



**North Dakota Revised
Statewide Transition Plan
For HCBS Settings
Under 1915(c) Waivers
Revised to address**

**Center for Medicare and Medicaid Services
(CMS) requirements**

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

Section1: Purpose

The Center for Medicare and Medicaid Services (CMS) issued a final rule that became effective on March 17, 2014 and requires 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 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) has 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.

The federal citation for the new rule is 42 CFR 441.301(c) (4)-(5), and more information on the rules can be found on the CMS website at:

<https://www.medicaid.gov/medicaid/hcbs/guidance/settings/index.html>

North Dakota submitted an initial Statewide Transition Plan that included public comment to CMS on November 28, 2014. CMS has 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 30 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 can be granted final approval. Those revisions are included in this document.

Please note: All revisions to the 11/01/2016 version is indicated in highlighted blue font.

Changes made at the request of CMS are highlighted in green.

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 maybe less than one year, between the ages of 0 through 21, 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 3-18 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 & 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 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 100% return response from the Provider Survey. To ensure a 100% Provider survey return, the survey completion was deemed mandatory and 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 meet home and community-based (HCB) requirements. For example, the survey asked if recipients are able to access the community as they choose, 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 100% 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, provide clarification, and/or provide 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 is utilizing 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 these 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 100% 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 are able to access the community as they choose, 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, 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 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 mitigate 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 to isolate individuals from the broader community. To assist in this effort from January 2018 to May 2018 Department staff conducted additional conference calls and or site visits with all 14 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:

- 1) Settings in a publicly or privately-operated facility that provides inpatient institutional treatment;
- 2) Settings in a building on the grounds of, adjacent to, a public institution;
- 3) 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 in to their daily practice, trained necessary staff, 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 and /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:

- a) Has successfully refuted the presumptively and now fully complies;
- b) With additional changes will fully comply; or
- c) Does not/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 30 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 30 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 31st, 2021.** All client transition plans must be completed no later than March 17, 2022.

The case/ 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/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/ 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 & September 2017, May, August, & 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 and or site visits with all 14 adult residential service providers to provide guidance on areas that need to be changed in order 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 State Wide 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, North Dakota Administrative Code, 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:

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

Settings Assessed through the 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		3		
Adult Foster Care IID/DD waiver & HCBS Medicaid waiver	12	0	12	0	0
*Day Supports (4.1.18 Waiver Amendment name change to Day Habilitation) IID/DD waiver	157	150	0	6	1
*Extended Services (4.1.18 Waiver Amendment removed this service and replaced with Prevocational Services, Small Group Employment Support, and Individual Employment Support) IID/DD waiver	154	152	2	0	0
Family Care Option IID/DD waiver	7	7	0	0	0
*Residential Habilitation- <ul style="list-style-type: none"> ○ Congregate Care ○ Family Care Option III (FCOIII) ○ Individualized Supported Living Arrangement (ISLA) 	3 11 488	0 7 438	3 3 47	0 0 0	0 1 3

<ul style="list-style-type: none"> ○ Minimally Supervised Living Arrangement (MSLA) ○ Supported Living Arrangement (SLA) ○ Transitional Community Living Facility (TCLF) <p>(Effective 4.1.18, the service remained but the subcategories were removed and Independent Habilitation added) IID/DD waiver</p>	50	27	22	0	1
	38	37	1	0	0
	25	7	18	0	0
Adult Residential Services HCBS Medicaid waiver	14	0	13	0	1

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

*These settings are not new settings, existed previously, and were included in the assessment process; only a name change occurred. Table 6 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

Table 1: Medicaid Waiver for Home and Community Based Services (HCBS Waiver- Serves Aged & Disabled)

Service	Service Description
<p><i>Settings for the services listed below 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.</i></p>	
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

Service	Service Description
Respite Care	Short-term relief provided to full-time caregivers. Respite care is limited to 52.5 hours of in-home respite.
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
<p><i>Settings that are not provided within the waiver participant's private residence but are presumed to fully comply. Institutional Respite complies per 42 CFR 441.301(c)(4)-(5). 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.</i></p>	
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.
<p><i>Services 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.</i></p>	
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
<p><i>Services that do not / cannot comply with the regulatory requirements because they are provided in a hospital or nursing facility.</i></p>	
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.
<p><i>The following services 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.</i></p>	

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 10 and 36 individuals

Table 2: Autism Spectrum Disorder Waiver

Service	Service Description
<p><i>Settings for the services listed below 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.</i></p>	
Assistive Technology	Equipment and supplies to help people live more independently
Respite	Short-term relief provided to full-time caregivers. Respite is limited to 20, 40 or 60 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

Table 3: **Children's Hospice Waiver**

Service	Service Description
<i>Settings for the services listed below 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.</i>	
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 76 hours per year.
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.
<i>Settings that are not provided within the waiver participant's private residence but are presumed to fully comply.</i>	
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.

Table 4: **Medically Fragile Waiver**

Service	Service Description
<i>Settings for the services listed below 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.</i>	
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 51% 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
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
<i>Settings that are not provided within the waiver participant's private residence but are presumed to fully comply.</i>	
Institutional Respite	Provide temporary relief to the recipient's legally responsible caregiver (complies with the setting rules per 42 CFR 441.301(c) (4)-(5)). Institutional respite is limited to two weeks per month.

Table 5: Technology Dependent Waiver

Service	Service Description
<p><i>Settings for the services listed below 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.</i></p>	
<p>Attendant Care Service</p>	<p>Hands-on supportive and medical care specific to a recipient who is ventilator dependent for a minimum of 20 hours per day. Attendant care services include nursing activities that have been delegated by the nurse manager.</p>
<p>Case Management</p>	<p>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</p>
<p>Non-medical Transportation</p>	<p>Provides a ride to essential services</p>
<p>Specialized Equipment and Supplies</p>	<p>Equipment and supplies to help people live more independently</p>

Table 6: **Traditional IID/DD Waiver**

Service	Service Description
<p><i>Settings for the services listed below 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.</i></p>	
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
Transportation Costs for the Financially Responsible Caregiver (Effective 1.1.17 removed this service based on guidance received from CMS)	Reimburses 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

Service	Service Description
<p><i>Settings that are not provided within the waiver participant's private residence but are presumed to fully comply.</i></p>	
<p>Family Care Option</p>	<p>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 21 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.</p>
<p><i>Certain settings within these services 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</i></p>	
<p>Adult Foster Care</p>	<p>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</p>
<p>Extended Services (Effective 4.1.18, removed this service and replaced with Prevocational Services, Small Group Employment Support, and Individual Employment Support)</p>	<p>Definition prior to 4.1.18: On- or off-the-job employment-related support for individuals needing intervention to assist them in maintaining employment, including job development, or replacement in the event of job loss.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Note: Settings now in Prevocational Services, Small Group Employment Support, and Individual Employment Support are not new settings and existed previously, only a name change occurred.</p>
<p>Residential Habilitation (Effective 4.1.18, the service remained but the subcategories were removed, and Independent</p>	<p>Definition prior to 4.1.18: Includes the following services: Congregate Care, Minimally Supervised Living Arrangements, Transitional Community Living Facility, Supported Living Arrangement, Individualized Supported Living Arrangements, and Family Care Option III; services are provided in licensed/unlicensed community residential settings that include group homes and homes leased, owned or controlled by individuals.</p>

Service	Service Description
Habilitation added.)	<p>Independent Habilitation: formalized training and staff supports provided to participants on a regular, but not on a daily basis for fewer than 24-hours per day.</p> <p>Residential Habilitation: formalized training and supports provided to participants who require some level of ongoing daily support.</p> <p>Note: Settings now in either Residential Habilitation or Individual Habilitation are not new settings and existed previously, only a name change occurred.</p>
Day Supports (Effective 4.1.18 name change to Day Habilitation)	<p>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</p> <p>Note: Settings now in Day Habilitation are not new settings and existed previously, only a name change occurred.</p>
<p><i>Certain settings within these services 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)</i></p>	
Residential Habilitation	Service is described above
<p><i>Certain settings within these services do not / cannot comply with the regulatory requirements because they are in an institutional setting</i></p>	
Adult Day Health	Minimum of three hours per day of supervised care in a group or congregate setting
Day Supports	Service is described above

Section 3: Assessment Results, Proposed Remedial Strategies and Timelines

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

- Table 7 lists the settings that, with changes, will comply with HCBS requirements, and the remedial strategies that will be employed to bring the settings into compliance.
- Table 8 lists the settings that, Settings that have completed the Heightened Scrutiny Review and determined to have the qualities of HCBS.
- Table 9 Settings that are Presumably Not HCBS for Which the State is Submitting Justification to Refute Presumption.
- Table 10 lists the settings where no determination has been made.
- Table 11 lists the settings that do not/cannot meeting HCBS Requirements.

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Table 7: Settings that, With Changes, Will Comply with HCBS Requirements Overview

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p>Adult Foster Care (AFC) (HCBS waiver and Traditional IID/DD Waiver)</p>	<p>12 AFC Homes (No more than 4 residents per home)</p>	<p>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, access to visitor's day or night</p>	<p>The Department conducted training for licensing entities, case managers, and licensed AFC providers on settings requirements.</p>	<p>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 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.</p>	<p>Aug 2014</p>	<p>The Department kept a roster of attendees and dates of training to track attendance.</p>	<p>The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Foster Care Providers, Consumers, Advocacy Organizations</p>	<p>Licensing entity will conduct home visits required for licensure & re-licensure. Re-licensure occurs every two years. Licensing visits will include HCBS setting experience interviews with all AFC recipients.</p> <p>New rules will be incorporated into the AFC licensing requirements and will be applied to all new and renewed licenses.</p> <p>Case Managers will monitor recipient experience and setting requirements at face to face quarterly visits.</p>
	<p>16 Medicaid waiver Recipients are Receiving AFC Statewide</p>		<p>The Department required modified AFC house rules to be sent to the Department.</p>		<p>Jan 2015</p>	<p>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.</p>		
	<p>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.</p>		<p>Oct 2016</p>		<p>Modified rules and policy will be published on State website.</p>			

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
Adult Foster Care (AFC) (HCBS waiver and Traditional IID/DD Waiver) (Cont)	12 AFC Homes	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	The Department provided training and sample lease agreements that comply with ND law to AFC providers	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 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.	Jan 2015	The Department kept a roster of attendees and dates of training to track attendance.	The Department, DD Program Managers, HCBS Case Managers, Human Service Center licensing unit, Adult Foster Care Providers, Consumers, Advocacy Organizations	Lease agreements are required to be submitted as part of the requirements for new and renewed AFC licenses.
	16 Medicaid Waiver Recipients are Receiving AFC Statewide		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)		Jan 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.		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. Department staff will conduct additional training with AFC providers and licensing staff no later than Jan 2019

Table 7: Settings that, With Changes, Will Comply with HCBS Requirements Setting details

Address	Licensing Capacity	Total Number Residing in Setting	Areas where Remediation is Needed to Comply with Settings Rule	Remediation Strategies	Timeline When Remedial strategies were/ will be completed	Oversight and Continued Monitoring strategies
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	01//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	02/9/2015	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	01/13/2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent
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	01/20/2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent.

Address	Licensing Capacity	Total Number Residing in Setting	Areas where Remediation is Needed to Comply with Settings Rule	Remediation Strategies	Timeline When Remedial strategies were/ will be completed	Oversight and Continued Monitoring strategies
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	01/30/2015	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 anytime	08-11-2016 established lease & allowed access to guests 01/31/2019 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.
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	01-8-2015	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 where Remediation is Needed to Comply with Settings Rule	Remediation Strategies	Timeline When Remedial strategies were/ will be completed	Oversight and Continued Monitoring strategies
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	01-29-2015	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 anytime	Established Lease/legally enforceable agreement, allow consumer to manage finances, have access to food at anytime	01-29-2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent
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	01/20/2015 Established lease removed personal resource restrictions 01-31-2019 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 Neche 58265	1	1	Establish Lease/legally enforceable agreement, restriction on access to phone at any time, restriction on consumer schedule for meal time, 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	01/27/2015 Established lease agreement, removed restrictions on schedule and visitors 01/31/2019 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

Address	Licensing Capacity	Total Number Residing in Setting	Areas where Remediation is Needed to Comply with Settings Rule	Remediation Strategies	Timeline When Remedial strategies were/ will be completed	Oversight and Continued Monitoring strategies
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.	01/17/2015	Resident Experience Survey, Review Lease agreement and other legally enforceable agreements annually, Conduct additional training to AFC providers, Case Managers and Licensing Agent

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Table 7: Settings that, With Changes, Will Comply with HCBS Requirements

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p>Extended Services (Traditional IID/DD Waiver)</p> <p>(Effective 4.1.18 the 2 settings were categorized as Prevocational Services)</p>	<p>2 Settings With 15 individuals.</p> <p>The original number included 15 individuals. Two individuals no longer receive services in the setting. Bringing the current count to 13.</p>	<p>Changes are needed in regard to the experience of the recipient to allow more community interaction</p>	<p>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.</p> <p>The Department conducted statewide training for providers, Individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.</p> <p>The Department updated licensing, Administrative Code, Polices and manuals</p>	<p>Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients.</p> <p>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.</p>	<p>Sep 2015</p> <p>The DD Program Managers conducts site visits to assess compliance with community interaction during their face to face visits.</p>	<p>The Department kept a roster of attendees and dates of training to track attendance.</p> <p>The Department conducted an on-site review to conduct observations, meet with individuals, and assess that the identified steps continue to be implemented.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers, Guardians, Individuals</p>	<p>The DD Program Managers will monitor recipient community interactions during their face to face visits.</p> <p>New rules are incorporated into the licensing requirements and applied to all new and renewed licenses.</p> <p>As additional guidance for non-residential settings is provided by CMS, the Department will ensure these services and settings comply with regulations.</p>

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
<p>Extended Services (Traditional IID/DD Waiver)</p> <p>(Effective 4.1.18 the 2 settings were categorized as Prevocational Services)</p>			<p>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.</p>		<p>Jan 2017</p>			
			<p>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.</p>					

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
Residential Habilitation (Traditional IID/DD Waiver)	96 Provider-Owned Community Residences (which includes the residential settings identified under heightened scrutiny for the IID/DD Waiver)	Changes are needed to ensure that all provider-owned residential settings: a) Provide a lease or legally enforceable agreement that complies with ND landlord-tenant laws (NDCC chap. 47-32). b) Have lockable bedroom doors	The Department updated licensing Administrative Code, policies, and manuals.	Providers who are unable to make necessary changes to comply will be informed that they are no longer eligible to accept MA recipients.	Administrative Code updates: Dec 2016; Policy updates: beginning Jan 2016	New providers will submit lease policies and a template lease as part of their License application.	DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units, families/guardians, individuals	The Department strengthened licensing renewal procedures to ensure ongoing compliance. The Department updated the Environmental Scan Checklist to include lockable doors.
			The Department provided sample lease agreements and information about ND's landlord-tenant laws to providers.	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 30-day notice to the recipient, per landlord-tenant laws, that they will need to find alternative housing.	June 2015	The Department reviewed providers' lease templates for compliance with ND landlord/tenant law.		
			Providers will submit lease policies and a sample lease template to the Department.	Providers that do not demonstrate compliance will be required to submit a Plan of Correction to the Department.	July 2016	The Department conducted site visits and reviewed service plans to assure changes were made (e.g., locks added to doors).		
			Providers that do not demonstrate compliance will be required to submit a Plan of Correction to the Department.	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 2016	The Department kept a roster of attendees and dates of training to track attendance.		
			The Department conducted statewide training for providers, individuals, advocates, families/guardians, and DD Program Managers on the overall components of the new CMS rules.	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.		

Name of Service (Applicable Waiver)	Total # of Settings Not Compliant	Areas Where Remediation is Needed to Comply with HCB Characteristics	Remedial Strategies to Bring Providers Into Compliance	Remedial Strategies for Providers Who are Unable to Comply	Timeline for Completion/ Date of Completion	Assuring Compliance	Key Stakeholders	Ongoing Monitoring
Residential Habilitation (Traditional IID/DD Waiver)			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			

Table 8: Settings that have completed the Heightened Scrutiny Review and determined to have the qualities of HCBS

Traditional IID/ DD Medicaid Waiver

Name of Service (Applicable Waiver)	Total # of Settings and Total # Served	Reason for Presumed Noncompliance	Assuring Compliance	Timeline
<p>Residential Habilitation (Traditional IID/DD waiver)</p>	<p>5 Settings with 10 individuals</p> <p>The original number included 10 individuals. Three individuals no longer receive services in the setting. Brining the current count to 7.</p>	<p>Located on the grounds of, or adjacent to, an Intermediate Care Facility (ICF)</p>	<p>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.</p>	<p>Jun – Aug 2014</p>
		<p>700 Cottage Road, 716 Cottage Road, 752 Cottage Road, 808 West 5th Street (2 units) –Villa De Remer Apartments, Grafton ND</p>	<p>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.</p>	<p>Aug – Sept 2014</p>
		<p>As a result of the CMS Heightened Scrutiny visits, these settings were found to be compliant based on the letter received from CMS on 8/11/15.</p>	<p>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.</p>	<p>Oct- Nov 2014</p>
		<p>As a result of the CMS heightened scrutiny visit, CMS identified one of the settings did not have a lease signed by the tenant/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.</p>	<p>As a result of the CMS heightened scrutiny visit, CMS identified one of the settings did not have a lease signed by the tenant/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.</p>	<p>July 2016</p>
		<p>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.</p>	<p>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.</p>	<p>May 2015</p>
	<p>As individuals continuously choose their place of residence located within these settings that have been reviewed previously for heightened scrutiny, the state will continue to ensure these settings meet requirements as identified in the ongoing monitoring and compliance section.</p>	<p>On-going</p>		

Justification that Setting is In Fact Community-Based

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 / visitors at any time.

Additionally, the state 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 and day supports/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 have full access to the community. Visits with consumers were all positive, including indicating they were happy where they lived, and individuals/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 stepping stone for individuals who have been unable to successfully secure housing or services off the grounds of the State 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 center, is open and very well utilized by the community. There is no physical barrier surrounding buildings and grounds of the State ICF.

Table 9: Settings that are Presumably Not HCBS for Which the State is Submitting Justification to Refute Presumption

Name of Service (Applicable Waiver)	Total # of Settings and Total # Served	Reason for Presumed Noncompliance	Assuring Compliance	Timeline
<p>Day Supports (Traditional IID/DD Waiver) (Effective 4.1.18 name change to Day Habilitation and Prevocational Service)</p>	<p>1-day facility with 14 individuals</p> <p>The original number included 17 individuals. In Nov 2014 when document was submitted, 2 individuals were not waiver participants and 1 individual no longer receives services in the setting. Brining the current count to 14.</p>	<p>Located on the grounds of, or adjacent to, an ICF</p> <p>828 West Chapel Drive, Grafton ND</p> <p>CMS conducted a Heightened Scrutiny visit in August 2015. 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. The facility-based setting was relocated off the grounds or adjacent to the ICF. The new location is at 522 Hill Ave, Grafton, ND. Changes were made to increase community interaction for compliance with the CMS requirements.</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Jun – Aug 2014</p> <p>Aug – Sept 2014</p> <p>Oct- Nov 2014</p> <p>Ongoing</p> <p>Relocations and plan updates completed by March 2018</p>

Justification that Setting is In Fact Community-Based Cont.

The information presented below is from the 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 center, is open and very well utilized by the community.

The Department conducted surveys of a sample of recipients regarding the experiences and environmental characteristics of the Day Facility and has 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 state 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. 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, 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 increase community interactions and achieve compliance with the federal HCBS rule, the facility-based setting was relocated off the grounds of the ICF. The new locations are 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, 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.

DRAFT

Table 10: Settings where no determination has been made- Setting detail adult residential services and adult day services provided in those settings

Adult Residential Setting Name	Setting Address	Total Setting Capacity	Total # Recipients Served	Determining Compliance/ Progress toward 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 in to 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 in to 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 in to 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 in to 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 in to 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 in to 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 intention of coming in to full compliance. Final determination will be made as specified in the Statewide Transition Plan.

Adult Residential Setting Name	Setting Address	Total Setting Capacity	Total # Recipients Served	Determining Compliance/ Progress toward Compliance
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 in to 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 in to full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Maple View, Fargo *Setting also used to provide Adult Day Care	4552 36 th Ave S Fargo, ND 58104	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 in to full compliance. Final determination will be made as specified in the Statewide Transition Plan.
Maple View, Grand Forks *Setting also enrolled to provide Adult Day Care	4650 Washington St Grand Forks, ND 58206	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 in to 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 in to 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 in to full compliance. Final determination will be made as specified in the Statewide Transition Plan.

Adult Residential Setting Name	Setting Address	Total Setting Capacity	Total # Recipients Served	Determining Compliance/ Progress toward Compliance
Roseadele *Setting also enrolled to provide Adult Day Care	1505 3 rd St SE Jamestown, ND 58401	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 in to full compliance. Final determination will be made as specified in the Statewide Transition Plan.

Table 11: Settings that Do Not/Cannot Meet HCBS Requirements

Name of Service (Waiver)	Total # of Settings Not Compliant	Remedial Strategies for Providers Who Are Not Able to Meet Requirements	Remedial Strategies for Recipients Receiving Services in Non-Compliant Settings	Key Stakeholders	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
<p>Adult Day Care Provided in Nursing Home (HCBS Waiver)</p>	<p>4</p>	<p>Policy is updated, and providers and case management entities have been informed that services cannot be authorized for Medicaid waiver recipients in these settings.</p>	<p>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.</p>	<p>State Medicaid Agency, HCBS Case Managers, Adult Day Care Providers</p>	<p>Dec 2014</p>	<p>State will monitor care plans to assure that recipients are not authorized services in non-complaint settings.</p>	<p>State will monitor care plans to assure that recipients are not authorized services in non-complaint settings.</p>
<p>Day Supports (Traditional IID/DD Waiver) (Effective 4.1.18 name change to Day Habilitation)</p>	<p>6 settings with 8 individuals total</p>	<p>Providers and DD Program Managers are informed that services cannot be authorized for Medicaid waiver recipients in ICF settings</p>	<p>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.</p> <p>Once a new setting/provider is selected, an admission plan is developed according to assist in a seamless transition.</p> <p>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.</p> <p>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.</p>	<p>DD Division, DD Program Administrators, DD Program Managers, DD Providers, DHS Legal Service units, Individuals, Guardians</p>	<p>Relocation Completed by Mar 2017</p>	<p>The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings</p>	<p>The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings</p>

Name of Service (Waiver)	Total # of Settings Not Compliant	Remedial Strategies for Providers Who Are Not Able to Meet Requirements	Remedial Strategies for Recipients Receiving Services in Non-Compliant Settings	Key Stakeholders	Timeline for Completion/ Date of Completion	Assuring Compliance	Ongoing Monitoring
<p>Adult Day Health (Traditional IID/DD Waiver)</p>	<p>0 settings with 0 individuals</p>	<p>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.</p>	<p>No remediation necessary as no waiver recipients are currently utilizing waiver services.</p> <p>The Department amended the Traditional IID/DD waiver to no longer include this service.</p>	<p>DD Division, DD Program Administrators</p>	<p>Jan 2017</p>	<p>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 case management system.</p>	<p>The Department monitors individual service plans to assure that recipients are not authorized services in non-compliant settings.</p>

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 should be 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/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/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 State will monitor all individual person-centered service plans, conduct case management reviews, client interviews/ 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 & October 2014, December 2016, March & September 2017, and May, August, & 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. State staff will conduct site visits of adult residential facilities upon initial enrollment and at renewal (every 2 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's 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 complaint to the Department and/or Vulnerable Adult Protective Services. One of the quarterly visits must include a completion of a Medicaid Waiver Quality review, State Form Number 1154 (<https://www.nd.gov/eforms/Doc/sfn01154.pdf>) 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 636 (<https://www.nd.gov/eforms/Doc/sfn00636.pdf>) 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 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 in to 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's (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 ND Administrative Code 75-04-01-15, the Department adopts for all licensees the current 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's 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 Person 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 90 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 636 (<https://www.nd.gov/eforms/Doc/sfn00636.pdf>) 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 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 and/or facility based. 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, 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/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 State will monitor all individual person-centered service plans, conduct case management reviews, client interviews/ 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 & October 2014, December 2016, March & September 2017, and May, August, & 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 and/or Vulnerable Adult Protective Services. One of the quarterly visits must include a completion of a Medicaid Waiver Quality review, State Form Number 1154 (<https://www.nd.gov/eforms/Doc/sfn01154.pdf>). 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-November 14, 2014. An additional public comment period was held from February 19, 2016 – 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 28th, 2018 – October 28th, 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 state wide video conference system at numerous locations throughout the state. The public comment meeting was held on September 28th, 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 can be found here:

<http://www.nd.gov/dhs/services/medicalserv/medicaid/archives/news-info.html>

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 or (855) 462-5465, or ND Relay TTY 800-366-6888

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 Waiver for Autism Spectrum Disorder Medicaid 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 Rule process, 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.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

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.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>1. 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>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.</p> <p>The ages of the children served in this waiver are not eligible for employment.</p> <p>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.</p> <p>NDCC 50-06.2-01 (1) & (3) (Page No 1) This statute 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.</p>		
<p>2. 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>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.</p> <p>NDCC 50-24.1-20(Page No. 11) This code 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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Silent – The state does not permit the use of restraint, restriction, or seclusion as stated in the waiver.</p> <p>NDCC 50-06.2-01 (2) (Page No. 1) This code 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.</p> <p>1915(c) #0842 states the use of restraints and coercion of child if forbidden.</p>	<p>Will add statement to autism policy stating the waiver prohibits the use of restraints, restriction or seclusion of children on the waiver</p>	<p>August 2017</p>
<p>4. 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>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.</p> <p>NDCC 50-06.2.01 (1) & (3) NDCC 50-06.2-01 (1) & (3) (Page No. 1) This code 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.</p> <p>NDCC 50-24.1-01 Chapter to provide services to persons for independence or self-care. NDCC 50-24.1-18.1 (page 10) ability to receive services within their home. NDCC 50-24.1-20 addresses the client's ability to have choice of services that best fits their needs</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>5. Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Compliant NDCC 50-06.2-06 (Page No 3) This statute complies with setting options being based on individual preference it states that individuals are free to choose their service provider. NDCC 50-24.1-20 (Page No. 11) This code 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.</p> <p>Stated within Autism Spectrum Disorder Birth Through Eleven Medicaid 1915(c) waiver #0842</p>		
<p>6. 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>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>		
	<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>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>7. 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>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>		
<p>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<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>		
<p>9. 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>	<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>		
<p>10. 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>	<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>		
<p>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</p>	<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>		
<p>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</p>	<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>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>13. 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.</p> <p>14. 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>Compliant Stated within Autism Spectrum Disorder Birth through Eleven Medicaid waiver #0842 Appendix D 1-8</p> <p>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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>15. 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>Compliant</p> <p>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.</p>		

North Dakota Crosswalk of Systemic Assessment

Children's Hospice Medicaid 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 Rule process, 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.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota CHW Policy & Procedure Manual: <http://www.nd.gov/dhs/policymanuals/57505/57505.htm>

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.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>1. 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>Compliant NDCC 50-24.1-20(Page No. 11) This code 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.</p> <p>CH Policy & Procedure Manual 575-05-15 state: 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>		
<p>2. 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>Compliant Child must be residing within their home to receive services. CH Policy & Procedure Manual 575-05 only setting option is parental home. Eligibility Criteria 575-05-25 states: Service/care is delivered in the recipient’s private family dwelling (house or apartment).</p>	<p>Will change name of care plan to “person centered care plan” will also add statements for parents to sign off on that 1) this plan will not cause harm to the identified client. And 2) understanding the services must be provided within the child parental home.</p>	<p>January 2017</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Silent NDCC 50-06.2-01 (2) (Page No 1) This statute partially complies it states that the purpose of the program is to prevent, remedy, or alleviate neglect, and abuse.</p> <p>NDCC 12.1-20-01 through 12.1-20-07 addresses coercion and assault and to prohibiting of these towards a child. 19159(c) #0834 states the use of restraints and coercion of child if forbidden.</p>	<p>Will add statement to CH policy stating the waiver prohibits the use of restraints, coercion, abuse neglect and exploitation of child on the waiver</p>	<p>January 2017</p>
<p>4. 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>Compliant – NDCC 50-06.2.01 (1) & (3) (Page No 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</p> <p>CH Policy & Procedure Manual 575-05 Parent driven program</p> <p>Stated within Children’s Hospice Medicaid Waiver #0834 states it is parent choice to make decisions concerning their child’s services and cares.</p>	<p>Will add to policy statement indication</p> <p>18 – 21-year olds will have decision making authority of person-centered plan unless a guardianship has been put in place legally.</p>	<p>January 2017</p>
<p>5. Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Compliant CH Policy & Procedure Manual 575-05 states parents and child have choice of services and supports.</p> <p>Stated within Children’s Hospice Medicaid Waiver #0834 states parents and child have choice of services and supports.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>6. 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>Compliant CH Policy & Procedure Manual 575-05- Waiver participant is a minor and resides within parental home.</p>		
<p>7. 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>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>		
<p>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>		
<p>9. 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>	<p>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>		
<p>10. 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>	<p>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</p>	<p>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>		
<p>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</p>	<p>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>		
<p>13. 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.</p>	<p>Compliant CH Policy & Procedure Manual 575-05 waiver does not pay for environmental modifications.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>14. 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>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>	<p>Requirements will be added to CH Policy & Procedure manual 575-05 for clarification.</p> <p>Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <p>A nursing facility; (Institutional Respite care is excluded from this requirement)</p> <p>An institution for mental diseases;</p> <p>An intermediate care facility for individuals with intellectual disabilities; or a hospital.</p>	<p>Aug 2017 completed</p>
<p>15. 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>Compliant CH Policy & Procedure Manual 575-05 Waiver participant is a minor and resides within parental home.</p>	<p>Requirements will be added to CH Policy & Procedure manual 575-05 for clarification</p> <p>Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <p>A nursing facility; (Institutional Respite care is excluded from this requirement)</p> <p>An institution for mental diseases;</p> <p>An intermediate care facility for individuals with intellectual disabilities; or a hospital.</p>	<p>August 2017 completed</p>

North Dakota Crosswalk of Systemic Assessment

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, 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 Rule process, 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.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota CMFW Policy & Procedure Manual:
<http://www.nd.gov/dhs/policymanuals/58505/58505.htm>

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.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>1. 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>Compliant NDCC 50-06.2-01 (1) & (3) (Page No 1) This statute 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.</p> <p>CMFW Policy & Procedure Manual 585-05</p>		
<p>2. 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>Compliant Child must be residing within their home to receive services. CMFW Policy & Procedure Manual 585-05 Eligibility Criteria 585-05-25</p>		
<p>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Silent NDCC 50-06.2-01 (2) (Page No. 1) This code 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.</p> <p>NDCC 12.1-20-01 through 12.1-20-07 addresses coercion and assault and to prohibiting of these towards a child. 19159(c) #0568 states the use of restraints and coercion of child if forbidden.</p>	<p>Will add statement to CMF policy stating the waiver prohibits the use of restraints, coercion, abuse neglect and exploitation of child on the waiver</p>	<p>January 2017</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>4. 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>Compliant – NDCC 50-06.2.01 (1) & (3) (Page No 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</p> <p>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.</p> <p>Stated within Medically Fragile Children’s waiver #0568 states it is parent choice to make decisions concerning their child’s services and cares.</p>		
<p>5. Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Compliant CMFW Policy & Procedure Manual 585-05 – states parents and child have choice of services and supports.</p> <p>Stated within Medically Fragile Children’s waiver #0568 states parents and child have choice of services and supports.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>6. 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>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		
<p>7. 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>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		
<p>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		
<p>9. 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>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>10. 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>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		
<p>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</p>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		
<p>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</p>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05 state child must reside within parental home.</p>		
<p>13. 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.</p>	<p>Compliant CMFW Policy & Procedure Manual 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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>14. 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>Compliant CMFW Policy & Procedure Manual 585-05 Waiver participant is a minor and resides within parental home.</p>	<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> <p>A nursing facility; (Institutional Respite care is excluded from this requirement)</p> <p>An institution for mental diseases;</p> <p>An intermediate care facility for individuals with intellectual disabilities; or a hospital.</p>	<p>Aug 2017 Completed</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>15. 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>Compliant CMFW Policy & Procedure Manual 585-05 Waiver participant is a minor and resides within parental home.</p>	<p>Requirements will be added to CMFW Policy & Procedure manual 585-05 for clarification</p> <p>Statement added 2/12/16: Waiver services cannot be provided in the following settings:</p> <p>A nursing facility; (Institutional Respite care is excluded from this requirement)</p> <p>An institution for mental diseases;</p> <p>An intermediate care facility for individuals with intellectual disabilities; or a hospital.</p>	<p>August 2017 completed</p>

North Dakota Crosswalk of Systemic Assessment

Traditional IID/DD 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 Rule process, 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.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota DD Division website:
<http://www.nd.gov/dhs/services/disabilities/dd.html>

Link to North Dakota AFC Policy & Procedure Manual:
<http://www.nd.gov/dhs/policymanuals/66005/66005.htm>

The page numbers are included with each citation for the ease of the reviewer.

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.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>1. 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>Compliant – NDCC 25-01.2-02. (Page No. 1) This code complies with receiving services that are integrated and supports full access to the community - it addresses the right to appropriate treatment, services, and habilitation in the least restrictive setting.</p>		
	<p>Compliant- NDCC – 50-06.2-01 (1), (3). (Page No. 1) This code 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.</p>		
	<p>Compliant- NDCC – 50-24.1-20. (Page No. 11) This code 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.</p>		
	<p>Compliant- NDCC 50-06-05.3 (1), (2). (Page No. 6) This code 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-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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent – NDCC 25-01.2-06. (Page No. 2) This code 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.</p>	<p>Will amend 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.</p>	<p>-Legislative Assembly begins January 3, 2017. -Effective date determined by the Legislative Assembly, typically effective August 2017 Completed 8/1/17</p>
	<p>Silent – NDAC 75-04-01-20. (1)(d). (page 10) This area of the code 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 but is silent to fully participating in community living.</p>	<p>Will be amended to add language- individuals have the right to receive services and supports to fully participate in the benefits of community living</p>	<p>-Proposed rules were issued for public comment on August 8, 2016. -Public comments accepted through September 22, 2016. -Public Hearing will be held September 12, 2016. -If approved, code changes affective January 1, 2017 Completed 4/1/18</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDAC 75-04-01-20. (1)(g). (page 10) The code is compliant in controlling personal resources - it addresses individual's receives wages pursuant to 29 CFR 525, 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.</p>		
	<p>Compliant – NDCC 25-16-14. (Page No. 3) This code 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.</p>		
	<p>Compliant –NDAC 75-04-01-27. (1), (2), (3), (4). (pages 15 and 16) This code is compliant in receiving services in the community – 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.</p>		
	<p>Compliant- NDAC 75-04-01-28. (4). (page 16) This code 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 exiting group homes or day services serving people with developmental disabilities, schools for people with disabilities, long-term care facilities, or other institutional facilities.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDAC 75-04-05-20. (1), (2), (4), (6), (9), (10), (11), (12), (15). (pages 22, 23, and 24) This code 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.</p>		
	<p>Silent- NDAC 75-04-01-01 (6), (7), (10), (14), (20), (24), (25) (pages 2, 3, and 4) These service definitions of settings provided in the code under Residential Habilitation, Day Supports, and Extended Services were silent in engaging in community life, community integration and opportunities to seek employment and work in competitive integrated employment.</p>	<p>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.</p>	<p>-Proposed rules were issued for public comment on August 8, 2016. -Public comments accepted through September 22, 2016. -Public Hearing will be held September 12, 2016. -If approved, code changes affective January 1, 2017 -Waiver amendment which includes new service description submitted To CMS September 27, 2016 Completed 4/1/18</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent- Overall Service Plan Instructions. This policy 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>Updated the Overall Service Plan Instructions- 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>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
<p>2. 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>Compliant – NDCC 25-01.2-02. (Page No. 1) This code 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.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(c). (page 10) This code 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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDCC 25-01.2-14. (Page No. 4) This code 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 personnel to carry out the plan, need for guardianship. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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 NDCC 25-01.2-14. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – 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</p>		
	<p>Compliant – NDCC 50-06.2-06. (Page No. 3) This code complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDCC 50-24.1-20. (Page No. 11) This code 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.</p>		
	<p>Silent- NDAC 75-03-21 (pages 1-17) and AFC Policy and Procedure 660-05 This code and policy are silent on individual choice to choose the option for a private unit in a residential setting.</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy and Procedure 660-05 to require individual choice for a private unit in a residential setting.</p>	<p>-Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing -Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent – Overall Service Plan Instructions – This policy 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>Updated the Overall Service Plan Instructions-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.</p> <p>Updated the Overall Service Plan Instructions- 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.</p>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
<p>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Compliant – NDCC 25-01.2-03. (Page No. 1) This code 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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent- NDCC 50-11-02. (1)(c). (Page No. 2) This code complies with the individual's right to dignity and respect, but it is silent to addressing freedom from coercion and restraint.</p> <p>Silent- NDAC 75-03-21-09 (4), (5), (7). (page 9) This code is compliant 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.</p> <p>Silent- NDAC 75-03-23-07(2)(d). (page 11) This code complies with an individual's right to privacy it states that providers must maintain confidentiality- but it is silent to the remaining rights in the federal regulation.</p>	<p>Requirements will be added to HCBS Policy & Procedure Manual 525-30-05-15 and the Qualified Service Provider 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.</p>	<p>Dec 2016</p> <p>Policy Updates Nov 2018</p>
	<p>Silent- NDAC 75-03-21-04 (2). (page 5) This code 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.</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC policy and procedure 660-05 to state that providers provide for privacy in the sleeping.</p>	<p>-Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing -Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent- NDAC 75-03-21-06 (4). (page 6) This code 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.</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC policy and procedure 660-05 to state that providers must provide doors that are lockable with only the resident and appropriate staff having keys.</p>	<p>-Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing -Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016</p> <p>NDAC Completed 10/1/16</p> <p>Policy updates Nov 2018</p>
	<p>Silent – NDCC 25-01.2-04. (Page No. 2) The code 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.</p>	<p>Will amend to address the rights for privacy and communication with mail, telephone, and visitations for all services/settings.</p>	<p>-Legislative Assembly begins January 3, 2017. -Effective date determined by the Legislative Assembly, typically effective August 2017 Completed 8/1/17</p>
	<p>Non-Compliant- NDCC 25.01.2-04. (1)(b). (Page No. 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.</p>	<p>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.</p>	<p>-Legislative Assembly begins January 3, 2017. -Effective date determined by the Legislative Assembly, typically effective August 2017 Completed 8/1/17</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDCC 25-01.2-08. (Page No. 3) This code 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 service or as a treatment of any medical or physical condition. Further clarification is found in NDAC 75-04-01-20 (m) which requires providers have a Human Rights Committee and a Behavior Management Committee which ensures due process for the individual.</p>		
	<p>Compliant – NDCC 25-01.2-09. (Page No. 3) This code 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.</p>		
	<p>Compliant – NDCC 25-01.2-16. (Page No. 5) This code complies with individual's rights – it addresses that a summary of rights guaranteed by NDCC 25-01.2 are posted in public areas and written notice of these rights are also provided.</p>		
	<p>Compliant – NDCC 25-01.2-17. (Page No. 5) This code complies with individual's rights – it addresses that an individual is entitled to enforce any of their rights identified in NDCC 25-01.2.</p>		
	<p>Compliant – NDCC 25-16-03. (Page No. 1) This code 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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDAC 75-04-01-20. (1)(a), (b), (f), (h), (i), (u). (pages 10, 11 and 12) This code 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.</p>		
	<p>Compliant – NDAC 75-04-01-20.2. (2) (page 12) This code complies with freedom from coercion and restraint – it addresses the recording and reporting of incidents of restraint utilized in response to behavior.</p>		
	<p>Silent- Overall Service Plan Instructions - This policy 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>	<p>Updated the Overall Service Plan Instructions-revised section “State ISP section of the OSP” to clarify annual review of rights at the team meeting.</p>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>4. 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>Compliant – NDCC 25-01.2-14. (Page No. 4) This code 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 Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant - NDCC 50-06-05.3 (1), (2). (Page No. 6) This code 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 health, social, emotional, food and nutrition, and housing service.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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 NDCC 25-01.2-14. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – NDCC 50-06.2-06. (Page No. 3) This code complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDCC – 50-24.1-20. (Page No. 11) This code 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.</p>		
	<p>Compliant – NDCC 50-24.1-01. (Page No. 1) This code complies with individual independence - it states that the purpose is to provide services to help individuals to retain or attain capability for independence or self-care.</p>		
	<p>Compliant – NDCC 50-06.2-01 (1), (3). (Page No. 1) This code 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.</p>		
<p>5. Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Compliant – NDCC 25-01.2-15. (Page No. 5) This code complies with individual choice regarding services and supports –it addresses the individual’s right to refuse services.</p>		
	<p>Compliant- NDCC 50-06-05.3 2). (Page No. 6) This code 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.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDAC 75-04-01-20. (1)(k). (page 11) This code 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.</p>		
	<p>Compliant – NDAC 75-04-05-21. (page 24) This code 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.</p>		
	<p>Compliant – NDCC 50-24.1-20. (Page No. 11) This code 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.</p>		
	<p>Compliant- NDCC 50-06.2-06. (Page No. 3) This code complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers.</p>		
	<p>Compliant – NDCC 25-01.2-14. (Page No. 4) This code complies with individual choice regarding services and supports, and who provides them 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.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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 NDCC 25-01.2-14.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent – Overall Service Plan Instructions - This policy 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.</p>	<p>Updated the Overall Service Plan Instructions- 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.</p> <p>Updated the Overall Service Plan Instructions-revised section "DD Program Manger responsibilities prior to Annual OSP" to clarify the review of all possibilities of service options and choice of service providers in a manner that is meaningful an easily understood.</p> <p>Updated the Overall Service Plan Instructions-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.</p> <p>Updated the Overall Service Plan Instructions-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>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
<p>6. 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</p>	<p>Silent- 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>Licensing procedures will be updated: New providers are required to submit a lease template or legally enforceable agreement</p>	<p>The licensing procedures will be updated by the Department by December 2017</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>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>that complies with ND landlord-tenant laws (NDCC chap. 47-32) and a lease policy as part of their license application for any provider-owned or controlled residential settings.</p> <p>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.</p> <p>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.</p> <p>The Department will review the providers' lease policy and lease templates for compliance with ND landlord/tenant law and the federal regulation.</p> <p>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>	<p>Completed 12/31/17</p>
	<p>Silent- NDAC 75-03-21 (pages 1-17) and AFC Policy and Procedure 660-05- This code and policy is 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>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 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</p>	<p>- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
		landlord/tenant law of the State, county, city, or other designated entity.	<p>NDAC Completed 10/1/16</p> <p>Policy updates Nov 2018</p>
<p>7. 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>Non-compliant - NDAC 75-04-01-29. (4). (page 17) This code 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>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.</p> <p>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.</p> <p>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>	<p>The Department will create policy by January 2017. Completed 4/1/18</p> <p>Proposed rules were issued for public comment on August 8, 2016. -Public comments accepted through September 22, 2016. -Public Hearing will be held September 12, 2016. -If approved, code changes affective Completed 4/1/18</p> <p>January 1, 2017 January 2015 Completed in January 2015</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Silent - Overall Service Plan Instructions - This policy 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>Updated the Overall Service Plan Instructions-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>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
	<p>Silent- NDAC 75-03-21-04 (2) (Page No 5) This rule 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 Policy & Procedures 660-05-30-20 This policy partially complies with privacy requirements it states privacy must be provided in bedrooms and bathrooms.</p>	<p>Requirements will be added to NDAC 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.</p>	<p>- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>
	<p>Silent- NDAC 75-03-21-06 (4) (Page No 6) This rule partially complies with requirement for lockable doors it states doors with locking mechanism must be provided. Adult Foster Care Policy & Procedures 660-05-30-30 This policy partially complies with requirement for lockable doors states lockable doors must be provided.</p>	<p>Requirements will be added to NDAC 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.</p>	<p>- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Silent – Overall Service Plan Instructions - This policy 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>	<p>Updated the Overall Service Plan Instructions- revised section "Rights Limitation and Due Process" to include individuals who share bedrooms have a choice in roommates.</p>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
	<p>Silent- NDAC 75-03-21 (pages 1-17) and AFC Policy and Procedure 660-05- This code and policy is silent on the individual choice to choose a roommate.</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to require that individuals have a choice of roommate in the setting.</p>	<p>- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>
<p>9. 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>Compliant – NDCC 25-01.2-14. (Page No. 4) This code 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 Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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-centered service plans pursuant to NDCC 25-01.2-14. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDAC 75-04-01-20. (1)(d). (page 10) This code 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>		
	<p>Silent – NDAC 75-04-01-29. (5). (page 17) This code 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>	Will create policy to have the freedom to furnish and decorate their bedrooms.	The Department will create this policy by January 2017 Completed 04/01/2018
	<p>Silent - NDAC 75-04-01-33. (1), (2). (page 18) This code 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>	Will create policy to ensure individuals have the freedom to furnish and decorate their living units.	The Department will create this policy by January 2017 Completed 04/01/2018
	<p>Silent - NDAC 75-03-21 (pages 1-17) and AFC Policy & Procedure 660-05- This code and policy is silent on the individual’s freedom to furnish and decorate their living unit within the lease or other agreement.</p>	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.	- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018
<p>10. 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>	<p>Compliant – NDCC 25-01.2-14. (Page No. 4) This code 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</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>plan, need for guardianship. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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 NDCC 25-01.2-14. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Silent- Overall Service Plan Instructions - This policy 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>	<p>Updated the Overall Service Plan Instructions- 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.</p>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
	<p>Non-Compliant – NDAC 75-03-21-12(1), (2). (page 12) Adult Foster Care Policy & Procedures 660-05-30-45- This code and policy is non-complaint with the freedom and support to control their own schedules and activities and to have access to food at any time.</p>	<p>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.</p>	<p>- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>
<p>11. For provider owned or controlled residential settings- Individuals are able to have visitors of their choosing at any time.</p>	<p>Compliant – NDAC 75-04-01-20. (1)(d). (page 10) This code 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>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>Compliant – NDCC 25-01.2-14. (Page No. 4) This code 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 Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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 NDCC 25-01.2-14. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Silent- Overall Service Plan Instructions - This policy 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>	<p>Updated the Overall Service Plan Instructions- revised section "Rights Limitation and Due Process" to include individuals have visitors of their choosing any time.</p>	<p>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
	<p>Silent- NDAC 75-03-21 (pages 1-17) and AFC Policy & Procedure 660-05 This code and policy are silent for individuals to have visitors of their choosing at any time.</p>	<p>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.</p>	<p>- Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>
<p>12. For provider owned or controlled residential settings- The setting is physically accessible to the individual.</p>	<p>Compliant – NDAC 75-04-01-20. (1)(o). (page 11) This code complies with the setting being physically accessible. This area of the code</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>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.</p>		
	<p>Silent – NDAC 75-04-01-29. (6). (page 17) This code 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.</p>	<p>Will create policy to ensure settings are physically accessible according to the individual's needs.</p>	<p>Department will create the policy by January 2017 Completed 04/01/2018</p>
	<p>Compliant – Overall Service Plan Instructions- 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.</p>		
	<p>Silent – NDAC 75-03-21-04. (page 4 and 5) This code is silent regarding the requirement that the setting is physically accessible to the individual.</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to state that the setting must be physically accessible to the individual.</p>	<p>-Public comment for proposed rules Nov. 6, 2015 -Public hearing Jun. 6, 2016 -Admin Rule Cmt. Hearing Sept. 13, 2016 -Effective Date Oct. 1, 2016 -Policy updates complete Dec 2016 NDAC Completed 10/1/16 Policy updates Nov 2018</p>
<p>13. 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</p>	<p>Compliant – NDAC 75-04-01-20. (1)(m), (t). (page 11) This code 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 – NDCC 25-01.2-14. (Page No. 4) This code 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</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>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>objectives, the personnel to carry out the plan, need for guardianship. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Compliant – NDAC 75-04-01-20. (1)(a). (page 10) This code 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 NDCC 25-01.2-14. The updated Overall Service Plan Instructions, which provides the principles and values of a person-centered service plan and the planning process, describes this further.</p>		
	<p>Silent- Overall Service Plan Instructions - This policy describes the principles 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>Updated the Overall Service Plan Instructions- revised section "Individual and/or 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>September 2015 Completed and training provided September 2015. OSP amendment available on the DD website on October 2015.</p>
<p>14. 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>Silent – Settings that are identified as not home and community based are not addressed</p>	<p>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.</p>	<p>The licensing procedures will be updated by the Department by December 2017 Completed 7/31/18</p>
<p>15. 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 	<p>Silent- Settings that are identified as presumed to have the qualities of an institution are not addressed</p>	<p>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 having</p>	<p>The licensing procedures will be updated by the Department by December 2017 Completed 7/31/18</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards (if not listed standard not applicable)	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>immediately adjacent to, a public institution, or</p> <ul style="list-style-type: none"> any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 		<p>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>	
	<p>Compliant- NDAC 75-04-01-28. (4). (page 16) This code 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>		

North Dakota Crosswalk of Systemic Assessment

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, 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 Rule process, 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.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota HCBS Policy & Procedure Manual:
<http://www.nd.gov/dhs/policymanuals/52505/52505.htm>

Link to North Dakota AFC Policy & Procedure Manual:
<http://www.nd.gov/dhs/policymanuals/66005/66005.htm>

Link to Basic Care Interpretive Guidelines:
http://www.ndhealth.gov/HF/PDF_files/Basic%20Care/basic_care_guidelines.pdf

Qualified Service Provider Handbook, Individual, Agency, and Adult Foster Care Versions
<http://www.nd.gov/dhs/services/adultsaging/providers.html>

Link to 42 CFR 441.301(c)(viii)(A) through (H): http://www.ecfr.gov/cgi-bin/text-idx?node=se42.4.441_1301&rgn=div8

The page numbers are included with each citation for the ease of the reviewer.

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.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
<p>1. 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>Compliant NDCC 50-06.2-01 (1) & (3) (Page No 1) This statute 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.</p> <p>Compliant NDCC 50-24.1-20 (Page No. 11) This statute 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.</p> <p>Compliant NDAC 75-03-23-01 (12) (Page No 2) This rule 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.</p> <p>Compliant HCBS Policy & Procedure Manual 525-05-15 This policy 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 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>Compliant HCBS Policy & Procedures 525 -05-30-16 This policy 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.</p>		
<p>2. 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,</p>	<p>Compliant NDCC 50-06.2-06 (Page No 3) This statute complies with setting options being based on individual preference it states that individuals are free to choose their service provider.</p> <p>Compliant NDCC 50-24.1-20 (Page no 11) This statute complies with services being based on individual need it states that individuals must</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy and Procedure 660-05 to</p>	<p>Public comment for proposed rules Nov. 6, 2015</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
<p>preferences, and, for residential settings, resources available for room and board.</p>	<p>be allowed to choose, from among all service options available, and the type of service that best meets that individual's needs.</p> <p>Compliant NDAC 75-03-23-04 (6) & (7) (Page No 5) This rule complies with services being based on individual preferences and options being identified in a plan of care.</p> <p>Complaint HCBS Policy & Procedures 525-05-25-10; 525-05-60-10; & 525-05-60-105 These policies speak to 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.</p> <p>Silent NDAC 75-03-21 (pages 1-17) and AFC Policy and Procedure 660-05 This rule and policy are silent on individual choice to choose the option for a private unit in a residential setting.</p>	<p>require individual choice for a private unit in a residential setting.</p>	<p>Public hearing Jun. 6, 2016</p> <p>Admin Rule Cmt. Hearing Sept. 13, 2016</p> <p>Effective Date Oct. 1, 2016 Complete</p> <p>Policy updates Nov 2018</p>
<p>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Silent NDCC 50-06.2-01 (2) (Page No 1) This statute 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 not completely prohibit restraints and does not specifically address each right in the federal regulation.</p> <p>Silent NDCC 50-10.2-02 (1) (Page No 1) This statute 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. 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> <p>Silent NDAC 33-03-24.1-01 (1) (Page No 1) & 33-03-24.1-09 (2) (e) & (h) (Page No 8) These rules 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> <p>Silent NDCC 50-11-02 (1)(c) (Page No 2) This statute 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</p>	<p>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).</p> <p>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).</p>	<p>Policy Updates Complete Dec 2016</p> <p>Public comment Nov 2016</p> <p>Submit waiver renewal to CMS for approval Jan 2017</p> <p>Waiver renewal effective date Apr 2017 Complete</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
	<p>addressing freedom from coercion and restraint.</p> <p>Silent NDCC 50-25.2 – This statute 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.</p> <p>Silent NDAC 75-03-21-01 (1), (7), (11), (13) & (20) (Page 1) These rules 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 (including confinement), exploitation, mental anguish, and neglect. It is silent because it does not completely prohibit restraints.</p> <p>Silent These rules partially comply with the individual's rights to privacy and dignity as it relates to settings where adult foster care is provided.</p> <p>NDAC 75-03-21-04 (2) (Page No 5) States there must be walls or partitions in bedrooms that extend floor to ceiling for privacy. Adult Foster Care Policy & Procedure 660-05-30-20 This policy partially complies with privacy requirements it states privacy must be provided in bedrooms and bathrooms.</p> <p>NDAC 75-03-21-06 (4) (Page No 6) Partially complies with the requirement for lockable doors it states doors with locking mechanism must be provided.</p> <p>Silent NDAC 75-03-21-09 (4), (5), (7). (Page No 8 & 9) This code 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 NDAC 75-03-23-07 (2) (d) (Page No 11) & Qualified Service Provider Handbook, Individual, Agency and Adult Foster Care Versions. This rule and policy is partially complaint it deals with an individual's right to privacy it states that providers must maintain confidentiality. This rule is silent because it does not specifically address each right in the federal regulation.</p> <p>Silent HCBS Policy & Procedures 525-05-30-05 & HCBS Policy & Procedures 525-05-60-100 These policies cover the right of an individual to be free of coercion and restraint; it requires</p>	<p>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> <p>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.</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 including the limited use of restraints in</p>	<p>Public comment for proposed rules Nov. 6 2015</p> <p>Public hearing Jun. 6, 2016</p> <p>Admin Rule Cmt. Hearing Sept. 13, 2016</p> <p>Effective Date Oct. 1, 2016 Complete</p> <p>Policy updates Nov 2018</p> <p>Dec 2016 Complete</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
	<p>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>adult residential service settings.</p>	
<p>4. 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>Compliant – These statutes and rules comply with requirement to optimize individual initiative, autonomy, and independence in making life choices for daily activities and physical environment NDCC 50-06.2.01 (1) & (3) (Page No 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 NDCC 50-06.2-06. (Page No. 3) This code complies with setting options being based on individual preferences; it states that individuals are free to choose their service providers. NDCC 50-24.1-01 (Page No 1) States purpose is to provide services to help individuals to retain or attain capability for independence or self-care. NDCC 50-24.1-20 (Page No 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. NDAC 75-03-23-04 (6) & (7) (Page No 5) States individual must agree to receive services in their home and must agree with plan of care. Compliant These rules comply with individuals making life choices as it relates to daily activities and physical environment. NDAC 75-03-23-01 (10) (Page No 2) Requires that information about daily activities and physical environment must be included in a functional assessment which is used to determine individual needs and preferences. NDAC 75-03-23-04 (6) & (7) (Page No 5) Requires that individual agrees to receive services in the home and agrees to plan of care. NDAC 75-03-23-17 (Page No 21) 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. Compliant HCBS Policy & Procedures 525-05-60-100 – This policy complies with promoting individual initiative, autonomy, and independence in</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
	<p>making life choices. Describes Quality Review which is conducted with all waiver recipients.</p> <p>Silent – With whom to interact</p>	<p>Requirements will be added to HCBS Policy & Procedure Manual 525-05 to assure individuals have choice with whom to interact.</p>	<p>Dec 2016 Complete</p>
<p>5. Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Compliant NDCC 50-06.2-06 (Page No 3) This statute complies with setting options being based on individual preference it states that individuals are free to choose their service provider. NDCC 50-24.1-20 (Page No. 11) This code 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. NDAC 75-03-23-04 (6) & (7) (Page No 5) This rule complies with individual choice states recipient must agree to receive waiver services and agrees with the plan of care. NDAC 75-03-23-06 (15) (b) (Page No 10) This rule complies as it requires AFC recipient's choice in choosing a respite care provider.</p>		
<p>6. 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>Adult Foster Care - Silent NDAC 75-03-21 (pages 1-17) and AFC Policy and Procedure 660-05 this rule and policy is 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>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 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>	<p>Public comment for proposed rules Nov. 6 2015 Public hearing Jun. 6, 2016 Admin Rule Cmt. Hearing Sept. 13, 2016 Effective Date Oct. 1, 2016 Policy updates complete Dec 2016</p>
	<p>Adult Residential Care – Compliant HCBS Policy & Procedures 525-05-30-16 This policy 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>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
<p>7. 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>Adult Foster Care – Silent NDAC 75-03-21-04 (2) (Page No 5) This rule 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 Policy & Procedures 660-05-30-20 This policy partially complies with privacy requirements it states privacy must be provided in bedrooms and bathrooms. NDAC 75-03-21-06 (4) (Page No 6) This rule partially complies with requirement for lockable doors it states doors with locking mechanism must be provided. Adult Foster Care Policy & Procedures 660-05-30-30 This policy partially complies with requirement for lockable doors states lockable doors must be provided.</p>	<p>Requirements will be added to NDAC 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.</p>	<p>Public comment for proposed rules Nov. 6 2015 Public hearing Jun. 6, 2016 Admin Rule Cmt. Hearing Sept. 13, 2016 Effective Date Oct. 1, 2016 Complete Policy updates Nov 2018</p>
	<p>Adult Residential Care – 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>	<p>Sept 2016 Establish Admin Code work group with Dept of Health Public comment for proposed rules Nov 2016 Public hearing Jun 2016 Admin Rule Cmt. Hearing Sept 2017 Effective Date Oct 2017 Complete Policy updates complete Dec 2017</p>
<p>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Adult Foster Care- Silent NDAC 75-03-21 (pages 1-17) and AFC Policy and Procedure 660-05- This code and policy is silent on the individual choice to choose a roommate</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to require that individuals have a choice of roommate in the setting.</p>	<p>Public comment for proposed rules Nov. 6 2015 Public hearing Jun. 6, 2016 Admin Rule Cmt. Hearing Sept. 13, 2016 Effective Date Oct. 1, 2016 Complete Policy updates Nov 2018</p>
	<p>Adult Residential Care- Silent</p>	<p>The Department will work with the Department of Health (licensing and surveying entity) to update regulatory documents to require</p>	<p>Sept 2016 Establish Admin Code work group with Dept of Health</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
		that individuals have a choice of roommate in the setting.	Public comment for proposed rules Nov 2016 Public hearing Jun 2016 Admin Rule Cmt. Hearing Sept 2017 Effective Date Oct 2017 Policy updates complete Dec 2017
9. 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.	Adult Foster Care- Silent This code and policy are silent on the individual's freedom to furnish and decorate their living unit within the lease or other agreement.	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.	Public comment for proposed rules Nov. 6, 2015 Public hearing Jun. 6, 2016 Admin Rule Cmt. Hearing Sept. 13, 2016 Effective Date Oct. 1, 2016 Complete Policy updates Nov 2018
	Adult Residential Care – 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.	Sept 2016 Establish Admin Code work group with Dept of Health Public comment for proposed rules Nov 2016 Public hearing Jun 2016 Admin Rule Cmt. Hearing Sept 2017 Effective Date Oct 2017 Policy updates complete Dec 2017
10. 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.	Adult Foster Care Non-Compliant- ND Admin Code 75-03-21-12(1), (2). (Page No 12) Adult Foster Care Policy & Procedures 660-05-30-45- This code and policy is non-complaint with the freedom and support to control their own schedules and activities and to have access to food at any time.	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	Public comment for proposed rules Nov. 6, 2015 Public hearing Jun. 6, 2016

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
	<p>Adult Residential Care</p> <p>Silent – Freedom and support to control their schedules</p> <p>Compliant NDAC 33-03-24.1-19 (Page No 13) Basic Care Facility Interpretive guidelines B1910, B1920, B1930, B1940 HCBS Policy & Procedures 525-05-30-16 This rule and guidelines 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.</p> <p>Partially Compliant NDAC 33-03-24.1-18 (1-6) (Page No 12) Basic Care Facility Interpretive Guidelines B1830 This rule, and guidelines comply 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.</p> <p>Out of compliance- NDAC 33-03-24.1-18 (7) (Page No 13) Dictates that meals must be served in the dining room. This rule will be changed to allow recipients to choose where they want to eat.</p>	<p>and activities and have access to food any time.</p> <p>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.</p>	<p>Admin Rule Cmt. Hearing Sept. 13, 2016</p> <p>Effective Date Oct. 1, 2016 Complete</p> <p>Policy updates Nov 2018</p> <p>Sept 2016 Establish Admin Code work group with Dept of Health</p> <p>Public comment for proposed rules Nov 2016</p> <p>Public hearing Jun 2016</p> <p>Admin Rule Cmt. Hearing Sept 2017</p> <p>Effective Date Oct 2017</p> <p>Policy updates complete Dec 2017</p>
<p>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</p>	<p>Adult Foster Care – Silent This code and policy are silent for individuals to have visitors of their choosing at any time. NDAC 75-03-21 (Page No 1-17) and AFC Policy & Procedure 660-05</p>	<p>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.</p>	<p>Public comment for proposed rules Nov. 6, 2015</p> <p>Public hearing Jun. 6, 2016</p> <p>Admin Rule Cmt. Hearing Sept. 13, 2016</p> <p>Effective Date Oct. 1, 2016 Complete</p> <p>Policy updates Nov 2018</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
	<p>Adult Residential Care- Silent</p>	<p>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.</p>	<p>Sept 2016 Establish Admin Code work group with Dept of Health</p> <p>Public comment for proposed rules Nov 2016</p> <p>Public hearing Jun 2016</p> <p>Admin Rule Cmt. Hearing Sept 2017</p> <p>Effective Date Oct 2017</p> <p>Policy updates complete Dec 2017</p>
<p>12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.</p>	<p>Adult Foster Care – Silent This code is silent regarding the requirement that the setting is physically accessible to the individual. NDAC 75-03-21-04. (Page No 4 & 5)</p>	<p>Requirements will be added to NDAC 75-03-21 and AFC Policy & Procedure 660-05 to state that the setting must be physically accessible to the individual.</p>	<p>Public comment for proposed rules Nov. 6, 2015</p> <p>Public hearing Jun. 6, 2016</p> <p>Admin Rule Cmt. Hearing Sept. 13, 2016</p> <p>Effective Date Oct. 1, 2016 Complete</p> <p>Policy updates Nov 2018</p>
	<p>Adult Residential Care – Compliant This statute and rule comply with the physically assessable requirements and describes accessibility standards that must be met for this setting. NDCC 54-21.3-04.1 (Page No 3), NDAC 33-03-24.2</p>		
<p>13. 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</p>	<p>Compliant This rule and policy chapters 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. NDCC 75-03-23-04 (7) (Page 5) HCBS Policy & Procedures 525-05-25-10 HCBS Policy & Procedures 525-05-60-10 HCBS Policy & Procedures 525-05-60-105</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timeline for Remediation
<p>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>14. 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>Compliant This policy complies as it states that waiver services cannot be provided in a nursing facility, institution for mental disease, intermediate care facility, or hospital. HCBS Policy & Procedure Manual 525-05-10</p> <p>Silent- Any other locations that have qualities of an institutional setting as determined by the Secretary</p>	<p>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</p>	<p>Jan 2019</p>
<p>15. 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>Compliant This statute and policy 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. NDCC 50-11-00.1 (8) (Page No 1) HCBS Policy & Procedure Manual 525-05-10 HCBS Policy & Procedure Manual 525-05-30-10 HCBS Policy & Procedure Manual 525-05-30-16</p> <p>Silent- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS</p>	<p>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</p>	<p>Jan 2019</p>

North Dakota Crosswalk of Systemic Assessment

Technology Dependent Medicaid 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 Rule process, 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.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota HCBS Policy & Procedure Manual:
<http://www.nd.gov/dhs/policymanuals/52505/52505.htm>

Qualified Service Provider Handbook, Individual and Agency Versions
<http://www.nd.gov/dhs/services/adultsaging/providers.html>

The page numbers are included with each citation for the ease of the reviewer.

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.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>1. 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>Compliant NDCC – 50-06.2-01 (1), (3). (Page No. 1) This statute 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.</p> <p>Compliant NDCC 50-24.1-20 (Page No. 11) This statute 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.</p> <p>Compliant NDAC 75-03-23-01 (12) (Page No 2) This code 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.</p> <p>Compliant NDAC 75-03-23-01 (12) (Page No 2) This rule 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.</p> <p>Compliant HCBS Policy & Procedure Manual 525-05-15 This policy 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 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>2. 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>Compliant NDCC 50-06.2-06 (Page No 3) This statute complies with setting options being based on individual preference it states that individuals are free to choose their service provider.</p> <p>Compliant NDCC 50-24.1-20 (Page no 11) This statute 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 service that best meets that individual's needs.</p> <p>Compliant</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
	<p>NDAC 75-03-23-04 (6) & (7) (Page No 5) This rule complies with services being based on individual preferences and options being identified in a plan of care.</p> <p>Complaint HCBS Policy & Procedures 525-05-25-10; 525-05-60-10; & 525-05-60-105 These policies speak to 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.</p> <p>Silent- option for a private unit in a residential setting.</p>	<p>Requirements will be added to HCBS Policy & Procedure Manual 525-05</p>	<p>Dec 2016 Complete</p>
<p>3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Silent NDCC 50-06.2-01 (2) (Page No 1) This statute 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 not completely prohibit restraints and does not specifically address each right in the federal regulation.</p> <p>Silent NDCC 50-25.2 – This statute 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.</p> <p>Silent NDAC 75-03-23-07 (2) (d) (Page No 11) & Qualified Service Provider Handbook, Individual, Agency and Adult Foster Care Versions. This rule and policy is partially complaint it deals with an individual's right to privacy it states that providers must maintain confidentiality. This rule is silent because it does not specifically address each right in the federal regulation.</p> <p>Silent HCBS Policy & Procedures 525-05-30-05 & HCBS Policy & Procedures 525-05-60-100 These policies cover the right of an individual to be free of 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>Requirements will be added to HCBS Policy & Procedure Manual 525-05-25-12 and the Qualified Service Provider Handbook, Individual and Agency 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 as stated in the Technology Dependent waiver.</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>Dec 2016 Complete</p> <p>Dec 2016 Complete</p>

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>4. 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>Compliant – These statutes and rules comply with requirement to optimize individual initiative, autonomy, and independence in making life choices for daily activities and physical environment NDCC 50-06.2.01 (1) & (3) (Page No 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. NDCC 50-06.2 (Page No 3) This statute complies with setting options being based on individual preference it states that individuals are free to choose their service provider. NDCC 50-24.1-01 (Page No 1) States purpose is to provide services to help individuals to retain or attain capability for independence or self-care. NDCC 50-24.1-18.1 (Page No 10) Provides for health maintenance services by allowing care to be provided in the home of the individual. NDCC 50-24.1-20 (Page No 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. NDAC 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 NDAC 75-03-23-04 (6) & (7) (Page No 5) States individual must agree to receive services in their home and must agree with plan of care. Compliant These rules comply with individuals making life choices as it relates to daily activities and physical environment. NDAC 75-03-23-01 (10) (Page No 2) Requires that information about daily activities and physical environment must be included in a functional assessment which is used to determine individual needs and preferences. NDAC 75-03-23-04 (6) & (7) (Page No 5) Requires that individual agrees to receive services in the home and agrees to plan of care. NDAC 75-03-23-17 (Page No 21) 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. Compliant 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. Silent – With whom to interact</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
		Requirements will be added to HCBS Policy & Procedure Manual 525-05 to assure individuals have choice with whom to interact.	Dec 2016 Complete
<p>5. Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Compliant NDCC 50-06.2-06 (Page No 3) This statute complies with setting options being based on individual preference it states that individuals are free to choose their service provider. NDCC 50-24.1-20 (Page No. 11) This code 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. NDAC 75-03-23-04 (6) & (7) (Page No 5) This rule complies with individual choice states recipient must agree to receive waiver services and agrees with the plan of care.</p>		
<p>6. 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>Compliant - No recipients are served in provider owned settings</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>7. 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>Compliant - No recipients are served in provider owned settings</p>		
<p>8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.</p>	<p>Compliant - No recipients are served in provider owned settings</p>		
<p>9. 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>	<p>Compliant - No recipients are served in provider owned settings</p>		
<p>10. 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>	<p>Compliant - No recipients are served in provider owned settings</p>		
<p>11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.</p>	<p>Compliant - No recipients are served in provider owned settings</p>		
<p>12. For provider owned or controlled residential settings. Setting is physically accessible to the individual.</p>	<p>Compliant - No recipients are served in provider owned settings</p>		
<p>13. 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.</p>	<p>Compliant This rule and policy chapters 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. NDCC 75-03-23-04 (7) (Page 5) HCBS Policy & Procedures 525-05-25-10 HCBS Policy & Procedures 525-05-60-10 HCBS Policy & Procedures 525-05-60-105</p>		

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
<p>14. 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>Compliant This policy complies as it states that waiver services cannot be provided in a nursing facility, institution for mental disease, intermediate care facility, or hospital HCBS Policy & Procedure Manual 525-05-10</p> <p>Silent- Any other locations that have qualities of an institutional setting as determined by the Secretary</p>	<p>Requirements will be added to HCBS Policy & Procedure manual 525-05 -25-12</p>	<p>Dec 2016 Complete</p>
<p>15. 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>Compliant This statute and policy 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. NDCC 50-11-00.1 (8) (Page No 1), HCBS Policy & Procedure Manual 525-05-10</p> <p>Silent- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS</p>	<p>Requirements will be added to HCBS Policy & Procedure manual 525-05 -25-12</p>	<p>Oct 2016 Complete</p>

ATTACHMENTS

Attachment 1. Adult Residential Service HCBS Setting Survey

ADULT RESIDENTIAL SERVICE (MEMORY CARE AND TRAUMATIC BRAIN INJURY) HCBS SETTING SURVEY
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
AGING SERVICES
SFN 61549 (10-2019)

ID

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?** _____

17773



**ADULT RESIDENTIAL SERVICE (MEMORY CARE AND TRAUMATIC
BRAIN INJURY) HCBS SETTING SURVEY**
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
AGING SERVICES
SFN 61549 (10-2019)

ID

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?** _____

17773



Attachment 2. 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)

<i>Date of on-site visit:</i>		<i>Facility Name/Contact:</i>	
<i>Address of setting:</i>		<i>Phone Number:</i>	
<i>Total Number of Residents:</i>		<i>Total Number of Residents on Medicaid (provide list):</i>	
<i>Waiver Service Provided:</i>		<i>Visit completed by:</i>	

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 inquires, 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).

(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).

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 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).

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 residents.

Section 4: Community Integration/Unrestricted Access to the Community			
Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non - Compliant
1. How often do the residents access the community? Are outing activities in a group only? How do the residents become aware of activities in the community? Who assists in facilitating activities? Can the resident go out as often as they prefer?		Activity Schedule, Care Plans, Documentation, Consumer/Family Feedback.	
2. Does your facility offer in house service as beautician and church services? Can the resident go out into the community if desired for these services as shopping, church, and other appointments? Does the resident have access to laundry services? Do Waiver recipients receive services in a different part of the building than other residents?		Description of Services, Activity Schedules posted.	
3. Are residents able to leave without a check out and check in process? Can they come and go as they please without a curfew? Do they have an opportunity to leave the settings during the day or night?		Describe Security, Describe Egress system and who is able to access the system, Consumer/Family Feedback.	

<p>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? Are their restricted areas in the setting? Is there ADA accessibility for special need residents? Are appliances accessible for individuals in wheelchairs? Are there environmental adaptations present for individuals that need grab bars, ramps, etc? 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). Is the setting accessible without obstructions as steps, lips in a doorway, narrow hallways, etc., which limits mobility?</p>		<p>Observation during site visit if any obstructions or barriers are present, Consumer/Family Feedback.</p>	
<p>5. Do the residents have access to a coded lock or keys to leave the facility?</p>		<p>Observation during site visit, Consumer/Family Feedback.</p>	
<p>6. Does facility have a schedule plan to allow meaningful community involvement?</p>		<p>Provide Activity Schedules, Care Plan, Consumer/Family Feedback.</p>	

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?		Provide Activity Schedules, Care Plan, Consumer/Family Feedback.	
8. Do residents have access to Public Transportation? Are the residents aware of how to access? Does the facility offer transportation?		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			
<i>Questions regarding HCBS waiver residents</i>	<i>Comments</i>	<i>Evidence Justification Provided</i>	<i>Remediation Plans if non - Compliant</i>
1. Can residents and family visit the facility prior to making a decision to move in? Was the individual given a choice of available options regarding where to live/receive services? Does the setting reflect the individual's needs and preferences? How do you ensure the resident understands their rights regarding housing and options to relocate?		Policy, Tour information, Consumer/Family Feedback. Facility to describe how they take into consideration the residents needs and preferences.	

<p>2. Is the residents schedule conducted according to the person centered plan? How do you make it clear that there are no requirements to adhere to a set schedule for waking, bathing, eating, activities, etc.?</p>		<p>Observation/Picture, Policy, Consumer/Family Feedback.</p>	
<p>3. Can the resident access television, radio, phones, and activities at their convenience? Is there Wi-Fi or Ethernet jack access in individual rooms? Can an individual have a cell phone, computer, or personal communication device or is there access in a private location?</p>		<p>Observation, Policy, Consumer/Family Feedback.</p>	
<p>4. Does the individual control their own personal resources? Do they have access to funds, checking accounts, etc.? How do you make it clear that the individual is not required to sign over their funds?</p>		<p>Observation, Policy, Consumer/Family Feedback.</p>	
<p>5. Do the residents share rooms? Do they have a choice in roommates? Can they switch roommate assignments if there is a conflict? Do couples have to share a room or do they have a choice?</p>		<p>Observation/Picture, Policy, Consumer/Family Feedback.</p>	

<p>6. Does the setting reflect the resident's individual interests, hobbies, personal items, and personal choices of furniture, etc.? Do individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement?</p>		<p>Observation, Policy, Consumer/Family Feedback.</p>	
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Section 6: Individual Rights of Privacy			
<i>Questions regarding HCBS waiver residents</i>	<i>Comments</i>	<i>Evidence Justification Provided</i>	<i>Remediation Plans if non - Compliant</i>
<p>1. Is informal (written and oral) communication conducted in a language that the individual understands?</p>		<p>Observation, Consumer/Family Feedback.</p>	
<p>2. Is assistance provided in private, as appropriate, when needed? For example is medical or other cares provided in view of others? Is Medical information kept private? Are there any schedules posted which are confidential? (OT, PT, Medication times, Special Diets, etc.</p>		<p>Observation, Record Keeping, Policy, Consumer/Family Feedback.</p>	

<p>3. Do resident areas have a door that locks? Do the restrooms lock? Is there privacy? How is the individual assured privacy in their sleeping unit? Do they have an option for a private room?</p>		<p>Observation, pictures, Consumer/Family Feedback.</p>	
<p>4. Do Staff or other residents always knock and receive permission prior to entering an individual's private space?</p>		<p>Observation, Policy, Consumer/Family Feedback.</p>	
<p>5. Are cameras/video monitoring present in the facility? If yes, where are they located?</p>		<p>Observation, Policy, Consumer/Family Feedback.</p>	

Section 7: Freedom to Schedules, Activities, and Food			
<i>Questions regarding HCBS waiver residents</i>	Comments	<i>Evidence Justification Provided</i>	<i>Remediation Plans if non - Compliant</i>
<p>1. 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?</p>		<p>Observation, Policy, Survey, Consumer/Family Feedback. Admission Packet, Educational Material.</p>	

<p>2. Does facility provide education upon admission regarding individual right to choose their own schedules?</p>		<p>Admission Packet, Education Material, Consumer/Family Feedback.</p>	
<p>3. Does the individual have access to a kitchen with cooking facilities? Can the individual have access to an alternate meal? Are snacks available? Does the individual have access to a meal at the time and place of clients choosing? Can they eat in their room or in private? Does the dining area afford dignity to the diners and individuals? Do you use disposable cutlery and plates? Are bibs used? Are there dining room assigned seating?</p>		<p>Observation, Policy, Consumer/Family Feedback, Admission Packet, Educational Material.</p>	
<p>4. Do you allow food in the resident room? Do you allow a fridge or microwave in resident rooms?</p>		<p>Observation, Policy, Consumer/Family Feedback, Admission Packet, Educational Material.</p>	
<p>5. Do Individuals have full access to areas of the setting such as the laundry room, community areas, break rooms, etc. Are Individuals able to move freely about inside and outside? If there are locked areas or restrictions, please describe.</p>		<p>Observation, Policy, Care Plan, Consumer/Family Feedback.</p>	

Section 8: Ensure Individual Rights, Dignity and Respect/ Freedom from Coercion and Restraint			
Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non - Compliant
1. Can an individual choose their provider or request a change in provider?		Policy, Consumer/Family Feedback.	
2. How do you accommodate Staff/resident conflicts?		Policy, Survey, Consumer/Family Feedback.	
3. How do individuals file a complaint or grievance? Can complaints be filed anonymously? How do you insure the individual know the person to contact or the process? Is the process for filing a complaint posted in a visible area and in an understandable format?		Policy, Consumer/Family Feedback, Observation, Ombudsman Poster Admission Packet, Educational Material.	
4. Is staff trained on resident's rights?		Staff interview, policy, Training Curriculum, Observation.	
5. How do you assure your staff interacts with residents in a dignified manner and treats residents with respect? Does the staff use the preferred name for residents?		Observation, policy, Staff interview, Consumer/Family Feedback.	

Section 9: Access to Visitors			
<i>Questions regarding HCBS waiver residents</i>	<i>Comments</i>	<i>Evidence Justification Provided</i>	<i>Remediation Plans if non - Compliant</i>
1. Does the facility have set visiting hours? Are visiting hours posted? Are there private areas where individuals can visit?		Observation, Policy, Consumer/Family Feedback, Admission Packet, Educational Material.	
2. Does the facility allow overnight guests?		Observation, Policy, Consumer/Family Feedback, Admission Packet, Educational Material.	

Section 10: Individual Person Centered Care Plan			
<i>Questions regarding HCBS waiver residents</i>	<i>Comments</i>	<i>Evidence Justification Provided</i>	<i>Remediation Plans if non -Compliant</i>
1. How often do you have care plan meetings? Is the individual or the chosen representative aware of how to schedule additional Person-Centered Planning meetings?		Policy, Admission Packet, Educational Material. Record Review of Care plans.	
2. Are they held at times that are convenient so that guardians, recipients, case manager, and facility staff can attend?		Policy, Record Review of Care plans, Consumer/Family Feedback.	
3. Was the individual or representative present at the last planned meeting?		Record Review of Care plan, Consumer/Family Feedback.	

<p>4. Is the facility involved in the assessment that is completed by the HCBS Case Manager? Do you have a copy of the person centered plan that lists restrictions or modifications that are in placed on the individual because of health and safety? If no, have you checked with Case Manager if client or representative is ok with facility receiving copy?</p>		<p>Record Review of Care Plan</p>	
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Section 11: Discussions with Individual (s), Legal Decision Makers, and /or Staff (observe as needed)			
Questions regarding HCBS waiver residents	Comments	Evidence Justification Provided	Remediation Plans if non-Compliant
<p>1. Service and setting choice: Did you choose to live here? Did you visit other settings? Do you like it here? Do you know your rights to housing and that you could relocate? Describe the options and opportunities to visit other settings.</p>		<p>Interview and with whom (Resident, family, guardian). Note if recipient or resident talks about outside activities.</p>	
<p>2. What do you do for work, volunteer or activities? Were you provided the opportunity or interested in competitive employment, community volunteering, etc.? If you work-did you have the opportunity to negotiate work schedule, break/lunch times?</p>		<p>Interview and with whom (Resident, family, guardian). Note if recipient or resident talks about outside activities.</p>	

<p>3. What do you like to do? What activities do you enjoy? Do you regularly go out in the community (shopping, church, appointments, recreation, etc.)? What activities are you involved in, where do you go in the community, is it as often as you like? How do you find out about activities outside of your home? Are there house rules? Can you come and go as you please?</p>		<p>Interview and with whom (Resident, family, guardian).</p> <p>Note if recipient or resident talks about outside activities.</p>	
<p>4. Do you share a bedroom? Did you choose your roommate? Do you want to continue sharing a bedroom with your roommate? Do you know how to request a change if you do not like living with a particular person? Can you decorate your room?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	
<p>5. Do you choose your schedule, when you get to take a shower, eat, wake/sleep, go out in the community, etc.? Do you choose what you eat? Are schedules varied from others in the setting, is there a curfew/requirement for a scheduled return, are there house rules?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	
<p>6. Do you have access to your money?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	

<p>7. Are you offered choices, do staff ask what you would like to do? Can you make decisions? Do you feel comfortable when asking for things? Do you know how to make requests if you need anything?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	
<p>8. Did you choose your doctors, where to shop, pharmacy, bank, church to attend, where to eat, etc.? Do you have access to a phone, television, radio?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	
<p>9. Are you happy with the help/services you get? Do you know who to go to if you are not happy with something? Do you like it here?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	
<p>10. When you want to be alone, are you able to be alone?</p>		<p>Interview and with whom (Resident, family, guardian).</p>	
<p>11. Note how individuals greet and chat with staff. Does staff talk within earshot of residents? Does the staff address the individuals as sweetie or hon.</p>		<p>Observation</p>	

Additional Notes or Observations

Date Evidence Package to send to state _____ Date posted _____

_____ Setting Summary completed	_____ Date
_____ Setting Summary Posted	_____ Date
Completed by _____	Date _____

Attachment 3. 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 Setting Final Rule Requirements" should be utilized as a tool to ensure initial compliance with new settings. <http://www.nd.gov/dhs/services/disabilities/docs/2015-cms-requirements-for-hcbs.pdf>

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.

The second step in compliance with the HCBS Final Rule will be addressed through the person-centered planning process for each person on an initial and annual basis, speaking to the person's individual experiences. The document reference above should also be utilized to address these individual experiences and to ensure setting compliance is maintained.

Please send completed review to the DD Division's Day and Residential Services Administrator.

Provider Information
Date of Review:
Name of Provider:
Location Address:
Type of Setting (duplex, apartment complex, group home, single home, office building, etc.):
License Type:
Number of Individuals to be Served:
Reviewer Name:

Any Relevant Background Information

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.).

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.).		
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>

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).		

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

Attachment 4. Traditional IID/DD Waiver Heightened Scrutiny Assessment

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

Date of on-site visit		
Address of setting		
Individuals in setting reviewed		
Total Number of individuals in setting:	Waiver service provided:	Provider of Service:
Visit completed by		

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). In the Final Rule, CMS defines home and community-based settings 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 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.

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.**

Section 1: 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:

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Section 2: Provider-owned Residential Setting Only		
Requirement Area	Evidence and comments	If non-compliant remediation and timeline (completed by provider after DD review)
1. Does the individual have a lease? <i>Verification completed by review of lease and includes the same responsibilities/protections from eviction under the ND landlord tenant law.</i>		
2. Does the individual know their rights regarding housing and when they could be required to relocate?		
3. Are there lockable bedroom doors?		
4. Does the person's plan reflect any modifications and situations in which staff may use a key?		
Section 3: Community Integration/Setting Access		
Observation and discussion with individuals and/or staff		
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> <p>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?</p> <p>Is there a curfew or scheduled time to return?</p> <p>If there are any locked areas or restrictions, please describe. (Modifications or restrictions</p>		

<p>must be addressed in the plan).</p> <p>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>		
<p>6. Is the setting physically accessible and there are no obstructions limiting the individual's mobility?</p> <p>Are appliances accessible to individuals (e.g. front loading washer/dryer for a person using a wheelchair)?</p> <p>Furniture is able to be used comfortably and at a convenient height and location?</p> <p>Are there environmental adaptations present if needed (e.g. grab bars, ramps, etc.)?</p>		
<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 available, schedules/numbers posted, transportation resources, etc.)?</p> <p>Do individuals know how to access transportation or receive training if needed?</p> <p>How do individuals get to where they want to go?</p>		
<p>9. The setting provides opportunities for regular meaningful, age-appropriate, non-work activities in integrated community settings as desired by</p>		

<p>the person?</p> <p>Are in house services (e.g. beautician, church, etc.) provided in the setting? <i>If available, provide any activity logs, schedules, etc.</i></p> <p>If in house services are used, is the individual afforded activities in the community as an option to choose from?</p>		
<p>10. Individuals regularly access the community (shopping, church, appointments, recreation, etc.)?</p> <p>How are individuals aware of activities in the community?</p> <p>What activities are individuals involved in, what do individuals like to do, where do individuals go in the community?</p> <p>Do individuals shop, attend religious services, schedule appointments, have lunch with family and friends, etc. in the community?</p> <p>Are the activities as often as they like?</p>		
<p>11. What do individuals do for work or day support activities?</p> <p>Were they provided the opportunity or interested in competitive employment, community volunteering, etc.?</p> <p>Do individuals participate regularly in integrated community settings?</p>		
<p>12. If individuals work-did they have the opportunity to negotiate work schedule,</p>		

break/lunch times?		
13. Service and setting choice: Describe the options available and opportunities to visit other settings. Did individual's choose where you live/work? 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		
Requirement Area	Evidence and comments	<i>If non-compliant remediation and timeline (completed by provider after DD review)</i>
14. Do the individuals share a bedroom? Did they choose their roommate and want to continue sharing with their roommate? Do individuals know how to request a change in roommates? 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.)? Do individuals have privacy in the bedroom and bathroom? When you want to be alone, are you able to be alone? Are there cameras/video monitoring in the setting?		

<p>17. Staff communicates and interacts with individuals with dignity and respect (natural conversations, greetings, explaining what doing during cares, etc.)?</p> <p>Individuals and staff greet and converse with each other?</p> <p>Preferred names are used?</p> <p>Is written and oral communication conducted in a language that the individual understands?</p>		
<p>18. Are individuals happy with the help/services you get?</p> <p>Do they know who to go to if they are not happy with something?</p> <p>Does the individual express satisfaction with the provider and know how to make a request for a new provider if needed?</p>		
<p>Section 5: Individual Initiative, Autonomy, Choices, Visitors, and Access to Food Observation and discussion with individuals and/or staff</p>		
<p>Requirement Area</p>	<p>Evidence and comments</p>	<p><i>If non-compliant remediation and timeline (completed by provider after DD review)</i></p>
<p>19. Does the setting reflect individual interests, hobbies, personal items, personal choice of furniture, arrangement of furniture, etc.?</p> <p>Individuals decorate both their sleeping and living areas?</p> <p>What are the individual's likes and interests?</p>		
<p>20. Does the setting reflect the individual's needs and preferences and accessible based on</p>		

any accommodations if needed?		
<p>21. Do individuals have access to personal items (TV, radio, phone, leisure activities of interest, etc.)?</p> <p>Individuals can make private phone calls, have a cell phone, phone jack in room, etc.?</p>		
<p>22. Do individuals have access to food anytime (snacks accessible, request alternative meals)?</p> <p>Are meals at a time and place of choosing (e.g. eat alone or with others, no assigned seating)?</p> <p>Individuals participate in meal preparations, etc.)?</p> <p>Can individuals choose what, when, and where they would like to have meals?</p>		
<p>23. Individuals have visitors of their choice?</p> <p>Are there visiting hours, certain visiting locations, visiting hours posted?</p> <p>There is privacy for visitors?</p> <p>Visitors are present?</p>		
<p>24. Do individuals choose their schedule, when they take a shower, eat, wake/sleep, go out in the community, etc.?</p> <p>Schedules vary from others in the setting, is there a curfew/requirement for a scheduled return, are there house rules?</p>		

<p>25. Are individuals offered choices, do staff ask what they would like to do, make decisions?</p> <p>Do staff ask individuals about their needs and preferences?</p> <p>Is individual choice facilitated in a manner that leave the person feeling empowered to make decisions?</p> <p>Are requests for services and supports accommodated as opposed to ignored or denied?</p>		
<p>26. Are there provider policies and practices that limit individual choice?</p> <p>Are individuals prohibited from engaging in legal activities?</p>		
<p>27. Did individuals choose their doctors, where to shop, pharmacy, bank, church to attend, where to eat, etc.?</p>		
<p>28. Do individuals have access to their money?</p> <p>Do individuals have a checking or savings account or other means to control their funds?</p> <p>How is it made clear that individuals are not required to sign over their paychecks to the provider?</p>		
<p>Section 6: Person Centered Service Plan Observation and discussion with individuals and/or staff</p>		
<p>Requirement Area</p>	<p>Evidence and comments</p>	<p>If non-compliant remediation and timeline (completed by provider after DD review)</p>
<p>29. Are individuals planning meetings held at times and a location that are convenient to the person receiving services and/or their legal decision maker?</p>		

<p>Are they aware of how to schedule or request a meeting?</p> <p>Can the individual explain the process to develop or update their plan?</p> <p>Was the individual present at their last planning meeting?</p>		
<p>30. Do individuals have a copy of their plan if they want one? Do individuals know what is in their plan? Is it understandable to individuals or written in an alternative format if requested?</p>		
<p>31. Does the plan reflect and correspond to the services and individual needs and preferences observed during the on-site visit?</p>		
<p>32. Does the plan adequately document the individual's options and choice in services and setting per HCBS requirements?</p>		
<p>33. Does the plan adequately document and justify any restrictions or modifications per HCBS requirements? (<i>assessed need and condition related to restriction, positive supports attempted, less intrusive methods tried, data collection review; time limits; informed consent; no harm assurance</i>)</p>		
Additional Notes or Observations		

Additional DD Division Review and Verification
Heightened Scrutiny needed to do: <ul style="list-style-type: none"><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.<input type="checkbox"/> A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution.<input type="checkbox"/> 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:

Updated Version 11/16/17