

South Dakota Home and Community Based Services Overview

South Dakota has four Medicaid 1915(c) waivers operated by the South Dakota Department of Human Services under oversight by the South Dakota Department of Social Services. Each Waiver targets a specific population and provides a menu of services to meet the needs of the target population:

Home & Community-Based Options and Person-Centered Experience (HOPE) Waiver:

The HOPE Waiver is operated by the Division of Long Term Services and Supports in the Department of Human Services and provides adult day services, in-home respite care, homemaker, in-home nursing services, personal care, specialized medical equipment, specialized medical supplies, adult companion services, assisted living, chore services, community living home, community transition coordination, community transition supports, emergency response system (ERS), environmental accessibility adaptations, meals, nutritional supplements, residential respite care, and structured family caregiving for individuals over age 65 and individuals with physical and other disabilities ages 18-64.

Assistive Daily Living Services (ADLS) Waiver:

The ADLS Waiver is operated by the Division of Rehabilitative Services in the Department of Human Services and provides personal attendant care, respite, , consumer preparation services, environmental accessibility adaptations, in home nursing, personal emergency response (PERS), specialized medical equipment and supplies, and vehicle modification services for aged individuals over age 65 and individuals with physical disabilities ages 18 to 64 years.

Community, Hope, Opportunity, Independence, Careers, Empowerment, Success (CHOICES) Waiver:

CHOICES is operated by the Division of Developmental Disabilities in the Department of Human Services and provides career exploration, case management, day services, residential habilitation, supported employment, medical equipment and drugs, nursing, other medically related services - speech, hearing and language services for individuals with intellectual disabilities and developmental disabilities.

Family Support (FS) 360:

Family Support 360 is operated by the Division of Developmental Disabilities in the Department of Human Services and provides personal care 1, respite, support coordination, supported employment, personal care 2, companion care, environmental accessibility adaptations, nutritional supplements, specialized medical adaptive equipment and supplies, and vehicle modification services for individuals with intellectual disabilities and individuals with developmental disabilities.

Home and Community Based Services Statewide Transition Plan:

On January 16, 2014, the Centers for Medicare and Medicaid Services (CMS) released a final rule regarding Home and Community-Based Services (HCBS) Setting requirements. The final rule establishes an outcome-oriented definition of home and community-based settings, as opposed to previous definitions that were based solely on a setting's location, geography or physical characteristics. The intent of this is to ensure individuals in Medicaid's HCBS waiver programs receive services and supports in the most integrated setting and have full access to the benefits of community living.

The Departments of Social Services and Human Services worked collaboratively to review and implement the final rule. Per the requirements of the final rule, South Dakota Medicaid developed a

transition plan for HCBS settings in South Dakota. South Dakota's original Home and Community Based Statewide Transition Plan was submitted to CMS on March 12, 2015. A revised Transition Plan was submitted to CMS on April 6, 2016, and CMS granted initial approval of the Transition Plan on June 2, 2017. CMS granted final approval of the Transition Plan on August 8, 2019. The Departments have worked closely with providers to ensure a smooth transition and ongoing compliance with the new rules.

Heightened Scrutiny Settings:

South Dakota has 25 settings submitted for heightened scrutiny all of which fall under category 1. The summary of the heightened scrutiny process, next steps to ensure compliance by March 17, 2023, and a list of South Dakota's heightened scrutiny settings were submitted to CMS December 21, 2022 after public notice was completed. Public comment period was open from October 11, 2022 – November 10, 2022.

Corrective Action Plan Status:

In instances where states that have submitted presumptively institutional settings to CMS for a heightened scrutiny review have yet to receive final adjudication of those settings to authorize additional opportunities to complete discussions with CMS states are allowed to submit a CAP. South Dakota submitted a CAP to CMS on November 28, 2022. The CAP states "The State of South Dakota anticipates that all settings, including those that are heightened scrutiny, will be compliant with all regulatory setting criteria by March 17, 2023; however, South Dakota has not received final adjudication of the presumptively institutional settings that have been submitted to CMS for a heightened scrutiny review. Per CMS' request, South Dakota is requesting a Corrective Action Plan (CAP) to extend the transition deadline to allow for final adjudication of presumptively institutional settings that have been submitted to CMS for a heightened scrutiny review."

South Dakota State and Provider Compliance:

The following is information requested by CMS to document state and provider compliance with the regulatory criteria:

Description of how the state's oversight systems have been modified to embed the regulatory criteria into ongoing operations:

HOPE Waiver:

New assisted living, community living home, and adult day center providers must demonstrate compliance with the HCBS Settings Rule prior to Medicaid enrollment. All providers, including those that are newly enrolling are required to ensure HOPE Waiver participants have access to community activities, physical accessibility within the setting, and optimized autonomy and independence. The "HCBS Settings Final Rule Evidence and Onsite Review Assessment" is completed for each new assisted living, community living home and adult day center prior to approval as a waiver setting to ensure compliance with the Rule. Additionally, the State conducts onsite reviews of assisted living, community living home and adult day centers every three years, or more frequently if deemed necessary based on participant surveys and other stakeholder feedback to ensure ongoing compliance with the Rule.

HOPE Waiver participant surveys are completed annually to ensure consumer feedback aligns with compliance with Rule, including with those that reside in privately owned homes. Although the State presumes that privately owned homes or rented apartments of people living with family members,

friends, or roommates meet the home and community-based settings criteria, the participant survey allows the State to monitor ongoing compliance with the regulatory criteria for this category of settings. The Division of Long-Term Services and Supports (LTSS) has incorporated the requirements of the Rule into the onsite provider reviews and the annual person-centered service plan process. Operation of HCBS in South Dakota is shared between the Department of Social Services and the Department of Human Services.

Each assisted living, community living home and adult day provider signs a contract with the Department of Human Services requiring the provider to attest to compliance with the Rule. Service Specific Provider Provisions ensure the providers adhere to the requirements of the signed contract.

ADLS Waiver:

Services in the ADLS waiver are provided only to individuals living in their own home or the family home and are intended to maximize independence and safety and support full community access and integration. Individuals do not live in congregated settings. The Department of Human Services and Department of Social services presume all settings in the 1915(c) ADLS waiver to meet the requirements of the federal regulation. At each waiver renewal, the ADLS waiver will evaluate services and service providers to determine if any services may be subject to the settings requirements in the federal regulations.

ADLS will monitor ongoing compliance by adding additional questions into their current consumer survey. In addition, ongoing compliance will be monitored by the service coordinators meeting with recipients on an annual basis in their home to review areas of health, safety and welfare.

Family Support 360

Services in the Family Support 360 Waiver are provided only to individuals who are children living with natural, adopted, step-families or relatives who act in a parental capacity; adults living independently in the community; or adults living with a family member, legal guardian, or advocate. The services are intended to maximize independence and safety and supports community access and integration. Individuals do not reside in congregate settings. Participants in this waiver self-direct their services and supports and live in their own home or the home of a family member. South Dakota's systemic assessment found the Family Support 360 waiver was fully compliant with the HCBS settings rule. At each waiver renewal, the Family Support 360 waiver will evaluate services and service providers to determine if any services may be subject to the settings requirements in the federal regulations.

Family Support 360 utilizes NCI surveys to measure important elements of person-centered planning, outcomes, and satisfaction in domains such as: self-determination, service coordination and access, relationships and community inclusion, rights, choices, and decision-making, employment status and goals, and health, welfare, and safety. This includes adult in-person surveys and family surveys. Family Support 360 utilizes the data in these surveys for ongoing monitoring. Additionally, Family Support Coordinators are responsible for conducting onsite home visits annually where the participant is living to ensure that there are no concerns regarding the health, safety, and rights of the participant. Family Support monitors participant rights during ongoing monthly file reviews.

CHOICES:

DDD's compliance monitoring system, also known as SMART, has been updated to reflect the requirements outlined in the HCBS Settings Rule. DDD reviews all provider policies to ensure that they are compliant with requirements. Additionally, DDD enters all settings reviews into the SMART system. The HCBS Settings Rule requirements related to rights modifications have been incorporated into

monthly participant file reviews to ensure that all modifications are compliant with the HCBS Settings Rule. DDD has provided targeted technical assistance to providers to ensure that they understand the requirements of the rule. Additionally, DDD has created materials to help participants and guardians understand the rights afforded to them as a result of the HCBS Settings Rule.

Description of how the state assesses providers for initial compliance and conducts ongoing monitoring or continued compliance:

HOPE Waiver:

New assisted living, community living home, and adult day center providers must demonstrate compliance with the HCBS Settings Rule prior to Medicaid enrollment. All providers, including those that are newly enrolling, are required to ensure waiver participants access community activities. The “HCBS Settings Final Rule Evidence and Onsite Review Assessment” is completed for each new assisted living, community living home and adult day center prior to approval as a waiver setting to ensure compliance with the Rule. Additionally, the State conducts onsite reviews of assisted living, community living home and adult day centers every three years, or more frequently if deemed necessary based on participant surveys and/or other stakeholder feedback to ensure ongoing compliance with the Rule. When non-compliance is identified in a setting, LTSS will develop recommendations for the provider and work individually with the provider to identify remedial actions.

In 2019, South Dakota updated the assessment tool and has utilized this tool to review all HCBS settings to ensure and monitor compliance with the HCBS Settings Final Rule. South Dakota’s “HCBS Setting Final Rule Evidence and Onsite Review Assessment” is designed to analyze each setting’s policy and procedure and to corroborate provider’s responses to the self-assessment. Five integral traits of a home and community-based setting are assessed during the evidence review process: Physical Location, Community Integration, Resident Rights, Living Arrangement, and Policy Implementation and Enforcement. A setting is determined to be compliant with the HCBS Settings Final Rule when sufficient evidence has been reviewed and determined compliant with all objectives outlined the “HCBS Settings Final Rule Evidence and Onsite Review Assessment”.

ADLS Waiver:

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ADLS will monitor ongoing compliance by adding additional questions into their current consumer survey. In addition, ongoing compliance will be monitored by the service coordinators meeting with recipients on an annual basis in their home to review areas of health, safety and welfare.

Family Support 360

Services in the Family Support 360 Waiver are provided only to individuals who are children living with natural, adopted, step-families or relatives who act in a parental capacity; adults living independently in the community; or adults living with a family member, legal guardian, or advocate. The services are intended to maximize independence and safety and supports community access and integration. Individuals do not reside in congregate settings. Participants in this waiver self-direct their services and supports and live in their own home or the home of a family member. South Dakota’s systemic

assessment found the Family Support 360 waiver was fully compliant with the HCBS settings rule. At each waiver renewal, the Family Support 360 waiver will evaluate services and service providers to determine if any services may be subject to the settings requirements in the federal regulations.

Family Support 360 utilizes NCI surveys to measure important elements of person-centered planning, outcomes, and satisfaction in domains such as: self-determination, service coordination and access, relationships and community inclusion, rights, choices, and decision-making, employment status and goals, and health, welfare, and safety. This includes adult in-person surveys and family surveys. Family Support 360 utilizes the data in these surveys for ongoing monitoring. Additionally, Family Support Coordinators are responsible for conducting onsite home visits annually where the participant is living to ensure that there are no concerns regarding the health, safety, and rights of the participant. Family Support monitors participant rights during ongoing monthly file reviews.

CHOICES:

All new HCB Settings are required to be fully compliant with the HCBS Rule prior to any services being delivered in the setting. DDD providers are required to complete a request form to establish services at a new setting. This form includes a provider self-assessment. After the completion of the provider self-assessment, DDD staff conduct an onsite visit to validate compliance. The setting must be validated to be fully compliant with the HCBS Settings Rule prior to the delivery of any services.

DDD reviews a representative sample of all provider settings during provider biennial provider certification visits. If concerns regarding HCBS Settings Compliance are identified, either through ongoing provider monitoring or concerns brought forward from individuals and families, DDD will conduct an onsite visit to determine if the setting is in compliance. Any setting identified to not meet the HCBS Settings Rule requirements may be ineligible for HCBS funding.

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Description of how a beneficiary's recourse to notify the state of setting non-compliance and how the state will address beneficiary feedback:

HOPE Waiver:

There are multiple opportunities for beneficiaries to notify the state of setting non-compliance including: contacting his/her service coordinator, responding to annual quality of life survey, providing feedback to reviewer during onsite reviews and providing feedback online.

LTSS staff provide case management services to all waiver beneficiaries. The beneficiary has access to his/her LTSS Service Coordinator during normal business hours and can leave a voicemail or e-mail any time to report setting non-compliance. Additionally, the LTSS Service Coordinator meets with the consumer in his/her home twice per year, at the six-month review and again at the annual review. The LTSS Service Coordinator also communicates with the consumer through quarterly contacts inquiring about services and whether there is a need for changes, questions, or concerns regarding services. Any complaints of non-compliance during these contacts are followed up as a complaint and resolved within 30 days. The beneficiary is also given the option for the LTSS Service Coordinator to make a referral to

the Ombudsman Program on his/her behalf.

During the 6-month review each year, surveys are completed to ensure ongoing compliance with the Rule, including surveys with beneficiaries residing in privately owned homes. Patterns of non-compliance are addressed through follow up with the provider, or with an onsite visit.

The Department of Human Services, Long Term Services and Supports has a feedback form on the DHS website that beneficiaries can complete if they feel their rights have been violated, or to provide other positive or negative feedback regarding services. Long Term Services and Supports investigates and evaluates all complaints received to determine necessary corrective actions by the provider. Finally, beneficiaries also have the opportunity to address any concerns of non-compliance while the onsite review is being completed.

ADLS Waiver:

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CHOICES and FS360:

Services in the Family Support 360 Waiver are provided only to individuals who are children living with natural, adopted, step-families or relatives who act in a parental capacity; adults living independently in the community; or adults living with a family member, legal guardian, or advocate. The services are intended to maximize independence and safety and supports community access and integration. Individuals do not reside in congregate settings. Participants in this waiver self-direct their services and supports and live in their own home or the home of a family member. South Dakota's systemic assessment found the Family Support 360 waiver was fully compliant with the HCBS settings rule. At each waiver renewal, the Family Support 360 waiver will evaluate services and service providers to determine if any services may be subject to the settings requirements in the federal regulations.

As required through Administrative Rule of South Dakota, all participants must be provided notice and training on their rights, including the rights afforded to them through the HCBS Settings Rule, upon admittance to the provider and annually thereafter. Additionally, each provider must have a written procedure for grievances approved by DDD. This procedure must ensure that the participant is provided

with information on how to contact DDD regarding a grievance. A participant may register a grievance directly to the DHS/DDD as the state agency responsible for the operation of the grievance/complaint system at any time. If a grievance is registered directly with the state, several state agencies, including the DHS Long-Term Services and Supports, the DSS Child Protection Services, and the SD Medicaid Fraud Control Unit within the SD Attorney General's Office work collaboratively with the DHS/DDD whenever the need arises. All participants who file a grievance are afforded due process pursuant to South Dakota Codified Law Chapter 1-26. A DHS/DDD Program Specialist shall contact the complainant within one (1) working day of receipt of all grievances/complaints to acknowledge receipt of the complaint/grievance. The DHS/DDD Program Specialist will gather information necessary to review the complaint/grievance. Information sources include but are not limited to qualified provider policies, qualified provider staff, people supported, guardians, individual files, etc. If the grievance/complaint involves medical or health issues the review should include an evaluation of a DHS/DDD Program Specialist who is also a registered nurse. If the complaint/grievance involves an allegation of ANE or the immediate jeopardy of the health and safety of the participant, the DHS/DDD Program Specialist should immediately notify a DHS/DDD supervisor and take reasonable actions to ensure the health and safety of the participant. The DHS/DDD Program Specialist should utilize available/applicable resources such as DHS/DDD management and nursing staff, state/federal laws, statements from parties involved, the implementation of the investigation process, etc. to make a determination on the complaint. The DHS/DDD Program Specialist will summarize the complaint, determination and any follow-up actions/resolution regarding the complaint and provide to a DHS/DDD supervisor for approval. This information will be provided to the complainant within 14 working days of the receipt of the complaint. DDD provides information regarding the HCBS Settings Rule to individuals and families on our website, including information on how to contact DDD directly with any concerns. When DDD becomes aware of any concerns regarding compliance with the HBCS Settings Rule, staff will conduct an onsite visit to determine if the setting is in compliance.