DD licensed providers annual staff trainings. The case file review process will be utilized for quality assurance.

Any changes in state standards that require providers to make any adjustments or modifications to comply with the federal HCBS rule will be completed by the Department through written communications, educational materials, policy issuances, or face to face trainings as appropriate. The Department's website includes fact sheets, training materials, and transition plan activities.

Technology Dependent Medicaid Waiver

At the recipient level; the Department will monitor all individual person-centered service plans, conduct case management reviews, client interviews and quality reviews to assure clients are free to choose what services and supports they wish to receive and who provides them. Case Managers will monitor recipient experience and setting requirements at quarterly face-to-face visits.

The Department conducted statewide trainings with HCBS Case Managers in August and October 2014, December 2016, March and September 2017, and May, August and September 2018 on the home and community-based setting requirements and the person-centered service planning requirements. Person-centered service plans have been updated and comply with the federal requirements as of July 2015.

Setting requirements will be added to the provider standards for enrollment. The HCBS Case Managers will be responsible to assure ongoing compliance with all Medicaid recipients through monitoring done during their required quarterly visit to conduct the person-centered care plan meeting. Case Managers are required to monitor during their quarterly face to face contacts to ensure an individual's is being afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint. Any violation of a waiver recipient's rights must be reported as complaint to the HCBS Case Manager, Vulnerable Adult Protective Services or both. One of the quarterly visits must include a completion of a Medicaid Waiver Quality review, [State Form Number \(SFN\) 1154](#). The completed form must be sent to the Department. Any issue identified must be reported to the Department who will be responsible to work with the provider to remediate any issues or violations related to the setting rule.

Training of Department staff, HCBS Case Managers has already been conducted and will continue annually. The HCBS settings criteria has been incorporated into the HCBS Case Manager training. Department staff will utilize the CMS PowerPoint materials, FAQ's etc. that are available online to assist in the training. Additional training for foster care providers and licensers will be conducted no later than January 2019.

Any changes in state standards that require providers to make any adjustments or modifications to comply with the federal HCBS rule will be completed by the Department through written communications, educational materials, policy issuances, or face to face trainings as appropriate.

Section 5: Public Input Process

The initial Statewide Transition Plan Public input period was conducted from October 15, 2014 through November 14, 2014. An additional public comment period was held from February 19, 2016 through March 20, 2016 to allow for comments on the revised plan that was submitted to CMS for initial approval. For the revised Statewide Transition Plan a public comment period was held from September 28, 2018 through October 28, 2018 to allow for comments on the revised plan toward obtaining final approval. The Department issued a news release to the media and a public notice was sent to stakeholders and posted on the Department website. Both notices provided information on the revised statewide transition plan, how to submit comments, and the location of a public comment meeting. The public comment meeting was held by statewide video conference system at numerous locations throughout the state. The public comment meeting was held on September 28, 2018 which gave an overview of the federal rules that guides how home and community-based services funded through Medicaid waivers are provided by states, review of North Dakota waivers, update of the most recent changes to the initial statewide transition plan, public comment, and the next steps in North Dakota's transition planning. The revised Statewide Transition Plan was posted to the Department's website and a hard copy could be obtained by contacting the Department. A summary of all comments received during the public comment periods have been retained and are available for CMS review for the duration of the transition period or approved waiver. In addition, the original plan including the public comments are located in the [Department Medical Services News and Information Archive](#).

Comments and public input on this revised Statewide Transition Plan submitted to CMS for final plan approval were accepted until October 28, 2018 in the following ways:

Email: dhshcbs@nd.gov
Phone: (701) 328-4601
Toll Free: (855) 462-5465
ND Relay (800) 366-6888 (TTY)
Fax: (701) 328-8744
Mail: ND DHS Aging Services Division
Attn: Nancy Nikolas Maier
1237 West Divide Ave Suite 6
Bismarck, ND 58501

The Department will assure that modifications made as a result of public input are posted for public information on the same date of submission to CMS and that all public comments on the Statewide Transition Plan will be retained and available for CMS review.

Public comments were received from the following individuals or organizations:

- North Dakota Long Term Care Association
- Protection and Advocacy Project

The following is a summary of public comments received by the Department:

One commenter appreciated that public comment was accepted in multiple ways and all the proposed changes are highlighted to allow readers to identify them.

- DHS Response: Thank you for the comment.

One commenter expressed concern that heightened scrutiny does not include opportunity for public comment.

- DHS Response: Per the HCBS settings rule, the state is responsible to determine if heightened scrutiny criteria apply. Any settings that will be submitted through the heightened scrutiny process will be put out for public comment for 30 days. Additional language was added to clarify the public comment process in the Statewide Transition Plan.

One commenter expressed concern about the day program that was located on the grounds of an ICF/IID and stated that the focus seems to only be on the physical location. Commenter also wondered how services were changed.

- DHS Response: The Statewide Transition Plan does summarize the changes the provider has made to the services. This information can be found in Table 9 and within the section “Justification that Setting is In Fact Community-Based”

One commenter asked whether supported employment services provided under the HCBS waiver are “completely individualized” and therefore can be presumed to be compliant.

- DHS Response: HCBS waiver supported employment services are provided to recipient based on a person-centered plan of care that reflects the consumers employment goals. Supported employment can only be provided in an individualized, integrated, complete employment setting.

One commenter questioned if there is a consult report from the assessment process in which an outside entity was involved. Additionally, questioned how compliance was determined and how the responses were validated.

- DHS Response: This section has not been updated since the state received initial approval from CMS. This information was presented at a public meeting in September 2014 and the results of the surveys are available on the department's website. The assessment validation process is described in section "Site Specific Assessment Process."

One commenter requested the tool that is used for the assessment process.

- DSH Response: The current tools utilized are attached to this Statewide Transition Plan and will be placed on the department's website.

One commenter asked what the response rate is for the consumer survey that will be used to determine the clients experience in a HCBS waiver service setting. They asked for additional information on how it is completed or how it will be used.

- DHS Response: The survey will be used with all HCBS waiver recipients living in the setting that is being reviewed for compliance. DHS will attempt to get a survey response from 100% of waiver recipients but the survey is voluntary. The survey will be administered with the consumer and or legal decision maker either in person or over the phone. The survey will be conducted by the HCBS Case Manager or DHS staff. Additional language was added to clarify the recipient survey process in the Statewide Transition Plan.

One commenter stated there is no listing of what settings are complaint vs non-compliant.

- DHS Response: See Section 2 "Summary of Settings Assessment Results" and Section 3 "Assessment Results, Proposed Remedial Strategies, and Timelines" address the assessment results.

One comment asked for additional detail to be added about the HCBS waiver supported employment program. They asked if HCBS supported employment services are ever provided in a group or crew.

- DHS Response: HCBS waiver supported employment services cannot be provided in a group or crew.

One commenter questioned what was involved in the additional survey for the Family Care Options survey.

- DHS Response: This section has not been updated since the state received initial approval from CMS. This information is described in section "Site Specific Assessment Process". The survey completed for these settings was not the same assessment used for other IDD settings, rather it was customized to account for the specific type of setting.

One commenter stated that the Statewide Transition Plan included a list of all Adult Foster Care settings but did not include a list for the other settings.

- DHS Response: Adult Foster Care settings are included because the location of the adult foster care is public information by North Dakota law. If the state provided all setting locations, there is concern that it will be a violation of HIPPA.

One commenter stated there does not appear to be a complaint process for individuals, parents, and guardians to raise concerns if the setting is not compliant. Additionally, they stated there is no description of ongoing monitoring for settings presumed to be compliant.

- DHS Response: See section 4 “On-going Monitoring and Compliance”. This section describes the ongoing monitoring for these settings and the process that will be used to address any complaints. Additional information has been added under the Traditional IID/DD Waiver section to clarify the process if there are concerns expressed.

One commenter stated there is no mention of building capacity in the Statewide Transition Plan.

- DHS Response: The department agrees and has added capacity building information under section 1 “Purpose”.

One commenter questioned why individuals living in residential setting on the grounds of an ICF/IID are have not secured other housing and services.

- DHS Response: This section has not been updated since the state received initial approval from CMS. Information pertaining to the annual team meetings and options for alternative service settings is described in section Table 8 “Settings that have completed the Heightened Scrutiny Review and determined to have the qualities of HCBS”.

The individuals who currently reside in these settings are assessed at least annually to determine if alternative service settings in the community are available and are afforded choice; including tours/visits to determine if they would like to move, etc.

One commenter stated that there was no opportunity to provide public comment described in the plan for the adult residential services that may need to be submitted through the heightened scrutiny process. They also stated that there was no opportunity to provide public comment on the assessment tool used to assess adult residential facilities for HCBS rule compliance and that the timeframe for moving is short as its only 30 days.

- DHS Response: Language has been added that clarifies that any setting that will be submitted for heightened scrutiny will be submitted for public comment prior to submitting to CMS to see if they concur. The HCBS settings rule does not require that the assessment tools be submitted for public comment. However, in the spirit of transparency the current tools have been attached to the plan.

The Department believes that 30-day written notice to consumers is sufficient to let individuals know that their current settings will not comply with HCBS settings rule. The actual relocation process may take longer than 30 days, but all transitions will be complete by March 17, 2022 and the transition time will be based on the needs of each individual.

One commenter believes all 114 waiver recipients receiving adult residential services would be in nursing homes, if not receiving the HBCS services provided in the Adult Residential setting. They expressed appreciation for DHS working with all 14 providers and new entities hoping to care for this population. They pointed out that most of the population being served have dementia or a brain injury and are receiving specialized services to remain as independent as possible. To maintain this level of independence and assure their safety and well-being, safeguards are in place, one being locked secure units. Without this level of security, many residents would not remain safe and would be placed at risk. Everyone is evaluated prior to placement, and many times this is the chief reason families are requesting placement.

- DHS Response: The State appreciates the comment and will continue to work with adult residential service providers and consumers to make a final determination on the adult residential service settings.

Section 6: North Dakota Crosswalk of Systemic Assessment

Medicaid Autism Spectrum Disorder Waiver

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

For ND Century Code changes, the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. The Legislature meets every other year, with the next legislative session starting January 2017. During this process the public has an opportunity to provide comments, either in testimony or written correspondence. If legislation is approved, it would generally take effect August 1st of that same year.

For ND Administrative Code, the Department prepares the proposed changes and per the [Administrative Agencies Practice Act](#), a public hearing is held. Notice of Administrative rule changes are published, draft rules require a twenty-day public comment period, which is followed by a public hearing. All public comments are responded to by the Legal Advisory Unit with the assistance of program and incorporated into the rule as necessary. The draft rule and public comment are then presented to the legislative administrative rules committee for review and approval. The rule making process generally takes up to nine months.

Table 26: Medicaid Autism Spectrum Disorder Waiver

Please note that in Table 26, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements or further clarification.

Table 26 Medicaid Waiver for Autism Spectrum Disorder Compliance

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1) & (3) on page 1 complies with the entire regulation. To help individuals or their families to achieve, maintain, or support the highest attainable level of personal independence and economic self-sufficiency, and to provide a continuum of community-based services adequate to appropriately sustain	Compliant. There are no adults served in this waiver and thus the custodial parent makes these choices for their child that is eligible and participating in the waiver. The ages of the children served in this waiver are not eligible for employment. Children in the ASD waiver engage in community life and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
individuals not receiving Medicaid HCBS.	individuals in their homes and in their communities and to delay or prevent institutional care.			
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.	Home and Community-based living-Choice of options, NDCC 50-24.1-20 on page 11 complies with receiving services in the community. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need.	Compliant. There are no provider-owned settings. There are no adults served in this waiver and thus the custodial parent makes these choices for their eligible child participating in the waiver.	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(2) on page 1 complies with the entire regulation. It addresses the prevention of neglect, abuse or exploitation. This code also addresses sustaining individuals in their own home and community and to delay/prevent institutional care.	Silent. The state does not permit the use of restraint, restriction, or seclusion as stated in the waiver. However, Autism Spectrum Disorder Birth Through Eleven Medicaid 1915(c) waiver #0842 states the use of restraints and coercion of child is forbidden.	Will add statement to autism policy stating the waiver prohibits the use of restraints, restriction or seclusion of children on the waiver.	August 2017
Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.	<ul style="list-style-type: none"> • Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1) & (3) on page 1 complies with the entire regulation. It addresses individuals to achieve, maintain, or support the highest level of independence and economic self-sufficiency. This code also addresses sustaining individuals in their own home and community and to delay/prevent institutional care. • Medical Assistance for Needy Persons Purpose, NDCC 50-24.1-01 on page 1 establishes the purpose to provide services to persons for independence or self-care. 	Compliant. Optimizes individual initiative, autonomy, and independence. Children are not served in provider-owned settings. Children must reside in their parental home to receive services.	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<ul style="list-style-type: none"> • Consumer-directed health maintenance services-Residing at home, NDCC 50-24.1-18.1 on page 11 addresses the client's ability to receive services within their home. • Home and Community-based living - Choice of options, NDCC 50-24.1-20 on page 11 addresses the client's ability to have choice of services that best fits their needs 			
Facilitates individual choice regarding services and supports, and who provides them.	<ul style="list-style-type: none"> • Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual preference it states that individuals are free to choose their service provider. • Home and Community-based living - Choice of options, NDCC 50-24.1-20 on page 11 complies with receiving services in the community. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need. 	Compliant. Stated within Autism Spectrum Disorder Birth Through Eleven Medicaid 1915(c) waiver #0842	N/A	N/A
For provider owned or controlled residential settings. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not	None	Compliant. There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>				
<p>For provider owned or controlled residential settings: Each individual has privacy in their sleeping or living units; units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	None	<p>Compliant. There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p>	N/A	N/A
<p>For provider owned or controlled residential settings: Individuals sharing units have a choice of roommates in that setting.</p>	None	<p>Compliant. There are no adults served in this waiver and children are not served in provider-owned settings. Children must reside in their parental home to receive services.</p>	N/A	N/A
<p>For provider owned or controlled residential settings: Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.</p>	None	<p>Compliant - There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.</p>	N/A	N/A
<p>For provider owned or controlled residential settings: Individuals have freedom and support to control their schedules and activities and have access to food any time.</p>	None	<p>Compliant - There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.</p>	N/A	N/A
<p>For provider owned or controlled residential settings: Individuals</p>	None	<p>Compliant – There are no adults served in this waiver and children are not served in provider-owned or controlled</p>	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
are able to have visitors of their choosing at any time.		residential settings. Children must reside in their parental home to receive services.		
For provider owned or controlled residential settings: Setting is physically accessible to the individual.	None	Compliant – There are no adults served in this waiver and children are not served in provider-owned or controlled residential settings. Children must reside in their parental home to receive services.	N/A	N/A
Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.	None	Compliant. Stated within Autism Spectrum Disorder Birth Through Eleven Medicaid 1915(c) waiver #0842 Appendix D 1-8.	N/A	N/A
Settings that are not home and community-based: <ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or 	None	Compliant. There are no adults served in this waiver and thus the custodial parent makes these choices for their child that is eligible and participating in the waiver. Children must reside in their parental home to receive services.	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<ul style="list-style-type: none"> Any other locations that have qualities of an institutional setting, as determined by the Secretary. 				
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment; Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	None	Compliant. There are no adults served in this waiver and thus the custodial parent makes these choices for their child that is eligible and participating in the waiver. Children must reside in their parental home to receive services.	N/A	N/A

Children’s Hospice Medicaid Waiver

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, the [Children's Hospice \(CH\) Medicaid Waiver Policy & Procedure Manual](#), and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

For ND Century Code changes, the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. The Legislature meets every other year, with the next legislative session starting January 2017. During this process the public has an opportunity to provide comments, either in testimony or written correspondence. If legislation is approved, it would generally take effect August 1st of that same year.

For ND Administrative Code, the Department prepares the proposed changes and per the [Administrative Agencies Practice Act](#), a public hearing is held. Notice of Administrative rule changes are published, draft rules require a twenty-day public comment period, which is followed by a public hearing. All public comments are responded to by the Legal Advisory Unit with the assistance of program and incorporated into the rule as necessary. The draft rule and public comment are then presented to the legislative administrative rules committee for review and approval. The rule making process generally takes up to nine months.

Table 27: Children’s Hospice Medicaid Waiver Compliance

Please note that in Table 27, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements or further clarification.

Table 27 Children's Hospice Medicaid Waiver Compliance

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<ul style="list-style-type: none"> • Home and Community-based living-Choice of options, NDCC 50-24.1-20 on page 11 complies with receiving services in the community. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need. • CH Policy & Procedure Manual: Purpose of Children's Hospice Program 575-05-15 states: “The settings where waiver recipients receive services must be integrated in and support full access, where age appropriate, of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.” 	<p>Compliant.</p>	<p>N/A</p>	<p>N/A</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	CH Policy & Procedure Manual: Eligibility Criteria 575-05-25(8) states: "Service/care is delivered in the recipient's private family dwelling (house or apartment)."	Compliant. Child must be residing within their home to receive services.	<ul style="list-style-type: none"> • Will change name of care plan to "person centered care plan." • Will add statements for parents to sign off on: <ol style="list-style-type: none"> 1) This plan will not cause harm to the identified client; and 2) The services must be provided within the child parental home. 	January 2017
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<ul style="list-style-type: none"> • Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(2) on page 1 partially complies. It states that the purpose of the program is to prevent, remedy, or alleviate neglect, and abuse. • Sex Offenses, NDCC 12.1-20, section 1 through 7, on pages 1 through 4, addresses coercion and assault and to prohibiting of these towards a child. 	Silent. Children's Hospice Medicaid Waiver #0834 states the use of restraints and coercion of child is forbidden.	Will add statement to CH policy stating the waiver prohibits the use of restraints, coercion, abuse neglect and exploitation of child on the waiver	January 2017
Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1, 3) on page 1 states that services shall help individuals to achieve, maintain, or support the highest attainable level of personal independence and to provide adequate services to appropriately sustain individuals in their homes and in their communities. Also see CH Policy & Procedure Manual 575-05 .	Compliant. Children's Hospice Medicaid Waiver #0834 states it is parent choice to make decisions concerning their child's services and cares.	Will add to policy statement indicating 18-21-year-old will have decision making authority of person-centered plan unless a guardianship has been put in place legally.	January 2017
Facilitates individual choice regarding services and supports, and who provides them.	CH Policy & Procedure Manual 575-05 states parents and child have choice of services and supports.	Compliant. Children's Hospice Medicaid Waiver #0834 states parents and child have choice of services and supports.	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>For provider owned or controlled residential settings. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.</p>	<p>Compliant.</p>	<p>N/A</p>	<p>N/A</p>
<p>For provider owned or controlled residential settings: Each individual has privacy in their sleeping or living units; units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.</p>	<p>Compliant.</p>	<p>N/A</p>	<p>N/A</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
For provider owned or controlled residential settings: Individuals sharing units have a choice of roommates in that setting.	CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.	Compliant.	N/A	N/A
For provider owned or controlled residential settings: Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.	CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.	Compliant.	N/A	N/A
For provider owned or controlled residential settings: Individuals have freedom and support to control their schedules and activities and have access to food any time.	CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.	Compliant.	N/A	N/A
For provider owned or controlled residential settings: Individuals are able to have visitors of their choosing at any time.	CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.	Compliant.	N/A	N/A
For provider owned or controlled residential settings: Setting is physically accessible to the individual.	CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.	Compliant.	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<p>CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.</p>	<p>Compliant.</p>	<p>N/A</p>	<p>N/A</p>
<p>Settings that are not home and community-based:</p> <ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or • Any other locations that have qualities of an institutional setting, as determined by the Secretary. 	<p>CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.</p>	<p>Compliant.</p>	<p>Requirements will be added to CH Policy & Procedure Manual 575-05 for clarification.</p> <ul style="list-style-type: none"> • Statement added 2/12/16: Waiver services cannot be provided in the following settings: • A nursing facility; (Institutional Respite care is excluded from this requirement) • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; or a hospital. 	<p>August 2017 completed</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment; Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>CH Policy & Procedure Manual: Eligibility Criteria 575-05-25 provides that waiver participant is a minor and resides within parental home.</p>	<p>Compliant.</p>	<p>Requirements will be added to CH Policy & Procedure Manual 575-05 for clarification Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <ul style="list-style-type: none"> A nursing facility; (Institutional Respite care is excluded from this requirement); An institution for mental diseases; An intermediate care facility for individuals with intellectual disabilities; or A hospital. 	<p>August 2017 completed</p>

Medicaid Waiver for Medically Fragile Children

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, the [Children with Medically Fragile Needs \(CMFW\) Policies and Procedure Manual](#) and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

For ND Century Code changes, the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. The Legislature meets every other year, with the next legislative session starting January 2017. During this process the public has an opportunity to provide comments, either in testimony or written correspondence. If legislation is approved, it would generally take effect August 1st of that same year.

For ND Administrative Code, the Department prepares the proposed changes and per the [Administrative Agencies Practice Act](#), a public hearing is held. Notice of Administrative rule changes are published Draft rules require a twenty-day public comment period, which is followed by a public hearing. All public comments are responded to by the Legal Advisory Unit with the assistance of program and ND Approved Statewide Transition Plan

incorporated into the rule as necessary. The draft rule and public comment are then presented to the legislative administrative rules committee for review and approval. The rule making process generally takes up to nine months.

Table 28: Medicaid Waiver for Medically Fragile Children

Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.

Table 28 Medicaid Waiver for Medically Fragile Children

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1, 3) on page 1, complies with the entire regulation. It addresses individuals to achieve, maintain, or support the highest level of independence and economic self-sufficiency. This code also addresses sustaining individuals in their own home and community and to delay/prevent institutional care. Also see CMFW Policy & Procedure Manual 585-05 .	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<ul style="list-style-type: none"> • Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(2) on page 1 complies with the entire regulation. It addresses individuals to achieve, maintain, or support the highest level of independence and economic self-sufficiency. This code also addresses 	Silent	Will add statement to CMFW Policy & Procedure Manual stating the waiver prohibits the use of restraints, coercion, abuse neglect and exploitation of child on the waiver.	January 2017

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>sustaining individuals in their own home and community and to delay/prevent institutional care.</p> <ul style="list-style-type: none"> • Sex Offenses, NDCC 12.1-20, section 1 through 7, on pages 1 through 4, addresses coercion and assault and to prohibiting of these towards a child. • Medically Fragile Children’s Waiver #0568 states the use of restraints and coercion of child is forbidden. 			
<p>Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</p>	<ul style="list-style-type: none"> • Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1, 3) on page 1, states that services shall help individuals to achieve, maintain, or support the highest attainable level of personal independence and to provide adequate services to appropriately sustain individuals in their homes and in their communities. • CMFW Policy & Procedure Manual 585-05 states this is a parent driven program and they have choice over services within the daily activities, physical environment and with whom they interact with. • Medically Fragile Children’s Waiver #0568 states it is parent choice to make decisions concerning their child’s services and cares. 	Compliant	N/A	N/A
<p>Facilitates individual choice regarding services and supports, and who provides them.</p>	<ul style="list-style-type: none"> • CMFW Policy & Procedure Manual 585-05 states parents and child have choice of services and supports. • Medically Fragile Children’s Waiver #0568 states parents and child have choice of services and supports. 	Compliant	N/A	N/A
<p>For provider owned or controlled residential settings. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally</p>	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be</p>	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	residing within their home to receive services.			
For provider owned or controlled residential settings. Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
For provider owned or controlled residential settings. Individuals sharing units have a choice of roommates in that setting.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
For provider owned or controlled residential settings. Individuals have freedom and support to control their schedules and activities and have access to food any time.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
For provider owned or controlled residential settings. Setting is physically accessible to the individual.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.	CMFW Policy & Procedure Manual: Environmental Modification 585-05-30-15 states the need for care plan to address need of modifications must be for independence. Authorization of service must be signed by parent for modification as stated in care plan.	Compliant	N/A	N/A
Settings that are not home and community-based are as follows:	Waiver participant is a minor and resides within parental home. CMFW Policy &	Compliant	Requirements will be added to CMFW Policy &	August 2017 Completed

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or • Any other locations that have qualities of an institutional setting, as determined by the Secretary. 	<p>Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.</p>		<p>Procedure Manual for clarification. Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <ul style="list-style-type: none"> • A nursing facility; (Institutional Respite care is excluded from this requirement); • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; or • A hospital. 	
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> • any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, • any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or • any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.</p>	Compliant	<p>Requirements will be added to CMFW Policy & Procedure Manual for clarification. Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <ul style="list-style-type: none"> • A nursing facility; (Institutional Respite care is excluded from this requirement) • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; or • A hospital. 	August 2017 Completed

Traditional IID/DD Waiver

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, [Adult Foster Care Policies & Procedures](#) and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

For ND Century Code changes, the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. The Legislature meets every other year, with the next legislative session starting January 2017. During this process the public has an opportunity to provide comments, either in testimony or written correspondence. If legislation is approved, it would generally take effect August 1st of that same year.

For ND Administrative Code, the Department prepares the proposed changes and per the [Administrative Agencies Practice Act](#), a public hearing is held. Notice of Administrative rule changes are published Draft rules require a 20-day public comment period, which is followed by a public hearing. All public comments are responded to by the Legal Advisory Unit with the assistance of program and incorporated into the rule as necessary. The draft rule and public comment are then presented to the legislative administrative rules committee for review and approval. The rule making process generally takes up to nine months.

For additional information refer to the [Developmental Disabilities Services homepage](#)

Table 29: Traditional IID/DD Waiver

Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification. Individualized setting is in reference to settings where the individual owns, rents, or shares the setting with a family member.

Table 29 Traditional IID/DD Waiver

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and	Developmental Disability: Appropriate treatment NDCC 25-01.2-02 on page 1 complies with receiving services that are integrated and supports full access to the community. It addresses the right to appropriate treatment,	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	services, and habilitation in the least restrictive setting.			
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1, 3) on page 1 complies with the entire regulation. It addresses individuals to achieve, maintain, or support the highest level of independence and economic self-sufficiency. This code also addresses sustaining individuals in their own home and community and to delay/prevent institutional care.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Medical Assistance for Needy Persons: Choice of Options NDCC 50-24.1-20 on page 11 complies with receiving services in the community. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Department of Human Services: Regional Human Service Centers NDCC 50-06-05.3(1, 2) on page 6 complies with supporting full access to the community, opportunities to seek employment, and engage in community life. It addresses Human Service Centers to provide assistance to individuals in achieving, maintaining, or support the highest level of personal independence and economic self-	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	sufficiency, including health, mental health, social, emotional, food and nutrition, and housing service. This code also addresses to prevent or reduce inappropriate institutional care or providing for community-based or other forms of less restrictive care.			
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Developmental Disabilities: Labor NDCC 25-01.2-06 on page 2 is silent to individualized settings and opportunities to seek employment and work in competitive integrated settings. The code is compliant in controlling personal resources. It addresses individual's using their money as they choose and makes reference to those who are minors or have a guardianship. Individuals may have a choice in their financial institution and how the money is distributed. An individual's informed consent is required if a service provider is a representative payee. The individual's money must stay with that person, even if the person leaves the provider. The code only addresses an individual working and receiving wages for a service provider in accordance with applicable federal and state laws and regulations.	Silent	Will amend NDCC to address controlling personal resources in all services/settings, including where the individual owns, rents, or shares the setting with a family member. Code will also be amended to further clarify and address opportunities to seek employment and work in competitive integrated.	<ul style="list-style-type: none"> • Legislative Assembly begins 1/3/17; • Effective date determined by the Legislative Assembly, typically effective 8/17; • Completed 8/1/17.
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and	Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(d)) on page 10 ensures providers have policies addressing the individual's right to vote, worship, interact socially, to freely communicate, receive guests, and to own and use personal property	Silent	Will amend NDAC to add language "individuals have the right to receive services and supports to fully participate in the benefits of community living"	<ul style="list-style-type: none"> • Proposed rules were issued for public comment on 8/8/16; • Public comments accepted through 9/22/16;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	but is silent to fully participating in community living.			<ul style="list-style-type: none"> Public Hearing will be held 9/12/16; If approved, code changes effective 1/1/17; Completed 4/1/18.
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Residential Care and Services for the Developmentally Disabled: Group Homes NDCC 25-16-14 on page 3 is compliant in receiving services in the community and is integrated. It addresses the location of group home settings to ensure there are located in residential areas.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(g)) on page 10 is compliant in controlling personal resources. It addresses individual's receives wages pursuant to 20 CFR 525: Employment of Workers with Disabilities , any restrictions to money are according to the individual's plan, money management plans are developed to assist in building money management skills, and an individual's informed consent is required if a service provider is a representative payee.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including	Developmental Disabilities: Group Home Design NDAC 75-04-01-27(1-4) on page 17 is compliant in receiving services in the community.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	It addresses group home design with a homelike atmosphere to encourage a personalized environment. The design provides for enough living space, ensure meaningful interpersonal relationships, privacy, and based on individual needs.			
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Developmental Disabilities: Group Home Location NDAC 75-04-01-28(4) on page 18 is compliant in receiving services in the community and integrated setting. It addresses the location of group homes to be located in residential neighborhoods, accessible to shops and other community facilities. The code also lays out the distance group homes should not be located from existing group homes or day services serving people with developmental disabilities, schools for people with disabilities, long-term care facilities, or other institutional facilities.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Developmental Disabilities: Personal Incidental Funds NDAC 75-04-05-20(1, 2, 4, 6, 9-12, 15) on pages 27 and 28, complies with controlling personal resources. It addresses the right for individuals to keep income for personal needs and may disperse their own funds. For providers who assist in the individual's financial management the code directs those responsibilities, such an accounting record must be kept, the individual's funds must be in the individual's own bank account, etc.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Developmental Disabilities: Definitions NDAC 75-04-04-04(6, 7, 10, 14, 20, 24 & 25) on pages 2 through 4 define settings provided in the code under Residential Habilitation, Day Supports, and Extended Services. The definitions were silent in engaging in community life, community integration and opportunities to seek employment and work in competitive integrated employment.</p>	<p>Silent</p>	<ul style="list-style-type: none"> • Will revise services in the code and add proposed new services to the waiver. • Definitions for the identified residential services will include language with the purpose of the service to independently reside and participate in an integrated community. • Employment support services will be added, with the definition including language to promote paid employment in integrated settings. • Prevocational services will be added, with the definition supporting individuals for preparation for paid employment in integrated setting community integration and integrated employment. 	<ul style="list-style-type: none"> • Proposed rules were issued for public comment on 8/8/16; • Public Hearing will be held 9/12/16; • Public comments accepted through 9/22/16; • Waiver amendment which includes new service description submitted to CMS 9/27/16; • If approved, code changes affective 1/1/17; • Completed 4/1/18.
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as</p>	<p>Overall Service Plan (OSP) Instructions describes the principles and values of the person-centered service plan and the planning process; however, the policy only implied the significance of full access to community living and integrated settings and was silent in this area.</p>	<p>Silent</p>	<p>Updated the OSP; added a new section "Individuals choose their services, providers and settings" to further clarify the options and choice in services and supports are to be provided in the most integrated setting and ensure full access of community living.</p>	<ul style="list-style-type: none"> • September 2015 Completed and training provided September 2015. • OSP amendment available on the DD website on October 2015.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
individuals not receiving Medicaid HCBS.				
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Developmental Disabilities: Appropriate Treatment NDCC 25-01.2-02 on page 1 complies with non-disability settings and based on individual's needs and preferences. It addresses that the individual has a right to appropriate treatment and services and must be provided in the least restrictive appropriate setting. Both support the individual's choice which could include a non-disability setting and based on an individual's needs and preferences.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(c)) on page11 complies with setting options based on individual's needs and preferences. This area of the code ensures providers have policies addressing that an individual beginning services within a provider is part of a team process, services are appropriate and is in the least restrictive appropriate setting.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<ul style="list-style-type: none"> • Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 complies with services are based on individual's needs and preferences through plan development. This area of the code addresses the provider requirements for the person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>personnel to carry out the plan, need for guardianship.</p> <ul style="list-style-type: none"> The updated OSP which provides the principles and values of a person-centered service plan and the planning process, describes this further. 			
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<ul style="list-style-type: none"> Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)) on page 11 complies with services are based on individual's needs and preferences through plan development. This area of the code ensures providers have policies on person-centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14. The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	Compliant	N/A	N/A
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>NDAC 75-04-07-02. (pages 2 and 3) This code complies with setting options based on individual's needs. It addresses the setting to be less intrusive and less restrictive residential living alternative.</p> <p>This code was repealed due to the service name changes effective 4/1/18. The following codes now apply: Developmental Disabilities: Appropriate Treatment NDCC 25-01.2-02; Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(c)); Developmental</p>	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	Disabilities: Service Plan NDCC 25-01.2-14; Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)); Developmental Disabilities: Service Plan NDCC 25-01.2-14.; and the updated OSP.			
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Medical Assistance for Needy Persons: Choice of Options NDCC 50-24.1-20 on page 11 complies with individual choice - it addresses individuals must be allowed choices from all service options available and the type of service based on the individual need.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are silent on individual choice to choose the option for a private unit in a residential setting.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy and Procedure Manual 660-05 to require individual choice for a private unit in a residential setting.	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16; • Administrative Rule Committee. Hearing 9/13/16; • Effective Date 10/1/16;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
				<ul style="list-style-type: none"> • Policy updates complete December 2016; • NDAC complete October 2016; • Second Policy updates complete November 2018.
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy does not include language for choice in setting options, non-disability specific settings, option for a private unit, and based on individual's needs and preferences and resources for room and board.</p>	<p>Silent</p>	<ul style="list-style-type: none"> • Updated the OSP; added a new section "Individuals choose their services, providers and settings" to clarify the roles and process with individuals choosing their services, providers and settings according to needs/preferences and resources for room and board, option for a private unit, and include non-disability specific settings. • Updated the OSP; revised sections "Assessment Review Sections" and "DDPM final review and discussion-Anticipated change in residence, services, supports, provider" to include documentation of setting options, choice of setting, and summarize where a person lives, works, or attends day supports. 	<ul style="list-style-type: none"> • September 2015 Completed and training provided September 2015. • OSP amendment available on the DD website on October 2015.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Protected Rights NDCC 25-01.2-03 on page 1 complies with the rights of individuals. It addresses individual's rights to vote, freedom to exercise religion, to have interactions with others of opposite sex, and confidentiality with personal and medical records.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Foster Care Homes for Children and Adults: License NDCC 50-11-02(1(c)) on page 2 complies with the individual's right to dignity and respect, but it is silent to addressing freedom from coercion and restraint.	Silent	Requirements will be added to HCBS Policy & Procedure Manual 525-30-05-15 and the QSP Handbook, Adult Foster Care Version, to require that individuals have a right of privacy, dignity, and respect, and to expressly prohibit coercion, seclusion and restraint of waiver recipients in all settings.	<ul style="list-style-type: none"> • December 2016; • Policy Updates November 2018.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Licensing of Foster Homes for Adults: General Practices NDAC 75-03-21-09(4, 5, 7) on page 9 complies with the individual's rights, right to privacy. It states resident information must be kept confidential, requires from freedom from discrimination and that residents cannot be subject to abuse, neglect or exploitation but it is silent as it does not completely prohibit restraints.	Silent	Requirements will be added to HCBS Policy & Procedure Manual 525-30-05-15 and the QSP Handbook, Adult Foster Care Version, to require that individuals have a right of privacy, dignity, and respect, and to expressly prohibit coercion, seclusion and restraint of waiver recipients in all settings.	<ul style="list-style-type: none"> • December 2016; • Policy Updates November 2018.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Provision of HCBS: QSP Standards NDAC 75-03-23-07(2(d)) on page 12 complies with an individual's right to privacy. It states that providers must maintain confidentiality- but it	Silent	Requirements will be added to HCBS Policy & Procedure Manual 525-30-05-15 and the QSP Handbook, Adult Foster	<ul style="list-style-type: none"> • December 2016; • Policy Updates November 2018.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	is silent to the remaining rights in the federal regulation.		Care Version, to require that individuals have a right of privacy, dignity, and respect, and to expressly prohibit coercion, seclusion and restraint of waiver recipients in all settings.	
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-04(2) on page 5 partially complies with the individual's right to privacy and dignity as it relates to settings where adult foster care is provided. It states there must be walls or partitions in bedrooms that extend floor to ceiling for privacy.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that providers provide for privacy in the sleeping.	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16; • Administrative Rule Committee Hearing 9/13/16; • Effective Date 10/1/16; • Policy updates complete; December 2016; • NDAC Complete October 2016; • Second Policy updates complete November 2018.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Licensing of Foster Homes for Adults: Safety NDAC 75-03-21-06(4) on page 6 partially complies with the individual's right to privacy as it relates to settings where adult foster care is provided. It states doors with locking mechanisms must be provided.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that providers must provide doors that are lockable with only the resident and appropriate staff having keys.	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16; • Administrative Rule Committee Hearing 9/13/16; • Effective Date 10/1/16; • Policy updates complete December 2016;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
				<ul style="list-style-type: none"> • NDAC complete October 2016; • Second Policy updates complete November 2018.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Communication Rights NDCC 25-01.2-04 on page 2 complies with rights for privacy but is silent to individualized settings. The code addresses individual rights for privacy and communication with mail, telephone, and visitations.	Silent	Will amend NDCC to address the rights for privacy and communication with mail, telephone, and visitations for all services/settings.	<ul style="list-style-type: none"> • Legislative Assembly begins 1/3/17; • Effective date determined by the Legislative Assembly, typically effective 8/17; • NDCC complete August 2017.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Communication Rights NDCC 25-01.2-04(1) on page 2. This section of the code is in conflict with the regulation on individual's rights pertaining to visitors and telephone access. This section of the code addresses the use of telephone and visitor restrictions based on the facility director.	Non-Compliant	Will propose to Legislature that this section of the code be removed or amended to read that if a person has any limits in their telephone and visitation rights that it is based on the individual need and identify in their service plan.	<ul style="list-style-type: none"> • Legislative Assembly begins 1/3/17; • Effective date determined by the Legislative Assembly, typically effective 8/17; • NDCC complete August 2017.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<ul style="list-style-type: none"> • Developmental Disabilities: Medical-Chemical Restraints NDCC 25-01.2-08 on page 3 complies with freedom from coercions and restraint. It addresses the administration of medication or chemical restraints expect under a written authorization by a licensed physician when necessary and appropriate as an element of the 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>service or as a treatment of any medical or physical condition.</p> <ul style="list-style-type: none"> • Further clarification is found in Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(m)) which requires providers have a Human Rights Committee and a Behavior Management Committee which ensures due process for the individual. 			
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Punishment-Physical Restraints NDCC 25-01.2-09 on pages 3 &4 complies with freedom from coercion and restraint. It addresses what individuals shall not be subject to such as corporal punishment, isolation, or seclusion. Further clarification is found in policy which states that seclusion is prohibited.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Notice of Rights NDCC 25-01.2-16 on page 5 complies with individual's rights. It addresses that a summary of rights, guaranteed by Developmental Disability NDCC 25-01.2 (pages 1-6), are posted in public areas and written notice of these rights are also provided.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Enforcement of Rights NDCC 25-01.2-17 on page 6 complies with individual's rights. It addresses that an individual is entitled to enforce any of their rights identified in Developmental Disabilities NDCC 25-01.2.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Residential Care and Services: Requirements NDCC 25-16-03 on page 1 complies with individual's rights. It addresses the service provider must provide an environment that is fit, safe, and sanitary; provider staff are qualified; individual health, safety, and well-being is safeguarded; and services are provided to address individual's needs.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a, b, f, h, i, u)) on pages 11-13 complies with individual's rights and freedom from coercion and restraint. These areas of the code ensures providers have policies addressing written notice of rights; any restrictions are pursuant to the individual program plan; guarantees client record confidentiality; prevention of drug use as a substitute for programming; guarantees freedom from corporal punishment, isolation, seclusion, restraints, psychosurgery, sterilization, electroconvulsive therapy, and research. This code also guarantees the right for a grievance procedure and the right to a fair hearing for any complaint.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Developmental Disabilities: Recording and Reporting Abuse NDAC 75-04-01-20.2(2) on page 14 complies with freedom from coercion and restraint. It addresses the recording and reporting of incidents of restraint utilized in response to behavior.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy did not include the already occurring practice and was silent in the individual rights (DD Bill of Rights and ISP Rights) being reviewed at least annually.</p>	Silent	Update the OSP; revise section "State ISP section of the OSP" to clarify annual review of rights at the team meeting.	<ul style="list-style-type: none"> September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<ul style="list-style-type: none"> Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 is compliant with individual's initiative, autonomy, making life choices, etc. through plan development. This code addresses the provider requirements for the person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the personnel to carry out the plan, need for guardianship. The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	Compliant	N/A	N/A
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<p>Department of Human Services: Regional Human Service Centers NDCC 50-06-05.3(1, 2) on pages 6 and 7 complies with individual's initiative, autonomy, making life choices, etc. It addresses Human Service Centers to provide individuals in assistance in achieving, maintaining, or support the highest level of personal independence and economic self-sufficiency, including health, mental</p>	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	health, social, emotional, food and nutrition, and housing service.			
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	<ul style="list-style-type: none"> • Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)) on page 11 complies with individual's initiative, autonomy, making life choices, etc. through plan development. This area of the code ensures providers have policies on person-centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14. • The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further 	Compliant	N/A	N/A
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers.	Compliant	N/A	N/A
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	Home and Community-based living - Choice of options, NDCC 50-24.1-20 on page 11 complies with receiving services in the community. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need.	Compliant	N/A	N/A
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	Medical Assistance for Needy Persons; Purpose, NDCC 50-24.1-01 on page 1, complies with individual independence. It states that the purpose is to provide services to help individuals to retain	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	or attain capability for independence or self-care.			
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1) & (3) on page 4 complies optimizes individual initiative, autonomy, and independence in making life choices. It states that services shall help individuals to achieve, maintain, or supports the highest attainable level of personal independence and to provide adequate services to appropriately sustain individuals in their homes and in their communities.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Developmental Disabilities: Right to Refuse Services NDCC 25-01.2-15 on page 5 complies with individual choice regarding services and supports –It addresses the individual’s right to refuse services.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Department of Human Services: Regional Human Service Centers NDCC 50-06-05.3(1, 2) on pages 6 and 7 complies with individual choice regarding services and supports, and who provides them- It addresses Human Service Centers to facilitate individual’s choice in services that assist them in achieving, maintaining, or supporting the highest level of personal independence and economic self-sufficiency, including health, mental health, social, emotional, food and nutrition, and housing service.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
Facilitates individual choice regarding services and supports, and who provides them.	Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(k)) on page 12 complies with individual choice regarding services and supports. This area of the code ensures providers have policies that address individuals have the right to refuse services.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Developmental Disabilities: Transfer Discharge NDAC 75-04-05-21 on page 28 complies with individual's choice of who provides services and supports. It addresses the individual's choice to move between service options and providers using the team process.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Home and Community-based living: Choice of options, NDCC 50-24.1-20 on page 11 complies with individual choice regarding services and supports and who provides them. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 complies with individual choice regarding services and supports, and who provides them through plan development. This code addresses the provider requirements for the	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the personnel to carry out the plan, need for guardianship.			
Facilitates individual choice regarding services and supports, and who provides them.	Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)) on page 11 complies with individual choice regarding services and supports and who provides them through plan development. This area of the code ensures providers have policies on person-centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14.	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy did not include the already occurring practice and was silent in describing individual choice regarding services and supports, and who provides them.	Silent	<ul style="list-style-type: none"> Updated the OSP; added a new section “Individuals choose their services, providers and settings” to clarify that part of the planning process, individuals are provided information initially, annually, as needed, and when requested about services, supports, and the providers available to make informed choices. Updated the OSP; revised section “DD Program Manger responsibilities prior to Annual OSP” to clarify the review of all possibilities of service options and choice of 	<ul style="list-style-type: none"> September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
			<p>service providers in a manner that is meaningful and easily understood.</p> <ul style="list-style-type: none"> • Updated the OSP; revised section “The OSP is a dynamic and ongoing process” to clarify that individuals can make a request anytime verbally or in writing to the provider or program manager to make changes to their plan. • Updated the OSP; revised section “Engaging individuals, family members and legal guardians” to clarify individual participation in the development and leading of their plan, and individuals are enabled to make informed choices. 	
<p>For provider owned or controlled residential settings: The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord</p>	<p>Legally enforceable agreement and the individual has at a minimum the same responsibilities from eviction that tenant have under landlord/tenant law are not addressed anywhere.</p>	<p>Silent</p>	<ul style="list-style-type: none"> • Licensing procedures will be updated: New providers are required to submit a lease template or legally enforceable agreement that complies with ND landlord-tenant laws Property: Eviction NDCC 47-37 and a lease policy as part of their license application for any provider-owned 	<ul style="list-style-type: none"> • The licensing procedures will be updated by the Department by December 2017; • Completed December 2017.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>			<p>or controlled residential settings.</p> <ul style="list-style-type: none"> • For existing providers, lease policies and templates were submitted to the Department by July 2016 and were reviewed for compliance with Federal requirements and ND landlord/tenant laws. • If any changes are made to the lease policy or lease template at any time, providers are required to submit the proposed changes to the Department for review. • The Department will review the providers' lease policy and lease templates for compliance with ND landlord/tenant law and the federal regulation. • Providers that do not demonstrate compliance will be required to submit a Plan of Correction to the Department before any license will be issued. 	
<p>For provider owned or controlled residential settings: The unit or dwelling is a specific physical place that can be owned, rented, or</p>	<p>Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual</p>	<p>Silent</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05</p>	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>660-05 are silent with the legally enforceable agreement and the individual has at a minimum the same responsibilities from eviction that tenant have under landlord/tenant law.</p>		<p>to state that adult foster care providers will provide recipient with a signed copy of the service and rental agreement that includes at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.</p>	<ul style="list-style-type: none"> • Public hearing 6/6/16; • Administrative Rule Committee Hearing 9/13/16; • Effective Date 10/1/16; • Policy updates complete December 2016; • NDAC Completed 10/1/16; • Second Policy updates November 2018.
<p>For provider owned or controlled residential settings: Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>Developmental Disabilities: Group Homes NDAC 75-04-01-29(4) on page 18 is non-compliant with individuals having doors that are lockable. It addresses group home bedroom doors not being able to be locked and individuals may lock their bedroom doors if it was consistent with programming.</p>	<p>Non-Compliant</p>	<ul style="list-style-type: none"> • Will create policy to ensure individuals have lockable doors unless there is a justified, specific assessed need and it is documented in the person-centered service plan for all provider-owned or controlled settings. • The code will be amended for individuals residing in group homes to have lockable bedroom doors unless there is a justified, specific assessed need and it is documented in the person-centered service plan. 	<ul style="list-style-type: none"> • The Department will create policy by January 2017; • Proposed rules were issued for public comment on 8/8/16; • Public comments accepted through 9/22/16; • Public Hearing will be held 9/12/16; • If approved, code changes affective • Completed 4/1/18 • Environmental Scan updates completed January 2015

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
			<ul style="list-style-type: none"> Environmental Scan Checklist-included in the annual checklist review that program managers compete, that bedroom doors are lockable unless otherwise noted in the individual's plan. 	
<p>For provider owned or controlled residential settings: Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy was silent in having doors that are lockable with only appropriate staff having keys.</p>	<p>Silent</p>	<p>Updated the OSP; revised section "Rights Limitation and Due Process" to include that in provider-owned and controlled settings, individual's bedrooms have doors that are lockable with only appropriate staff having keys to doors under emergency situations or circumstances identified by the team planning process and documented in the plan.</p>	<ul style="list-style-type: none"> September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.
<p>For provider owned or controlled residential settings: Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<ul style="list-style-type: none"> Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-04(2) on page 5 partially complies with privacy in sleeping unit it states there must be walls or partitions in bedrooms that extend floor to ceiling to provide privacy. Adult Foster Care (AFC) Policies and Procedures Manual 660-05 partially complies with privacy requirements it states privacy must be provided in bedrooms and bathrooms. 	<p>Silent</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that providers must provide for privacy in the sleeping area, doors must be lockable with only the resident and appropriate staff having keys.</p>	<ul style="list-style-type: none"> Public comment for proposed rules 11/6/15; Public hearing 6/6/16; Administrative Rule Committee Hearing 9/13/16; Effective Date 10/1/16; Policy updates complete December 2016; NDAC complete 10/1/16;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
				<ul style="list-style-type: none"> • Second Policy updates complete November 2018.
<p>For provider owned or controlled residential settings: Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<ul style="list-style-type: none"> • Licensing of Foster Homes for Adults: Facility NDAC 75-03-21(4) on page 5 partially complies with requirement for lockable doors. It states doors with locking mechanism must be provided. • Adult Foster Care (AFC) Policies and Procedures Manual 660-05 partially complies with requirement for lockable doors states lockable doors must be provided. 	Silent	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that providers must provide for privacy in the sleeping area, doors must be lockable with only the resident and appropriate staff having keys.</p>	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16; • Administrative Rule Committee Hearing 9/13/16; • Effective Date 10/1/16; • Policy updates complete December 2016; • NDAC complete 10/1/16; • Second Policy updates complete November 2018.
<p>For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy was silent in individuals sharing units having a choice of roommates.</p>	Silent	<p>Updated the OSP; revised section "Rights Limitation and Due Process" to include individuals who share bedrooms have a choice in roommates.</p>	<ul style="list-style-type: none"> • September 2015 completed, and training provided September 2015. • OSP amendment available on the DD website on October 2015.
<p>For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are silent on the individual choice to choose a roommate.</p>	Silent	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to require that individuals have a choice of roommate in the setting.</p>	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
				<ul style="list-style-type: none"> • Administrative Rule Committee Hearing 9/13/16; • Effective Date 10/1/16; • Policy updates complete December 2016; • NDAC complete 10/1/16; • Second Policy updates complete November 2018.
<p>For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<ul style="list-style-type: none"> • Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 complies with the freedom to furnish and decorate sleeping or living units through plan development - It addresses the provider requirements for the person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the personnel to carry out the plan, need for guardianship. • The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	Compliant	N/A	N/A
<p>For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<ul style="list-style-type: none"> • Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)) on page 11 complies in the freedom to furnish and decorate sleeping or living units through plan development. This area of the code ensures providers have policies on person- 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14.</p> <ul style="list-style-type: none"> The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 			
<p>For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(d)) on page 11 complies with individuals have the freedom to furnish their sleeping or living unit. This area of the code ensures providers have policies addressing the individual's right to own and use personal property which includes the freedom to decorate and furnish their living unit.</p>	Compliant	N/A	N/A
<p>For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Developmental Disabilities: Group Homes NDAC 75-04-01-29(5) on page 18 complies with the freedom to furnish and decorate their living units but is silent to individualized settings. It addresses group home furnishings of bedrooms are appropriate to the needs of each individual.</p>	Silent	Will create policy to have the freedom to furnish and decorate their bedrooms.	<ul style="list-style-type: none"> The Department will create this policy by January 2017; Completed 04/01/18.
<p>For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Developmental Disabilities: Group Homes NDAC 75-04-01-33(1, 2) on page 18 complies with the freedom to furnish and decorate sleeping or living units but is silent to individualized settings it addresses individuals residing in group homes having free use of space for privacy and personal possessions and to personalize their living unit.</p>	Silent	Will create policy to ensure individuals have the freedom to furnish and decorate their living units.	<ul style="list-style-type: none"> The Department will create this policy by January 2017; Completed 04/01/18.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are silent on the individual's freedom to furnish and decorate their living unit within the lease or other agreement.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to require that individuals have the freedom to decorate their sleeping or living unit in the rental agreement.	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16; • Administrative Rule Committee Hearing 9/31/16; • Effective Date 10/1/16; • Policy updates complete December 2016; • NDAC Complete 10/1/16; • Second Policy updates complete November 2018.
For provider owned or controlled residential settings. Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.	<ul style="list-style-type: none"> • Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 complies with the freedom and support to control own schedules and activities and have access to food at any time through plan development – it addresses the provider requirements for the person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the personnel to carry out the plan, need for guardianship. • The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	Compliant	N/A	N/A
For provider owned or controlled residential settings. Individuals have	<ul style="list-style-type: none"> • Developmental Disabilities: Applicant guarantees NDAC 75- 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
the freedom and support to control their own schedules and activities and have access to food at any time.	<p>04-01-20(1(a)) on page 11 complies in the freedom and support to control own schedules and activities and have access to food at any time through plan development. This area of the code ensures providers have policies on person-centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14.</p> <ul style="list-style-type: none"> The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 			
For provider owned or controlled residential settings. Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.	<p>Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy was silent in the freedom and support to control own schedules and activities and have access to food at any time.</p>	Silent	Updated the OSP revised section "Rights Limitation and Due Process" to include individuals' control and have choice in their schedules and activities and have access to food at any time.	<ul style="list-style-type: none"> September 2015 complete and training provided September 2015. OSP amendment available on the DD website on October 2015.
For provider owned or controlled residential settings. Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.	<p>Licensing of Foster Homes for Adults: Service and Rental Agreements NDAC 75-03-21(1, 2) on page 13 and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are non-complaint with the freedom and support to control their own schedules and activities and to have access to food at any time.</p>	Non-Compliant	Requirements will be added or modified in NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to require that individuals have freedom and support to control their schedules and activities and have access to food any time.	<ul style="list-style-type: none"> Public comment for proposed rules 11/6/15; Public hearing 6/6/16; Administrative Rule Committee Hearing 9/13/16; Effective Date 10/1/16;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
				<ul style="list-style-type: none"> • Policy updates complete December 2016; • NDAC Completed October 2016; • Second Policy updates complete November 2018
<p>For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.</p>	<p>Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(d)) on page 11 complies with individual right to visitors. This area of the code ensures providers have policies addressing the individual's right to interact socially, to freely communicate, and to receive guests.</p>	Compliant	N/A	N/A
<p>For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.</p>	<ul style="list-style-type: none"> • Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 complies with the right to have visitors of their choosing any time through plan development - it addresses the provider requirements for the person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the personnel to carry out the plan, need for guardianship. • The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	Compliant	N/A	N/A
<p>For provider owned or controlled residential settings. Individuals are</p>	<ul style="list-style-type: none"> • Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)) on page 11 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
able to have visitors of their choosing at any time.	<p>complies in the right to have visitors of their choosing any time through plan development. This area of the code ensures providers have policies on person-centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14.</p> <ul style="list-style-type: none"> The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 			
For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.	<p>Overall Service Plan (OSP) Instructions describes the principles and values of a person-centered service plan and the planning process; however, the policy was silent in the right to have visitors of their choosing any time.</p>	Silent	Updated the OSP; revised section "Rights Limitation and Due Process" to include that individuals have visitors of their choosing any time.	<ul style="list-style-type: none"> September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.
For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.	<p>Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are silent for individuals to have visitors of their choosing at any time.</p>	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that individuals must be able to have visitors of their choosing at any time.	<ul style="list-style-type: none"> Public comment for proposed rules 11/6/15; Public hearing 6/6/16; Administrative Rule Committee Hearing 9/13/16; Effective Date 10/1/16; Policy updates complete December 2016; NDAC Complete 10/1/16;

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
				<ul style="list-style-type: none"> • Second Policy updates complete November 2018.
For provider owned or controlled residential settings. The setting is physically accessible to the individual.	<u>Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(o))</u> on page 12 complies with the setting being physically accessible. This area of the code ensures providers have policies to assure that individuals with disabilities have adaptive equipment to meet their toileting, mobility, or eating needs. Mobility includes ensuring the setting is physically accessible.	Compliant	N/A	N/A
For provider owned or controlled residential settings. The setting is physically accessible to the individual.	<u>Overall Service Plan (OSP) Instructions</u> complies with physically accessible in the section “Adaptive, Orthotic, corrective, communication equipment, supplies, augmentative devices” This policy describes the principles and values of a person-centered service plan and the planning process. It addresses the devices and the equipment the person uses. If there is any need for adaptive equipment or technology, the planning process will address this.	Compliant	N/A	N/A
For provider owned or controlled residential settings. The setting is physically accessible to the individual.	<u>Developmental Disabilities: Group Homes NDAC 75-04-01-29(6)</u> on page 18 complies with the setting is physically accessible but is silent to individualized settings. The code addresses group home bedrooms have storage space for clothing which is accessible.	Silent	Will create policy to ensure settings are physically accessible according to the individual’s needs.	<ul style="list-style-type: none"> • Department will create the policy by January 2017; • Completed 04/01/18.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>For provider owned or controlled residential settings. The setting is physically accessible to the individual.</p>	<p>Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-04(2) on pages 4 and 5 is silent regarding the requirement that the setting is physically accessible to the individual.</p>	<p>Silent</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that the setting must be physically accessible to the individual.</p>	<ul style="list-style-type: none"> • Public comment for proposed rules 11/6/15; • Public hearing 6/6/16; • Administrative Rule Committee Hearing 9/13/16; • Effective Date 10/1/16; • Policy updates complete December 2016; • NDAC completed 10/1/16; • Second Policy updates complete November 2018.
<p>For provider owned or controlled residential settings. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<p>Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(m, t)) on pages 12 and 13 complies with reporting, reviewing, and recording the need and justification of restrictions. This area of the code ensures providers have policies addressing that restrictions are taken through due process (behavior management and human rights committees) and all restraints are recorded and reported.</p>	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>For provider owned or controlled residential settings. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<ul style="list-style-type: none"> • Developmental Disabilities: Service Plan NDCC 25-01.2-14 on page 5 complies with reporting, reviewing, and recording the need and justification of restrictions. This area of the code addresses the provider requirements for the person-centered service plan to be individualized, timelines, updated, to include goals and objectives, the personnel to carry out the plan, need for guardianship. • The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>
<p>For provider owned or controlled residential settings. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<ul style="list-style-type: none"> • Developmental Disabilities: Applicant guarantees NDAC 75-04-01-20(1(a)) on page 11 complies in complies with reporting, reviewing, and recording the need and justification of restrictions. This area of the code ensures providers have policies on person-centered service plans pursuant to Developmental Disabilities: Service Plan NDCC 25-01.2-14. • The updated OSP, which provides the principles and values of a person-centered service plan and the planning process, describes this further. 	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>
<p>For provider owned or controlled residential settings. Any modification</p>	<p>Overall Service Plan (OSP) Instructions describes the principles</p>	<p>Silent</p>	<p>Updated the OSP; revised section "Individual and/or</p>	<ul style="list-style-type: none"> • September 2015 Completed

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<p>and values of a person-centered service plan and the planning process; however, the policy was silent and does not include language addressing the additional provider-owned characteristics and the person-centered service plan requirements for any modifications.</p>		<p>guardian approval (Release signed specific to plan restrictions)" to include the list of provider-owned characteristics and the person-centered service plan documentation requirements for any modifications.</p>	<p>and training provided September 2015. <ul style="list-style-type: none"> OSP amendment available on the DD website on October 2015. </p>
<p>Settings that are not home and community-based are as follows:</p> <ul style="list-style-type: none"> A nursing facility; An institution for mental diseases; An intermediate care facility for individuals with intellectual disabilities; A hospital; or Any other locations that have qualities of an institutional setting, as determined by the Secretary. 	<p>Settings that are identified as not home and community based are not addressed</p>	<p>Silent</p>	<ul style="list-style-type: none"> Will update licensure procedures: Providers are required to be licensed initially and annually. Assurance statements will be added to the license application that settings are not located in places that CMS identified as not HCB and the provider acknowledges CMS requirements. The licensing process will identify those settings that fall into the category as identified as not HCB. 	<ul style="list-style-type: none"> The licensing procedures will be updated by the Department by December 2017; Completed 7/31/18.
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> Any setting that is located in a building that is also a publicly or 	<p>Settings that are identified as presumed to have the qualities of an institution are not addressed</p>	<p>Silent</p>	<ul style="list-style-type: none"> Will update licensure procedures: Providers are required to be 	<ul style="list-style-type: none"> The licensing procedures will be updated by the Department

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>privately-operated facility that provides inpatient institutional treatment,</p> <ul style="list-style-type: none"> Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 			<p>licensed initially and annually.</p> <ul style="list-style-type: none"> Assurance statements will be added to the license application that settings are not located in places that CMS identified as having qualities of an institution and the provider acknowledges the CMS requirements. The licensing process will identify those settings that fall into the category of heightened scrutiny. The Department will conduct a review of these settings to determine the community-based nature of the setting. 	<p>by December 2017;</p> <ul style="list-style-type: none"> Completed 7/31/18.
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>Developmental Disabilities: Group Home Location NDAC 75-04-01-28(4) on page 18 complies with settings that are presumed to have qualities of an institution. It addresses the location of group homes to be located in residential neighborhoods, accessible to shops and other community facilities. The code also lays out the distance group homes should not be located from existing group homes or day services serving people with developmental disabilities, schools for people with disabilities, long-term care facilities, or other institutional facilities.</p>	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>

Medicaid Waiver for Home and Community Based Services (Serves Aged & Disabled)

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, the [Home and Community Based Services \(HCBS\) Policy & Procedure Manual, Adult Foster Care Policies & Procedures](#) and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

For ND Century Code changes, the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. The Legislature meets every other year, with the next legislative session starting January 2017. During this process the public has an opportunity to provide comments, either in testimony or written correspondence. If legislation is approved, it would generally take effect August 1st of that same year.

For ND Administrative Code, the Department prepares the proposed changes and per the [Administrative Agencies Practice Act](#), a public hearing is held. Notice of Administrative rule changes are published Draft rules require a twenty day public comment period, which is followed by a public hearing. All public comments are responded to by the Legal Advisory Unit with the assistance of program and incorporated into the rule as necessary. The draft rule and public comment are then presented to the legislative administrative rules committee for review and approval. The rule making process generally takes up to nine months.

For additional information refer to [Qualified Service Providers \(QSP\)](#) homepage for Handbooks: [QSP Individual Provider](#); [QSP Agency Provider](#); [QSP Family Home Care Provider](#); and [Adult Family Foster Care \(AFFC\) Provider](#); North Dakota Department of Health [Basic Care Facility Interpretive Guidelines](#); and the Code of Federal Regulations (CFR) [Contents of Request for a Waiver](#) section (c)(viii)(A-H).

Table 30: HCBS Medicaid Waiver

Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.

Table 30 HCBS Medicaid Waiver

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1) & (3) on page 1 complies with the entire regulation. It addresses	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	individuals right to achieve, maintain, or support the highest level of independence and economic self-sufficiency. This code also addresses sustaining individuals in their own home and community and to delay or prevent institutional care. See also: CMFW Policy & Procedure Manual 585-05.			
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<ul style="list-style-type: none"> • Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(2) on page1 complies with the entire regulation. It addresses individuals right to achieve, maintain, or support the highest level of independence and economic self-sufficiency. This code also addresses sustaining individuals in their own home and community and to delay or prevent institutional care. • Sex Offenses, NDCC 12.1-20, section 1 through 7, on pages 1 through 4, addresses coercion and assault and to prohibiting of 	Silent	Will add statement to CMFW Policy & Procedure Manual stating the waiver prohibits the use of restraints, coercion, abuse neglect and exploitation of child on the waiver.	January 2017 Completed

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	these towards a child. Medically Fragile Children's Waiver #0568 states the use of restraints and coercion of child is forbidden.			
Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.	<ul style="list-style-type: none"> • Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1, 3) on page 1 states that services shall help individuals to achieve, maintain, or support the highest attainable level of personal independence and to provide adequate services to appropriately sustain individuals in their homes and in their communities. • CMFW Policy & Procedure Manual 585-05 states this is a parent driven program and they have choice over services within the daily activities, physical environment and with whom they interact with. • Medically Fragile Children's Waiver #0568 states it is parent choice to make decisions concerning their child's services and cares. 	Compliant	N/A	N/A
Facilitates individual choice regarding services and supports, and who provides them.	<ul style="list-style-type: none"> • CMFW Policy & Procedure Manual 585-05 states parents and child have choice of services and supports. • Medically Fragile Children's Waiver #0568 states parents and child have choice of services and supports. 	Compliant	N/A	N/A
For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented,	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-	Complaint	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>25 provides that a child must be residing within their home to receive services.</p>			
<p>For provider owned or controlled residential settings –Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.</p>	Complaint	N/A	N/A
<p>For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.</p>	Compliant	N/A	N/A
<p>For provider owned or controlled residential settings - Individuals have the freedom to furnish and</p>	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-</p>	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
decorate their sleeping unit or living units within the lease or other agreement.	25 provides that a child must be residing within their home to receive services			
For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
For provider owned or controlled residential settings -. Setting is physically accessible to the individual.	Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.	Compliant	N/A	N/A
Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic	CMFW Policy & Procedure Manual: Purpose of Children's Medicaid Waiver 585-05-15 states the need for care plan to address need of modifications must be for independence. Authorization of service must be signed by parent for modification as stated in care plan.	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.				
<p>Settings that are not home and community-based are as follows:</p> <ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or • Any other locations that have qualities of an institutional setting, as determined by the Secretary. 	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.</p>	Compliant	<p>Requirements will be added to CMFW Policy & Procedure Manual 585-05 for clarification. Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <ul style="list-style-type: none"> • A nursing facility; (Institutional Respite care is excluded from this requirement) • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; or • A hospital. 	August 2017 Completed
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> • Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, • Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or • Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual: Eligibility Criteria 585-05-25 provides that a child must be residing within their home to receive services.</p>	Compliant	<p>Requirements will be added to CMFW Policy & Procedure Manual 585-05 for clarification. Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <ul style="list-style-type: none"> • A nursing facility; (Institutional Respite care is excluded from this requirement) • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; or • A hospital. 	August 2017 Completed

Technology Dependent Medicaid Waiver

The Department reviewed the [North Dakota Century Code \(NDCC\)](#), the [North Dakota Administrative Code \(NDAC\)](#), licensing rules and regulations, the [HCBS Policy & Procedure Manual](#) and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

For ND Century Code changes, the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. The Legislature meets every other year, with the next legislative session starting January 2017. During this process the public has an opportunity to provide comments, either in testimony or written correspondence. If legislation is approved, it would generally take effect August 1st of that same year.

For ND Administrative Code, the Department prepares the proposed changes and per the [Administrative Agencies Practice Act](#), a public hearing is held. Notice of Administrative rule changes are published Draft rules require a twenty-day public comment period, which is followed by a public hearing. All public comments are responded to by the Legal Advisory Unit with the assistance of program and incorporated into the rule as necessary. The draft rule and public comment are then presented to the legislative administrative rules committee for review and approval. The rule making process generally takes up to nine months.

For additional information refer to [Qualified Service Providers \(QSP\)](#) homepage for Handbooks: [QSP Individual Provider](#); [QSP Agency Provider](#); [QSP Family Home Care Provider](#); and [Adult Family Foster Care \(AFFC\) Provider](#)

Table 31: Technology Dependent Medicaid Waiver

Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.

Table 31 Technology Dependent Medicaid Waiver

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and	Comprehensive Human Services Programs Purpose, NDCC 50-06.2-01(1, 3) on page 1 addresses the rights of individuals to achieve, maintain, or support the highest level of independence and economic self-sufficiency; sustaining individuals in their own	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	home and community and to delay/prevent institutional care.			
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Medical Assistance for Needy Persons: HCBS Choice of Options, NDCC 50-24.1-20 on page 11 provides that individuals must be allowed choices from all service options available and the type of service based on the individual need.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	HCBS: Definition NDAC 75-03-23-01(12) on page 2 complies with receiving services in the community. It defines HCBS as services that are essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.	Compliant	N/A	N/A
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	Home and Community Based Services (HCBS) Policies & Procedures Manual 525-05 complies as it states that the purpose of the Medicaid Waiver Program is to prevent or reduce institutional care. It states that the settings where recipients receive services must be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.			
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	HCBS Policy & Procedure Manual: Adult Residential Care 525-05-30-16 states that adult residential care must be furnished in a way that fosters the maintenance or improvement in independence of the recipient. It also describes what is required of provider owned settings.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual preference it states that individuals are free to choose their service provider.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and	<ul style="list-style-type: none"> Home and Community-based living: Choice of options, NDCC 50-24.1-20 on page 11 complies with services being based on individual need. It states that individuals must be allowed to choose, from among all service options available, and the type of 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	<p>service that best meets that individual's needs.</p> <ul style="list-style-type: none"> • Provision of HCBS: Eligibility Criteria NDAC 75-03-23-04(6, 7) on pages 5 and 6 complies with services being based on individual preferences and options being identified in a plan of care. 			
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	HCBS Policy & Procedure Manual: Legal Reference 525-05-10; Assessment Instructions 525-05-60-10; and Person-Centered Plan of Care (SFN 404) Medicaid Waiver Person Centered Plan of Care address the type of settings where waiver services can be provided, the requirement that setting options are identified in person centered service plan and what must be included in that plan.	Compliant	N/A	N/A
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are silent on individual choice to choose the option for a private unit in a residential setting.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy and Procedure Manual 660-05 to require individual choice for a private unit in a residential setting.	<ul style="list-style-type: none"> • NDAC October 2016 Complete; • Policy updates November 2018
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Comprehensive Human Services Programs: Purpose NDCC 50-06.2-01(2) on page 1 partially complies. It states that the purpose of the program is to prevent, remedy, or alleviate neglect, and abuse. It is silent because it does	Silent	<ul style="list-style-type: none"> • Requirements will be added to HCBS Policy & Procedure Manual 525-05-25-10, 525-05-30-15 & 525-05-30-16 and the Qualified Service Provider Handbook, Individual, Agency and Adult Foster Care Versions, to require 	<ul style="list-style-type: none"> • Policy Updates Complete December 2016; • Second Policy Updates

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	not completely prohibit restraints and does not specifically address each right in the federal regulation.		<p>that individuals have a right of privacy, dignity, and respect, and to expressly prohibit coercion, seclusion, and restraint of waiver recipients in all settings with the exception of the limited use of restraints in adult residential service settings as described in NDCC 50-10.2-02 (1) (Page No 1).</p> <ul style="list-style-type: none"> • The renewal application for the Medicaid waiver for Home & Community Based Services will include a provision for the limited use of restraints in adult residential service settings as described in NDCC 50-10.2-02 (1) (Page No 1). • Requirements will be added to HCBS Policy & Procedure Manual 525-05-30-05 to state that any use of restraints must be expressly documented in the person-centered service plan following the criteria in 42 CFR 441.301(c)(viii)(A) through (H). 	Complete November 2018.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Health Care Facility: Residents' Rights NDCC 50-10.2-02(1) on page 1 complies with resident rights of privacy, dignity, and respect as it relates to settings where adult residential services are provided. It is silent in regard to the freedom from physical or chemical restraint because it does not completely prohibit restraints. It requires that any restraint must be authorized and documented by a physician for a limited period of time, if the restraint is chemical, it must be administered by a licensed nurse or physician.	Silent	<ul style="list-style-type: none"> • Requirements will be added to HCBS Policy & Procedure Manual 525-05-25-10, 525-05-30-15 & 525-05-30-16 and the Qualified Service Provider Handbook, Individual, Agency and Adult Foster Care Versions, to require that individuals have a right of privacy, dignity, and respect, and to expressly prohibit coercion, seclusion, and restraint of waiver recipients in all settings with the exception of the limited use of restraints in adult residential service settings as described in NDCC 50-10.2-02 (1)(Page No 1). 	<ul style="list-style-type: none"> • Policy Updates Complete December 2016; • Second Policy Updates Complete November 2018.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>Restraints cannot be used for the purposes of punishment, for convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved plan.</p>		<ul style="list-style-type: none"> • The renewal application for the Medicaid waiver for Home & Community Based Services will include a provision for the limited use of restraints in adult residential service settings as described in NDCC 50-10.2-02 (1)(Page No 1). • Requirements will be added to HCBS Policy & Procedure Manual 525-05-30-05 to state that any use of restraints must be expressly documented in the person-centered service plan following the criteria in 42 CFR 441.301(c)(viii)(A) through (H). 	
<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Basic Care Facilities: Abuse NDAC 33-03-24.1-01(1) on page 1 and Basic Care Facilities: Governing Body NDAC 33-03-24.1-09(2(e, h)) on page 8 comply with an individual's rights of privacy, dignity and respect as it relates to the setting where adult residential services are provided. It requires that policy and procedures are in place to prohibit abuse and neglect. It is silent in regard to freedom from coercion and restraint because it does not completely prohibit restraints.</p>	Silent	<p>Update Administration Code to ensure freedom from coercion and restraint.</p>	<p>April 2017 Complete.</p>
<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Foster Care Homes for Children and Adults: License NDCC 50-11-02(1(c)) on page 2 is specific to settings where adult foster care is provided It speaks to an individual's right to dignity and respect, but it is silent to addressing freedom from coercion and restraint.</p>	Silent	<p>Update Century Code to ensure freedom from coercion and restraint.</p>	<p>October 2016 Complete</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Vulnerable Adult Protection Services NDCC 50-25.2 (pages 1-6)partially complies with an individual's rights of privacy, dignity and respect. It governs the States Adult Protective Service laws which define abuse, neglect, exploitation, mandatory reporting laws and penalties. It is silent because it does not completely prohibit restraints.	Silent	Update Century Code to ensure freedom from coercion and restraint.	October 2016 Complete
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Licensing of Foster Homes for Adults: Definitions NDAC 75-03-21-01(1, 7, 11, 13, 20) on pages 1 and 2 partially comply and speak to an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint as it relates to the setting where adult foster care services are provided. It defines abuse, confinement, exploitation, mental anguish, and neglect. It is silent because it does not completely prohibit restraints.	Silent	Requirements will be added to ND Admin Code 75-03-21 and AFC Policy & Procedure 660-05 to state that providers must provide for privacy in the sleeping area, doors must be lockable with only the resident and appropriate staff having keys.	December 2016 Complete
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<ul style="list-style-type: none"> • Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-04(2) on page 5 partially complies with the individual's rights to privacy and dignity at is relates to settings where adult foster care is provided stating that there must be walls or partitions in bedrooms that extend floor to ceiling for privacy. • Adult Foster Care Policy & Procedures Manual: Facility Standards 660-05-30-20 partially complies with privacy requirements it states privacy 	Silent	Requirements will be added to ND Admin Code 75-03-21 and AFC Policy & Procedure 660-05 to state that providers must provide for privacy in the sleeping area, doors must be lockable with only the resident and appropriate staff having keys.	December 2016 Complete

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>must be provided in bedrooms and bathrooms.</p> <ul style="list-style-type: none"> • Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-06(4) on page 6 partially complies with the requirement for lockable doors; it states doors with locking mechanism must be provided. 			
<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Licensing of Foster Homes for Adults: General Practices NDAC 75-03-21-09(4, 5, 7) on page 9 speaks to an individual's rights, to privacy as it relates to settings where AFC is provided. It states resident information must be kept confidential, requires from freedom from discrimination and that residents cannot be subject to abuse, neglect or exploitation. It is silent because it does not completely prohibit restraints.</p>	<p>Silent</p>		<p>December 2016 Complete</p>
<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Provision of HCBS: QSP Standards NDAC 75-03-23-07(2(d)) on page 12 QSP Individual Provider; QSP Agency Provider and Adult Family Foster Care (AFFC) Provider are partially compliant; it deals with an individual's right to privacy as it states that providers must maintain confidentiality. The rule is silent because it does not specifically address each right in the federal regulation.</p>	<p>Silent</p>		<p>December 2016 Complete</p>
<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>HCBS Policy & Procedures Manual: Case Management 525-05-30-05 and Medicaid Waiver Review 525-05-60-100 cover the right of an individual to be free of</p>	<p>Silent</p>	<p>Requirements will be added to HCBS Policy & Procedure Manual 525-05-30-05 & 525-05-60-100 to address the need to monitor for each right in the federal regulation</p>	<p>December 2016 Complete</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>coercion and restraint; it requires case managers to monitor for abuse, neglect or exploitation and outlines reporting requirements. These policies are silent because they do not specifically address each right in the federal regulation.</p>		<p>including the limited use of restraints in adult residential service settings.</p>	
<p>Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>These statutes and rules comply with requirement to optimize individual initiative, autonomy, and independence in making life choices for daily activities and physical environment</p> <ul style="list-style-type: none"> • Comprehensive Human Services Programs: Purpose NDCC 50-06.2-01(1, 3) on page 1 states that services shall help individuals to achieve, maintain, or support the highest attainable level of personal independence and to provide adequate services to appropriately sustain individuals in their homes and in their communities. • Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers. • Medical Assistance for Needy Persons Purpose, NDCC 50-24.1-01 on page 1 states purpose is to provide services to help individuals to retain or attain capability for independence or self-care. 	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<ul style="list-style-type: none"> • Home and Community-based living- Choice of options, NDCC 50-24.1-20 on page 11 states individuals must be allowed to choose, from among all service options available, and the type of service that best meets that individual's needs. • NDCC 75-02-02-08 (1) (u) (Page No 8) Defines personal care services as services that assist an individual with ADL's and IADL's in order to maintain independence and self-reliance to the greatest degree possible. • Provision of HCBS: Eligibility Criteria NDAC 75-03-23-04(6, 7) on pages 5 and 6 states individual must agree to receive services in their home and must agree with plan of care. • HCBS Policy & Procedures 525-05-60-100 –This policy complies with promoting individual initiative, autonomy, and independence in making life choices. Describes Quality Review which is conducted with all waiver recipients. 			
<p>Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>These rules comply with individuals making life choices as it relates to daily activities and physical environment.</p> <ul style="list-style-type: none"> • HCBS: Definition NDAC 75-03-23-01(10) on page 2 requires that information about daily activities and physical environment must be included in a functional assessment 	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>which is used to determine individual needs and preferences.</p> <ul style="list-style-type: none"> • Provision of HCBS: Eligibility Criteria NDAC 75-03-23-04(6, 7) on pages 5 and 6 requires that individual agrees to receive services in the home and agrees to plan of care. • Provision of HCBS: Functional Assessment NDAC 75-03-23-17 on page 22 requires use of functional assessment which promotes individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, and physical environment. • HCBS Policy & Procedure Manual: Medicaid Waiver Review 525-05-60-100 complies with promoting individual initiative, autonomy, and independence in making life choices. Describes Quality Review which is conducted with all waiver recipients. 			
<p>Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>Individuals have choice with whom to interact.</p>	<p>Silent</p>	<p>Requirements will be added to HCBS Policy & Procedure Manual 525-05 to assure individuals have choice with whom to interact.</p>	<p>December 2016 Complete</p>
<p>Facilitates individual choice regarding services and supports, and who provides them.</p>	<ul style="list-style-type: none"> • Comprehensive Human Services Programs: Freedom of Choice NDCC 50-06.2-06 on page 4 complies with setting options being based on individual 	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
	<p>preference it states that individuals are free to choose their service provider.</p> <ul style="list-style-type: none"> • Home and Community-based living- Choice of options, NDCC 50-24.1-20 on page 11 complies with receiving services in the community. It addresses individuals must be allowed choices from all service options available and the type of service based on the individual need. • Provision of HCBS: Eligibility Criteria NDAC 75-03-23-04(6, 7) on pages 5 and 6 complies with individual choice states recipient must agree to receive waiver services and agrees with the plan of care. • Provision of HCBS: Services Covered NDAC 75-03-23-06(15(b)) on page 10 complies as it requires AFC recipient's choice in choosing a respite care provider. 			
<p>For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply,</p>	<p><i>Adult Foster Care Licensing of Foster Homes for Adults NDAC 75-03-21</i> (pages 1-18) and <i>Adult Foster Care (AFC) Policies and Procedures Manual 660-05</i> are silent with the legally enforceable agreement and the individual has at a minimum the same responsibilities from eviction that tenant have under landlord/tenant law.</p>	<p>Silent</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that adult foster care providers will provide recipient with a signed copy of the service and rental agreement that includes at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.</p>	<ul style="list-style-type: none"> • NDAC complete October 2016; • Policy updates complete December 2016.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>				
<p>For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p><i>Adult Residential Care</i> HCBS Policy & Procedure Manual: Adult Residential Care 525-05-30-16 states, for settings in which landlord tenant laws do not apply, the case manager must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. All adult residential recipients must have a signed lease or other legally enforceable agreement that meets the above standards. A copy of the lease must be maintained in the recipient's file.</p>	<p>Compliant</p>	<p>N/A</p>	<p>N/A</p>
<p>For provider owned or controlled residential settings. Each individual has privacy in their sleeping or living units:</p>	<p><i>Adult Foster Care</i></p> <ul style="list-style-type: none"> • Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-04(2) on page 5 partially complies with privacy in sleeping unit it 	<p>Silent</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that providers must provide for privacy in the sleeping area, doors</p>	<ul style="list-style-type: none"> • NDAC complete October 2016; • Policy updates complete

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>states there must be walls or partitions in bedrooms that extend floor to ceiling to provide privacy.</p> <ul style="list-style-type: none"> • Adult Foster Care Policy & Procedures Manual: Facility Standards 660-05-30-20 partially complies with privacy requirements it states privacy must be provided in bedrooms and bathrooms. • Licensing of Foster Homes for Adults: Safety NDAC 75-03-21-06(4) on page 6 partially complies with requirement for lockable doors it states doors with locking mechanism must be provided. • Adult Foster Care Policy & Procedures Manual: Safety 660-05-30-30 partially complies with requirement for lockable doors states lockable doors must be provided. 		<p>must be lockable with only the resident and appropriate staff having keys.</p>	<p>November 2018</p>
<p>For provider owned or controlled residential settings. Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p><i>Adult Residential Care</i> Allow for privacy and lockable door requirements.</p>	<p>Silent</p>	<p>The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents to allow for privacy and lockable door requirements.</p>	<ul style="list-style-type: none"> • NDAC complete October 2017; • Policy updates complete December 2017.
<p>For provider owned or controlled residential settings. Individuals sharing units have a choice of roommates in that setting.</p>	<p><i>Adult Foster Care</i> Licensing of Foster Homes for Adults NDAC 75-03-21 (pages 1-18) and Adult Foster Care (AFC) Policies and Procedures Manual 660-05 are silent on the individual choice to choose a roommate.</p>	<p>Silent</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to require that individuals have a choice of roommate in the setting.</p>	<ul style="list-style-type: none"> • NDAC complete October 2016; • Policy updates complete November 2018.

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
For provider owned or controlled residential settings. Individuals sharing units have a choice of roommates in that setting.	<i>Adult Residential Care</i> Individuals have a choice of roommate in the setting.	Silent	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents to require that individuals have a choice of roommate in the setting.	<ul style="list-style-type: none"> • NDAC complete October 2017; • Policy updates complete December 2017.
For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.	<i>Adult Foster Care</i> This code and policy are silent on the individual's freedom to furnish and decorate their living unit within the lease or other agreement.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to require that individuals have the freedom to decorate their sleeping or living unit in the rental agreement.	<ul style="list-style-type: none"> • NDAC complete October 2016; • Policy updates complete November 2018
For provider owned or controlled residential settings. Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.	<i>Adult Residential Care</i> Individuals have the freedom to decorate their sleeping or living unit in the rental agreement.	Silent	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents to require that individuals have the freedom to decorate their sleeping or living unit in the rental agreement.	<ul style="list-style-type: none"> • NDAC complete October 2017; • Policy updates complete December 2017.
For provider owned or controlled residential settings. Individuals have freedom and support to control their schedules and activities and have access to food any time.	<i>Adult Foster Care</i> Licensing of Foster Homes for Adults: Service and Rental Agreement NDAC 75-03-21-12(1, 2) on page 13 and Adult Foster Care Policy & Procedures Manual: Service & Rental Agreements 600-05-30-45 are non-complaint with the freedom and support to control their own schedules and activities and to have access to food at any time.	Non-Compliant	Requirements will be added/modified to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to require that individuals have freedom and support to control their schedules and activities and have access to food any time.	<ul style="list-style-type: none"> • NDAC complete October 2016; • Policy updates complete November 2018.
For provider owned or controlled residential settings. Individuals have freedom and support to control their schedules and activities and have access to food any time.	<i>Adult Residential Care</i> Freedom and support to control their schedules	Silent	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents. Rules will be clarified to indicate that recipients must have access to food at all	<ul style="list-style-type: none"> • NDAC requirements complete October 2017; • Policy updates

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
			times, and to allow recipients to choose where they want to eat.	complete December 2017.
For provider owned or controlled residential settings. Individuals have freedom and support to control their schedules and activities and have access to food any time.	Basic Care Facilities: Activity Services NDAC 33-03-24.1-19 on page 13, Basic Care Facility Interpretive guidelines B1910, B1920, B1930, B1940, and HCBS Policy & Procedure Manual: Adult Residential Care 525-05-30-16 comply with the right to control schedules and activities. It requires that there to be a planned meaningful activity program to meet the needs and interest of the recipient that is based on an assessment. Activities must be available and provided during the day, evening and weekends. Recipients will be assisted in planning to participate in activities in the facility and community according to their interests.	Compliant	N/A	N/A
For provider owned or controlled residential settings. Individuals have freedom and support to control their schedules and activities and have access to food any time.	Basic Care Facilities: Dietary Services NDAC 33-03-24.1-18(1-6) on pages 12 and 13, and Basic Care Facility Interpretive Guidelines B1830 are partially compliant with the requirement to have access to food at any time. It describes the requirements for meals and that snacks are to be provided between meals and in the evening. Rules will be clarified to indicate that recipients must have access to food at all times.	Non-Compliant	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents. Rules will be clarified to indicate that recipients must have access to food at all times, and to allow recipients to choose where they want to eat.	
For provider owned or controlled residential settings. Individuals have freedom and support to control their schedules and	Basic Care Facilities: Dietary Services NDAC 33-03-24.1-18(7) on page13 dictates that meals must be served in the dining room.	Non-Compliant	This rule will be changed to allow recipients to choose where they want to eat.	

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
activities and have access to food any time.				
For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.	<i>Adult Foster Care Licensing of Foster Homes for Adults NDAC 75-03-21</i> (pages 1-18) and <i>Adult Foster Care (AFC) Policies and Procedures Manual 660-05</i> are silent for individuals to have visitors of their choosing at any time.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to state that individuals must be able to have visitors of their choosing at any time.	<ul style="list-style-type: none"> • NDAC requirements complete October 2016; • Policy updates complete November 2018.
For provider owned or controlled residential settings. Individuals are able to have visitors of their choosing at any time.	<i>Adult Residential Care</i> Individuals must be able to have visitors of their choosing at any time.	Silent	The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents to state that individuals must be able to have visitors of their choosing at any time.	<ul style="list-style-type: none"> • NDAC complete October 2017; • Policy updates complete December 2017.
For provider owned or controlled residential settings. Setting is physically accessible to the individual.	<i>Adult Foster Care Licensing of Foster Homes for Adults: Facility NDAC 75-03-21-04</i> on pages 4 and 5 is silent regarding the requirement that the setting is physically accessible to the individual.	Silent	Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure Manual 660-05 to state that the setting must be physically accessible to the individual.	<ul style="list-style-type: none"> • NDAC complete October 2016; • Policy updates complete November 2018.
For provider owned or controlled residential settings. Setting is physically accessible to the individual.	<i>Adult Residential Care State Building Code: Accessibility Standards NDCC 54-21.3-04.1</i> on page 3 and <i>Basic Care Facilities Standard for Construction NDAC 33-03-24.2</i> (page 1-5) comply with the physically assessable requirements and describes accessibility standards that must be met for this setting.	Compliant	N/A	N/A
Any modification of the additional conditions must be supported by a specific assessed need and	<i>Provision of HCBS: Eligibility Criteria NDAC 75-03-23-04(6, 7)</i> on pages 5 and 6,	Compliant	N/A	N/A

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<p>justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<p>HCBS Policy & Procedure Manual: Medicaid Waiver 525-05-25-10; Assessment Instructions 525-05-60-10; and Person-Centered Plan of Care (SFN 404 Medicaid Waiver Person Centered Plan of Care) comply with the person-centered service plan requirements. They state that individuals must agree to the plan of care and describe the requirements and process for the person-centered planning which includes all of the required elements.</p>			
<p>Settings that are not home and community-based are as follows:</p> <ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or • Any other locations that have qualities of an institutional setting, as determined by the Secretary. 	<p>HCBS Policy & Procedure Manual: Legal Reference 525-05-10 complies as it states that waiver services cannot be provided in a nursing facility, institution for mental disease, intermediate care facility, or hospital.</p>	Compliant	N/A	N/A
<p>Settings that are not home and community-based are as follows:</p> <ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or 	<p>Any other locations that have qualities of an institutional setting as determined by the Secretary</p>	Silent	Requirements will be added to HCBS Policy & Procedure Manual 525-05 if the State determines that an Adult residential or Adult day care setting needs to be submitted for heightened scrutiny	January 2019

Federal Regulation	State Standards	Compliant, Non-Compliant or Silent	Remediation Needed	Timelines for Remediation
<ul style="list-style-type: none"> Any other locations that have qualities of an institutional setting, as determined by the Secretary. 				
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>Foster Care Homes for Children and Adults: Definitions NDCC 50-11-00.1(8) on page 1, HCBS Policy & Procedure Manual: Legal Reference 525-05-10, Adult Day Care 525-05-30-10 and Adult Residential Care 525-05-30-16 define where waiver services can be provided, it complies with the requirements for settings that are presumed to have the qualities of an institution as it relates to settings that provide inpatient institutional treatment, or that are adjacent to, a public institution.</p>	Compliant	N/A	N/A
<p>Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS</p>	Silent	Requirements will be added to HCBS Policy & Procedure Manual 525-05 if the State determines that an Adult residential or Adult day care setting needs to be submitted for heightened scrutiny	January 2019

Section 7: Attachments

Attachment 1. Adult Residential Service HCBS Setting Survey

Attachment 2. HCBS Waiver Settings Assessment Tool

Attachment 3. Traditional IID/DD Waiver HCBS Setting Assessment

Attachment 4. Traditional IID/DD Waiver Heightened Scrutiny Assessment

QSP Number

Facility Name

Shade Ovals Like This Not Like This

Was the survey completed by the consumer?

Yes

No - **What is your relationship to the consumer?**

Family Legal Guardian Case Manager Other (Specify) _____

Was the consumer present?

Yes - **Did the consumer participate in the survey to the best of his/her ability?** Yes No

No

Please answer the questions based on your experience living at this facility. If possible, the consumer should be involved in the completion of this survey. If someone other than the consumer is completing the survey, please answer based on your knowledge of his/her experience receiving services in the facility.

1. **Did you choose where you live?** Yes No

2. **When you want to, are you able to get to places for fun outside of the facility?** Yes No

3. **Do you have a way to get to places when needed? (e.g. medical appointments)** Yes No

4. **Do you regularly participate in activities outside the facility?**

Yes - **In what type of activities do you participate?** _____

No - **Why?** _____

5. **Do you regularly participate in activities inside the facility?**

Yes

No - **Why?** _____

6. **Does the facility have any rules that prevent you from coming and going from the facility as you choose?**

Yes - **What prevents this?** _____

No

7. **Do you manage your own finances?**

Yes

No - **Who manages your finances?** _____

8. **Are you happy living in this facility?**

Yes - **Why?** _____

No - **Why?** _____



9. Do you choose the time you get up and go to bed? Yes No
10. Do you choose when you want to take a bath? (e.g. morning or night) Yes No
11. Do you get to choose who provides care to you? Yes No
12. Do you get along with the staff? Yes No
13. Do you have a roommate?
 Yes - Do you like living with your roommate? Yes No
 No
 Does Not Apply
14. Do you know who to talk to if you wanted to change roommates? Yes No
15. Can you decorate your room like you want? Yes No
16. Do you know how to file a grievance or complaint at this facility? Yes No
17. Can you lock your bedroom door?
 Yes
 No - Why? _____
18. Do you have privacy in your bedroom? Yes No
19. Do you feel safe in the facility? Yes No
20. Were you asked what time you like to eat? Yes No
21. Can you choose when to eat meals? Yes No
22. What happens if you miss a mealtime at the facility? _____
23. Is food available when you want? Yes No
24. Can you have visitors anytime? Yes No
25. Is family encouraged to visit? Yes No
26. Does the facility allow you to have overnight guests? Yes No
27. Do you feel that the staff interacts with you in a dignified manner and treats other residents with respect? Yes No
28. Do you know who is your case manager? Yes No
29. Did you participate in the last care plan meeting? Yes No

Thank you for taking the time to share this important information. Your comments matter and will help us to assure that consumers are receiving good care.



HCBS Waiver Settings Assessment Tool

Home and Community Based (HCB) Setting On-Site Visit Review for Heightened Scrutiny Settings (Home and Community Based Waiver and Technology Dependent Waiver)

Figure 1 HCB Information

Date of On-Site Visit:	Facility Name/Contact:
Address of Setting:	Phone Number:
Total Number of Residents:	Total Number of Residents on Medicaid (provide list):
Waiver Service Provided:	Visit Completed by:

Figure 2 On-Site Visit Instructions

On-Site Visit Instructions:
 This document contains the information to be gathered for the on-site visits towards determination of compliance with the CMS Final Rule for HCB settings.

The final rule establishes requirements for the qualities of settings that are eligible for reimbursement for the Medicaid home and community-based services (HCBS) provided under sections 1915(c), 1915(i) and 1915(k) of the Medicaid statute. In this final rule, CMS is moving away from defining home and community-based settings by “what they are not,” and toward defining them by the nature and quality of individuals’ experiences.

The questions are based on criterion provided in the CMS toolkit of exploratory questions. The observations and questions are not limited to what is listed.

The on-site visit process is based on observation, discussion, and care plan review. This document is a tool and the information is organized to provide guidance in determining if characteristics are present. To assist in the determination, other necessary inquiries, provider policy, or material review will occur as needed. Sample evidence justification is listed on the Site Review Checklist. **Other documentation or evidence may be provided.**

(Person Centered Care Plans for the Waiver Recipients must be provided upon request.)

Please provide information to support the process based on observation, discussion, and care plan review. Note any other sources of verification utilized (e.g. policy and procedures). **Yes/No answers are not sufficient.**

Section 1: Description of Setting (To be completed by reviewer)

Figure 3 Narrative Box for Description of Setting

Describe home, apartment unit, apartment building, work, day support; location in the community; is it among other private residences and retail businesses; what are the community interactions like outside of setting; is the setting only for people with disabilities; etc. May attach pictures of area, home or google maps view.

Section 2: Residential Settings Lease Agreement (Facility to provide Lease agreement during site visit)

Figure 4 Narrative Box for Lease Agreement Conditions

Does the setting offer the same responsibilities, protection from eviction for Medicaid recipients as all tenants under the North Dakota landlord tenant law? Does the facility honor thirty (30) day notice prior to eviction or other eviction agreement as provided in lease?

Section 3: Medication Agreement (Per HCBS Waiver Quality Assurance Requirement – Provide Medication Error Reporting Assurance form signed). Due every 2 years upon enrollment or re-enrollment.

Figure 5 Narrative Box for Medication Agreement

Is there a Medication reporting system in place for reporting Medication errors to the State Medicaid Agency for Medicaid Waiver Residents? Has the Medication Error Reporting Agreement been signed? (Provide Medication Error Reporting Assurance form, signed every 2 years). Describe the training and competency schedule of the staff that provided medications to the resident.

Section 4: Community Integration: Unrestricted Access to the Community

Table 1 Community Integration and Access to the Community Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
1. How often do the residents access the community? a. Are outing activities in a group only? b. How do the residents become aware of activities in the community?		<ul style="list-style-type: none"> • Activity Schedule • Care Plans • Documentation • Consumer/Family Feedback 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
c. Who assists in facilitating activities? d. Can the resident go out as often as they prefer?			
2. Does your facility offer in house services as beautician and church services? a. Can the resident go out into the community if desired for these services as shopping, church, and other appointments? b. Does the resident have access to laundry services? c. Do Waiver recipients receive services in a different part of the building than other residents?		<ul style="list-style-type: none"> • Description of Services • Activity Schedules posted 	
3. Are residents able to leave without a check out and check in process? a. Can they come and go as they please without a curfew? b. Do they have an opportunity to leave the settings during the day or night?		<ul style="list-style-type: none"> • Describe Security • Describe Egress system and who is able to access the system • Consumer/Family Feedback 	
4. Are there gates, locked doors, Velcro strips, locked cupboards or other barriers preventing individuals' entrance to or exiting from certain areas of the setting? a. Are there restricted areas in the setting? b. Is there ADA accessibility for special need residents? c. Are appliances accessible for individuals in wheelchairs? d. Are there environmental adaptations present for individuals that need grab bars, ramps, etc.? e. How do you ensure that individuals that need supports in the setting have these provided? (For example, grab bars, high rise seats in bathrooms, ramps for wheelchair accessibility, and viable exits for emergencies). f. Is the setting accessible without obstructions as steps, lips in a doorway, narrow hallways, etc., which limits mobility?		<ul style="list-style-type: none"> • Observation during the site visit if any obstructions or barriers are present • Consumer/Family Feedback 	
5. Do the residents have access to a coded lock or keys to leave the facility?		<ul style="list-style-type: none"> • Observation during site visit • Consumer/Family Feedback 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
6. Does facility have a schedule plan to allow meaningful community involvement.		<ul style="list-style-type: none"> • Activity Schedule • Care Plans • Consumer/Family Feedback 	
7. How many residents are retired? Do any individuals work or volunteer in the broader community? If an individual, desires to work, how is this pursued?		<ul style="list-style-type: none"> • Activity Schedule • Care Plans • Consumer/Family Feedback 	
8. Do residents have access to Public Transportation? Are the residents aware of how to access? Does the facility offer transportation?		<ul style="list-style-type: none"> • Observation of Transit and bus schedules posted • Description of Resources given Consumer/Family • Consumer/Family Feedback 	

Section 5: Optimizes Autonomy and Independence in Resident/Recipient Choices

Table 2 Resident Autonomy and Independence Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
<p>9. Can residents and family visit the facility prior to making a decision to move in?</p> <p>a. Was the individual given a choice of available options regarding where to live/receive services?</p> <p>b. Does the setting reflect the individual's needs and preferences?</p> <p>c. How do you ensure the resident understands their rights regarding housing and options to relocate?</p>		<ul style="list-style-type: none"> • Policy • Tour Information • Consumer/Family Feedback • Facility to describe how they take into consideration the residents needs and preferences 	
10. Is the residents schedule conducted according to the person-centered plan?		<ul style="list-style-type: none"> • Observation/Picture • Policy • Consumer/Family Feedback 	
11. How do you make it clear that there are no requirements to adhere to a set schedule for waking, bathing, eating, activities, etc.?		<ul style="list-style-type: none"> • Observation/Picture • Policy • Consumer/Family Feedback 	
<p>12. Can the resident access television, radio, phones, and activities at their convenience?</p> <p>a. Is there Wi-Fi or Ethernet jack access in individual rooms?</p> <p>b. Can an individual have a cell phone, computer, or personal communication device or is there access in a private location?</p>		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
13. Does the individual control their own personal resources? a. Do they have access to funds, checking accounts, etc.? b. How do you make it clear that the individual is not required to sign over their funds?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback 	
14. Do the residents share rooms? a. Do they have a choice in roommates? b. Can they switch roommate assignments if there is a conflict? c. Do couples have to share a room or do they have a choice?		<ul style="list-style-type: none"> • Observation/Picture • Policy • Consumer/Family Feedback 	
15. Does the setting reflect the resident's individual interests, hobbies, personal items, and personal choices of furniture, etc.?		<ul style="list-style-type: none"> • Observation/Picture • Policy • Consumer/Family Feedback 	
16. Do individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement?		<ul style="list-style-type: none"> • Observation/Picture • Policy • Consumer/Family Feedback 	

Section 6: Individual Rights of Privacy

Table 3 Individual Rights of Privacy Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
17. Is informal (written and oral) communication conducted in a language that the individual understands?		<ul style="list-style-type: none"> • Observation/Picture • Consumer/Family Feedback 	
18. Is assistance provided in private, as appropriate, when needed? For example, is medical or other cares provided in view of others? a. Is Medical Information kept private? b. Are there any schedules posted which are confidential? (OT, PT, Medication times, Special diets, etc.)		<ul style="list-style-type: none"> • Observation • Record Keeping • Policy • Consumer/Family Feedback 	
19. Do resident areas have a door that locks? a. Do the restrooms lock? b. Is there privacy? c. How is the individual assured privacy in their sleeping unit? d. Do they have an option for a private room?		<ul style="list-style-type: none"> • Observation/Picture • Consumer/Family Feedback 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
20. Do Staff or other residents always knock and receive permission prior to entering an individual's private space?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback 	
21. Are camera/video monitoring present in the facility? If Yes, where are they located?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback 	

Section 7: Freedom to Schedules, Activities, and Food

Table 4 Freedom to Set Own Schedules, Activities and Food Choices Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
22. Are individuals required to adhere to a set schedule for waking, bathing, eating, and activities? If No, how is it made clear to the resident?		<ul style="list-style-type: none"> • Observation • Policy • Survey • Consumer/Family Feedback • Admission Pack • Educational Material 	
22. Does the facility provide education upon admission regarding individual rights to choose their own schedule?		<ul style="list-style-type: none"> • Admission Pack • Educational Material • Consumer/Family Feedback 	
24. Does the individual have access to a kitchen with cooking facilities? a. Can the individual have access to an alternate meal? b. Are snacks available? c. Does the individual have access to a meal at the time and place of clients choosing? d. Can they eat in their room or in private? e. Does the dining area afford dignity to the diners and individuals? f. Do you use disposable cutlery and plates? g. Are bibs used? h. Are there dining room assigned seating?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback • Admission Packet • Educational Material 	
25. Do you allow food in the resident room?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback • Admission Packet • Educational Material 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
26. Do you allow a fridge or microwave in resident room?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback • Admission Packet • Educational Material 	
27. Do individuals have full access to areas of the setting such as the laundry room, community areas, break rooms, etc.? <ol style="list-style-type: none"> Are individuals able to move freely about inside and outside? If there are locked areas or restriction, please describe. 		<ul style="list-style-type: none"> • Observation • Policy • Care Plan • Consumer/Family Feedback 	

Section 8: Ensure Individual Rights, Dignity and Respect: Freedom from Coercion and Restraint

Table 5 Individuals Protected Rights, Freedom from Coercion and Restraint Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
28. Can an individual choose their provider or request a change in provider?		<ul style="list-style-type: none"> • Policy • Consumer/Family Feedback 	
29. How do you accommodate Staff / Resident conflicts?		<ul style="list-style-type: none"> • Policy • Survey • Consumer/Family Feedback 	
30. How do individuals file a complaint or grievance? <ol style="list-style-type: none"> Can complaints be filed anonymously? How do you ensure the individual knows the person to contact or the process? Is the process for filing a complaint posted in a visible area and in an understandable format? 		<ul style="list-style-type: none"> • Policy • Consumer/Family Feedback • Observation • Ombudsman Poster • Admission Packet • Educational Material 	
31. Is staff trained on resident's rights?		<ul style="list-style-type: none"> • Staff Interview • Policy • Training Curriculum • Observation 	
32. How do you assure your staff interacts with residents in a dignified manner and treats residents with respect?		<ul style="list-style-type: none"> • Observation • Policy • Staff Interview • Consumer/Family Feedback 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
33. Does the staff use the preferred name for residents		<ul style="list-style-type: none"> • Observation • Policy • Staff Interview • Consumer/Family Feedback 	

Section 9: Access to Visitors

Table 6 Access to Visitors Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
34. Does the facility have set visiting hours? a. Are visiting hours posted? b. Are there private areas where individuals can visit?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback • Admission Packet • Educational Material 	
35. Does the facility allow overnight guests?		<ul style="list-style-type: none"> • Observation • Policy • Consumer/Family Feedback • Admission Packet • Educational Material 	

Section 10: Individual Person-Centered Care Plan

Table 7 Individual Person-Centered Care Plan Assessment Questions

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
36. How often do you have care plan meetings?		<ul style="list-style-type: none"> • Policy • Admission Packet • Educational Material • Record Review of Care Plan 	
37. Is the individual or the chosen representative aware of how to schedule additional Person-Centered Planning meetings?		<ul style="list-style-type: none"> • Policy • Admission Packet • Educational Material • Record Review of Care Plan 	
38. Are they held at times that are convenient so that guardians, recipients, case manager, and facility staff can attend?		<ul style="list-style-type: none"> • Policy • Record Review of Care Plan • Consumer/Family Feedback 	
39. Was the individual or representative present at the last planned meeting?		<ul style="list-style-type: none"> • Record Review of Care Plan • Consumer/Family Feedback 	
40. Is the facility involved in the assessment that is		Record Review of Care Plan	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
<p>completed by the HCBS Case Manager?</p> <p>a. Do you have a copy of the person-centered plan that lists restrictions or modifications that are in place on the individual because of health and safety?</p> <p>b. If No, have you checked with Case Manager if client or representative is ok with facility receiving copy?</p>			

Section 11: Discussions with Individual(s), Legal Decision Makers, and/or Staff (observe as needed)

Table 8 Discussions with Individual(s), Legal Decision makers and Staff

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
<p>41. Service and setting choice:</p> <p>a. Did you choose to live here?</p> <p>b. Did you visit other settings?</p> <p>c. Do you like it here?</p> <p>d. Do you know your rights to housing and that you could relocate?</p> <p>e. Describe the options and opportunities to visit other settings.</p>		<ul style="list-style-type: none"> • Interview and with whom (Resident, family, guardian) • Note if recipient or resident talks about outside activities 	
<p>42. What do you do for work, volunteer or activities?</p> <p>a. Were you provided the opportunity or interested in competitive employment, community volunteering, etc.?</p> <p>b. If you work, did you have the opportunity to negotiate work schedule, break/lunch times?</p>		<ul style="list-style-type: none"> • Interview and with whom (Resident, family, guardian) • Note if recipient or resident talks about outside activities 	
<p>43. What do you like to do?</p> <p>a. What activities do you enjoy?</p> <p>b. Do you regularly go out in the community (shopping, church,</p>		<ul style="list-style-type: none"> • Interview and with whom (Resident, family, guardian) • Note if recipient or resident talks about outside activities 	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
appointments, recreation, etc.)? c. What activities are you involved in, where do you go in the community, is it as often as you like? d. How do you find out about activities outside of your home? e. Are there house rules? f. Can you come and go as you please?			
44. Do you share a bedroom? a. Did you choose your roommate? b. Do you want to continue sharing a bedroom with your roommate? c. Do you know how to request a change if you do not like living with a particular person? d. Can you decorate your room?		Interview and with whom (Resident, family, guardian)	
45. Do you choose your schedule, when you get to take a shower, eat, wake/sleep, go out in the community, etc.? a. Do you choose what you eat? b. Are schedules varied from others in the setting, is there a curfew, requirement for a scheduled return or are there house rules?		Interview and with whom (Resident, family, guardian)	
46. Do you have access to your money?		Interview and with whom (Resident, family, guardian)	
47. Are you offered choices, do staff ask what you would like to do? a. Can you make decisions? b. Do you feel comfortable when asking for things? c. Do you know how to make requests if you need anything?		Interview and with whom (Resident, family, guardian)	
48. Did you choose your doctors, where to shop, pharmacy, bank, church to attend, where to eat, etc.?		Interview and with whom (Resident, family, guardian)	
49. Do you have access to a phone, television, radio?		Interview and with whom (Resident, family, guardian)	

Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
50. Are you happy with the help/services you get? a. Do you know who to go to if you are not happy with something? b. Do you like it here?		Interview and with whom (Resident, family, guardian)	
51. When you want to be alone, are you able to be alone?		Interview and with whom (Resident, family, guardian)	
52. Note how individuals greet and chat with staff. a. Does staff talk within earshot of residents? b. Does the staff address the individuals as sweetie or hon?		Observation	

Figure 6 Narrative Box for Additional Notes or Observations

Additional Notes or Observations

Figure 7 Completion Information

Date Evidence Package to send to State:	Date Posted:
Setting Summary Completed:	Date:
Setting Summary Posted:	Date
Completed by:	Date

Traditional IID.DD Waiver HCBS Setting Assessment

INITIAL Home and Community Based Services (HCBS) WAIVER SETTING REVIEW Developmental Disabilities Division

Introduction: This initial review is the first step in determining a waiver setting's compliance with the HCBS Final Rule. It is essential that providers engage the Regional DDPA and DD Division early in the planning process to avoid any potential conflicts with the Final Rule. The focus is on the setting's current physical characteristics and the location contributing to community integration and people's rights. This review will identify any potential for heightened scrutiny and/or characteristics that may be potentially institutional and/or isolating in nature. All settings must also comply with the Licensing Administrative Code.

Instructions: The provider is responsible to notify the Day and Residential Services Administrator of any new provider-owned residential setting, facility-based Day Habilitation or facility based Prevocational setting prior to the setting being initiated, built or purchased. The DD Division should be involved throughout the planning stages of the setting to ensure the setting will comply with the HCBS Final Rule, such as physical location and design of the setting. A complete review would need to be conducted before the setting could be licensed or a budget developed for the setting.

The document [CMS Home and Community Based Settings Final Rule Requirements](#) should be utilized as a tool to ensure initial compliance with new settings. Please refer to <http://www.nd.gov/dhs/services/disabilities/docs/2015-cms-requirements-for-hcbs.pdf> for additional information.

The Regional DDPA will work with the provider to ensure that the Day and Residential Services Administrator is aware of the proposed new setting. This review will be conducted by the DDPA in conjunction with the provider. The Day and Residential Services Administrator will involve the Quality Assurance Administrator in the review process. The Day and Residential Services Administrator will work with the DDPA on the timeline for completing the review. The completed review will be turned into the Day and Residential Services Administrator.

If there are any further questions or concerns, the DD Division will be in contact with the DDPA and/or Provider. The final copy of the review will be provided to the DDPA and Provider after review by the DD Division. All final questions and concerns will need to be followed up and resolved before final approval of the setting.

Table 2 Physical Characteristics Assessment Questions

Physical Characteristics
1. Describe the specific location in the community and how it is physically located among other private residences and/or retail businesses.
2. Describe the physical/environmental design of setting. (Include how the design may offer a homelike atmosphere; areas do not resemble an institution; same physical characteristics as a setting of those not receiving services; physical arrangements of the setting, etc.).
3. Describe how the setting design provides for full access to common areas and there are no predetermined restrictions/physical barriers (e.g. access to kitchen, laundry room, community areas, break rooms; people will be able to move freely around all areas of the setting; setting is accommodating,; rooms are not set up with barriers or locked doors; setting is not surrounded by high walls/fence, have closed/locked areas, etc.).
4. Describe how the setting design provides for individual's rights of privacy, dignity, and respect. (do people share or have or have own bedroom, telephone jacks throughout the home, are cameras present, break areas, private space for personal cares/medications, etc.).

Table 3 Physical Location and Integration Assessment Questions

Physical Location and Integration	Yes/No	If <u>Yes</u>, provide further information or evidence for consideration to support compliance with the HCBS requirements.
5. Is the setting located in a building that is also a public or privately-operated facility that provides inpatient institutional treatment (Nursing Facility, Institution for Mental Disease, ICF/IID, hospital).		
6. Is the setting in a building on the grounds of, or immediately adjacent to, a public institution (which is typically owned/operated by state, county, etc.).		

Physical Location and Integration	Yes/No	If <u>Yes</u>, provide further information or evidence for consideration to support compliance with the HCBS requirements.
7. Is the setting located on the same street as other homes or buildings that are owned or operated by the provider or another provider. Per NDAC 75-04-01-28(4) group homes cannot be located within 600 feet of an existing home or day program.		<i>If yes, address if/how staff and programing will be shared among the locations.</i>
8. Will the setting offer several onsite services (e.g. day supports, residential supports, congregational services, professional therapies, medical services, etc. which are all brought into the setting in a manner that prevents people from receiving these services that are typically in the community).		
9. Is the setting primarily for people with disabilities.		<i>If yes, provide information toward the setting does not prohibit people from being integrated and participating in the community (e.g. frequent community interaction).</i>

Table 4 Provider-Owned Residential Tenancy Assessment Questions

Answer for Provider-Owned or Controlled Residential Setting Only; Tenancy	Yes/No	If NO, provide further information
10. Will the individual(s) have a lease that at a minimum has the same responsibilities and protections from eviction that tenants have under North Dakota landlord tenant laws.		
11. Will there be lockable bedroom doors available (unless otherwise identified by the team and documented in the plan).		

Table 5 DD Reviewer Information

Do not write below, for completion by DD Division
Date Reviewed by DD Division:
Reviewer Name:

Comments:

Home and Community Based (HCB) Setting On-Site Visit Review for Heightened Scrutiny Settings

IID/DD Waiver

Figure 1 On-Site Address Information

Address of Setting:	Date of on-site visit:
Individuals in Setting reviewed:	Total Number of Individuals in Setting:
Waiver Service provided:	Provider of Service:
Visit Completed by:	Visit Completed by:

Figure 2 On-Site Visit Instructions

<p>On-site visit instructions:</p> <p>This document contains the information to be gathered for the on-site visits towards determination of compliance with the CMS Final Rule for HCB settings. The Final Rule establishes requirements for the qualities of settings that are eligible for reimbursement for the Medicaid home and community-based services (HCBS) provided under sections 1915 (c), 1915 (i) and 1915 (k). In the Final Rule, CMS defines home and community-based settings by the nature and quality of individuals’ experiences.</p> <p>The questions are based on criterion provided in the CMS toolkit of exploratory questions. The observations and questions are not limited to what is listed.</p> <p>The on-site visit process is based on observations, discussions, and plan review. This document is a tool and the information is organized to provide guidance in determining if characteristics are present. To assist in the determination, other necessary inquires, provider policy, or material review will occur as needed.</p> <p>Please provide information to support or not support the findings based on the observations, discussions (both individual and provider), and plan review. Note any other sources of verification utilized (e.g. policy and procedures). Yes/no answers are not sufficient.</p>
--

Section 3: Community Integration-Setting Access Observation and Discussion with Individuals and/or Staff

Table 2 Community Integration and Access Assessment Questions

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
<p>5. Do individuals have full access to areas of the setting such as the kitchen, laundry room, community areas, break room, etc.</p> <ul style="list-style-type: none"> a. Individuals are able to move freely about inside and outside, able to come and go any time and leave without a check in/check out process? b. Is there a curfew or scheduled time to return? c. If there are any locked areas or restrictions, please describe. (Modifications or restrictions must be addressed in the plan). d. Are there any gates or barriers? Is there any place an individual cannot go with in the setting? Are certain doors or cupboard locked? 		
<p>6. Is the setting physically accessible and there are no obstructions limiting the individual's mobility?</p> <ul style="list-style-type: none"> a. Are appliances accessible to individuals (e.g. front-loading washer/dryer for a person using a wheelchair)? b. Furniture is able to be used comfortably and at a convenient height and location? c. Are there environmental adaptations present if needed (e.g. grab bars, ramps, etc.)? 		
<p>7. Do individuals have access to keys or a coded lock to their home?</p>		
<p>8. Do individuals have access to public transportation or means to get to community activities (location of bus stops, taxis</p>		

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
<p>available, schedules/numbers posted, transportation resources, etc.)?</p> <ul style="list-style-type: none"> a. Do individuals know how to access transportation or receive training if needed? b. How do individuals get to where they want to go? 		
<p>9. The setting provides opportunities for regular meaningful, age-appropriate, non-work activities in integrated community settings as desired by the person?</p> <ul style="list-style-type: none"> a. Are in house services (e.g. beautician, church, etc.) provided in the setting? If available, provide any activity logs, schedules, etc. b. If in house services are used, is the individual afforded activities in the community as an option to choose from? 		
<p>10. Individuals regularly access the community (shopping, church, appointments, recreation, etc.)?</p> <ul style="list-style-type: none"> a. How are individuals aware of activities in the community? b. What activities are individuals involved in, what do individuals like to do, where do individuals go in the community? c. Do individuals' shop, attend religious services, schedule appointments, have lunch with family and friends, etc. in the community? d. Are the activities as often as they like? 		
<p>11. What do individuals do for work or day support activities?</p> <ul style="list-style-type: none"> a. Were they provided the opportunity or interested in competitive employment, community volunteering, etc.? 		

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
b. Do individuals participate regularly in integrated community settings?		
12. If individuals work, did they have the opportunity to negotiate work schedule, break and lunch times?		
13. Service and setting choice: Describe the options available and opportunities to visit other settings. a. Did individuals choose where they live/work? b. Do they like where they live/work?		

Section 4: Rights of Privacy, Dignity and Respect, Freedom from Coercion and Restraint. Observation and Discussion with Individuals and/or Staff

Table 3 Individual Rights and Freedom from Coercion and Restraint Assessment Questions

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
14. Do the individuals share a bedroom? a. Did they choose their roommate and want to continue sharing with their roommate? b. Do individuals know how to request a change in roommates? c. Do couples share or not share a room by choice?		
15. Are there any schedules posted which are confidential (OT, PT, med times, special diets, etc.)?		
16. Dignity and privacy is respected and present (personal cares, health/medical information, visits, clothing appropriate/individual preference, hygiene maintained, knocking on doors, private phone calls, opening mail, etc.)? a. Do individuals have privacy in the bedroom and bathroom?		

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
b. When you want to be alone, are you able to be alone? c. Are there cameras/video monitoring in the setting?		
17. Staff communicates and interacts with individuals with dignity and respect (natural conversations, greetings, explaining what doing during cares, etc.)? a. Individuals and staff greet and converse with each other? b. Preferred names are used? c. Is written and oral communication conducted in a language that the individual understands?		
18. Are individuals happy with the help/services you get? a. Do they know who to go to if they are not happy with something? b. Does the individual express satisfaction with the provider and know how to make a request for a new provider if needed?		

Section 5: Individual Initiative, Autonomy, Choices, Visitors, and Access to Food Observation and Discussion with Individuals and/or Staff

Table 4 Individual Autonomy, Choices and Food Access Assessment Questions

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
19. Does the setting reflect individual interests, hobbies, personal items, personal choice of furniture, arrangement of furniture, etc.? a. Individuals decorate both their sleeping and living areas? b. What are the individual's likes and interests?		

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
20. Does the setting reflect the individual's needs and preferences and accessible based on any accommodations if needed?		
21. Do individuals have access to personal items (TV, radio, phone, leisure activities of interest, etc.)?		
22. Can Individuals make private phone calls, have a cell phone, phone jack in room, etc.?		
<p>23. Do individuals have access to food anytime (snacks accessible, request alternative meals)?</p> <p>a. Are meals at a time and place of choosing (e.g. eat alone or with others, no assigned seating)?</p> <p>b. Individuals participate in meal preparations, etc.)?</p> <p>c. Can individuals choose what, when, and where they would like to have meals?</p>		
<p>24. Individuals have visitors of their choice?</p> <p>a. Are there visiting hours, certain visiting locations, visiting hours posted?</p> <p>b. There is privacy for visitors?</p> <p>c. Visitors are present?</p>		
25. Do individuals choose their schedule, when they take a shower, eat, wake/sleep, go out in the community, etc.?		
26. Do individuals have schedules varied from others in the setting, is there a curfew or requirement for a scheduled return, are there house rules?		
<p>27. Are individuals offered choices, do staff ask what they would like to do, make decisions?</p> <p>a. Do staff ask individuals about their needs and preferences?</p>		

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
b. Is individual choice facilitated in a manner that leave the person feeling empowered to make decisions? c. Are requests for services and supports accommodated as opposed to ignored or denied?		
28. Are there provider policies and practices that limit individual choice?		
29. Are individuals prohibited from engaging in legal activities?		
30. Did individuals choose their doctors, where to shop, pharmacy, bank, church to attend, where to eat, etc.?		
31. Do individuals have access to their money? a. Do individuals have a checking or savings account or other means to control their funds? b. How is it made clear that individuals are not required to sign over their paychecks to the provider?		

Section 6: Person Centered Service Plan Observation and Discussion with Individuals and/or Staff

Table 5 Person-Centered Service Plan Assessment Questions

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
32. Are individuals planning meetings held at times and a location that are convenient to the person receiving services and/or their legal decision maker? a. Are they aware of how to schedule or request a meeting? b. Can the individual explain the process to develop or update their plan? c. Was the individual present at their last planning meeting?		

Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
33. Do individuals have a copy of their plan if they want one? a. Do individuals know what is in their plan? b. Is it understandable to individuals or written in an alternative format if requested?		
34. Does the plan reflect and correspond to the services and individual needs and preferences observed during the on-site visit?		
35. Does the plan adequately document the individual's options and choice in services and setting per HCBS requirements?		
36. Does the plan adequately document and justify any restrictions or modifications per HCBS requirements? (assessed need and condition related to restriction, positive supports attempted, less intrusive methods tried, data collection review; time limits; informed consent; no harm assurance)		

Figure 4 Narrative Box for Additional Notes

Additional Notes or Observations

Figure 5 Additional Review and Verification

Additional DD Division Review and Verification
Heightened Scrutiny needed to do: <input type="checkbox"/> A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.

- A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution.
- Any other setting that has the effect of isolating individuals from the broader community.

Does the plan reflect the findings with in the review?

Does the plan reflect HCBS requirements?

Comments: