



June 22, 2023

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Centers for Medicare & Medicaid Services

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RE: Nebraska's HCBS Settings Rule Implementation

Dear Amanda Hill,

Below is Nebraska's response to the Centers for Medicare & Medicaid Services' request to document state and provider compliance with the State Transition Plan (STP); Final Rule regulatory criteria:

1. Description of how the state's oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations:
 - a. Nebraska's monitoring efforts will occur at the individual, provider, and state levels. All settings are continually monitored through monthly reviews of person-centered plans with participants and at annual review meetings facilitated by service coordinators, which include Home & Community-based Services (HCBS) settings criteria in the monitoring process.
 - b. Individual: Monitoring efforts at the individual level include a review of person-centered service plans. Relevant forms have been or will be updated to include indicators of compliance with the HCBS final rule. Medicaid & Long-term Care (MLTC) and the Division of Developmental Disabilities (DDD) will ensure that service delivery system staff continue to receive training on person-centered planning

philosophy and practice, including the empowerment of the individual to fully understand the range of options available to them and their rights in making individual choices. Training will emphasize an individual's right to select where they live and to receive services from the full array of available options, including services and supports in their own or family homes. The training will include curricula on supporting informed choice and identifying areas that providers must address. Guidance will be provided to service coordinators on how to educate individuals about person-centered philosophy and practice, which supports the implementation of the State Transition Plan. It will also include rights, protections, person-centered thinking, and community membership.

- c. Provider: Monitoring efforts at the provider level include ensuring current providers transition to compliance and maintain compliance. MLTC and DDD will use the results of initial site assessments to identify those settings requiring further attention to come into compliance with the HCBS settings final rule. The assessment process will identify what modifications are needed and by when. Nebraska will assess providers' progress toward compliance through reports, interviews, and on-site inspections that include information from providers and individuals receiving services. Licensing, certification, and/or service delivery system staff will be critical to ensuring compliance and assuring providers' progress on their provider-level transition plans. Ongoing monitoring and follow-up will ensure compliance is achieved. Once overall compliance is achieved, strategies to ensure ongoing compliance will include:
 - i. Ongoing licensing inspections and certification reviews by appropriate staff; and
 - ii. Ongoing HCBS setting compliance monitoring to ensure that settings continue to comply with the HCBS regulations.
 - d. State: MLTC and DDD will ensure that these staff members are appropriately trained on the HCBS regulations and expectations. DDD will work with Department of Public Health (DPH) licensure and certification staff to reduce duplication of effort in each Division's survey process.
2. Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance:
- a. Continuous Improvement and Ongoing Monitoring for Aged & Disabled/Traumatic Brain Injury (AD/TBI) Waivers:

- i. Continuous quality improvement is founded in good person-centered planning, and to that end, MLTC will provide key performance indicators to be included in various tools (for example, individual needs assessments, and surveys of participant experience). MLTC's quality improvement file reviews currently include reviews of the entire needs assessment to make sure it is filled out correctly and that all identified needs are covered in the Plans of Services and Supports (POSS). MLTC will update needs assessments to incorporate elements from the HCBS final rule. MLTC's file review summaries will facilitate tracking of progress in remediation efforts for HCBS setting-related issues identified on the needs assessment or plan of services and supports.
 - ii. In addition to the file reviews, MLTC staff (or designees) will conduct ongoing monitoring for all provider-owned, operated, or controlled settings through setting assessments during the annual provider review process, to assure continuous monitoring and improvement. All provider-owned, operated, or controlled settings are monitored for all parts of the HCBS Final Rule. This will include determining sample sizes to ensure providers are complying with HCBS regulations on an ongoing basis.
 - iii. MLTC staff (or designees) actively monitor the provision of services and supports identified in the participant service plan at a frequency and intensity which ensures needs are met and that any necessary revisions to the service plan are completed. This includes monitoring individual private homes, non-licensed settings, and anywhere services are received.
- b. Continuous Improvement and Ongoing Monitoring for DD Waivers:
- i. On December 14, 2015, the licensing staff was re-assigned from DDD to DPH to create an independent survey team. These DPH staff perform on-site reviews prior to initial certification and prior to the expiration of the most recent provider certification. Forms and processes for the survey team have been reviewed and revised as a result of this change. The revised forms added language to address the HCBS regulations regarding rights, access, and freedom from isolation.
 - ii. On-site visits may be conducted for follow-up to complaints against providers regarding a potential violation of Nebraska Administrative Code 404 rules. Follow-up may be conducted through additional on-site visits, document

reviews, telephone, and/or email (note – abuse/neglect allegations are investigated by the Division of Children and Family Services (CFS) and/or law enforcement as appropriate, in addition to any required complaint investigation).

- iii. STP Self-Assessments have been developed for our DD providers to complete before opening and serving participants in a residential or non-residential site. These assessments are evaluated by the DDD quality team to determine compliance. If non-compliant items are found, the DDD quality team works with the provider to come into compliance before beginning to provide services to waiver participants. Once the provider has received a fully compliant letter from the DDD quality team, they are open to start providing services in that setting.
- iv. DDD service coordination staff and the DDD quality team actively monitor the provision of services and supports identified in the service plan at a frequency and intensity which ensures habilitative needs are met and that any necessary revisions to the service plan are completed. This includes monitoring individual private homes, non-licensed settings, and individualized day/supported employment settings. Monitoring assures that the services and supports in the service plan are occurring as developed by the Individual's Support Planning team. Monitoring also focuses on safety, environmental factors, personal well-being, and issues related to community integration. Monitoring can take the form of face-to-face meetings or telephone calls with the individual, guardian, involved family members, advocates, and other contacts on behalf of the individual, or reviews of paperwork, such as financial records, medication records, etc. Full and ongoing reviews are documented on the required forms. The forms include HCBS final rule language and philosophies. The individual served, the guardian, involved family members, provider staff, advocates, and others as appropriate may participate in the review process. All settings receive ongoing monitoring by DDD service coordination staff at least annually.
- v. DDD will conduct ongoing monitoring activities on all setting types assuring that settings remain compliant in all areas of the final rule. Annually, settings will be selected for monitoring using a combination of a random, stratified

sampling strategy as well as targeted assessment when necessary. Settings may be selected for targeted assessment for any number of reasons including previous settings assessment results, consumer or public concern regarding compliance with the final rule, or other issues.

3. Description of a beneficiary's recourse to notify the state of setting non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback:
 - a. DDD has recently updated our customer service support guidance to better support participants or members of the public who may have questions or concerns about the final rule compliance or HCBS services within the state. Included in this update, DD has developed presentations and publications to increase knowledge and understanding of the Final Settings Rule within the State.
 - b. DDD understands there may be times when the waiver participant, service providers(s), legal guardian(s), or family members may have concerns that are not able to be resolved by a customer service worker, their service coordinator, or a supervisor. These issues are handled as formal complaints which are open to anyone who is currently involved with the Nebraska DHHS - Division of Developmental Disabilities home and community-based waivers.
 - c. Participants are advised in the Notice of Rights and Obligations (received at the annual Individual and Family meeting or annual service plan meeting) that filing a grievance or complaint is not a prerequisite for filing for a Fair Hearing. Participants receiving support(s) through the waiver may register the following types of grievances/complaints:
 - i. Safety, endangerment, or welfare issues;
 - ii. Suspicion of Medicaid fraud;
 - iii. Violations by providers of DDD Medicaid regulations, DDD regulations, or policy by DDD policies;
 1. As a codified CMS rule, echoed in DDD policy, DDD views complaints involving the final rule as fitting within this category.
 - iv. Issues related to a participant's Service Coordinator; or
 - v. Difficulty with DDD Medicaid DD services or providers.
 - d. The process and timelines for addressing grievances and complaints: The grievance/complaint may be submitted via mail, email, fax, phone, or in person at any

local DHHS office or targeted case management agency office, such as the League of Human Dignity or Area Agency on Aging, for the AD or TBI waivers. DDD also has a central phone number participants can call to file a complaint or to ask questions. Participants can also write a letter and mail or fax it in to DDD or may submit a complaint online through the DDD website where they may indicate it is related to the final rule. Complaints, questions, or concerns are responded to by designated DDD or TCM program personnel. Once the grievance/complaint has been resolved, designated personnel provide written notification, when applicable, of the outcome to the complainant. Resolution of the grievance/complaint may involve working with DHHS Division partners, multiple providers, and the participant's service plan team; thus, there is no universal timeframe for resolution and notify the complainant. Designated personnel are expected to take immediate steps to make a resolution and notification within seven days and to fully remediate the situation within 30 days depending complexity of the situation. All grievances/complaints and outcomes are maintained in electronic form, in accordance with the Records Retention Schedule applicable to DHHS.

- e. DHHS and TCM agencies resolve and respond to complaints through follow-up by phone, letter, in-person or remote visits with the provider or participant, and referral to another DHHS program (e.g., Child Welfare Services, Adult Protective Services, and Medicaid Fraud Control Unit).

Sincerely,



Tony Green, Director
Division of Developmental Disabilities