

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

# GUIDANCE DOCUMENT

“This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Nebraska Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.”

Pursuant to  
Neb. Rev. Stat. § 84-901.03




## PROVIDER BULLETIN

No. 22-01

DATE: September 27, 2022

TO: Medicaid HCBS DD Waiver Agency Service Providers

FROM: Tony Green, Director Division of Developmental Disabilities 

BY: Ashley Knudtson, Quality Assurance Coordinator

RE: Reminder of Assessment Requirements for New HCBS Sites and CMS Updates

Effective March 2014, all settings subject to the Medicaid HCBS Final Settings Rule (42 Code of Federal Regulations [CFR] Parts 430, 431, 435, 436, 440, 441, and 447) are subject to immediate compliance. Therefore, all new sites must be assessed prior to providing services. This applies to all locations including Residential Settings (Group Homes, Shared Living or Host Homes, and CDDs) and Non-Residential Settings (Habilitative Workshops, Adult Day Services Centers). The final rule requires states to ensure people receiving Medicaid home and community-based services have the benefits of community living. 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.

On August 2, 2022, the Centers for Medicare & Medicaid Services (CMS) granted Nebraska final approval of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (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, the state worked diligently in making a series of technical changes requested by CMS to achieve final approval. Any settings that have been or will be submitted by the state under heightened scrutiny will be reviewed and a determination will be made separately and distinct from final STP approval.

### IMPACTED NEBRASKA HCBS WAIVERS

#### Medicaid 1915(c) Waivers

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

## IMPACTED NEBRASKA HCBS SETTINGS

AD Waiver	DD Waivers	TBI Waiver
Assisted Living	Extended Family Home (Host Home and Shared Living)	Assisted Living
Adult Day Health	Group Home	
Extra Child Care for Children with Disabilities	Centers for the Developmentally Disabled (CDD)	
Respite	Workshop	
Adult Day Settings		
Other Day Settings		

## NON-IMPACTED 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 or developmental disabilities; and
- Hospitals

## FINAL SETTINGS RULE COMPLIANCE

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

- Maximized opportunities for individuals (for example: 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 unit;
- Choice of roommate; and
- Control of schedule, including access to food.

## HEIGHTENED SCRUTINY

For settings presumed to have institutional qualities, CMS requires an assessment process called “heightened scrutiny.” Identified settings are required to undergo 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 in-patient institutional treatment; settings on the grounds of, or adjacent to, a public institution; or settings with the effect of isolating people receiving Medicaid home and community-based services from the broader community of people not receiving services. Heightened scrutiny documentation will be sent to CMS when requested. CMS makes the final determination if identified settings meet HCBS criteria.

## DD ASSESSMENT PROCESS

All new settings must be self-assessed by the agency provider with validation activities completed by DDD staff as necessary. Shared Living settings must ensure that if an SLP changes addresses or selects a new provider, a new self-assessment must be completed. Settings selected for validation activities will be notified through a separate process.

All Self-Assessment Surveys will be administered through Survey Monkey. Additionally, paper copies of the surveys, for reference purposes, are available upon request.

To complete the self-assessment process, agencies must fill out the applicable DD Self-Assessment Survey 15 business days **prior to** beginning services in the setting.

- Non-Residential Self-Assessment Survey Monkey:  
<https://www.surveymonkey.com/r/Non-ResidentialSelf-Assessments>
- Residential Self-Assessment Survey Monkey:  
<https://www.surveymonkey.com/r/ResidentialSelfAssessments>

## DD REVIEW OF ASSESSMENT AND DETERMINATION OF COMPLIANCE

- Completed assessments will be reviewed by DDD staff within 15 business days to determine whether the DD agency provider is in compliance or if an on-site visit is needed.
- DDD Staff will issue a response (notification letter) to the agency provider via email.
- When an on-site visit is deemed necessary, DDD staff will notify the agency provider via phone to schedule the on-site visit.
- When the setting is found to be “fully compliant,” the agency provider is permitted to begin providing services in that setting.
- When the setting is found to be “partially compliant,” the agency provider will be required to correct the identified issues and submit evidence of remediation to DDD staff. **The agency will not be permitted to 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.

## DDD IS COMMITTED TO CONTINUE:

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

## RECENT CMS GUIDANCE



Time is of the  
essence.pdf

<https://youtu.be/OYFarI7aVVY>

## RESOURCES

- DDD STP Website: <https://dhhs.ne.gov/Pages/HCBS-Statewide-Transition-Plan.aspx>
- If you have any questions about this provider bulletin, please contact Ashley Knudtson at [ashley.knudtson@nebraska.gov](mailto:ashley.knudtson@nebraska.gov) or (402) 214-0470.

***All settings must be deemed compliant by March 2023.***