

HCBS Final Settings Rule State Transition Plan (STP) Training

November 3 & 10, 2022

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Agenda

- HCBS Final Settings Rule and State Transition Plan (STP)
- Heightened Scrutiny and Impacted HCBS Waivers
- Self-Assessment Process
- On-Site Expectations

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HCBS Final Settings Rule State Transition Plan (STP)

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The Final Settings Rule

- The Centers for Medicare and Medicaid Services (CMS) published a final rule for Medicaid Home and Community-Based Services (HCBS) effective March 14, 2014.
- This rule reflects CMS' intent to ensure individuals receiving services and supports through Medicaid HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.
- The rule supports enhanced quality in HCBS programs and adds protections for individuals receiving services.

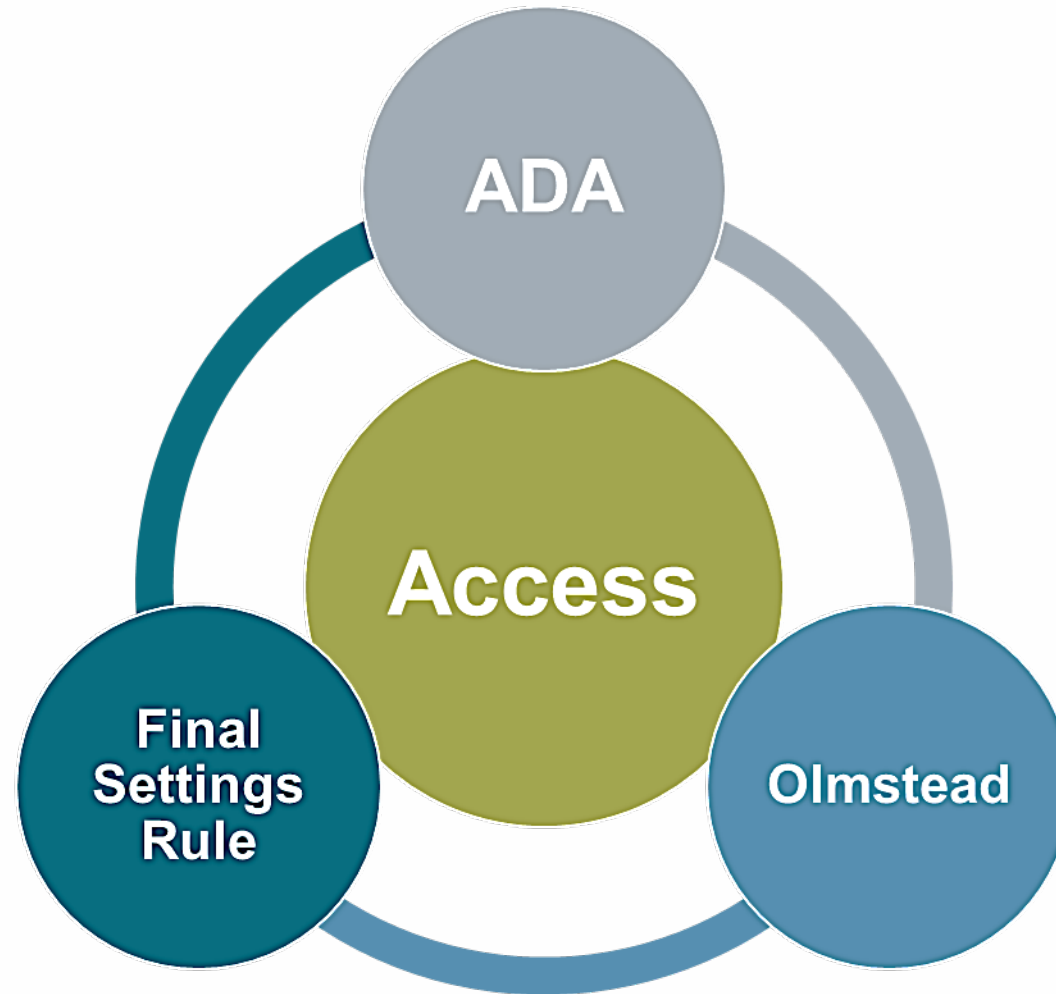
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Accessibility Ecosystem



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Final Settings Emphasis

The HCBS Final Settings Rule emphasizes:

- Person-centered planning;
- Conflict-free case management; and
- Provider-owned, controlled, and operated settings where home and community-based services are provided.

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Final Settings Rule Compliance

Characteristics required for HCBS settings include, but are not limited to:

- Maximized opportunities for individuals (such as employment, community engagement, and control of personal resources);
- Access to community living and participation;
- Choice, dignity, and privacy;
- Legally enforceable rental agreement;
- Lockable doors and freedom to decorate;
- Choice of roommate; and
- Control of schedule, including access to food.

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Statewide Transition Plan (STP)

CMS required each state to create a Statewide Transition Plan (STP) reviewing policies, practices, and settings where home and community-based services are provided, including:

- Requirements for all settings and additional requirements for provider-owned or operated residential settings;
- A plan explaining updates to policies and regulations;
- A plan to determine if service settings are meeting requirements; and
- A plan to remedy instances where settings are not meeting requirements.

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Nebraska Timeline

- 2014 – CMS releases the Final Settings Rule
- 2015 – CMS initial review of Nebraska plan,
Site assessment process established
- 2016 – Public comment and revised plan to CMS
- 2018 – Public comment period for 2019 submission
- 2019 – Public comment and revised plan to CMS
- 2021 – Ongoing monitoring of previously assessed settings
- 2022 – Final public comment,
CMS grants Nebraska final approval,
State continues on-going monitoring to report to CMS

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STP Final Approval

- On August 2, 2022, CMS granted Nebraska final approval of its STP to bring settings into compliance with the federal HCBS regulations found in 42 CFR Section 441.301(c)(4) and (5).
 - Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on March 31, 2017, Nebraska worked diligently to make technical changes requested by CMS to achieve final approval.
 - Any settings submitted by the state under heightened scrutiny will be reviewed and a determination will be made separate and distinct from final STP approval.
- Nebraska is the 25th state to receive CMS approval.
- We are one of seven states to receive final approval during the public health emergency.

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Heightened Scrutiny and Impacted HCBS Waivers

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Excluded Settings

The following settings are **not** considered home and community-based services and are excluded from the Final Settings Rule:

- Nursing Facilities;
- Institutions for Medical Disease;
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs); and
- Hospitals.

These are not HCBS settings.

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Impacted Nebraska HCBS Waivers

Nebraska operates four Medicaid 1915(c) Waivers:

- Aged and Disabled (AD) Waiver;
- Comprehensive Developmental Disabilities (CDD) Waiver;
- Developmental Disabilities Adult Day (DDAD) Waiver; and
- Traumatic Brain Injury (TBI) Waiver.

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Evaluated Settings for Nebraska Waivers

AD Waiver	DD Waivers	TBI Waiver
Assisted Living Facilities	Host Home/Shared Living	Assisted Living Facilities
Adult Day Health	Group Home	
Extra Childcare for Children with Disabilities	Centers for Developmental Disabilities (CDDs)	
Respite Settings	Adult Day Settings	
	Other Settings	
	Day Support (Workshop)	

Heightened Scrutiny Settings

- For settings ***presumed*** to have institutional qualities, CMS requires an additional assessment process called “heightened scrutiny.”
- Identified settings will be required to undergo an additional review by state staff and may be included in a sample reviewed by CMS.
- Settings subject to heightened scrutiny include:
 - Settings in a publicly or privately-operated facility providing inpatient institutional treatment;
 - Settings on the grounds of, or adjacent to, a public institution; and
 - Settings with the effect of isolating people receiving Medicaid home and community-based services from the broader community of people not receiving services.

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Heightened Scrutiny Process

- For settings *presumed* to have institutional qualities according to the final rule:
 - It *does not* necessarily mean HCBS cannot be provided in this setting;
 - It *does* mean this setting is subject to the heightened scrutiny process.
- Depending on the setting, the heightened scrutiny process may include:
 - Site visits;
 - Submitting a packing of information;
 - Responding to additional inquiries; and
 - Remediation planning.

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Self-Assessment Process

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DD Self-Assessment Process

- All new settings must be self-assessed by the DD agency provider with validation activities completed by DDD staff, as necessary.
 - Shared Living settings must ensure that when a shared living provider (SLP) changes addresses or selects a new provider, a new self-assessment is completed.
 - Settings selected for validation activities will be notified through a separate process.
- Self-Assessment Surveys are administered through Survey Monkey.
 - Paper copies of the surveys, for reference, are available upon request.

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DD Self-Assessment Links

To complete the self-assessment, DD agency providers must fill out the applicable DD Self-Assessment on Survey Monkey 15 business days before beginning services in the setting:

- Non-Residential Self-Assessment:

<https://www.surveymonkey.com/r/Non-ResidentialSelf-Assessments>

- Residential Self-Assessment:

<https://www.surveymonkey.com/r/ResidentialSelfAssessments>

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On-Site Expectations

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DDD Review of Assessment & Full Compliance

- Completed assessments will be reviewed by DDD staff within 15 business days to determine if the DD agency provider is in compliance or if an on-site visit is needed.
- DDD staff will email a response (notification letter) to the agency provider.
- When an on-site visit is deemed necessary, DDD staff will telephone the agency provider to schedule the on-site visit.
- When the setting is found to be “fully compliant,” the agency provider can begin providing services in that setting.

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DDD Review of Assessment & Partial Compliance

- When the setting is found to be “partially compliant,” the agency provider is required to correct identified issues and submit evidence of remediation to DDD staff.
- The agency cannot begin services in the setting until the setting is deemed “fully compliant.”
- Service authorizations will not be approved until the agency receives a fully compliant determination for that site, and must be enrolled with our provider enrollment broker, Maximus.

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DDD Monitoring Assessment Process

- The DDD Quality Team is in charge completing on-going, on-site assessments for all HCBS settings in Nebraska.
- The on-site assessment is to confirm what the agency provider submitted during the self-assessment process.
- DDD uses a random, stratified sample to select sites to visit.
- The Quality Team can also complete targeted reviews of any setting at any time.
- On-site assessments are interview-style with a required walk-through of the site.
- Once the on-site is completed, the agency provider will receive a response letter with the findings.
- The agency provider should respond to questions within 15 business days to ensure compliance and ability to continue providing services in the setting.

Shared Living Affiliations

- When an agency provider is going to have a Shared Living home, the agency needs to make sure the SLP is affiliated in Maximus **before** the participant moves into the home.
- When an agency provider has a SLP with a participant already living in the home and it has not been affiliated with Maximus, DDD will turn off authorizations for that participant until the SLP is affiliated.
 - This means the agency provider will not receive payment and includes paying back any funds received for the time the SLP was not in Maximus.
 - It is the agency's responsibility to make sure SLPs are properly enrolled and active in Maximus.
- Resource to affiliate Shared Living Providers:
<https://www.nebraskamedicaidproviderenrollment.com/Documents/5HCBSSharedLiving.pdf>

Next Steps for Compliance

DHHS is committed to continue:

- Working with participants, families, providers, and partners;
- Sharing technical assistance and good service models;
- Supporting providers through heightened scrutiny; and
- Supporting participants to select providers and in person-centered service delivery.

**All settings must be in compliance by
March 2023.**

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View the State Transition Plan Page:

<https://dhhs.ne.gov/Pages/HCBS-Statewide-Transition-Plan.aspx>



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