State of Nebraska
Department of Health and Human Services

State Transition Plan

To Implement the Settings Requirement for Nebraska's Home and Community-Based Waivers

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1. Summary for Nebraska Stakeholders

a. Nebraska's Commitment to Stakeholder Engagement

Nebraska holds a unique place in the history of services to seniors and individuals with disabilities. The first community-based program in the United States was launched in Omaha, Nebraska, in 1968 by a remarkable coalition of families and professionals. This history of visionary leadership coupled with grassroots organizing continues to drive our state and ensures that we have a human services system that reflects our values and our promise to all of the citizens of Nebraska. This State Transition Plan belongs to the people of Nebraska and represents the commitment of the Nebraska Department of Health and Human Services (DHHS) to stakeholder engagement, government transparency, and continuous quality improvement.

b. What is Medicaid?

Medicaid is the main publicly financed source of health care coverage for low-income individuals who have limited resources. It is funded jointly through a Federal and State partnership and helps pay for a variety of health care services. States design and administer their own Medicaid programs within broad federal guidelines. Medicaid covers many individuals with disabilities and complex needs. Today, it is a primary payer for nursing facility services, intermediate care facilities for individuals with developmental disabilities (ICF/DD), and community-based long-term services and supports.

c. What are Home and Community-Based Services (HCBS) Waivers?

In 1981, Section 1915(c) of the Social Security Act allowed states to use Medicaid funds to pay for a wide-ranging set of non-medical services. The services are required to help individuals, who would otherwise need care in institutional settings, to remain in their homes and communities. The Centers for Medicare and Medicaid Services (CMS) waived certain requirements to allow states to target certain populations and areas with these funds. The DHHS Division of Medicaid and Long-Term Care (MLTC) oversees four HCBS waivers that are germane to the State Transition Plan:

- HCBS for Aged and Adults and Children with Disabilities (A&D) Waiver;
- Traumatic Brain Injury (TBI) Waiver;
- Comprehensive Developmental Disabilities (CDD) Services Waiver; and
- DD Adult Day Services (DDAD) Waiver.

MLTC administers the A&D Waiver and the TBI Waiver, whereas the DHHS Division of Developmental Disabilities (DDD) administers the two DD waivers. Combined, these HCBS waivers provide support to address the needs of Nebraska's seniors and individuals with disabilities.

d. The HCBS Regulations

Effective March 17, 2014, the Centers for Medicare and Medicaid Services (CMS) issued regulations (also referred to as the final rule) that have a broad effect on the design and delivery of home and community-based services in residential and day service settings. These regulations are available at https://www.medicaid.gov/medicaid/managed-care/guidance/final-rule/index.html.

The regulations require that all settings in which Medicaid HCBS are delivered to:

1. Make possible full participation in greater community life, beyond the walls of the setting itself;
2. Maximize independence in making life choices;
3. Ensure the right to privacy, dignity, respect, and freedom from coercion and restraint;
4. Be chosen by the individual among other residential and day service settings, including those not specifically established for individuals with disabilities;
5. Facilitate choice of services and who provides them, as shown in a person-centered plan; and
6. Provide the opportunity to seek competitive employment, if desired by the individual.

The CMS HCBS regulations require states to submit a transition plan within one year of the March 17, 2014 effective date. All states have until March 17, 2022 to meet requirements of the regulations. Each state was required to submit an initial plan to CMS to explain how the state would update its policies, determine if its service settings were meeting requirements, and remedy any instances when settings were not meeting requirements.

MLTC submitted the initial State Transition Plan, as well as a summary of public comments about the plan, on December 1, 2014. CMS provided feedback on September 24, 2015, requesting the plan be expanded in key areas. All versions of the State Transition Plan and the CMS letter of feedback are available on Nebraska's HCBS State Transition webpage at: http://dhhs.ne.gov/Pages/HCBS-Statewide-Transition-Plan.aspx

In an effort to increase transparency and promote an environment of collaboration with stakeholders, MLTC sought permission from CMS to rewrite the State Transition Plan to provide the desired specificity. During a conference call on October 19, 2015, CMS was in agreement that MLTC could update and resubmit the State Transition Plan.

Per CMS expectations, a state's transition plan must be available for public comment for a period of at least 30 days and public notice must be provided in a minimum of two forms. Both forms of public notice should reach individuals

receiving services and the full scope of stakeholders. A state's transition plan submission to CMS must include a summary of public comments identifying whether changes were made to the plan in response to each comment and the reason why the transition plan was or was not changed as a result of each comment. The transition plan, with any revisions based on public comment, must be made available publicly.

e. *Nebraska's State Transition Plan for Coming into Compliance with HCBS Regulations*

Nebraska's State Transition Plan addresses MLTC's and DDD's statewide efforts for compliance with the HCBS regulations as well as incorporates each waiver program's specific plan. In order to determine Nebraska's readiness to comply with the HCBS regulations, DHHS undertook a variety of activities. Providers serving individuals across disability populations assisted with assessments of their residential and day services. MLTC and DDD developed work plans identifying tasks necessary to transition into compliance, including waiver applications, policies, rules and practices. The State Transition Plan gives stakeholders a comprehensive perspective on the status of programs and work yet to be done. Representatives from MLTC and DDD worked closely together to ensure a seamless response to the requirements of the HCBS regulations.

We thank you for your invaluable assistance as we work together to improve the lives of Nebraska's seniors and individuals with disabilities.

2. Stakeholder Input

MLTC and DDD utilized a variety of methods to educate stakeholders and the broader public regarding the State Transition Plan. These methods included a dedicated State Transition Plan website, public forums in communities throughout the state, provider information meetings, and development of technical assistance resources distributed to providers and contracted service coordination agencies.

An initial round of public comment was conducted from September 3, 2014 through October 15, 2014. At that time, the draft State Transition Plan was posted on a dedicated State Transition Plan website. A second public comment period was conducted from March 28, 2016 through May 2, 2016 for the second submitted draft (that resulted in initial approval from CMS). The comment period for the proposed final approval draft submission was conducted from May 23, 2018 through June 25, 2018. Changes were made to the document prior to the submission, so another public comment period was conducted from May 10, 2019 through June 17, 2019. The State Transition website has been updated to include the current draft and additional resources.

For some of the comment periods, notice was published in the Omaha World-Herald. Both MLTC and DDD sent an email notification to stakeholders to solicit comments during each comment period. Individuals were able to request a printed copy of the State Transition Plan under review by contacting their assigned services coordinator, local DHHS office, or MLTC/DDD staff.

Anyone interested was invited to submit comments via email, phone, fax, in-person, and USPS. Comments with responses by MLTC and DDD were posted following the applicable comment periods.

a. State Transition Plan Website (September 2014- March 2022)

The HCBS State Transition Plan webpage serves as a hub of information for stakeholders regarding the HCBS final rule requirements and ongoing efforts for transition to compliance. The webpage includes the State's submitted and draft State Transition Plans, public comments, site assessment tools, companion guides for site assessment tools, assessment findings, and information regarding stakeholder engagement opportunities. MLTC and DDD will continue to utilize the dedicated webpage throughout the transition period.

b. Public Forums and Information Sessions (September 2014 – June 2019)

Fall 2014

MLTC and DDD hosted regional forums throughout the state to provide an overview of the final rule and receive public comments on the State Transition Plan. MLTC and DDD invited individuals, family members, and providers to these forums. The forums were held during the day as well as evenings to

increase attendance. Copies of the draft State Transition Plan were made available.

The following table lists the locations, dates, and times of the fall 2014 public forums. The initial public comment period included an opportunity for stakeholders to hear from DDD and/or MLTC officials at four forums throughout the state.

City	Date/Time	Location	Focus
Kearney	Sept. 29, 2014; 1:00-3:00 p.m. CDT	Kearney Public Library	All waivers
Lincoln	Sept. 30, 2014; 1:00-4:30 p.m. CDT	Nebraska State Office Building	All waivers
Omaha	Oct. 7, 2014; 9:00 a.m. CDT	Metro Community College	A&D Waiver TBI Waiver
Sidney	Oct. 9, 2014; 9:00 a.m. MDT	Western Nebraska Community College	A&D Waiver TBI Waiver

Summer/Early Fall 2015.
DDD conducted information sessions to explain the final rule to stakeholders and address their questions and concerns. The following table identifies the locations, dates, and times of the sessions.

City	Date/Time	Location
Kearney	Aug. 17, 2015; 3:00-4:00 p.m. CST	Educational Service Unit #10
Grand Island	Sept. 02, 2015; 3:00-4:00 p.m. CST	Nebraska Department of Health and Human Services
Norfolk	Sept. 22, 2015; 3:00-4:00 p.m. CST	Lifelong Learning Center
Lincoln	Sept. 24, 2015; 1:30-3:30 p.m. CST	Included Video Conference Option: • **Columbus** – Columbus Public Library • **North Platte** – ESU #16, Distance Learning Room • **Omaha** – Omaha State Office Building

Late Fall 2015.
"Let's Talk" information sessions were held throughout the state to provide an update on key issues, including State Transition Plan progress, and to receive public comments. Leadership from MLTC and DDD toured the state. The following table identifies the locations, dates, and times of the fall 2015 sessions.

City	Date/Time	Location	Focus
Norfolk	Nov. 30, 2015; 5:30-7:30 p.m. CDT	Norfolk Public Library	All waivers
Fremont	Dec. 1, 2015; 5:00-7:30 p.m. CDT	University of Nebraska, Cooperative Extension Office	All waivers
Gering	Dec. 6. 2015; 5:00-7:30 p.m. MDT	Gering Public Library	All waivers
North Platte	Dec. 7, 2015; 5:00-7:30 p.m. CST	Mid-Plains Community College	All waivers
Kearney	Dec. 8, 2015; 5:00-7:30 p.m. CST	Nebraska Student Union	All waivers
Grand Island	Dec. 9, 2015; 5:00-7:30 p.m. CST	College Park	All waivers
Hastings	Dec. 10, 2015; 5:00-8:00 p.m. CST	Hastings College	All waivers
Omaha	Dec. 14, 2015; 5:00-8:00 p.m. CST	Autism Center of Nebraska	All waivers
Lincoln	Dec. 16, 2015; 5:00-8:00 p.m. CST	Lincoln Community Foundation	All waivers

Spring 2016.

In March and April of 2016, MLTC and DDD held forums throughout the state to provide updates on the State Transition Plan and to gather stakeholder input. The following identifies the locations, dates, and times for the scheduled forums.

City	Date	Location	Focus
Lincoln	Mar. 28, 2016; 10:00 a.m.-12:00 p.m. CST	Monthly Stakeholder Meeting, Nebraska State Office Building	All waivers
Omaha	Apr. 11, 2016; 1:00- 3:00 p.m. CST	Autism Center of Nebraska	All waivers
Norfolk	Apr. 19, 2016; 1:00-3:00 p.m. CST	Norfolk Public Library	All waivers
Fremont	Apr. 19, 2016; 5:30-7:30 p.m. CST	Keene Memorial Library	All waivers
Statewide	Apr. 18, 2016; 5:30-7:30 p.m. CST	Statewide Streaming	All waivers
Kearney	Apr. 25, 2016; 1:00-3:00 p.m. CST	Kearney Public Library,	All waivers
Grand Island	Apr. 25, 2016; 5:00-7:00 p.m.	Edith Abbott Memorial Library	All waivers
Lincoln	Apr. 26, 2016; 10:00 a.m.-12:00 p.m. CST	Monthly Stakeholder Meeting, Nebraska State Office Building	All waivers

A second “Let’s Talk” tour of the state occurred in August and September 2016, in which the State Transition Plan update was an agenda item.

Summer 2018.

In May and June of 2018, MLTC and DDD held forums throughout the state focused on the State Transition Plan update and gathering stakeholder input. The following identifies the locations, dates, and times for the scheduled forums.

City	Date	Location	Focus
Norfolk	May 31, 2018; 7:30-8:30 p.m. CST	Northeast Nebraska Area Agency on Aging	All waivers
Lincoln	Jun. 6, 2018; 3:00-4:00 p.m. CST	Nebraska State Office Building	All waivers
Lincoln	Jun. 11, 2018; 11:00 a.m.-12:00 p.m. CST	Nebraska State Office Building	All waivers
Omaha	Jun. 12, 2018; 3:00-4:00 p.m. and 7:00-8:00 p.m.	Quality Living Inc.	All waivers
North Platte	Jun. 13, 2018; 4:00-5:00 p.m.	Senior Center	All waivers
Ogallala	Jun. 14, 2018; 8:00-9:00 p.m.	Ogallala Public School	All waivers
Gering	Jun. 15, 2018; 11:00 a.m.-12:00 p.m.	Educational Service Unit #16	All waivers
Hastings	Jun. 20, 2018; 2:00-3:00 p.m.	Midlands Area Agency on Aging	All waivers

Summer 2019

In May and June of 2019, the final public comment period was held in order to give information on the final submission of the State Transition Plan and gather stakeholder and public input on the proposed submission. The following identifies the locations, dates, and times for the scheduled public comment sessions.

City	Date	Location	Focus
Lincoln	May 22, 2019 10:00-11:30 a.m. CST	Nebraska State Office Building Also by Live Webinar with call-in option	All waivers
Statewide	May 30, 2019 5:30-7:00 p.m., CST	Live Webinar with call-in option	All waivers

Statewide	Jun. 5, 2019 1:30-3:00 p.m., CST	Live Webinar with call-in option	All waivers

MLTC and DDD have established regular HCBS stakeholder engagement meetings that include progress updates on the State Transition Plan as a regular agenda item. MLTC and DDD will also continue to utilize public forums throughout the transition period.

c. *Provider Information Meetings and Training (June 2014 – ongoing)*

MLTC began meeting with providers and provider associations in June 2014 to inform them of the final rule and Nebraska's State Transition Plan. Similar meetings were hosted by DDD beginning in the summer of 2015, as referenced in the above tables. Ongoing meetings with MLTC and DDD leadership and providers now occur on a regular basis. These meetings afford providers the opportunity to ask questions and provide valuable input.

Training resources and tools regarding individual rights, protections, community inclusion, and person-centered planning will be made available in light of the HCBS settings requirements. These will be posted on the DHHS website.

d. *Summary of Public Comments*

MLTC and DDD received comments via public forums, letters, emails, and stakeholder meetings during three public comment periods. The first was between September and October 2014, prior to the State's first draft State Transition Plan submission. The second was March 2016 through May 2016. The third was held from May 25, 2018, through June 25, 2018, prior to the State's submission of the draft for final approval. A fourth public comment period will be between May 10th and June 17th, 2019 prior to submission to CMS for final approval.

In total, 299 individuals/organizations have submitted comments, 48 of which were submitted in 2014, 36 of which were submitted in 2016, 179 of which were submitted in 2018 and 36 of which were submitted in 2019. All public comments are provided in the Appendices to this Plan. Appendix A lists comments from 2014-2016 and Appendix B lists comments from 2018-2019.The Appendices indicate whether each individual comment led to a change in the plan or not, and if not, the reason for not incorporating a change. Through all of the public comment periods, the following trends were observed and are categorized and described below:

- 74 included comments about the assessment of HCBS sites and the heightened scrutiny process, inquiring about public input process, assessment tools used, and settings that will require heightened scrutiny.

- 13 included comments about assisted living facilities, primarily regarding how the requirements apply in these settings.
- 36 included comments related to general concerns with the effects of the HCBS final rule, asking whether individuals who need a structured environment would be forced into other environments.
- 41 included comments not directly related to the HCBS final rule, rather asking about services provided for specific individuals.
- 24 included comments regarding the need for additional outreach and education for individuals or families.
- 16 included comments related to the public comment opportunity/options provided.
- 80 included comments related to the format of the STP, specifically that it include more narrative and be more user-friendly or asked for clarification in regards to language used in the STP.
- 60 included comments regarding the person-centered aspect of the HCBS final rule, as well as support for community integration and self-determination.
- 7 included comments regarding the lease requirements of the rule and how they would be addressed in the STP.
- 6 included comments regarding the lease requirements of the rule and how they would be addressed in the STP.
- 7 included comments regarding advocacy.
- 7 questioned how the final rule may affect guardianship and power of attorney roles.
- 8 included comments regarding concerns and challenges associated with availability of transportation.
- 9 comments related to questions about the origin of the Final Rule.
- 5 comments related to the need for technical assistance and support for providers and Services Coordinators.
- 5 comments expressed satisfaction with the individual's current living arrangement and services.

3. Nebraska's Home and Community-Based Services (HCBS) Waiver Programs

a. Which Medicaid Programs are covered by the HCBS Regulations?

The HCBS regulations apply to all settings funded through federal Centers for Medicare and Medicaid Services (CMS), authorized by Section 1915 of the Social Security Act, including:

- 1915(c) HCBS waivers
- State plan home and community-based services through 1915(i) and 1915(k) options
- 1115 demonstration waivers and HCBS provided under 1915(b)(3) managed care waivers.

Nebraska's four HCBS waiver programs are overseen by MLTC; two are administered by MLTC and two are administered by DDD.

b. 1915(c) HCBS Waivers Administered by the Division of Developmental Disabilities

DDD administers two HCBS waivers, each of which requires individuals to have care needs at a level which would necessitate care in an intermediate care facility for individuals with developmental disabilities (ICF/DD).

- *Developmental Disabilities (DD) Adult Day Services Waiver*. This waiver, initially approved in 2003, offers a variety of services and supports to maximize independence as individuals live, work, socialize, and participate to the fullest extent possible in their communities. As of July 2019, the DD Adult Day Services Waiver was serving approximately 665 individuals.

- *Comprehensive Developmental Disabilities (DD) Services Waiver*. This waiver, initially approved in 1989, offers a variety of services and supports for children and adults with developmental disabilities and their families to promote independence and integration into the community, to allow the child's family to support him or her in the family home, and to allow the adults to maximize their independence as they live, work, socialize, and participate to the fullest extent possible in their communities. As of July 2019, the DD Comprehensive Waiver was serving approximately 4,106 individuals.

c. 1915(c) HCBS Waivers Administered by the Division of Medicaid and Long-Term Care

MLTC administers two HCBS waivers, each of which requires individuals to have care needs at a level which would necessitate care in a nursing facility.

- *HCBS for Aged and Adults and Children with Disabilities (A&D Waiver)*. This waiver, initially approved in 1991, provides a variety of services and supports for aged individuals and individuals of all ages with disabilities. As of March 2019, the A&D Waiver active participants numbered approximately 5,286 individuals. This included about 770 youth, 1,292 adults ages 18-64, and 3,224 individuals 65 years of age and older.

Traumatic Brain Injury (TBI) Waiver. This waiver, initially approved in 2000, provides specialized assisted living for individuals aged 18-64 with a TBI. As of April 2019 the Waiver was serving 20 adults.

4. HCBS Settings Requirements

a. Overview, HCBS Regulations, and Settings

Since the time 1915(c) waivers began, home and community-based services have been provided in a wide variety of settings, many of which are truly integrated into the community. Some of these settings, however, may retain or appear to retain qualities of institutional care. Federal law prohibits paying institutional settings, i.e., hospitals, nursing facilities, Institutes for Mental Disease (IMDs) (referred to in Nebraska as Behavioral Health Regional Centers), or ICF/DDs as settings for home and community-based services. To ensure home and community-based services offer a true alternative to institutional care, the HCBS regulations (final rule) better define settings in which Medicaid HCBS waiver services can be provided. In the final rule, CMS outlines expectations for both residential and non-residential settings.

b. Requirements for All Settings

In all settings, the final rule requires that:

- The setting is selected by the individual from options that include non-disability specific settings and options for privacy in residential settings (i.e. a private room or unit.) Individuals must have choice of providers, services, and settings and that choice must be documented in a person-centered plan.
- Each individual has the right to privacy, is treated with dignity and respect, and is free from coercion and restraint.
- Each individual has optimal opportunity for independence in making life choices without regimented daily activities, can access their physical environment, and may interact with family and friends, just as individuals who are not receiving home and community-based services do.

c. Additional Requirements for Provider-Owned or Operated Residential Settings

In residential settings owned or controlled by a service provider, additional requirements must be met. These are as follows:

- Each individual must have the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws. If such laws do not apply, a lease or other legally binding agreement is in place to provide those protections.
- Each individual must have privacy in their sleeping or living unit, with a lock and key controlled by the individual and appropriate staff.
- Each individual must be allowed to furnish and decorate their own sleeping and living areas, to have access to food at any time, and to have visitors of their choosing at any time.
- Each individual sharing a living unit must have choice of roommate.

These requirements may only be modified if the individual has a need that justifies deviation that is documented in the individual's person-centered plan.

d. Settings Requiring Heightened Scrutiny

The rule clarifies settings that are institutional and settings that are presumed to be institutional in nature. According to the final rule, settings presumed to be institutional include:

- Any setting that is located in a building that is publicly or privately operated facility that provides inpatient institutional treatment;
- Settings 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.

If a setting is presumed institutional according to the final rule, it does not necessarily mean that HCBS may not be provided in this setting; rather, it means this setting is subject to a heightened scrutiny process.

5. Applicable Nebraska Medicaid HCBS Waiver Settings

The following are the identified service setting types to be evaluated for compliance with the new rule. Setting is defined as locations where habilitation services and/or supports are delivered. An individual's or family's own home is not provider-owned, controlled, or operated, and therefore is not included for the purposes of this State Transition Plan.

a. A&D Waiver Settings

Assisted Living. A licensed residential setting that provides a variety of services to seniors and individuals with disabilities. Services must include socialization, escort services, assistance with shopping, housekeeping, laundry, medication assistance, personal care, non-medical transportation, and health maintenance activities.

Adult Day Health. A licensed (four or more individuals being served) or unlicensed (three or fewer individuals being served) setting that provides an array of structured social and health services. These may be adjacent to licensed assisted living facilities or nursing facilities, or in other community locations. This service is not provided in an individual's home.

Extra Child Care for Children with Disabilities. Service settings include the home of the child or the home of the individual providers; community-based locations where the facility is not typically exclusively dedicated to child care (such as a church or community center); and dedicated child care centers. The types of child care are as follows:

- In-Home Child Care Provider: Child care provided within a private residence where the child resides.

- License-Exempt Family Child Care Home: Child care provided outside the individual's home within a private residence with less than 3 individuals receiving the service. Often times this is within a family member's home.
- Licensed Child Care Center: A facility licensed to provide child care for 13 or more children.
- Licensed Family Child Care Home I or II
    - Family Child Care Home I: A licensed child care operation in the provider's place of residence which serves at least four but no more than eight children at any one time.
    - Family Child Care Home II: A licensed child care operation either in the provider's place of residence or a site other than the residence, serving 12 or fewer children at any one time.

b. TBI Waiver Setting

Assisted Living Facilities. A licensed residential facility that provides an array of services to individuals with a traumatic brain injury. Services must include socialization, escort services, assistance with shopping, housekeeping, laundry, medication assistance, personal care, non-medical transportation, and health maintenance activities.

c. DD Waiver Settings

Residential Habilitation-Extended Family Home (EFH). The habilitative needs that were previously met by "Residential Habilitation-Extended Family Home (EFH)" are now met by Residential Habilitation with the 2017 renewals of the DD Waivers. All individuals were transitioned to services in the new waivers by September 30, 2017.

Residential Habilitation-Group Home. The habilitative needs that were previously met by "Residential Habilitation-Group Home" are now met by Residential Habilitation with the 2017 renewals of the DD Waivers. All individuals were transitioned to services in the new waivers by September 30, 2017.

Residential Habilitation. Residential Habilitation service is a habilitative service that provides individually tailored supports that assist with the acquisition, retention, or improvement in skills related to living in the community. These supports include adaptive skill development, habilitative community inclusion, transportation, opportunities for practicing skills taught in therapies, counseling sessions, or other settings, and social and leisure skill development that assist the individual to reside in the most integrated setting appropriate to his/her needs.

Residential Habilitation service includes prompting and supervising the individual in completing tasks including but not limited to: activities of daily living (ADL); health maintenance; meal preparation; laundry; teaching the use of

police, fire, and emergency assistance; performing routine household activities to maintain a clean and safe home; and managing personal financial affairs.

Residential Habilitation Service can be provided in a provider-operated Group Home, a Center for the Developmentally Disabled, or Extended Family Home.

Day Habilitation-Prevocational Workshop. The Habilitative needs previously met by "Day Habilitation-Prevocational Workshop Habilitation services" are now met by Habilitative Workshop services with the 2017 renewals of the DD Waivers. All individuals were transitioned to services in the new waivers by September 30, 2017.

Habilitative Workshop. Habilitative Workshop services are habilitative services that offer a provision of regularly scheduled activities in a provider-owned or controlled non-residential setting. Habilitative Workshop services are regularly scheduled activities, formalized training, and staff supports for the acquisition, retention, or improvement in self-help, behavioral, and adaptive skills that enhance social development and develop skills in performing activities of daily and community living. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, including greater independence and personal choice. This service is provided to individuals who do not have a clear plan for reemployment and are therefore not currently seeking to join the general work force. Services are not job-task oriented, but aimed at generalized results.

Habilitative Child Care. The habilitative needs that were previously met by "Habilitative Child Care" are now met by either Residential Habilitation service or Habilitative Community Inclusion service with the 2017 renewals of the DD Waivers. All child individuals were transitioned to services in the new waivers by May 31, 2017. Habilitative Community Inclusion services occur in the community.

Retirement Services. The habilitative needs that were previously met by "DD Retirement Services" are now met by Adult Day services with the 2017 renewals of the DD Waivers. All individuals were transitioned to services in the new waivers by September 30, 2017.

Adult Day Services. Adult Day Services are defined as non-habilitative services consisting of meaningful day activities provided in a non-residential setting. Adult Day Services provide active supports which foster independence, encompassing both health and social services needed to ensure the optimal functioning of the individual. Adult Day Services include assistance with activities of daily living (ADL), health maintenance, and supervision. Individuals receiving Adult Day Services are integrated into the community to the greatest extent possible. Adult Day Services do not offer as many opportunities as other day waiver services for getting individuals engaged in their community or

participating in community events mainly due to compromised health issues and significant limitations of individuals. Engaging individuals in volunteer activities is within the scope of this service.

As of the submission of this plan, Adult Day Services have not yet been assessed. Adult Day Services are a new service, effective May 1, 2017. Once notifications are received that indicate this service is being utilized, sites will be assessed for HCBS compliance in the same manner that other HCBS settings were assessed (combination of self-assessment and on-site reviews) in the DD Waivers.

Community Living and Day Supports. The habilitative needs that were previously met by "Community Living and Day Supports" are now met by Adult Companion Service In-Home, Adult Companion Service, or Habilitative Community Inclusion with the 2017 renewals of the DD Waivers. All individuals were transitioned to services in the new waivers by September 30, 2017.

6. Systemic Assessment for Developmental Disabilities, Aged and Disabled, and Traumatic Brain Injury Waivers

a. Approach

The Division of Medicaid and Long-Term Care (MLTC) and the Division of Developmental Disabilities (DDD) completed a comprehensive systemic assessment including: state statutes, regulations applicable to all waivers, licensure and certification tools and procedures, other current practice (e.g., monitoring by service coordinators), approved waiver applications, and Medicaid provider agreements and applicable addendums to assess compliance with the final rule. A work plan for waiver-specific applications, Nebraska Administrative Code (NAC) and practices compliance is provided in Attachment 1. Assessment results for the A&D Waiver, indicating whether rules and policies complied with the final rule, did not comply, or were silent is provided in Attachment 2. Similarly, assessment results for the TBI Waiver and DD Waivers are provided in Attachments 3 and 4.

Statutes reviewed for the A&D Waiver systemic assessment included §76-1401 et. seq. the Uniform Residential Landlord Tenant Act, and §71-406, Assisted Living Facility definition. State regulations reviewed for the A&D Waiver included Title 480 NAC (Home and Community-Based Services and Optional Targeted Case Management Services); Title 175 Chapters 4 and 5 (Health Care Facilities and Services Licensure: Chapter 4 - Assisted Living Facilities, Chapter 5-Adult Day Services); and Title 391 (Children's Services Licensing).

Statutes reviewed for the Developmental Disabilities (DD) Waivers systemic assessment included: §83-1202 (Legislative Intent), §83-1209 (Director; Duties) of the DD Services Act, §71-408 (Center or group home for the developmentally disabled, defined), §76-1401 (the Uniform Residential

Landlord Tenant Act, how cited), §76-1402 (Purposes; rules of construction), §76-1408 (Exclusions from application of sections), and §76-1430 (Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service). State regulations reviewed for the DD Waivers systemic assessment included: Title 404 NAC Chapter 4 through 6 (Community-Based Services for Individuals with Developmental Disabilities) and Title 403 NAC Chapter 1 through 5 (Medicaid Home and Community Based Waiver Services for Individuals with Developmental Disabilities).

Approved waiver applications are available at:

- Aged and Disabled Waiver
- Traumatic Brain Injury Waiver
- Comprehensive Developmental Disabilities Services Waiver
- Developmental Disabilities Day Services Waiver for Adults

Below is a general overview of the systemic assessment results for Nebraska's Medicaid HCBS program in comparison to federal requirements.

b. Statutes

Statutes in §76-1401 (the Uniform Residential Landlord Tenant Act) and §71-406 (Assisted Living Facility definition) are compliant. DHHS will propose an amendment to Statute §81-2268 (Medicaid Waiver funds and use authorized) to indicate that nothing in the statute authorizes Medicaid funds to be used for disqualified settings under Nebraska or Federal law. DHHS will propose an amendment to Statute §83-1202 (Legislative intent, persons with developmental disabilities) to remove limiting language or apply to State-funded services only. Otherwise, State statutes are silent regarding settings requirements in the final rule.

c. Nebraska Administrative Code (NAC)

Titles 480 (Home and Community-Based Waiver Services and Optional Targeted Case Management Services), 404 (Community-Based Services for Individuals with Developmental Disabilities), and 403 (Medicaid Home and Community Based Waiver Services for Individuals with Developmental Disabilities) will be updated with additional regulations to align them with federal requirements. Regulations for the TBI waiver have been drafted and are in the process of promulgation. In addition, both titles will be amended to include more specific language for the requirements of the rule, e.g., privacy and freedom in the living unit, control over schedule including food and freedom to have visitors. Detail including whether the NAC is compliant, not yet meeting HCBS characteristics, or silent, is available in Attachments 2, 3, and 4.

d. Waiver-Specific Applications

- *A&D Waiver*. The A&D Waiver with effective date August 1, 2016 was being amended to include State Transition Plan language that ensures compliance with the HCBS final rule. The approved effective date for this

amendment to include State Transition Plan language was approved August 1, 2018.

- *TBI Waiver*. MLTC renewed the TBI Waiver effective October 2018 to address documentation of less intrusive methods of meeting individual's needs, accessibility, privacy issues, landlord tenant laws, and overall integration with the broader community. The renewal will ensure compliance with the HCBS final rule.
- *DD Waivers*. DDD renewed two DD Waivers in 2017: the DD Adult Day Services Waiver and the Comprehensive Developmental Disabilities Waiver. The previous Children's Comprehensive Services Waiver and Adult Comprehensive Services Waivers were combined into the Comprehensive DD Waiver, covering the lifespan of an individual. DDD completed a collaborative stakeholder engagement process, public comment period and received CMS approval with implementation dates of May 1, 2017, for the DD Adult Day Services Waiver and June 1, 2017, for the Comprehensive DD Waiver. The new waiver application submissions were compliant with the final rule, pertaining to settings requirements.

e. Practice

- *A&D Waiver.* Current practice is in compliance with the final rule. Specific areas targeted for improvement are education of individuals, guardians, contractors, and providers regarding optimizing autonomy and independence as well as establishing consistent landlord/lease practices.
- *TBI Waiver.* Current practice is in compliance with the final rule. Specific areas targeted for improvement are education of individuals, guardians, contractors, and providers regarding optimizing autonomy and independence as well as establishing consistent landlord/lease practices. MLTC will also work with providers to ensure individuals have the freedom to furnish and decorate their sleeping or living units as identified within the lease or other enforceable rental agreement.
- *DD Waivers.* Current practice is in compliance with the final rule. Specific areas targeted for improvement are education for service coordinators regarding documentation of setting options presented to individuals and landlord tenant laws.

f. Verification

- *A&D Waiver*. Currently, verification includes on-site monitoring by services coordinators, on-site file reviews, off-site file reviews, and National Core Indicators Aging and Disability (NCI-AD). The program has identified the need for revisions to the assessment processes, the person-centered plan of services and supports and the consent form.
- *TBI Waiver*. Currently, verification includes on-site monitoring by services coordinators, on-site file reviews, off-site file reviews, and National Core Indicators Aging and Disability (NCI-AD). The program has identified the need for revisions to the assessment processes, the person-centered plan of services and supports and the consent form.

- *DD Waivers*. Currently, verification includes on-site monitoring by service coordinators and certification and licensure by the Division of Public Health (DPH) licensure unit. All monitoring tools will be updated to address requirements of the final rule by utilization of National Core Indicators (NCI) and other monitoring tools.

g. Remediation

Remediation activities specific to the Systemic Assessment will include updating state regulations, waivers, and policies and practices. Licensure regulations address minimum requirements to become licensed in the State of Nebraska. Titles 403, 404, and 480 will address additional requirements that must be met in order to be eligible to be a Waiver provider. Remediation activities and timelines are included in Attachment 1.

MLTC and DDD are engaged in a concurrent initiative, Long-Term Care (LTC) Redesign, to assist with the redesign of the long term care system and the impact of Nebraska's Medicaid waiver programs. Changes will be needed to state operating agency regulations, waivers, and policies and practices. MLTC procured a consultant who assessed the full range of Medicaid-funded long-term services and supports. This consultant made recommendations for service delivery, from initial access through monitoring and evaluation of outcomes. The consultant's recommendations may result in improved processes for assessment of functional needs, use of additional federal authorities for HCBS delivery, and regulatory changes. In addition, the consultant engaged stakeholders regarding the redesign and provided a summary report of stakeholder engagement. The LTC redesign consultant reports and Nebraska Long Term Care Redesign Plan are posted to the MLTC website.

7. Settings Assessment

MLTC and DDD determined the approaches for site assessments for each waiver. A work plan for settings compliance is available in Attachment 5. Below describes the process for completing the settings assessments.

Several rounds of site assessments were conducted in preparation for completing the State Transition Plan.

For the A&D Waiver and TBI Waiver, the first round of assessments were conducted in January 2015 and included onsite reviews and MLTC-contracted assessments. The Area Agencies on Aging (AAAs) completed the assessments of assisted living facilities. Due to the nature of the contract with the AAAs, they are considered and act as state representatives.

The AAAs, League of Human Dignity, or DHHS Resource Developers (RD) are responsible for initial and annual renewals, which includes the assessment of

the settings. These approvals are for agency and individual providers participating in the A&D Waiver and TBI Waiver.

DDD and MLTC benefitted from the ongoing series of webinars sponsored by CMS and MLTC determined the need for a second round of assessments for the A&D Waiver, conducted in January-March 2016, to capture other settings not originally surveyed. For A&D Waiver, the second round only included assessments of settings providing extra childcare for children with disabilities and adult day health settings. These assessments were conducted by DHHS Division of Children and Family Services RD staff and MLTC-contracted community agencies. In addition, for any assisted living facility with an initial assessment that showed areas of non-compliance, a second round of onsite reviews was conducted and a provider transition plan was completed. These plans stated the areas of deficiency and a detailed plan with date of completion to come into compliance. For settings in all four waivers, for which a transition period applies, all modifications are to be completed by September 1, 2021, to allow an appropriate amount of time for individual relocations as well as an appeal process prior to March 17, 2022.

For the A&D and TBI Waivers, the AAAs or MLTC staff completed an in-person survey with the administrator of each assisted living facility or adult day health setting.

For the A&D Waiver, each setting where extra child care for children with disabilities is provided (excluding settings where this service is provided in the individual's home) was contacted to determine if it was serving only A&D Waiver individuals or only individuals with disabilities in order to determine if assessments were required for these settings. Any site serving A&D Waiver individuals and individuals without disabilities was not assessed. Beginning January 2018, settings that provide extra care for children with disabilities and respite outside of the individual's home were mailed a self-assessment to complete. These settings included in-home childcare providers, license-exempted family child care homes, licensed childcare centers, and licensed family childcare homes (I and II).

Additionally, individuals or their representatives were mailed a satisfaction survey to verify self-assessment results. All assessments were to be returned by March 31, 2018. Results from the satisfaction survey yielded a return of approximately 10% of each of the setting types listed above.

Training was provided to the AAA, League of Human Dignity, and DHHS RD in March 2018 to ensure 100% of all extra care for children with disabilities and respite settings are assessed uniformly. As of April 1, 2018, all newly applying and renewing providers will have their setting assessed using the State's age-appropriate tool to determine compliance. The settings tool was modified for the childcare settings to account for age-appropriateness. The age-appropriate

tool accounts for limitations in access due to age of the individual and normal restrictions that would be found in any setting that provides child care services compared to the Nebraska child care licensure regulations. The childcare providers who completed self-assessments initially, had follow-up, in-person assessments at contract renewal.

For the DD waivers, several rounds of assessments were conducted beginning in January 2015 through December 2018. Additional specific information about the additional assessments conducted may be found below.

The first round of assessments, conducted in January 2015, included self-assessments by residential habilitation providers, with oversight provided by DDD staff. Additional assessments were conducted in March 2016 by DDD Service Coordinators, who used a sampling methodology to verify the statistical validity of the initial round of findings and assessed a sample of residential and non-residential services providers. Continued assessments included self-assessments conducted in March – August 2017 and on-site validation assessments completed by DDD staff in January 2018 – December 2018 to provide guidance for providers trying to come into compliance. Guidance is occurring in-person in the on-site assessments, as well as in writing in a follow-up remediation plan from DDD (as needed).

For DDD's second round sampling assessment (conducted in March 2016), a randomized, stratified approach was utilized. This approach required a sample of at least 50 DD Waiver providers for the population. The data pull included certified and licensed sites as well as sites that served individuals receiving services based on behavioral and medical risk.

For DDD's third round of assessment (conducted in 2017 and 2018) several approaches were used. Agencies providing Extended Family Home and Group Home services were given self-assessments. These were then validated by DDD staff through on-site assessment (100% validation for Group Homes and a randomized, stratified sample of EFH homes). Also in the third round of assessment, 100% of Centers for the Developmentally Disabled and 100% of day services settings were assessed by DDD staff through on-site assessment processes.

The following table summarizes the number of settings assessed from 2014 to 2018. Please note that some settings were assessed more than once due to validation activities but are only reported once.

Setting	# Settings (Self-Assessment)	# Settings (In-person Completed by MLTC/DDD Staff or designee)
A&D Waiver Residential		
Assisted Living, Non-Specialized	0	190
Assisted Living, Specialized (Memory Care)	0	33
Total A&D Waiver Residential	***0***	***223***
A&D Waiver Non-Residential		
Extra Child Care for Children with Disabilities	90	7
Adult Day Health	0	29
Total A&D Waiver Non-Residential	***90***	***31***
Total A&D Waiver	**90**	**251**
TBI Waiver Residential		
Assisted Living, Specialized (TBI)	0	1
Total TBI Waiver	**0**	**1**
DD Residential		
Extended Family Home	700	252
Group Home	289	267
Centers for the Developmentally Disabled (CDD)	0	111
Total DD Residential	***989***	***630***
DD Non-Residential		
Prevocational Workshop	0	67
Other Non-Residential Sites	0	57
Total DD Non-Residential	***0***	***124***
Total DD Waiver	**989**	**753**
Total All Waivers	**1079**	**1005**

The site assessments for waiver settings evaluated specific topics, and were organized by CMS-identified qualities and conditions for HCBS settings. Qualities listed in numbers 1-5 below must be present in all HCBS settings. The conditions listed in numbers 6-10 below are additional requirements for provider-owned or controlled residential settings.

1. *Integration with the greater community*. 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.

2. *Selection of setting*. The setting is selected by the individual from among setting options including non-disability specific settings and a private unit in a residential setting. The settings 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.

3. *Freedom from coercion and restraint*. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

4. *Optimization of individual initiative, autonomy, and independence*. The setting 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.

5. *Choice regarding services and supports*. The setting facilitates individual choice regarding services and supports, and who provides them.

6. *Legally-enforceable residential agreement*. 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 individual, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.

7. *Privacy and freedom in living unit*. The setting provides for privacy in units, including entrance doors lockable by the individual with only appropriate staff having keys, choice of roommates/housemates, and freedom to furnish and decorate the sleeping or living units within the lease or other agreement.

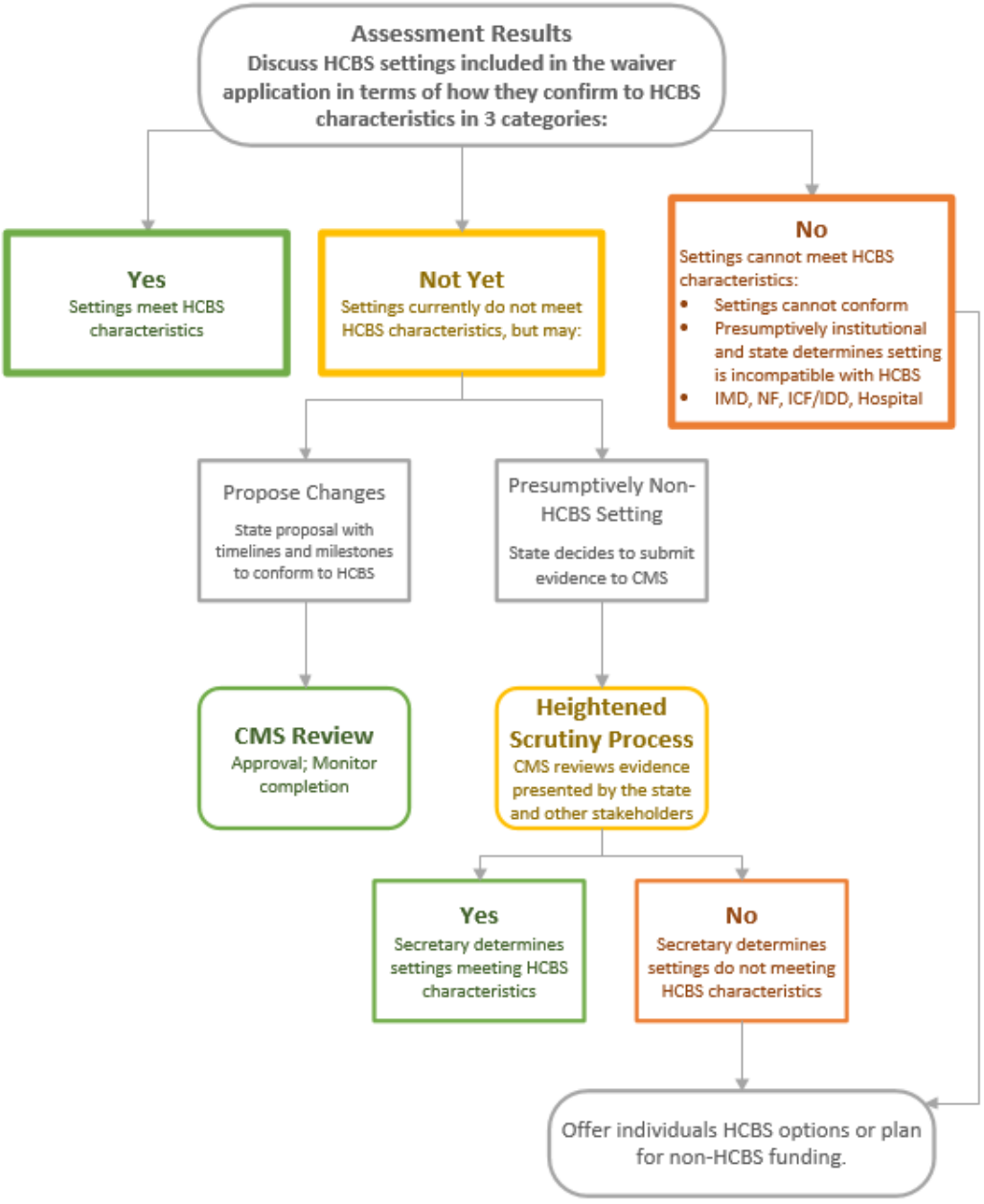
8. *Control over schedule, including food*. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

9. *Freedom to have visitors*. The setting provides individuals the freedom to have visitors of their choosing at any time.

10. *Physical accessibility*. The setting is physically accessible to the individual.

The diagram below, titled “Steps to Compliance for HCBS Settings Requirements,” depicts three categories for categorizing HCBS settings and how they conform to HCBS characteristics. These categories include settings that meet HCBS characteristics, settings that currently do not meet HCBS characteristics but may with modifications, and settings that cannot meet HCBS characteristics. Based upon results of preliminary assessments, MLTC and DDD have categorized each setting as fully compliant, not compliant but could be with modifications, or not able to comply.

Steps to Compliance for HCBS Settings Requirements in a 1915 (c) Waiver and 1915(i) SPA



The assessment tool for the A&D and TBI waivers was tested by DHHS staff. Stakeholders reviewed the assessments, and feedback was incorporated into the revised assessment. MLTC Resource Development (RD) staff were provided education through a webinar giving instructions on what to look for when assessing settings.

For MLTC, validation activities included additional desk-review of settings' policies and procedures, training documentation, or other evidence of compliance. For DDD, activities to validate preliminary self-assessments and on-site assessments continued through December 2018. MLTC and DDD will validate via on-site re-assessments using a stratified sample of all setting types. DDD staff will also conduct on-site re-assessments for 100% of settings identified fully out of compliance. All of the DDD settings identified as out of compliance in any area will be remediated which could include additional on-site re-assessments, if necessary. MLTC and DDD are using the results of the validation activities to determine the need for additional on-site assessments. Additional on-site and self-assessments of residential and non-residential settings have provided DDD with a 100% sample and assess compliance specific to each setting type. These additional site assessments included Residential Habilitation Settings, Habilitative Workshop and other Day Settings. These additional site assessments were completed as of December 2018.

Nebraska makes the presumption that privately owned or rented homes and apartments of individuals living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where individuals who do not receive home and community-based services also reside. If any of the settings are in question in regards to the presumption of being institutional in nature, the state will submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In regard to private residences, settings are also evaluated on whether they are isolating to the individuals.

Nebraska will work with the individual in researching all possible settings and community resources for the individual to choose from. Nebraska will ensure the individual is given ample opportunity to learn about the variety of settings available and compliant with the HCBS final rule across the state. Individuals should be afforded the opportunity to select from non-disability specific settings and select roommates if applicable. Supports will be provided to the individual to assist in transition.

a. A&D Waiver Residential

Assisted living is the only provider-owned or controlled residential setting type in the A&D Waiver. MLTC categorized these as follows:

- One hundred sixty-nine (169) assisted living facilities out of the two hundred and twenty-three (223) are categorized as fully compliant and not subject to heightened scrutiny;
- Out of the fifty-four (54) settings subject to heightened scrutiny one (1) is determined to be fully complaint, forty-four (44) submitted heightened scrutiny packets and ten (10) did not submit heightened scrutiny packets.

All of these settings could be complaint with modifications; and additional information. Letters will be sent out in August 2019 requesting additional information.

- No settings are categorized as unable to comply. Previous settings who identified they were not able to comply have closed.

The following is a summary of site assessment data and themes observed by each CMS-identified requirement category:

1. *Integration with the greater community*. 208 of 223 of assisted living facilities provided evidence that they offer activities and outings in the community. Assisted Living activity calendars, client attendance records, facility activity policies, facility transportation policies, transportation logs, or community transportation options were reviewed and it was determined that these assisted living facilities ensure that individuals have access to and participate in community activities of their choosing. Individuals have access to and use public transportation if they choose. In urban areas city bus passes can be obtained at a discounted rate on an as-needed basis for public transportation. City Handi-Van rides are also available at a discounted rate on an as-needed basis. Local taxi services as well as ridesharing are also available in numerous areas. For more rural areas, county-sponsored transportation is available at affordable and/or reduced rates for social and medical needs on an as-needed basis. Some counties offer free rides for caregivers to escort their individuals. Individuals are choosing to use public transportation and local communities are expanding public transit services. Nebraska has a Public Transit website and a phone service that provide information about local transportation available in all counties. Where public transportation is limited, or not available, individuals utilize unpaid supports, i.e. family or friends, or the assisted living facility provides transportation to access the broader community. In small communities many destinations are within walking distance. Of the fifteen that are considered noncompliant, ten have yet to submit a heightened scrutiny packet and five did not include sufficient evidence to be considered compliant.

2. *Selection of setting*. 213 of 223 assisted living facilities ensure that residents have selected the setting from among options including non-disability specific settings such as private apartments and homes in both rural and urban areas. During the service coordination process, the individual is given the option to choose from assisted living options in their local area as well as across the state. Ten assisted living facilities were considered noncompliant in this area only because they have not submitted heightened scrutiny packets

3. *Freedom from coercion and restraint*. 212 of 223 assisted living facilities submitted their facility policies that indicate that the individuals are treated

with respect, have privacy, and are free from coercion and restraints. Eleven assisted living facilities are considered noncompliant at this time, with ten not having submitted a heightened scrutiny packet and one not submitting any facility policies, therefore they could not be considered compliant until the policies are available for review.

4. *Optimization of individual initiative, autonomy, and independence*. 208 of 223 assist living facilities provided evidence that they ensure individuals residing at facilities participate in activities of their choosing, in the facility and in the community, based on a review of submitted assisted living activity calendars, client activity attendance records, facility activity policies, facility transportation policies, transportation logs, or community transportation options. Of the fifteen that are considered noncompliant in this area, ten have not submitted heightened scrutiny packets and five did not include submit sufficient evidence to be considered compliant. Individuals work with the facility, family, friends, and the community to gain transportation to activities of their choice. Facilities will aid individuals who need assistance with setting up transportation. Individuals are given the opportunity in the provider-owned, provider-controlled or provider-operated setting in which they reside to be a part of a resident council. The resident council is where individuals' issues and concerns are discussed and can be presented to management, as well as where choices are made regarding what social activities they would like to have available. The State Long-Term Care Ombudsman as well as State licensure's contact information is available for residents' use.

   As part of the admissions process, residents express in writing their individual preferences, likes, dislikes, hobbies, and social events they enjoy attending. Residents can keep abreast of current activities in the community by viewing bulletin boards, local newspapers, or the internet which are provided by the facility. The State is beginning the process of implementing National Core Indicators – Aging and Disability.

5. *Choice regarding services and supports*. 210 of 223 assisted living facilities do not require individuals to use a specific doctor, dentist, or therapist. Some settings choose to use a specific pharmacy for consistency in medication administration and specific packaging. Each individual is given the option to use the assisted living facility's chosen pharmacy or agrees prior to admission to choose their own pharmacy, which may require them to pay an additional fee to have the medication repackaged if necessary. Of the fifteen that are considered noncompliant, ten have yet to submit a heightened scrutiny packet and three indicated that they charge extra fees for services and/or supports that should be included in their monthly payment.

6. *Legally-enforceable residential agreement*. 208 of 223 assisted living facilities offer a legally enforceable residential service agreement as evidenced by their submission of a copy of the resident service agreement that they have all residents sign at the time of admission. Facilities will include the addition of apartment numbers to their residential service agreement as part of provider-level transition plans submitted. Provider agreements will be terminated for assisted living facilities that do not have a legally enforceable residential service agreement or lease by September 2021. Of the fifteen that are considered noncompliant, ten have yet to submit a heightened scrutiny packet and five did not submit a copy of their Resident Service Agreement with their heightened scrutiny packet.

7. *Privacy and freedom in living unit*. 188 of 223 assisted living facilities provided clear evidence that they value resident privacy and freedom amongst the living unit and provide specific training regarding the home and community based service model to their staff. They protect each individual's privacy by not posting personal information or discussing services in public. Medication is distributed per the individual's preference and individuals are able to have private conversations. Assisted living facilities have Resident Service Agreements that state that each individual is able to furnish and decorate his or her apartment as desired and to have specific apartments. Apartments have lockable doors and staff are instructed to knock and wait for resident's reply before entering. For those that do not have lockable doors, it is because an individual assessment of their capabilities has been completed. The assessment takes into consideration health and safety issues due to any cognitive or functional impairments of the individual. If an individualized modification of removing locks is determined to be needed, it would occur after less intrusive methods have been tried and have been found not to work. This information is documented in the Plan of Services and Supports and case management narratives. Assisted living facilities follow the Home and Community-Based Services policy, which provides for multiple occupancy only on an exceptional basis. Residents that have multiple occupancy have an established relationship with and have chosen their roommates. Individuals are not restricted from any area of the building and apartments are in the same part of the building as private pay. Of the fifteen that are considered noncompliant, ten have yet to submit a heightened scrutiny packet and twenty-five did not submit copies of their training specific to home and community based services and/or person centered thinking.

8. *Control over schedule, including food*. 198 of 223 assist living facilities provided clear evidence that they support individual autonomy in regards to the residents' schedules. Individuals are not required to adhere to a set schedule of waking, bathing, eating, or activities. Individuals are able to cook and do their own laundry if they choose. Congregate meals offer multiple choices of entrees for residents to choose from, and snacks are

always made available to residents. Residents have the choice to eat privately in their own apartment or in the congregate dining room. Individuals have either a full kitchen or kitchenette in their apartments or have access to a community kitchen. Individuals are able to access the laundry room or, in assisted living facilities that do not have a laundry room, the facility will provide transportation to and from the Laundromat and pay for the use of the machines. Individuals have the choice to utilize a laundry service at their own cost and as available. Twenty-five assisted living facilities are considered noncompliant in this area, with ten having yet to submit their heightened scrutiny packets and fifteen indicating that may not have a staff member trained in the home and community based service model present in the assisted living facility at all times. They are now being asked to change this practice so that each resident has access to a staff member at all times based on their individual schedule.

9. *Freedom to have visitors*. 212 of 223 assisted living facilities submitted policies that verify that the support all individuals being able to have visitors at their time of choosing including overnight visitors. Eleven assisted living facilities are considered noncompliant at this time, with ten not having submitted a heightened scrutiny packet and one not submitting any facility policies, therefore they could not be considered compliant until the policies are available for review.

10. *Physical accessibility*. 212 of 223 assisted living facilities submitted policies that verify that they support individuals generally having unrestricted access the assisted living facility. Residents can come and go at any time without a known schedule. All apartments and common areas are free from physical barriers. All apartments have lockable doors except for those of individuals who are identified as having health or safety issues related to cognitive or functional impairments. Individual modifications are made following a specific assessed need, informed consent, itemized list of less intrusive methods that have been tried and found not to work, data-gathering, and time limits. Eleven assisted living facilities are considered noncompliant at this time, with ten not having submitted a heightened scrutiny packet and one not submitting any facility policies, therefore they could not be considered compliant until the policies are available for review.

b. A&D Waiver Non-Residential

MLTC categorized non-residential settings as follows:

- One hundred and twenty-three (123) out of one hundred and twenty-eight (128) settings are categorized as fully compliant; and
- Five (5) settings are categorized as not compliant due to being located in nursing facilities.

- Sites categorized as unable to comply during the initial assessments have opted to discontinue providing non-residential A&D Waiver services. The transition process was completed when needed.

The following is a summary of site assessment data and themes observed by each CMS-identified requirement category.

1. *Integration with the greater community*. 128 of 128 were in compliance with all topics in the category. All settings indicated that they include all clients that they provide care for in all activities and field trips, when offered. All settings indicated that they encourage all clients to interact with other clients, and children were encouraged to interact with other children of the same age.

2. *Selection of setting.* 128of 128 sites were compliant with all topics in the category. All clients in all facilities were granted the same opportunities and choices, regardless of payment source. All settings that provide care to multiple children have all children of similar ages participate in the same activities and there are no restrictions because of payment source.

3. *Freedom from coercion and restraint*. 128 of 128 sites were compliant with all topics in this category. All settings indicated that they don't restrain clients in their care and encourage all clients to freely move about the inside and outside of the setting, as appropriate for the client's age and supervision level. No settings restricted a client's access to activities or areas of the setting unless contrary to the safety and wellbeing of the individual.

4. *Optimization of individual initiative, autonomy, and independence.* 128 of 128 sites were compliant with all topics in this category. All settings indicated that they provide activities that are responsive to the client's goals, interests and needs.

5. *Choice regarding services and supports.* 128 of 128 sites were compliant with all topics in this category. All settings meet the client's needs based of the service authorization or plan of services and supports. For settings that specifically provide care to children, those settings indicated that they provide a schedule to parents focusing on activities of each child in their care.

6. *Legally-enforceable residential agreement.* This category is not applicable.

7. *Privacy and freedom in living unit.* This category is not applicable. However, all assessed sites reported supporting individual privacy by providing appropriate areas for individuals to obtain privacy due to personal choice or for personal care needs.

8. *Control over schedule, including food.* 128 of 128 sites reported they offer individuals variety and choice in the food they eat and times they eat meals and snacks. For settings that specifically provide care to children, those settings indicated that they provide a schedule to parents focusing on activities of each child in their care and encourage all children to eat together.

9. *Freedom to have visitors.* 128 of 128 sites reported they support visitor attendance in their locations.

10. *Physical accessibility.* In 128 of 128 sites, surveyors noted accessibility to all areas commonly accessed by individuals including elevator access to multi-level settings in commercial settings. No elevators were observed in any settings where extra care for children with disabilities was being provided and items such as tables and chairs were deemed to be accessible to all children.

c. TBI Waiver Residential

MLTC categorized the residential setting as follows:

- One of one is categorized as fully compliant.

The following is a list of CMS-identified requirement categories and themes observed in the site assessment data.

1. *Integration with the greater community*. The assisted living facility offers activities and outings outside in the community. In addition, individuals have access to and participate in community activities of their choosing. Individuals have access to and use public transportation if they choose, including a bus stop on the grounds.

2. Selection of setting. Assisted living residents have selected the setting from among setting options including non-disability specific settings.

3. *Freedom from coercion and restraint*. The assisted living facility has policies that indicate that the individuals are treated with respect, have privacy, and are free from coercion and restraints.

4. *Optimization of individual initiative, autonomy, and independence*. Individuals residing at the facility participate in activities of their choosing. Individuals decide what activities they would like the assisted living facility to provide. The assisted living facility provides access to local newspapers and the internet for individuals to see what activities are offered in the broader community. Service coordination monitoring and participant experience surveys gauge the extent individuals feel their autonomy is respected.

5. *Choice regarding services and supports*. The assisted living facility does not require individuals to use one doctor, pharmacy, dentist, or therapist.

6. *Legally-enforceable residential agreement*. The assisted living facility offers a legally enforceable residential agreement.

7. *Privacy and freedom in living unit*. The assisted living facility protects each individual's privacy by not posting personal information or discussing services in public. Medication is distributed per the individual's preference and individuals are able to have private conversations. The assisted living facility Resident Service Agreement states that each individual is able to furnish and decorate his or her apartment as desired and to have specific apartments. All apartments have lockable doors. The assisted living facility follows the Home and Community-Based Services policy, which provides for multiple occupancy only on an exceptional basis. Individuals are not restricted from any area of the campus.

8. *Control over schedule, including food*. Individuals are not required to adhere to a set schedule of waking, bathing, eating, or activities. Individuals are able to cook and do their own laundry if they choose. Individuals have access to the campus kitchen and laundry room. Choice of entrees and snacks is available, including a restaurant and a bar on campus. Individuals may choose to eat privately or sit in the dining room.

9. *Freedom to have visitors*. All individuals are able to have visitors at their time of choosing including overnight visitors.

10. *Physical accessibility*. The assisted living facility has unrestricted access. This includes individuals' ability to enter and leave at any time, come and go without a required schedule, and that all apartments and common areas are free from physical barriers.

d. DD Waiver Residential

DDD categorized residential settings as follows:

- Four hundred seventy-six (476) of six hundred thirty (630) are categorized as fully compliant;
- One hundred fifty-four (154) settings are categorized as not compliant, but could be with modifications; and
- No residential settings are categorized as unable to comply.

The following is a summary of site assessment data and themes observed by each CMS identified requirement category.

1. *Integration with the community*. 628 of 630 sites reported compliance with all topics in the category. For the two sites not fully compliant in this category, one did not report permitting individuals the opportunity to come

and go at will, and the other did not report promoting participation in regular meaningful work or non-work activities in integrated community settings for the period of time desired by the individual. Remediation plans have been or will be submitted by both sites and both indicated they would be in compliance by March 2022.

2. *Selection of setting*. 630 of 630 sites were compliant with all topics in the category. Setting selection is evidenced by whether there is an indication of the individual's choice in the person-centered plan.

3. *Freedom from coercion and restraint*. 577 of 630 sites were compliance with all topics in the category. For the 53 sites not fully compliant in this category, eight sites did not have a complaint/grievance process for participants, 47 sites did not allow for the filing of an anonymous complaint, two sites did not assure that information about participants was kept private, one site did not have a policy requiring the individual and/or representative grant informed consent prior to the use of restraints or restrictive interventions and document these in the person-centered plan, three sites did not have a process to ensure that each individual's supports and plans to address identified needs are specific to the individual and/or not restrictive to all individuals receiving support in the setting, four sites were not free from the use of delayed egress devices or secured perimeters, and one site did not offer a secure place to store belongings. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

4. *Optimization of individual initiative, autonomy, and independence*. 624 of 630 sites were compliant with all topics in this category. For the six sites not fully compliant in this category, one site did not reflect that the setting allowed for individuals' choice to participate in which activities they want, three sites did not allow for individual to do activities alone in the community and one site did not allow individuals to have access to their personal financial assets. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

5. *Choice of services and supports*. 630 of 630 sites were compliant with all topics in this category. All sites indicate individuals were provided a choice for services and a chance to visit and understand options. All sites indicate individuals were supported to exercise autonomy to the greatest extent possible and polices ensured individuals were supported in developing their plans to support needs and preferences. All sites also indicated that information was provided to individuals about how to make a request for additional services or changes to their current services.

6. *Legally-enforceable residential agreement*. 591 of 630 sites were compliant with all topics in this category. For the 39 sites that were not currently in

compliance, 27 of the sites did not reflect that the setting provided individuals with a lease or, for a setting in which landlord/tenant laws do not apply, a written residency agreement. 34 of the sites did not reflect that the setting informed individual of their rights regarding housing and when they could be relocated. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

7. *Privacy and freedom in living unit*. 528 of 630 sites were compliant with all topics in this category. For the 102 sites that were not currently in compliance, eight of the sites did not reflect that the setting allowed for individuals to choose their roommate/house mate, two sites did not indicate that married couples could share/not share a room by choice, 81 sites did not have locking bedroom doors, 29 sites did not allow individuals to close and lock the bathroom door, and 14 sites were not free of cameras or monitoring devices. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

8. *Control over schedule, including food*. 627 of 630 sites were compliant with all topics in this category. For the 3 sites that were not currently in compliance, all three did not indicate individuals could eat at any time. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

9. *Freedom to have visitors*. 630 of 630 sites were compliant with all topics in this category. All settings indicated that individuals were free to have visitors at any hour and visitors were allowed to take individuals outside the setting for both short and longer periods of time.

10. *Physical accessibility*. 614 of 630 sites were compliant with all topics in this category. For the 16 sites that were not currently in compliance, 11 sites did not reflect that the setting provided full access to a kitchen with cooking facilities, dining area, laundry, and comfortable seating in shared areas, eight sites were not free of barriers preventing the individuals' entrance or exit from certain areas of the setting, and nine sites did not reflect that the site was physically accessible or lacked environmental adaptations such as a stair lift or elevator to ameliorate the obstruction. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

e. DD Waiver Non-Residential

DDD categorized non-residential settings as follows:

- Forty-two of one hundred twenty-four (124) are categorized as fully compliant;
- Eighty-two are categorized as not compliant but could be with modifications; and
- No non-residential settings are categorized as unable to comply.

The following is a summary of site assessment data and themes observed by each CMS-identified requirement category.

1. *Integration with the community*. 81 of 124 sites were compliant with all topics in the category. For the 43 sites not fully compliant in this category, two sites did not provide opportunities for meaningful work or non-work activities in integrated community settings for the period of time as desired by the individual, one site did not afford opportunities for individual schedules that focus on the needs and desires of the individuals, one site did not afford opportunities for individuals to have knowledge of or access to information regarding age-appropriate activities, one site did not allow individuals the freedom to move about inside and outside the setting, five sites were not in the community/building located among other private businesses that facilitates integration with the greater community, ten sites did not encourage visitors or other people from the greater community to be present and/or visitors were not present at regular frequencies, two sites did not provide individuals with the opportunity to negotiate their schedule, break/lunchtimes etc. to the same extent as those not receiving HCBS, 33 sites did not provide individuals with contact information, access to, or education about public transportation and/or did not have these schedules/phone numbers available in a convenient location, in one site where public transportation was limited, the site did not provide information about other resources to access the broader community, three sites did not assure that tasks and activities were comparable to tasks and activities for people of similar ages who do not receive HCBS, and four sites were not physically accessible and/or there were no adaptations to ameliorate the obstructions. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022. At this time, Nebraska has not defined the level of integration required for each setting in order to be complaint. Nebraska is continuing research, and provider and stakeholder engagement in order to make this determination and will be adding this language to the Comprehensive Developmental Disabilities and Adult Day Waivers and Nebraska State Regulations in future amendments with a planned implementation date prior to March 2022.

2. *Selection of setting*. 118 of 124 sites were compliant with all topics in the category. Of the six sites that were not fully compliant in this category, one site did not reflect individual needs and preferences and/or its policies did not reflect informed choice of the individual, five sites did not offer non-disability specific settings or engage in general non-disabled community activities, and three sites' options did not include the opportunity for individuals to choose to combine more than one service delivery setting or service type in any given day/week. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

3. *Freedom from coercion and restraint*. 53 of 124 sites were compliant with all topics in the category. For the 71 sites not fully compliant in this category, seven sites did not assure that all information about individuals was kept private, 24 sites did not support providing personal assistance in private areas, three sites did not have a process to assure that each individual's supports and plans to address identified needs are specific to the individual and/or not restrictive of others in the site, and 57 sites did not offer a secure place for individuals to store belongings. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

4. *Optimization of individual initiative, autonomy, and independence.* 105 of 124 sites were compliant with all topics in this category. For the 19 sites not fully compliant in this category, two sites were not free of barriers preventing individuals' entrance/exit from certain areas of the setting, five sites did not afford a variety of meaningful activities that are responsive to the wants/needs of the individuals and/or the physical environment did not support a variety of individuals goals and needs, two sites did not afford the individuals the opportunity to choose with whom to do activities and/or individuals were assigned to only be with a certain group, four sites did not allow for individuals to have meals/snacks at the time of their choosing and/or the diners were not treated age appropriately, six sites did not provide or post individual rights, and three sites did not support individuals engaging in age-appropriate activities such as voting or other civil activities. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

5. *Choice of services and supports*. 121 of 124 sites were compliant with all topics in this category. For the three sites not fully compliant in this category, two sites did not afford individuals the opportunity to participate in meaningful activities in integrated community settings in a manner consistent with individual needs and preferences, and one site did not provide information to individuals about how to make a request for additional services or changes to their current services. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2022.

f. Remediation

Letters notifying providers of the preliminary results of their setting assessments were sent starting in early April 2016 and continued until all settings had received their results. Providers were given the option to respond with comments regarding their results.

Following the completion of validation activities, MLTC and DDD clarified areas of improvement with providers, for which providers were required to submit provider-level transition plans. By June 2021, MLTC and DDD will provide

instructions to providers regarding actions needed to be in compliance with Final Rule requirements. MLTC and DDD will review and provide feedback on plans no later than July 2021. During this time, providers will continue to make progress toward compliance. From 2017 through March 17, 2022, MLTC and DDD will monitor ongoing progress.

For DDD, remediation strategies for Adult Day Services and Habilitative Workshop Services settings that are not fully compliant with the integration requirements set by the State (within the framework outlined by the HCBS Final Rule) will also include requirements for a specific and comprehensive strategy, including timelines, to address this area.

CMS technical assistance resources regarding provider-level transition plans will be made available on the Nebraska Medicaid State Transition Plan website and will be updated during the transition period.

g. Process to Address Heightened Scrutiny

For sites requiring heightened scrutiny, the final rule indicates that a state may provide evidence to CMS to indicate that a setting has the qualities of home and community-based settings, or that it is transitioning to have such qualities. This process includes an opportunity for public input, including a response from the provider.

Following are the criteria for designating that a setting be subject to heightened scrutiny:

- The setting is located in a building that is a publicly or privately operated facility that provides inpatient institutional treatment;
- The setting is on the grounds of, or immediately adjacent to, a public institution
- The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.
- The setting is part of a group of multiple settings co-located and operationally related such that the co-location and/or cluster serves to isolate and/or inhibit interaction with the broader community, including any of the following:
    - Setting is located on a private campus where there are multiple group homes and/or an ICF/DD on the same property (e.g., private campus, co-located sites such that individuals who participate do not leave the site/participate in the broader community and/or a large number of individuals with disabilities are congregated and this structure inhibits interaction with the broader community); and/or
    - Other circumstances that meet the criteria (for multiple settings co-located and operationally related such that the co-location isolates individuals with disabilities and/or inhibits individuals from interacting with the broader community).

- The setting's design, appearance and/or location appears to be institutional and/or isolating (includes one or more of the following criteria):
    - The setting is clustered (i.e. adjacent to, in close proximity to other settings/sites for individuals with disabilities) such that the cluster isolates individuals with disabilities and/or inhibits individuals from interacting with the broader community;
    - The setting is designed to provide individuals with disabilities multiple types of services and activities on the same site and individuals with disabilities have little to no interaction or experiences outside of the setting, resulting in limited autonomy and/or regimented services;
    - Individuals in the setting have limited, if any, interaction with the broader community (i.e. the setting is set up and operated in such a way that individuals with disabilities have limited to no interactions or experiences outside of the setting, regardless of the settings location); and/or
    - The setting appears to be more isolating than other settings in the same vicinity/neighborhood and/or CMS guidance has specifically mentioned the setting type as a setting presumed to isolate. For example:
        - Setting is a gated community;
        - Setting has fencing, gates, or other structural items setting it apart from homes/settings in the vicinity;
        - Setting is labeled by signage as a setting for individuals with disabilities, thus not blending with the broader neighborhood/community;
        - Setting is close to a potentially undesirable location (e.g., dump, factory, across the street from a prison or other institutional setting, etc.) that is isolating and/or inhibits individuals from interacting with the broader community.

MLTC and DDD provided guidance for settings requiring heightened scrutiny regarding the State's approach in late spring 2017. Examples of evidence/documentation that MLTC and DDD may request from providers requiring heightened scrutiny include, but are not limited to:

- An HCBS Heightened Scrutiny Evidence Worksheet, which will be completed by each setting regarding its characteristics and practices, how the setting overcomes the presumption of isolation and/or being institutional in nature, and evidence that individuals receiving Medicaid HCBS experience inclusion in the broader community to the same extent as those not receiving HCBS;
- Documentation showing individualized planning and evidence that a review of an individual's interests, priorities, and necessary supports occurs regularly; and
- Evidence that efforts are made to support and promote new experiences for individuals within the broader community.

MLTC and DDD will review information gathered as a result of additional assessment activities and will also identify settings subject to heightened scrutiny by March of 2019. The public comment period for the identified settings will begin October 2020 and heightened scrutiny packets will be submitted to CMS on a rolling basis.

In accordance with CMS requirements, this public input process must:

- List the affected settings by service area, and identify the number of individuals served in each setting;
- Be widely disseminated with the intent of reaching HCBS individuals, families, and the community;
- Include any and all justifications from the state as to how the setting meets HCBS rules and is not institutional, such as any reviewer reports, interview summaries, and other evidence;
- Provide sufficient detail such that the public has an opportunity to support or rebut the state's determination; and,
- Provide responses to CMS from the public comments including explanations as to why the state is or is not changing its decision.

Once the public input process for heightened scrutiny is concluded, MLTC and DDD will send to CMS evidence that each of the heightened scrutiny settings meets or will meet HCBS settings standards (if applicable). According to its June 26, 2015, requirements document, CMS will review the information or documentation to ensure that all individuals in the setting are afforded the degree of community integration required by the final rule and desired by the individual. The evidence must be sufficient to overcome the presumption that the site is institutional or isolating. If the setting withstands this "heightened scrutiny," it will be deemed home and community-based.

Attachment 5 includes a summary of the heightened scrutiny timeline and required action that applies to all residential and non-residential settings where waiver services are delivered.

h. Process to Address Relocation

Providers must be in full compliance with the final rule by September 17, 2021. The timeframe between September 17, 2021, and March 17, 2022, assures that MLTC and DDD will have adequate time to provide notification of the requirement to relocate. This will give individuals ample time and opportunities to learn about the variety of compliant settings, disability and non-disability specific, that are available. Person-centered planning processes will be used to identify the individual's goals and preferences. Assistance will be given to individuals in transition to discuss options, alternate settings, and other individual-chosen services and supports.

Medicaid agreements for providers who are not willing or able to come into compliance with the final rule will be terminated no later than March 17, 2022.

8. Continuous Improvement and Ongoing Monitoring for HCBS Waivers

a. Overview

Nebraska's monitoring efforts will occur at the individual, provider, and state levels. This section provides an overview of how these monitoring efforts apply to all Nebraska Medicaid HCBS waivers. Subsequent sections identify improvement and monitoring efforts specific to each HCBS waiver program. The work plan for waiver-specific applications, NAC and policy compliance are found in Attachment 1. The work plan for settings compliance are found in Attachment 5. Both attachments provide benchmarks for identified modifications.

Individual. Monitoring efforts at the individual level include review of person-centered service plans. Relevant forms will be updated to include indicators of compliance with the HCBS final rule. MLTC and 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 trainings 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 implementation of the State Transition Plan. It will also include rights, protections, person-centered thinking, and community membership.

Provider. Monitoring efforts at the provider level include ensuring current providers transition to compliance and maintain compliance. MLTC and DDD will use 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 towards 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:

- Ongoing licensing inspections and certification reviews by appropriate staff; and

- Ongoing HCBS setting compliance monitoring to ensure that settings continue to comply with the HCBS regulations.

State. MLTC and DDD will ensure that these staff members are appropriately trained on the HCBS regulations and expectations. DDD will work with DPH licensure and certification staff to reduce duplication of effort in each Division's survey process.

b. Continuous Improvement and Ongoing Monitoring for A&D and TBI Waivers
MLTC will continue to modify its quality improvement strategies (as needed), including individual survey instruments, as a result of the HCBS final rule. MLTC submitted the A&D Waiver renewal application on July 1, 2016 and was approved with an effective date of August 1, 2016. It included new performance measures specific to the settings assessments, in order to focus on providers who are fully compliant, as well as those progressing toward compliance.

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 (e.g. individual needs assessments, 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.

In addition to file reviews, MLTC staff (or designees) will conduct setting assessments during the initial and annual provider review process, to assure continuous monitoring and improvement. This will include determining sample sizes to ensure providers are complying with HCBS regulations on an ongoing basis.

c. Continuous Improvement and Ongoing Monitoring for DD Waivers
On December 14, 2015, the licensing staff was re-assigned from DDD to DPH in order 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 in regard to rights, access, and freedom from isolation.

On-site visits may be conducted for follow up to complaints against providers regarding 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 and/or law enforcement as appropriate, in addition to any required complaint investigation).

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. 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. The individual served, the guardian, involved family members, provider staff, advocates, and others as appropriate may participate in the review process.

9. Conclusion

MLTC and DDD are dedicated to supporting participation in community life, choice of services and providers, opportunities for competitive employment, autonomy, dignity, and independence for individuals participating in their programs. MLTC and DDD are working collaboratively with stakeholders to ensure these goals now and in the future. Stakeholders are encouraged to comment on this updated State Transition Plan, including regulations, settings assessments, waiver-specific applications, or any initiatives described. Stakeholder comments are valued and will be used when refining the State Transition Plan to support the inclusion and integration of seniors and individuals with disabilities in the rich fabric of Nebraska's community life.

10. Attachments

Attachment 1 - Work Plan for Waiver, NAC and Policy Compliance

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Waiver Applications				
Establish stakeholder work groups for waiver renewal	DDD	January 2016	DDD staff	Workgroups established to consider application and eligibility, health and safety, person-centered planning, prioritization, provider enrollment, quality improvement and service definitions.
Engage contractor for rate methodology development	DDD	January 2016	DDD staff	Services are unbundled and fair rate methodology is applied.
Develop and execute communication plan for waiver renewals	DDD	February 2016	DDD staff	Communication plan is developed.
Include all NE HCBS waivers in established work groups	All	February 2016	MLTC staff	Stakeholders interested in all Nebraska HCBS waivers attending work groups co-facilitated by MTLC and DDD staff.
Obtain public comments for waiver renewal application	A&D	March 2016	MLTC staff	Forums were held statewide, two webinars were held, and public notice was provided.
Submit waiver renewal application to CMS	A&D	April 2016	MLTC staff	Waiver renewal application incorporates relevant State Transition Plan and HCBS regulation requirements.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Obtain CMS technical assistance to review progress on DD Waiver renewals and options for delivery system redesign	DDD	April 2016	DDD Director and staff	An initial concept for seamless waiver program operations across populations is identified as well as potential HCBS authorities, such as Community First Choice, 1915(i).
Obtain technical assistance for self-directed service option improvements	DDD	June 2016	DDD Director and staff	Self-directed service options opportunities are identified.
Revise waiver application based upon CMS feedback	A&D	May-October 2016	MLTC	CMS approval of waiver application.
Implement waiver renewal	A&D	November 2016	MLTC	Waiver is implemented with a retroactive August 2016 effective date.
Review and revise day service definitions to remove reference to facilities-based settings and clarify the Division's mission of serving all individuals in the most integrated setting possible	DDD	September 2016	DDD staff	DD Waivers include language that describes the Division's mission to serve all individuals in the most integrated setting possible.
Review and revise retirement services definition, requirements and restrictions.	DDD	September 2016	DDD staff	Retirement services are clearly defined to include requirements and restrictions.
Submit sections of waiver applications to CMS	DDD	May 2016-December 2016	DDD staff	CMS preliminary review of waiver application sections.
Submit waiver applications to CMS	DDD	January 2017	DDD staff	CMS approval of waiver applications
Conduct statewide training regarding revised waivers	DDD	December 2016-May 2017	DDD staff	State Transition Plan and HCBS regulations requirements incorporated in training.
Obtain CMS approval of revised waiver renewal timelines	DDD	April 2017	DDD staff	CMS approved renewal timeline extension.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Implement revised waivers	DDD	May 2017	DDD staff	Waivers are implemented.
TBI Waiver Renewal	TBI	March 2019	MLTC	Waiver to be implemented.
Nebraska Administrative Code				
Identify NAC changes necessary to ensure compliance	All	August 2014-December 2016	MLTC and DDD staff	Necessary changes are identified to address federal requirements for Title 404 and 480.
Draft and prepare NAC changes for promulgation	All	January 2017-February 2019	MLTC and DDD staff	Necessary changes are drafted and submitted through Nebraska's regulation promulgation process.
Promulgate updated regulations 480	AD & TBI	March 2019	MLTC staff	Regulations address HCBS requirements.
Promulgate updated regulations 403	DDD	July 2018	DDD staff	Regulations address HCBS requirements.
Promulgate updated regulations 404	DDD	October 2019	DDD Staff	Regulations address HCBS requirements
Policies				
Identify DDD Division internal policy and guideline changes needed	DDD	April 2016	DDD staff	DDD Division policies and guidelines needing changes are identified.
Draft DDD Division internal policy and guideline changes and establish implementation plan	DDD	September 2016	DDD staff	DDD Division policies and guidelines align with federal requirements and implementation plan is established.
Begin review and revision of service coordination hiring tools, orientation, and training curriculum to ensure focus on person-centered practices, recognition of and advocacy for individual rights, and ensuring all individuals are supported in the most integrated setting possible.	DDD	September 2016	DDD staff	Service coordinators have skills and tools required for implementing State Transition Plan and goals of the HCBS regulations.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Creation of Policy Manual for internal and external clarification on DDD policies and included HCBS Final Rule language	DDD	January 2018-September 2019	DDD Staff	Internal and External partners will have a clearer idea of DDD policies and how the HCBS requirements are implemented
Update provider handbooks	All	December 2018	MLTC	Handbooks updated to reflect changes to reflect federal final settings rule criteria.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(i) 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.	Title 175 Chapter 4 Compliant: **4-006.04** *Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:* *1. Be treated with dignity and provided care by competent staff;* *2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;* *3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;* *4. Be informed in writing of the pricing structure and/or rates of all facility services;* *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;* *6. Choose a personal attending physician;* *7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;* *8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;* *9. Refuse to perform services for the facility;* *10. Refuse to participate in activities;* *11. Privacy in written communication including sending and receiving mail;* *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* *13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;* *14. Have the right to have a telephone in his/her room at the resident's expense;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	**July 2019:** Legal sends regulations to Governor's Policy Research Office. **November 2019:** Governor's Policy Research Office completes review. Publish Public Notice for formal public hearing in December. **December 2019:** Public Hearing. Review and Incorporate Public Comments **June 2020**: Regulations sent to the Attorney General's Office for Approval **September 2020**: Regulations sent to Governor's Policy Research Office for final approval. **December 2020:** Regulations approved by the

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	4-006.04A Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to: *1. A procedure on submission of grievances available to residents, employees and others;* *2. Documentation of efforts to address grievances received from residents, employees and others; and* *3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.* **4-006.08** *Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.* Title 175 Chapter 5 Silent Title 480Chapter 5 Silent		Governor, to take effect on December 31, 2020.
(4)(ii) 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	Title 175 Chapter 4 Silent Title 175 Chapter 5 Silent Title 391 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
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.	Title 480 Chapter 5 Compliant: **5-003.A.4(a)** *The services coordinator shall -* *a. Together with the potential client, develop a plan of services and supports based upon assessment results. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF assessment categories: activities of daily living; high risk factors, joint motion; locomotion; nursing observations; orientation; and medical and nursing needs.* *The plan of services and supports must ensure the potential client's health and welfare, including the consideration of acceptable risk. If, despite consideration of the full range and scope of services, the client's health or welfare is in jeopardy, waiver services may not be provided.* *The potential client has freedom of choice in selecting providers of waiver services. The client's choice of providers is documented in the client's case narrative.* *Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the client/guardian.* **5-001D(1)(h)** *D. IMPLEMENTATION* *1. Services coordination activities h. Arranging for support and services identified in the plan of services and supports, while maintaining the client's freedom of choice in providers;* **5-003.B.(4)(a)** *4. PLANNING FOR SERVICES* *PURPOSE: To identify specific individual services to be provided in a coordinated and organized manner.* *The services coordinator shall -*		

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	a. Together with the child and family, further develop the plan of services and supports. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF domains: activities of daily living; cognition; environment; medical/nursing status; support network; and transition. *The plan of services and supports must ensure the child's health and welfare, including consideration of acceptable risk. If, despite consideration of the full range and scope of services, the child's health or welfare is in jeopardy, waiver services may not be provided.* *The child's guardian has freedom of choice in selecting providers of waiver services. The guardian's choice of providers is documented in the child's case narrative.* *Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the child's guardian. Note: If a child under the age of three receives services coordination through an Early Intervention Program, the Individualized Family Service Plan (IFSP) developed for that program meets the plan of services and supports requirement for this waiver. The IFSP document must specify needed service(s) to be authorized through this waiver, with a copy maintained in the waiver case record.*		
(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Title 175 Chapter 4 Compliant: **4-006.02 (8) and (9)** *Administration: Each assisted-living facility must have an administrator who is responsible for the overall operation of the facility. The administrator is responsible for planning, organizing, and directing the day to day operation of the assisted-living facility. The administrator must report all matters related to the maintenance, operation, and management of the assisted-living facility and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator must:* *8. Develop and implement procedures that require the reporting of any evidence of abuse, neglect, or exploitation of any resident residing in the*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

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	assisted-living facility in accordance with Neb. Rev. Stat. §§ 28-372 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. § 28-711; *9. Complete an investigation on suspected abuse, neglect, or misappropriation of money or property and take action to prevent reoccurrence until the investigation is completed;* **4-006.04** *Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:* *1. Be treated with dignity and provided care by competent staff;* *2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;* *3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;* *4. Be informed in writing of the pricing structure and/or rates of all facility services;* *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment; 6. Choose a personal attending physician;* *7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;* *8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;* *9. Refuse to perform services for the facility;* *10. Refuse to participate in activities;* *11. Privacy in written communication including sending and receiving mail;* *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* *13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;*		

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	14. Have the right to have a telephone in his/her room at the resident's expense; *15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;* *16. Share a room with a person of his or her choice upon consent of that person;* *17. Self-administer medications if it is safe to do so;* *18. Be free of chemical and physical restraints;* *19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;* *20. Form and participate in an organized resident group that functions to address facility issues;* *21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12; 22. Be free from abuse, neglect, and misappropriation of their money and personal property; and* *23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.* **4-006.11** *Resident Care: Each assisted-living facility must provide residents care and services in accordance with their established resident service agreements which maximize the residents' dignity, autonomy, privacy and independence.* *4-006.11A Evidence that the facility is meeting each resident's needs for personal care, assistance with activities of daily living and health maintenance include the following outcomes for residents:* *4-06.11A1 Physical well-being of the resident:* *1. Clean and groomed hair, skin, teeth and nails;* *2. Nourished and hydrated;*		

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	3. Free of pressure sores, skin breaks, chaps and chafing; *4. Appropriately dressed for the season in clean clothes;* *5. Protected from accident, injury and infection; and* *6. Receives prompt emergency care for the following but not limited to: illnesses, injuries, and life threatening situations.* *4-006.11A2 Behavioral/emotional well-being of the resident:* *1. Opportunity to participate in age appropriate activities that are meaningful to the resident, if desired;* *2. Sense of security and safety;* *3. Reasonable degree of contentment; and* *4. Feeling of stable and predictable environment.* *4-006.11A3 In agreement that the resident:* *1. Is free to go to bed at the time desired;* *2. Is free to get up in the morning at the time desired;* *3. Is free to have visitors;* *4. Has privacy;* *5. Is free to self direct his/her own care and treatment and change their plan at any time;* *6. Is assisted to maintain a level of self-care and independence;* *7. Is assisted as needed to have good oral hygiene;* *8. Has been made as comfortable as possible by the facility;* *9. Is free to make choices and assumes the risk of those choices;* *10. Is fully informed of the services he/she can expect to be provided by the facility;* *11. Is free of abuse, neglect and exploitation;* *12. Is treated with dignity; and* *13. Has the opportunity to participate in activities, if desired.* *4-006.11B Health Maintenance Activities: All health maintenance activities must be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.* *4-006.11C Other Supportive Services: A assisted-living facility may provide other supportive services to assist residents. These services could include, but are not limited to: transportation, laundry, housekeeping,*		

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	financial assistance/management, behavioral management, case management, shopping, beauty/barber and spiritual services. *4-006.11D Special Populations Services: Each assisted-living facility that provides services to special populations such as, but not limited to, those individuals with disabilities, mental impairments, dementia, or other disorders must:* *1. Evaluate each resident to identify the abilities and special needs;* *2. Ensure the administrator and staff assigned to provide care are trained to meet the special needs of those residents. Such training must be done by a person(s) qualified by experience and knowledge in the area of special services being provided;* *3. Prepare and implement each resident service agreement to address the special needs; and* *4. Provide a physical environment that maintains the safety and dignity of residents and accommodates residents' special needs, such as physical limitations, and visual and cognitive impairments.* **4-006.11E** *Requirements for Facilities or Special Care Units for Persons with Alzheimer's Disease, Dementia or a Related Disorder: Each assisted-living facility or special care unit that specializes in providing care for persons who have Alzheimer's disease, dementia or a related disorder must meet the following requirements:* *1. Care and services must be provided in accordance with the resident service agreement and the stated mission and philosophy of the facility.* *2. Prior to admission, the facility must inform the resident or authorized representative in writing of the facility's criteria for admission, discharge, transfer, resident conduct and responsibilities.* *3. The facility or unit must maintain a sufficient number of direct care staff with the required training and skills necessary to meet the resident population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other supportive services. Such staff must remain awake, fully dressed*		

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	and be available in the facility or unit at all times to provide supervision and care to the residents. *4. The administrator and direct care staff must be trained in: a. The facility or unit's philosophy and approaches to providing care and supervision for persons with Alzheimer's disease; b. The Alzheimer's disease process; and c. The skills necessary to care for, and intervene and direct residents who are unable to perform activities of daily living, personal care, or health maintenance and who may exemplify behavior problems or wandering tendencies.* *5. The facility must not admit or retain residents if any one of the following conditions exists, unless the criteria in 4-006.07B are met: a. The resident poses a danger to self or to others; or b. The resident requires complex nursing interventions.* Title 175 Chapter 5 Compliant: **5-006.04B** *Client Rights* *At a minimum, client rights include the right to:* *1. Receive respectful and safe care from competent personnel;* *2. Be free from abuse, neglect, exploitation, and treated with dignity;* *3. Receive ADS without discrimination based upon race, color, religion, gender, national origin, or payer;* *4. Voice complaints and grievances without discrimination or reprisal and have those complaints and grievances addressed;* *5. Have all records, communications and personal information kept confidential;* *6. Self-administer medications if it is safe to do so;* *7. Be free of chemical and physical restraints;* *8. Be informed of changes in agency policies, procedures, and charges for service or have his/her designee receive this information.* Title 391		

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	Compliant: **1-006.13A** *Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:* *1. Spanking;* *2. Slapping;* *3. Punching;* *4. Pinching;* *5. Shaking;* *6. Striking with any object;* *7. Use of soap, hot sauce or other unpleasant food or non-food items;* *8. Isolating a child in a locked or closed room or closet;* *9. Handling roughly;* *10. Biting;* *11. Denial of food;* *12. Forced napping;* *13. Subjecting a child to derogatory remarks about the child or the child's family;* *14. Abusive or profane language directed at children;* *15. Yelling or screaming at children;* *16. Threats of physical punishment; or* *17. Mechanical restraints.* **1-006.13E** *Use of Restraints: The use of restraints is prohibited except under the following conditions:* *1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints.* *2. The training curriculum must be accepted by the Department.* *3. The training must be taught by a certified trainer.* *4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:*		

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	a. Child's name; *b. Date of the incident;* *c. Description of the incident; and* *d. Names of the staff involved.* **2-006.13A** *Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:* *1. Spanking;* *2. Slapping;* *3. Punching;* *4. Pinching;* *5. Shaking;* *6. Striking with any object;* *7. Use of soap, hot sauce or other unpleasant food or non-food items;* *8. Isolating a child in a locked or closed room or closet;* *9. Handling roughly;* *10. Biting;* *11. Denial of food;* *12. Forced napping;* *13. Subjecting a child to derogatory remarks about the child or the child's family;* *14. Abusive or profane language directed at children;* *15. Yelling or screaming at children;* *16. Threats of physical punishment; or* *17. Mechanical restraints.* **2-006.13E** *Use of Restraints: The use of restraints is prohibited except under the following conditions:* *1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints.* *2. The training curriculum must be accepted by the Department.*		

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	3. The training must be taught by a certified trainer. *4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:* *a. Child's name;* *b. Date of the incident;* *c. Description of the incident; and* *d. Names of the staff involved.* **3-006.20A** *Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:* *1. Spanking;* *2. Slapping;* *3. Pinching;* *4. Punching;* *5. Shaking;* *6. Striking with any object;* *7. Use of soap, hot sauce, or other unpleasant food and non-food items;* *8. Isolating a child in a locked or closed room or closet;* *9. Handling roughly;* *10. Biting;* *11. Denial of food;* *12. Forced napping;* *13. Subjecting children to derogatory remarks about the child or the child's family;* *14. Abusive or profane language directed at children;* *15. Yelling or screaming at children;* *16. Threats of physical punishment; or* *17. Mechanical restraints.* **3-006.20E**		

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	Use of Restraints: The use of restraints is prohibited except under the following conditions: *1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;* *2. The training curriculum must be accepted by the Department;* *3. The training must be taught by a certified trainer; and* *4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:* *a. Child's name;* *b. Date of the incident;* *c. Description of the incident; and* *d. Names of the staff involved.* **4-006.19A** *Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:* *1. Spanking;* *2. Slapping;* *3. Pinching;* *4. Punching;* *5. Shaking;* *6. Striking with any object;* *7. Use of soap, hot sauce, or other unpleasant food and non-food items;* *8. Isolating a child in a locked or closed room or closet;* *9. Handling roughly;* *10. Biting;* *11. Denial of food;* *12. Forced napping;* *13. Subjecting children to derogatory remarks about the child or the child's family;* *14. Abusive or profane language directed at children;* *15. Yelling or screaming at children;*		

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	16. Threats of physical punishment; or *17. Mechanical restraints.* **4-006.19E** *Use of Restraints: The use of restraints is prohibited except under the following conditions:* *1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;* *2. The training curriculum must be accepted by the Department;* *3. The training must be taught by a certified trainer; and* *4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:* *a. Child's name;* *b. Date of the incident;* *c. Description of the incident; and* *d. Names of the staff involved.* **5-006.19A** *Unacceptable Forms of Discipline: The following actions are prohibited as a form of discipline:* *1. Spanking;* *2. Slapping;* *3. Pinching;* *4. Punching;* *5. Shaking;* *6. Striking with any object;* *7. Use of soap, hot sauce, or other unpleasant food and non-food items;* *8. Isolating a child in a locked or closed room or closet;* *9. Handling roughly;* *10. Biting;* *11. Denial of food;* *12. Forced napping;*		

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	13. Subjecting children to derogatory remarks about the child or the child's family; *14. Abusive or profane language directed at children;* *15. Yelling or screaming at children;* *16. Threats of physical punishment; or* *17. Mechanical restraints.* **5-006.19E** *Use of Restraints: The use of restraints is prohibited except under the following conditions:* *1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;* *2. The training curriculum must be accepted by the Department;* *3. The training must be taught by a certified trainer; and* *4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:* *a. Child's name;* *b. Date of the incident;* *c. Description of the incident; and* *d. Names of the staff involved.* Title 480 Chapter 5 Silent		
(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, included, but not limited to, daily activities, physical	Title 175 Chapter 4 Compliant: **4-006.04** *Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:* *1. Be treated with dignity and provided care by competent staff;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

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environment, and with whom to interact.	*2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;* *3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;* *4. Be informed in writing of the pricing structure and/or rates of all facility services;* *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;* *6. Choose a personal attending physician;* *7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;* *8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;* *9. Refuse to perform services for the facility;* *10. Refuse to participate in activities;* *11. Privacy in written communication including sending and receiving mail;* *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* *13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;* *14. Have the right to have a telephone in his/her room at the resident's expense;* *15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;* *16. Share a room with a person of his or her choice upon consent of that person;* *17. Self-administer medications if it is safe to do so;* *18. Be free of chemical and physical restraints;* *19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;*		

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	20. Form and participate in an organized resident group that functions to address facility issues; *21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12;* *22. Be free from abuse, neglect, and misappropriation of their money and personal property; and* *23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff. Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:* *1. A procedure on submission of grievances available to residents, employees and others;* *2. Documentation of efforts to address grievances received from residents, employees and others; and* *3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.* **4-006.08** *Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.* Title 175 Chapter 5 Compliant: **5-006.04** *Client Rights* *5-006.04A The ADS must:*		

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	1. Inform clients of their rights in writing upon enrollment; *2. Ensure that clients are aware of their rights for the duration of their participation in the ADS;* *3. Operate so as to afford the clients the opportunity to exercise their rights; and* *4. Protect and promote client rights.* *5-006.04B At a minimum, client rights include the right to:* *1. Receive respectful and safe care from competent personnel;* *2. Be free from abuse, neglect, exploitation, and treated with dignity;* *3. Receive ADS without discrimination based upon race, color, religion, gender, national origin, or payer;* *4. Voice complaints and grievances without discrimination or reprisal and have those complaints and grievances addressed;* *5. Have all records, communications and personal information kept confidential;* *6. Self-administer medications if it is safe to do so;* *7. Be free of chemical and physical restraints;* *8. Be informed of changes in agency policies, procedures, and charges for service or have his/her designee receive this information.* *5-006.04C Designee Rights: At a minimum, designee rights include the right to:* *1. Be informed of agency's policies, procedures, and charges for service;* *2. Voice complaints and grievances without discrimination or reprisal against themselves or the client and have those complaints and grievances addressed;* *3. Formulate advance directives and have the ADS comply with the directives unless the facility notifies the caretaker of their inability to do so; and* *4. Be informed of client and designee rights during admission.* **5-006.09** *Activities: The ADS must:* *1. Plan and provide activities that:*		

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	a. Meet the interests of clients; *b. Promote the physical, mental, and psychosocial well-being of clients; and* *c. Are ongoing.* *2. Inform clients of the opportunity to participate; and* *3. Post and otherwise make available to clients, information about ADS activities.* Title 391 Silent Title 480 Chapter 5 Compliant: **5-005.B.1** *B. ASSISTED LIVING SERVICE* *1. Description* *Assisted living is an array of support services that promote client self-direction and participation in decisions which incorporate respect, independence, individuality, privacy, and dignity in a home environment. These services include assistance with or provision of personal care activities, activities of daily living, instrumental activities of daily living, and health maintenance.* *The need for this service must be reflected in one or more assessment areas of the client's plan of services and support.* **5-005.M** *Home Again (HA) Service* *1. Description: HA Service is available to support and enable Medicaid-eligible nursing facility residents to move to a more independent living situation of their choice. Items and services covered include but are not limited to:* *1. Furniture, furnishings, and household supplies;* *2. Security deposits, utility installation fees or deposits; and*		

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	3. Moving expenses. *2. Need for Service: All items and services covered must be essential to:* *1. Ensure that the person is able to transition from the current NF; and* *2. Remove identified barriers or risks to the success of the transition to a more independent living situation.* *3. Persons Eligible: To receive this service, a person aged 18 or older must be a current NF resident whose NF services have been paid by Medicaid for at least six months. Persons whose NF stay is rehabilitative are not eligible for this service.* *4. Items and Services Covered: The Services Coordinator and client must jointly determine the need for specific Home Again Services. Services must be identified in one or more assessment areas and reflected in the client's Plan of Services and Supports. The Services Coordinator may authorize services in one or more of the following areas:* *1. Essential furniture, appliances, furnishings, and household supplies;* *2. Security deposits and utility installation fees and deposits;* *3. Moving expenses;* *4. Assistance from a Home Again Sponsor; and* *5. Expenses for other services or items related to the move which are essential to remove barriers to the transition or its success.* *Once purchased, all items become the property of the client. Any prior-authorized transition expenses incurred in good faith will be covered by the program even if the transition does not ultimately occur (for example, the client has a medical emergency).* *5. Items and Services Not Covered: Medicaid funds may not be used to pay rent. In addition, the Services Coordinator must not authorize items and services which:* *1. Are not essential to supporting the move or ensuring its success;* *2. Are available through the Medicaid state plan or through another service of this Waiver program;* *3. Are available at no cost from relatives, friends, or any other source; or* *4. Relate to a move to an assisted living facility and are the responsibility of the AL facility or included in the client's public assistance budget.*		

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	Examples are a rental deposit, monthly payment, utilities provided for all residents, or basic furniture. *6. Service Duration: HA services may be authorized only once during a twelve month period. The authorization period for HA Services may begin as soon as the client, Services Coordinator, and NF staff agree that a discharge plan indicates a move to a more independent setting. The Services Coordinator may authorize expenditures made up to 60 days in advance of the planned move date and for 30 days after the actual move date.* *7. Home Again Sponsor: Each client eligible for Home Again Service must have a designated HA Sponsor. The role of the Sponsor includes but is not limited to:* *1. Assisting the client as necessary to locate and procure accessible, affordable housing;* *2. Providing support in dealing with the changes related to the transition move; and* *3. Providing the up-front funding to obtain the essential items and services included in the Plan of Services and Supports.* *If the client has no family or friend available to fill the Sponsor role at no cost, the Services Coordinator may authorize the payment to a paid Sponsor. A relative or friend assuming the role of Sponsor must also meet provider standards to receive reimbursement of actual transition expenditures made on behalf of the client.* *8. HA Sponsor Standards: A HA Sponsor may be an individual, a business, an organization or an agency. In addition to the general standards for all waiver providers, a HA Sponsor must:* *1. Be age 19 or older;* *2. Recognize and support the client choice in selection of items and services provided through this service;* *3. Have experience in carrying out activities related to locating housing and setting up a household;* *4. Be free of communicable disease;* *5. Be able to recognize distress and/or signs of illness in clients;*		

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	6. Observe and report all changes in client functioning to the services coordinator and/or to the NF staff; and *7. Assure that any vehicle and driver transporting a client to look for housing or other transition need meets applicable licensing and safety laws and regulations.* *9. Home Again Rates: The Home Again rate consists of payment for the actual cost of items and services necessary for the client's move and any payment to the sponsor. The maximum amount allowed for the Home Again service is a one-time payment of $1500, of which up to $300 may be allowed for the payment to the sponsor. This amount may be subject to annual adjustment as allowed by the Legislature (see 480-000-209). Payment for the Home Again service is not counted in the client's monthly cost for waiver services.* *10. Home Again Services Provider Billing: HA Sponsors must bill for services by:* *1. Totaling and submitting dated receipts for purchases made on behalf of the client;* *2. Totaling and submitting receipts or other written documentation of the financial obligation incurred by the Sponsor on behalf of the client for security deposits, utility installation, and/or fees;* *3. Providing a detailed listing of the dates and activities performed if payment for the Sponsor's time is authorized; and* *4. Submitting a billing request for the total amount of expenses incurred.*		
(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	Title 175 Chapter 4 Silent Title 175 Chapter 5 Silent Title 391 Silent Title 480 Chapter 5	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

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	Compliant: **5-001.A** *GENERAL INTRODUCTION* *Home and community-based waiver services offer eligible persons a choice between entering a Nursing Facility (NF) or receiving supportive services in their homes. Medicaid funding through the Nebraska Medical Assistance Program (NMAP) is used to fund either service option. The average cost of waiver services funded by Medicaid must not exceed the average cost to Medicaid for NF services.* *To be eligible for support through this "Aged and Disabled Waiver," a potential client must meet the following general criteria:* *1. Have care needs equal to those of Medicaid-funded residents in Nursing Facilities;* *2. Be eligible for Medicaid; and* *3. Work with the services coordinator to develop an outcome-based, cost effective service plan.* **5-001.B** *Waiver services build on client/family strengths and are intended to strengthen and support informal and formal services already in place to meet the needs of the client and are not intended to replace them.* *Waiver services utilize a self-directed services philosophy and vision that holds that each client has the right and responsibility to participate to the greatest extent possible in the development and implementation of his/her service plan.* *The services coordinator and the client together shall identify appropriate levels of services coordination by considering risk factors or capacity to direct their own services. The services coordination levels include:* *! Self-Directed Services Coordination* *! Supportive Services Coordination* *! Comprehensive Services Coordination* *Elements in the following areas shall be considered to determine the level of services coordination both initially and as service levels change:*		

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	1. Determination of strengths, priorities, and resources. *2. Planning for services.* *3. Connecting with needed services.* *4. Advocacy.* *5. Monitoring.* **5-003.A.4.A** *Together with the potential client, develop a plan of services and supports based upon assessment results. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF assessment categories: activities of daily living; high risk factors, joint motion; locomotion; nursing observations; orientation; and medical and nursing needs.* *The plan of services and supports must ensure the potential client's health and welfare, including the consideration of acceptable risk. If, despite consideration of the full range and scope of services, the client's health or welfare is in jeopardy, waiver services may not be provided.* *The potential client has freedom of choice in selecting providers of waiver services. The client's choice of providers is documented in the client's case narrative.* *Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the client/guardian.* **5-003.B.4.A** *PLANNING FOR SERVICES* *PURPOSE: To identify specific individual services to be provided in a coordinated and organized manner.* *The services coordinator shall -* *a. Together with the child and family, further develop the plan of services and supports. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF domains:*		

Standards Applicable to All HCBS Settings			
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	activities of daily living; cognition; environment; medical/nursing status; support network; and transition. *The plan of services and supports must ensure the child's health and welfare, including consideration of acceptable risk. If, despite consideration of the full range and scope of services, the child's health or welfare is in jeopardy, waiver services may not be provided.* *The child's guardian has freedom of choice in selecting providers of waiver services. The guardian's choice of providers is documented in the child's case narrative.* *Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the child's guardian.* *Note: If a child under the age of three receives services coordination through an Early Intervention Program, the Individualized Family Service Plan (IFSP) developed for that program meets the plan of services and supports requirement for this waiver. The IFSP document must specify needed service(s) to be authorized through this waiver, with a copy maintained in the waiver case record.*		

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(4)(vi)(A) The unit or dwelling is a specific physical space 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 individual, and that that the document provides protections	§76-1401 et. Seq. (Uniform Residential Landlord Tenant Act) Compliant §71-406 (Assisted Living Facility, defined) Compliant Title 175 Chapter 4 Compliant: **4-006.04 (23)** *23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.* Title 175 Chapter 5 Compliant: **5-006.08** *Admission and Discharge of Clients: The ADS must ensure that its admission and discharge practices meet the client's identified needs and conform with the program description.* *5-006.08A Admission Criteria: The ADS must have written criteria for admission that includes each level of care and the components of care and services provided.* *5-006.08B Admission Decisions: The ADS must ensure that the decision to admit a client is based upon its admission criteria and its capability to meet the identified needs of the client.* *5-006.08C Agreement of Participation: The ADS must negotiate an agreement of participation with the client or designee.* *5-006.08D Discharge Criteria: The ADS must have written criteria for dismissal of clients.* *5-006.08E Discharge Decisions: The ADS must ensure that the decision to discharge a client is based upon its discharge criteria.* Title 480 Chapter 5	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

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that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	Silent		
(4)(vi)(B) Each individual has privacy in their sleeping or living unit:	Title 175 Chapter 4 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	Title 175 Chapter 5 Compliant: **5-007.02L** *Doors: The facility doors must be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize client injury.* *5-007.02L1 Toilet and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.* *5-007.02L2 In new construction, the door of a toilet and bathing room with less than 50 square feet of clear floor area and dedicated to client use, must not swing inward.* Title 480 Chapter 5 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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(2) Individuals sharing units have a choice of roommates in that setting.	Title 175 Chapter 4 Compliant: **4-006.04(16)** *Share a room with a person of his or her choice upon consent of that person;* Title 480 Chapter 5 Compliant: **5-005B4c** *The facility shall provide a private room with bath consisting of a toilet and sink for each client receiving waiver assisted living service. Any facility that receives funding through the Nebraska Health Care Trust Fund Act shall provide a private room with bath consisting of a toilet, sink, and tub or shower for each client receiving waiver assisted living service. Semi-private rooms shall be considered on an individual basis (e.g., couples), and require prior approval of the HHS System.*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Title 175 Chapter 4 Compliant: **4-006.04(15)** *15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;* Title 175 Chapter 5 Silent Title 480 Chapter 5 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(4)(vi)(C) Individuals have the freedom and support to control their own schedules and activities, and have	Title 175 Chapter 4 Compliant: **4-006.04(5)** *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;*	**Title 480** Implement new HCBS administration rule that describes the	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
access to food at any time.	**4-006.04(10)** *10. Refuse to participate in activities;* Title 175 Chapter 5 Compliant: **5-006.09(2)** *Activities: The ADS must:* *1. Plan and provide activities that:* *a. Meet the interests of clients;* *b. Promote the physical, mental, and psychosocial well-being of clients; and* *c. Are ongoing.* *2. Inform clients of the opportunity to participate; and* *3. Post and otherwise make available to clients, information about ADS activities.* Title 391 Silent Title 480 Chapter 5 Silent	characteristics required of all settings in which HCBS is provided.	
(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	Title 175 Chapter 4 Compliant: **4-006.04(12)** *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* Title 175 Chapter 5 Silent Title 480 Chapter 5 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(vi)(E) The setting is physically accessible to the individual.	Title 175 Chapter 4 Compliant: **4-007.03A1(6)** *New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:* *6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12* Title 175 Chapter 5 Compliant: **5-007.02** *Construction Standards: ADS facilities must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and services to be provided. The standards for such facilities are set forth as follows.* *5-007.02A Codes and Guidelines* *5-007.02A1 New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and services to be provided:* *1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;* *2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;* *3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;* *4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;* *5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;* *6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12; and* *7. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.* *5-007.02A2 All Facilities: All facilities must comply with the following applicable codes and standards to provide a safe environment.*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

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	1. Fire Codes: Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1; and *2. The Food Code, Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.* *5-007.02A3 Existing and New Facilities: Existing and new facilities must comply with the physical plant standards contained in 175 NAC 5-007. The facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose, or location.* *5-007.02B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with these regulations, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal prevails.* *5-007.02C Interpretations: All dimension, sizes, and quantities must be determined by rounding fractions to the nearest whole number.* *5-007.02D Floor Area: Floor area is the space with ceilings at least seven feet in height and excludes areas such as enclosed storage, toilets and bathing rooms, corridors and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width must not be included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height with areas less than five feet in height, not included in the required floor area.* *5-007.02E Dining areas must:* *1. Have adequate light and ventilation;* *2. Have tables and chairs that accommodate the clients' needs;* *3. Not be used for sleeping, offices, or corridors; and* *4. Be arranged so that all clients are able to eat meals at an appropriate time by having:* *a. All clients eat at the same time;* *b. Clients eat in different shifts; or* *c. Open times for client meals.*		

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	5-007.02F Activity Areas: A facility must have space for client socialization, resting, and leisure time activities. Activity areas must: *1. Have furnishings to accommodate group and individual activities;* *2. Not be used for sleeping, offices, or as a corridor;* *3. Be available to all clients; and* *4. In new construction, have 60 square feet per person.* *5-007.02G Toilet Fixtures: The ADS must provide one toilet fixture for every ten clients. Handwashing sinks must be conveniently located near the toilet fixtures. In new construction a toilet room must be located no more than 40 feet from program and activity areas.* *5007.02H Sleeping Areas: If clients are served overnight, the ADS must provide a sleeping area which affords privacy, provides access to furniture, and accommodates the care provided to the participants. Sleeping rooms:* *1. Must not be located in any garage, storage area, shed, or similar detached buildings; and* *2. Must not be accessed through a bathroom, food preparation area, laundry, or bedroom.* *5-007.02I Examination and Therapy Rooms: If provided, each examination and therapy room must have sufficient space. In new construction, each examination and therapy room must have a minimum floor area of 80 square feet and a minimum of 3 feet clear dimension around 3 sides of the examination table or chair. In new construction, each examination and therapy room must provide at least one handwashing sink equipped with towels and soap dispenser.* *5-007.02J Participant Storage: The facility must provide adequate storage for client belongings.* *5-007.02K Corridors: The facility corridors must be wide enough to allow passage and be equipped as needed by the participants with safety and assistive devices to minimize injury. All stairways and ramps must have handrails.* *5-007.02L Doors: The facility doors must be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize client injury.*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	5-007.02L1 Toilet and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care. *5-007.02L2 In new construction, the door of a toilet and bathing room with less than 50 square feet of clear floor area and dedicated to client use, must not swing inward.* *5-007.02M Outdoor Areas: If the facility provides an outdoor area for client use, it must be equipped and situated to allow for client safety and abilities.* *5-007.02N Bathing Rooms: If the facility provides bathing services, the facility must have a bathing room with a tub and/or shower. Tubs and showers used by clients must be equipped with handgrips or other assistive devices as needed by the clients. The bathing room must not directly open into a dining/kitchen area.* Title 391 Silent Title 480 Compliant: **5-005.A4** *ADHC standards* *The Department of Health and Human Services annually contracts with providers of Adult Day Health Care to ensure that all applicable federal, state, and local laws and regulations are met.* *Provider Standards: Providers of ADHC shall obtain adequate information on the medical and personal needs of each client, if applicable; and observe and report all changes to the services coordinator.* *Facility Standards: Each Adult Day Health Care facility must meet all applicable federal, state, and local fire, health, and other standards prescribed in law or regulation. This includes the following standards:* *a. Atmosphere and design: This includes -* *(1) The facility must be architecturally designed to accommodate the needs of the clients being served;* *(2) Furniture and equipment used by clients must be adequate;*		

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	(3) Toilets must be in working order and easily accessible from all program areas; and *(4) A telephone must be available for client use.* *b. Location and space: The facility shall ensure that the facility has sufficient space to accommodate the full range of program activities and services. This includes -* *(1) Flexibility for large and small group and individual activities and services;* *(2) Storage space for program and operating supplies;* *(3) A rest area, adequate space for special therapies, and designated areas to permit privacy and isolate clients who become ill;* *(4) Adequate table and seating space for dining;* *(5) Outside space available for outdoor activities and accessible to clients; and* *(6) Adequate space for outer garments and private possessions of the clients.* *c. Safety and sanitation: The facility shall ensure that* *(1) The facility is maintained in compliance with all applicable local, state, and federal health and safety regulations;* *(2) If food is prepared at the center, the food preparation area must comply with HHS regulations;* *(3) At least two well-identified exits are available;* *(4) Stairs, ramps, and interior floor have non-slip surfaces or carpet;* *(5) The facility is free of hazards (e.g., exposed electrical cords, improper storage of combustible material);* *(6) All stairs, ramps, and barrier-free bathrooms are equipped with usable handrails; and* *(7) A written plan for emergency care and transportation is documented in the client's file.* *Staffing: Each center must be staffed at all times by at least one full-time trained staff person.* *The center shall maintain a ratio of direct care staff member to clients sufficient to ensure that client needs are met. The center shall develop written job descriptions and qualifications for each professional, direct care, and non-direct care position.* *Provider Skills and Knowledge: Direct care staff members must –*		

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	a. Have training or one or more years' experience in working with adults in a health care/social service setting; *b. Have knowledge of CPR and first aid;* *c. Be able to recognize distress or signs of illness in clients;* *d. Have knowledge of available medical resources;* *e. Have access to information on each client's address, telephone number, and means of transportation; and* *f. Know reasonable safety precautions to exercise when dealing with clients and their property.* *The provider must have a licensed nurse on staff, or contract with a licensed nurse, who will provide the health assessment/nursing service component of ADHC and supervise ADL/personal care and ADL training component.* *Counseling must be provided only by a certified social worker, a certified master social worker, or a certified professional counselor.*		
(vi)(F) Any modification of the additional conditions under §441.301(c)(4)(vi)(A) through (D), 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: **(1) Identify a specific and**	Title 175 Chapter 4 Compliant: **4-006.06** *Resident Service Agreements: The assisted-living facility must evaluate each resident and must have a written service agreement negotiated with the resident and authorized representative, if applicable, to delineate the services to be provided to meet the needs identified in the evaluation.* *4-006.06A The agreement must contain the following basic components:* *1. Services to be provided by the assisted-living facility and from other sources, how often and when the services are provided and by whom, to meet the needs of individuals including those for special populations as specified in 175 NAC 4-006.11E. Such services must not exceed those which are defined in these regulations as shelter, food, activities of daily living, personal care, health maintenance, other supportive services or those which involve complex nursing interventions that are allowed by 175 NAC 4-006.07B;* *2. Rights and responsibilities of the facility and of the resident;* *3. Costs of services and terms of payment; and* *4. Terms and conditions of continued residency.*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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individualized assessed need. **(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.** **(3) Document less intrusive methods for meeting the need that have been tried but did not work.** **(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.** **(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.**	*4-006.06B The Resident Service Agreement must be reviewed and updated as the resident's needs change.* Title 175 Chapter 5 Compliant: **5-006.07** *Service Plan: The ADS must evaluate each client and must have a written service plan which identifies how particular services are to be provided to the client by the ADS. The plan must address the following basic needs of the client:* *1. Health;* *2. Psycho-social; and* *3. Functional.* **5-006.10** *Program Description: The ADS must have a written program description that is available to staff, clients and their designees, and members of the public that explains the range of care and services activities provided. The description must include the following:* *1. The mission statement, program philosophy or goals, and objectives;* *2. The client population served, including age groups and other relevant characteristics;* *3. The hours and days the ADS provides care and services;* *4. Staff composition and staffing qualification requirements to sufficiently provide care and/or services to meet facility goals and objectives;* *5. Staff job responsibilities for meeting care and services objectives;* *6. System of referral for alternative services for those individuals who do not meet admission criteria;* *7. The admission and discharge process, including criteria;* *8. The client admission and ongoing assessment and evaluation procedures used by the program, including service plan process;* *9. Plan for providing emergency care and services, including use of facility approved interventions to be used by staff in an emergency situation;*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. **(7) Include informed consent of the individual. Include an assurance that interventions and supports will cause no harm to the individual.**	*10. System governing the reporting, investigation, and resolution of allegations;* *11. Client and designee rights and the system for ensuring client rights will be protected and promoted; and* *12. The telephone number and address of the Department.* **5-006.12** *Annual Review: The ADS must review all elements of the written program description as listed in 175 NAC 5-006.10 at least annually. The ADS must document the results of the annual review. The ADS must include in the review process relevant findings from its quality assurance/performance improvement program for the purpose of improving client services and resolving problems in client care and services. The licensee must revise the program description, as necessary, to reflect accurately care and services the ADS is providing.* Title 480 Chapter 5 Compliant: **5-003(3)** *3. DETERMINATION OF STRENGTHS, PRIORITIES, AND RESOURCES.* *PURPOSE: To identify the potential waiver eligible child's and family's strengths, needs, priorities, and resources so an appropriate plan of services and supports can be developed.* *The services coordinator shall -* *a. Meet in person with the child and his/her guardian to complete an assessment of the child's and family's strengths, needs, priorities, and resources. This meeting must be arranged and completed within 14 days of the request date and be held on a date and time convenient to the family. In emergency situations, the assessment must be completed within 24 hours. During the assessment, the services coordinator, together with the child and family, shall begin to develop the plan of services and supports.* *The services coordinator may conduct an initial assessment of a child with a contracted nurse as appropriate, when the child's medical condition warrants interdisciplinary assessment. Written authorization for the assessment must be provided to the nurse.*		

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	If the child has been assessed using the program's assessment instrument within the past year, the services coordinator may use the previous assessment or obtain a release from the guardian to request a copy of the completed form to determine whether further assessment is indicated. *Early Intervention Exception: If an infant or toddler is receiving services coordination through Early Intervention, assessment provided through the Individualized Family Service Plan (IFSP) process substitutes for this and any other subsequent face-to-face assessments. The waiver services coordinator may be involved as a member of the IFSP team or may only offer technical assistance and program-specific support to the Early Intervention services coordinator/family. The Early Intervention services coordinator provides ongoing services coordination and arranges periodic interagency, interdisciplinary review. (See 480 NAC Chapter 10.)* *If, at any point during the eligibility process, the child's guardian chooses NF services instead of waiver services, the services coordinator shall work with appropriate HHS staff to make these arrangements.* *If at any point after the assessment, the parent/guardian voluntarily withdraws from receiving waiver services, the services coordinator shall provide written notice of ineligibility and also provide appropriate referrals.* *b. Gather functional information to determine a child's NF level of care eligibility that reflects the child's developmental level and includes information in the following NF domains:* *(1) Activities of daily living -* *(a) Behavior: The ability to exhibit actions that are developmentally and socially appropriate in the areas of independence, maturation, learning, and social responsibility.* *(b) General hygiene, including:* *(1) Bathing: The ability to get to the bathing area and cleanse all parts of the body and the hair to maintain proper hygiene and prevent body odor, including tub, shower, and/or sponge bath.* *(2) Dressing: The ability to put on and remove clothing, as needed. This includes both upper and lower body.*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	(3) Grooming: The ability to do routine daily personal hygiene (combing hair, brushing teeth, and washing face and hands). *(c) Feeding/eating: The ability to take nourishment. This may include the act of getting food from the plate to the mouth or self-use of mechanical feeding devices.* *(d) Movement, including:* *(1) Mobility: The ability to move from place to place indoors or outside.* *(2) Transferring: The ability to move from one place to another, including bed to chair and back, and into and out of a vehicle. (Toilet transfer is not included.)* *(e) Sight: The ability to visualize or see, especially one's environment. This may include the use of glasses, contacts, prisms, or other adaptive devices.* *(f) Hearing: The ability to perceive sound, including by the use of equipment such as hearing aids, cochlear implants, etc.* *(g) Communication: The ability to make oneself understood through the use of words, sounds, signs, facial expressions, communication boards, or other adaptive devices.* *(h) Toileting, including bladder and bowel continence: The ability to get to and from the toilet, commode, bedpan, or urinal, including transfer to and from the toilet; management of clothing, and cleansing; and the ability to get to the toilet on time to empty the bladder and bowel, including changing incontinence pad/briefs, cleansing, and disposing of soiled articles.* *(2) Cognition -* *The ability to remember, reason, understand, and use judgment.* *(3) Environment -* *The ability to function in his/her living situation, including health, housing, and accessibility.* *(4) Medical/health status -* *Any medical or health condition that impacts the child's ability to function independently. The complexity of care and unstable medical conditions are also factors.* *(5) Support network -* *The ability and capacity of extended family, friends, and community resources to provide informal and formal supports. This may include in-home supports,*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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	school services, and therapies. In addition, this includes the family's and the support network's effectiveness in protecting the child from abuse and neglect. *(6) Transition -* *The availability of a coordinated set of activities designed to promote independence and movement through services and developmental stages. This may include, but is not limited to, movement from early intervention services to preschool services, child to adult services, or from one type of living situation to another.* *c. Route functional information gathered during the in-person assessment and other documentation to HHS Central Office for a NF level of care determination.* *The services coordinator may require medical information and/or educational material (e.g., most recent Multi-Disciplinary Team (MDT) report, most recent psychological) as a method of gathering additional functional information upon which a NF level of care determination may be based.* *If the child does not meet the NF level of care criteria, the services coordinator shall provide written notice of this decision to the child's guardian. The services coordinator shall also provide appropriate information and referral.* **5-003(4)** *4. PLANNING FOR SERVICES* *PURPOSE: To identify specific individual services to be provided in a coordinated and organized manner.* *The services coordinator shall -* *a. Together with the child and family, further develop the plan of services and supports. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF domains: activities of daily living; cognition; environment; medical/nursing status; support network; and transition.* *The plan of services and supports must ensure the child's health and welfare, including consideration of acceptable risk. If, despite consideration of the full range and scope of services, the child's health or welfare is in jeopardy, waiver services may not be provided.*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	The child's guardian has freedom of choice in selecting providers of waiver services. The guardian's choice of providers is documented in the child's case narrative. *Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the child's guardian.* *Note: If a child under the age of three receives services coordination through an Early Intervention Program, the Individualized Family Service Plan (IFSP) developed for that program meets the plan of services and supports requirement for this waiver. The IFSP document must specify needed service(s) to be authorized through this waiver, with a copy maintained in the waiver case record.* *b. Determine the cost of serving the child and determine that the estimated total monthly cost, excluding the costs of Assistive Technology and Supports (ATS) and Home Modification services, does not exceed the ongoing cap. The ongoing cap may change annually.* *Services included in calculating the cost of the plan of services and supports are the Medicaid non-waiver services of home health care, personal care aide, and medical transportation and all ongoing waiver services. ATS and home modifications are one-time or annually-only waiver services and are separately capitated. This separate cap may change annually.* *If the estimated monthly cost of the plan of services and supports exceeds the ongoing cap for children, the services coordinator shall contact Central Office to discuss possible approval to exceed the ongoing cap. Central Office considers the following factors in making this decision and may approve or disapprove the request based upon them:* *(1) Child demographics (e.g., living situation, diagnosis, treatment plan, and prognosis);* *(2) Health and welfare concerns;* *(3) A description of the plan of services and supports;* *(4) The costs of the ongoing waiver services (i.e., plan totals aside from home health, personal care aide, ATS, home modifications, and medical transportation);* *(5) Available support systems; and*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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	(6) Possible funding shifts to other programs. *If the cost of the child's plan of services and supports does exceed the ongoing cap and an exception is not approved, the services coordinator shall provide written notice of ineligibility to the child's guardian. The services coordinator shall also provide appropriate information and referral.* *c. Offer the child's guardian the option of accepting NF or waiver services as described in the plan of services and supports after the child has been determined to meet the NF level of care criteria, an assessment completed, and a plan of services and supports developed. If the guardian chooses to accept waiver services, the services coordinator shall obtain his/her signature on the waiver consent form. The consent form must be signed at initial determination only, and remains valid as long as the waiver case is open.* *Note: The waiver consent form is not valid and must not be signed until the child's eligibility for Medicaid has been determined or presumptive waiver eligibility has been established. The child's waiver eligibility period may begin no earlier than the date of the guardian's signature on the consent form.* *Presumptive Waiver Eligibility: Waiver eligibility may be presumed for any potential waiver eligible child from whose guardian a signed Medicaid application has been received by Medicaid eligibility staff and when the guardian is willing to cooperate with its completion (e.g., is willing to provide all requested financial records; is willing to pay a spend down/shared cost, if required). The services coordinator shall contact the Medicaid eligibility staff to determine if it is likely the child will become Medicaid eligible prior to obtaining the guardian's signature on the consent form. Notation must be made on the consent form indicating presumptive waiver eligibility until a final Medicaid eligibility decision has been made.* *The services coordinator shall have ongoing contact with the Medicaid eligibility staff until a final Medicaid eligibility decision has been made. If the child is determined not to be Medicaid eligible, the services coordinator shall provide written notice, effective immediately, to the child's guardian and also provide appropriate information and referral. Ten-day notice is not allowed.* *Services which may be presumptively authorized are waiver services and medical transportation. Presumptive authorization for ATS and home*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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	modifications is not allowed. Any authorized services shall result in the payment of the provider.		

Attachment 3 – Systemic Assessment Summary – TBI Waiver

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(i) 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.	Title 175 Chapter 4 Compliant: **4-006.04** *Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:* *1. Be treated with dignity and provided care by competent staff;* *2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;* *3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;* *4. Be informed in writing of the pricing structure and/or rates of all facility services;* *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;* *6. Choose a personal attending physician;* *7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;* *8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;* *9. Refuse to perform services for the facility;* *10. Refuse to participate in activities;* *11. Privacy in written communication including sending and receiving mail;* *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* *13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	**July 2019:** Legal sends regulations to Governor's Policy Research Office. **November 2019:** Governor's Policy Research Office completes review. Publish Public Notice for formal public hearing in December. **December 2019:** Public Hearing. Review and Incorporate Public Comments **June 2020**: Regulations sent to the Attorney General's Office for Approval **September 2020**: Regulations sent to Governor's Policy Research Office for final approval. **December 2020:** Regulations approved by the Governor, to take

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	14. Have the right to have a telephone in his/her room at the resident's expense; *4-006.04A Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:* *1. A procedure on submission of grievances available to residents, employees and others;* *2. Documentation of efforts to address grievances received from residents, employees and others; and* *3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.* **4-006.08** *Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.*		effect on December 31, 2020
(4)(ii) 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	Title 175 Chapter 4 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
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.			
(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Title 175 Chapter 4 Compliant: **4-006.02 (8) and (9)** *Administration: Each assisted-living facility must have an administrator who is responsible for the overall operation of the facility. The administrator is responsible for planning, organizing, and directing the day to day operation of the assisted-living facility. The administrator must report all matters related to the maintenance, operation, and management of the assisted-living facility and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator must:* *8. Develop and implement procedures that require the reporting of any evidence of abuse, neglect, or exploitation of any resident residing in the assisted-living facility in accordance with Neb. Rev. Stat. §§ 28-372 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. § 28-711;* *9. Complete an investigation on suspected abuse, neglect, or misappropriation of money or property and take action to prevent reoccurrence until the investigation is completed;* **4-006.04** *Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to: *1. Be treated with dignity and provided care by competent staff;* *2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;* *3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;* *4. Be informed in writing of the pricing structure and/or rates of all facility services;* *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment; 6. Choose a personal attending physician;* *7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;* *8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;* *9. Refuse to perform services for the facility;* *10. Refuse to participate in activities;* *11. Privacy in written communication including sending and receiving mail;* *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* *13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;* *14. Have the right to have a telephone in his/her room at the resident's expense;* *15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;* *16. Share a room with a person of his or her choice upon consent of that person;* *17. Self-administer medications if it is safe to do so;* *18. Be free of chemical and physical restraints;*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States; *20. Form and participate in an organized resident group that functions to address facility issues;* *21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12; 22. Be free from abuse, neglect, and misappropriation of their money and personal property; and* *23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.* **4-006.11** *Resident Care: Each assisted-living facility must provide residents care and services in accordance with their established resident service agreements which maximize the residents' dignity, autonomy, privacy and independence.* *4-006.11A Evidence that the facility is meeting each resident's needs for personal care, assistance with activities of daily living and health maintenance include the following outcomes for residents:* *4-06.11A1 Physical well-being of the resident:* *1. Clean and groomed hair, skin, teeth and nails;* *2. Nourished and hydrated;* *3. Free of pressure sores, skin breaks, chaps and chafing;* *4. Appropriately dressed for the season in clean clothes;* *5. Protected from accident, injury and infection; and* *6. Receives prompt emergency care for the following but not limited to: illnesses, injuries, and life threatening situations.* *4-006.11A2 Behavioral/emotional well-being of the resident:* *1. Opportunity to participate in age appropriate activities that are meaningful to the resident, if desired;*		

Standards Applicable to All HCBS Settings			
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	2. Sense of security and safety; *3. Reasonable degree of contentment; and* *4. Feeling of stable and predictable environment.* *4-006.11A3 In agreement that the resident:* *1. Is free to go to bed at the time desired;* *2. Is free to get up in the morning at the time desired;* *3. Is free to have visitors;* *4. Has privacy;* *5. Is free to self direct his/her own care and treatment and change their plan at any time;* *6. Is assisted to maintain a level of self-care and independence;* *7. Is assisted as needed to have good oral hygiene;* *8. Has been made as comfortable as possible by the facility;* *9. Is free to make choices and assumes the risk of those choices;* *10. Is fully informed of the services he/she can expect to be provided by the facility;* *11. Is free of abuse, neglect and exploitation;* *12. Is treated with dignity; and* *13. Has the opportunity to participate in activities, if desired.* *4-006.11B Health Maintenance Activities: All health maintenance activities must be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act. 4-006.11C Other Supportive Services: A assisted-living facility may provide other supportive services to assist residents. These services could include, but are not limited to: transportation, laundry, housekeeping, financial assistance/management, behavioral management, case management, shopping, beauty/barber and spiritual services.* *4-006.11D Special Populations Services: Each assisted-living facility that provides services to special populations such as, but not limited to, those individuals with disabilities, mental impairments, dementia, or other disorders must:* *1. Evaluate each resident to identify the abilities and special needs;*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	2. Ensure the administrator and staff assigned to provide care are trained to meet the special needs of those residents. Such training must be done by a person(s) qualified by experience and knowledge in the area of special services being provided; *3. Prepare and implement each resident service agreement to address the special needs; and* *4. Provide a physical environment that maintains the safety and dignity of residents and accommodates residents' special needs, such as physical limitations, and visual and cognitive impairments.* ***4-006.11E*** *Requirements for Facilities or Special Care Units for Persons with Alzheimer's Disease, Dementia or a Related Disorder: Each assisted-living facility or special care unit that specializes in providing care for persons who have Alzheimer's disease, dementia or a related disorder must meet the following requirements:* *1. Care and services must be provided in accordance with the resident service agreement and the stated mission and philosophy of the facility.* *2. Prior to admission, the facility must inform the resident or authorized representative in writing of the facility's criteria for admission, discharge, transfer, resident conduct and responsibilities.* *3. The facility or unit must maintain a sufficient number of direct care staff with the required training and skills necessary to meet the resident population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other supportive services. Such staff must remain awake, fully dressed and be available in the facility or unit at all times to provide supervision and care to the residents.* *4. The administrator and direct care staff must be trained in: a. The facility or unit's philosophy and approaches to providing care and supervision for persons with Alzheimer's disease; b. The Alzheimer's disease process; and c. The skills necessary to care for, and intervene and direct residents*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	who are unable to perform activities of daily living, personal care, or health maintenance and who may exemplify behavior problems or wandering tendencies. *5. The facility must not admit or retain residents if any one of the following conditions exists, unless the criteria in 4-006.07B are met: a. The resident poses a danger to self or to others; or b. The resident requires complex nursing interventions.*		
(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, included, but not limited to, daily activities, physical environment, and with whom to interact.	Title 175 Chapter 4 Compliant: **4-006.04** *Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:* *1. Be treated with dignity and provided care by competent staff;* *2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;* *3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;* *4. Be informed in writing of the pricing structure and/or rates of all facility services;* *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;* *6. Choose a personal attending physician;* *7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;* *8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;* *9. Refuse to perform services for the facility;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	10. Refuse to participate in activities; *11. Privacy in written communication including sending and receiving mail;* *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;* *13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;* *14. Have the right to have a telephone in his/her room at the resident's expense;* *15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;* *16. Share a room with a person of his or her choice upon consent of that person;* *17. Self-administer medications if it is safe to do so;* *18. Be free of chemical and physical restraints;* *19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;* *20. Form and participate in an organized resident group that functions to address facility issues;* *21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12;* *22. Be free from abuse, neglect, and misappropriation of their money and personal property; and* *23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff. Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:* *1. A procedure on submission of grievances available to residents, employees and others;*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	2. Documentation of efforts to address grievances received from residents, employees and others; and *3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.* **4-006.08** *Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.*		
(4)(v) Facilitates individual choice regarding services and supports, and who provides them.	Title 175 Chapter 4 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(vi)(A) The unit or dwelling is a specific	§76-1401 et. Seq. (Uniform Residential Landlord Tenant Act)	**Title 480**	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
physical space 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 individual, and that that the document provides protections that address eviction processes and appeals comparable	Compliant §71-406 (Assisted Living Facility, defined) Compliant Title 175 Chapter 4 Compliant: **4-006.04 (23)** *23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.*	Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
to those provided under the jurisdiction's landlord tenant law.			
(4)(vi)(B) Each individual has privacy in their sleeping or living unit: **(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.**	Title 175 Chapter 4 Silent	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(2) Individuals sharing units have a choice of roommates in that setting.	Title 175 Chapter 4 Compliant: **4-006.04(16)** *Share a room with a person of his or her choice upon consent of that person;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the	Title 175 Chapter 4 Compliant: **4-006.04(15)** *15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;*	**Title 480** Implement new HCBS administration rule that describes the	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
lease or other agreement.		characteristics required of all settings in which HCBS is provided.	
(4)(vi)(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Title 175 Chapter 4 Compliant: **4-006.04(5)** *5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;* **4-006.04(10)** *10. Refuse to participate in activities;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	Title 175 Chapter 4 Compliant: **4-006.04(12)** *12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
(4)(vi)(E) The setting is physically accessible to the individual.	Title 175 Chapter 4 Compliant: **4-007.03A1(6)**	**Title 480** Implement new HCBS administration rule that	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided: *6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12*	describes the characteristics required of all settings in which HCBS is provided.	
(vi)(F) Any modification of the additional conditions under §441.301(c)(4)(vi)(A) through (D), 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: **(1) Identify a specific and individualized assessed need.** **(2) Document the positive interventions and supports used prior to any modifications to the person-**	Title 175 Chapter 4 Compliant: **4-006.06** *Resident Service Agreements: The assisted-living facility must evaluate each resident and must have a written service agreement negotiated with the resident and authorized representative, if applicable, to delineate the services to be provided to meet the needs identified in the evaluation.* *4-006.06A The agreement must contain the following basic components:* *1. Services to be provided by the assisted-living facility and from other sources, how often and when the services are provided and by whom, to meet the needs of individuals including those for special populations as specified in 175 NAC 4-006.11E. Such services must not exceed those which are defined in these regulations as shelter, food, activities of daily living, personal care, health maintenance, other supportive services or those which involve complex nursing interventions that are allowed by 175 NAC 4-006.07B;* *2. Rights and responsibilities of the facility and of the resident;* *3. Costs of services and terms of payment; and* *4. Terms and conditions of continued residency.* *4-006.06B The Resident Service Agreement must be reviewed and updated as the resident's needs change.*	**Title 480** Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
centered service plan. **(3) Document less intrusive methods for meeting the need that have been tried but did not work.** **(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.** **(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.** **(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.**			

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(7) Include informed consent of the individual. **Include an assurance that interventions and supports will cause no harm to the individual.**			

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(i) 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.	Title 404 Chapter 4 Compliant **4-005.01** Habilitation*: Each individual receiving services must receive habilitation services to acquire, retain, and improve the skills necessary so the individual is able to function with as much independence as possible; enhance choice and self-management; and participate in the rights and responsibilities of community membership. Habilitation must be observable in daily practice and identifiable in the IPP and supporting documentation. Habilitation must be an ongoing planned process that includes: comprehensive assessments, an individualized plan, training and supports, service delivery, documentation of the service delivery, measuring progress of the plan; monitoring the service to determine if the services continue to meet the needs of the individual.* *Habilitation requires that:* *1. The individual's program plan is developed based on the individual's preferences with input from the IPP team members, and strengths and needs that are accurately assessed.* *2. The IPP team must prioritize needs so that:* *a. The individual is challenged to overcome barriers that result in the need for specialized services; and* *b. The highest level of independence in all areas of community living is achieved.* *3. Strategies and supports must be developed that are:* *a. Based on prioritized needs;* *b. Relevant to the IPP;* *c. Functional;* *d. Tailored to individual needs, and respectful of individual choice; and* *e. Documented in the IPP.*	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	**Title 403:** **January 31, 2017**: Finalize regulations for internal review **February 1, 2017**: Post to website and send draft regulations to stakeholders for input for to public hearing **February 15, 2017**: Incorporate and feedback and begin editing draft regulations with DHHS Legal staff. **June 21, 2017:** Concluded meetings with Provider stakeholders to review draft regulations. **June 30, 2017**: Sent draft regulations to DHHS Legal for final review.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	4. Training and supports are consistently implemented in all settings as the need arises and as opportunities occur. Incidental learning and appropriate behaviors are encouraged and reinforced. *5. Activities and environments must facilitate acquisition of skills, appropriate behavior, greater independence, and personal choice.* *6. Performance is accurately measured and training or supports or both are modified based on data and changes in individual circumstances;* *7. Monitoring of service delivery must be provided and, if needed, cause actions to occur to ensure needs are addressed.* *Individuals with conditions that make further growth or development unlikely must receive training and supports designed to maintain skills and functioning and to prevent further regression to the extent possible.* **4-005.05A** *General Requirements: The provider must ensure that:* *1. The provider must not use the individuals' funds and property as a reward or punishment;* *2. The provider must not assess the individuals' funds and personal property as payment for damages unless the IPP team reviews, on a case by case basis, whether it is appropriate for the individual to make restitution, the rationale is documented on the IPP, and the individual or legal representative gives written informed consent to make restitution for damages;* *3. The provider must not assess the individuals' funds and personal property for damages when the damage is the result of lack of appropriate supervision or lack of programmatic intervention;* *4. The provider must not use the individuals' funds and personal property to purchase inventory or services for the provider; and* *5. The individuals' funds and personal property are not borrowed by staff.* *4-005.05B Support in Managing Financial Resources: When an individual does not have the skills necessary to manage his/her financial resources, the provider may, with the informed choice of the individual, offer services*		**September 15, 2017:** Received regulations from DHHS Legal for final editing. **October 1, 2017:** Returned to DHHS Legal for final review **November 6, 2017:** DHHS Legal send to Governor's Policy Research Office **December 4, 2017**: Governor's Policy Research Office completes review **December 7, 2017**: Publish Public Notice for formal public hearing in January **January 19, 2018**: Public Hearing **March 1, 2018**: Finish Incorporation of public comments, which

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	and supports that temporarily transfers some of the control of handling the individual's financial resources to the provider. ***4-005.05B1*** *The transfer of control of an individual's financial resources:* *1. Must not be for a convenience of staff, or as a substitute for habilitation;* *2. Must be temporary;* *3. Must be based on the choice of the individual and the extent to which the individual can participate;* *4. Must not be transferred to another entity and the individual must not be charged for the service.* ***4-005.05C*** *The individual's IPP team must determine and document in the IPP the following regarding the temporary transfer of control of an individual's finances to the provider:* *1. The extent in which the individual can participate in management of his/her financial resources;* *2. The individual's informed choice;* *3. The rationale for the transfer of control;* *4. The support plan that leads to returning control of the finances to the individual; and* *5. The frequency in which the IPP team will review the temporary transfer of control and support plan, but at least annually.* **4-005.05D** *Provider Management of Individuals' Finances: When the provider is responsible for handling individuals' funds:* *1. The provider must maintain a financial record for each individual that includes:* *a. Documentation of all cash funds, savings, and checking accounts, deposits, and withdrawals; and*		required substantial changes, so a second public hearing was required **April 6, 2018:** Publish Public Notice for formal public hearing in May **May 17, 2018**: Public Hearing **May 25, 2018:** Finish Incorporation of public comments **May 25, 2018**: Regulations sent to Attorney General's Office for approval **June 8, 2018**: Regulations sent to Governors Policy Research Office for final approval **June 25, 2018**: Regulations approved by Governor to be effective July 10, 2018.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	b. An individual ledger which provides a record of all funds received and disbursed and the current balance. *2. The provider must provide account balances and records of transactions to each individual or legal representative at least quarterly, unless otherwise requested;* *3. The provider must ensure that all non-routine expenditures exceeding $100 are reviewed and prior authorized by the individual or legal representative. The individual's IPP team is notified;* *4. The provider must ensure that policies and procedures outline how financial errors, overdrafts, late fees, and missing money will be handled when the provider is responsible for managing individuals' funds. The policies and procedures must include that:* *a. The provider is responsible for service charges and fees assessed due to staff errors;* *b. The provider must replace missing money promptly if missing money is due to staff error; and* *c. The provider is responsible for taking steps to correct an individual's credit history when it is affected by provider staff actions in managing the individual's finances;* *5. When the provider is maintaining individuals' personal funds in a common trust, a separate accounting is maintained for each individual or for his/her interest in a common trust fund.* Title 404 Chapter 5 Compliant **5-002.03** *Supported Living: Supported Living is defined as supports provided in the community for an individual eligible for developmental disability services, with no more than two other individuals with developmental disabilities in a residence that it is under the control and direction of the individual(s). The residence must be in a community integrated setting.*		**Title 404:**

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Supported Living means that the individual(s) have control and choice over where and with whom they live. Providers may suggest potential roommates for individuals, but the recommendation must not be based on diagnosis alone but by the individuals' preferences and compatibility. *The number of individuals with developmental disabilities alone does not define Supported Living. Supported Living is an option that can be considered by the individual receiving support and offered by providers as an option in their menu of services. If an individual chooses Supported Living, or if the provider chooses to offer Supported Living as a service option, the requirements of this chapter must be met for this option to be exercised.* *Supported Living options are for a maximum of three individuals with developmental disabilities (not including staff) who choose to live together in this type of arrangement. The provider of specialized DD services must be able to document that the individual(s) chose the supported living residence and that the lease or mortgage is under the control of the individual(s). The owner or lessee of the property must be unrelated, directly or indirectly, to the provider of specialized services.* **5-002.04** *<u>Supported Day:</u> Supported Day is defined as day supports provided for three or fewer individuals as part of an array of supports in a non-facility based option. This is an option where a majority of the non-paid adults present are individuals without developmental disabilities who are part of the typical community.* *Supports offered may include, but are not limited to, supported employment, self-employment, regular work, and other inclusive non-facility, participatory activities that bring monetary or social value to a person's life. These are all part of what may be considered a meaningful day.*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Title 404 Chapter 6 Compliant **6-001.02** *Day and residential services in this chapter are provided at various integrated community settings that are operated or controlled by a certified provider or the provider's employee or subcontractor or any entity owned or controlled by the provider. This is regardless of who owns or leases the property.* **6-002** *Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:* *1. Individuals are free from abuse, neglect, mistreatment, and exploitation;* *2. Health, safety, and well-being of the individual is a priority;* *3. Individuals are treated with consideration, respect, and dignity;* *4. Individuals' preferences, interests, and goals are honored;* *5. Individuals have daily opportunities to make choices and participate in decision making;* *6. Activities are meaningful and functional for each individual;* *7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;* *8. Individuals live in a manner that is most inclusive;* *9. Individuals experience being part of the community; and* *10. Individuals are able to express their wishes, desires, and needs.* **6-003** *RESIDENTIAL AND DAY SERVICES: Residential and Day services offer habilitation, including services and supports and supervision as needed, designed to assist the individual in acquisition, improvement, and retention*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	of skills necessary to enable him/her to live and work successfully and independently as possible in his/her home and the community. **§ 83-1202** **DD Services Act**[1] Compliant *Statue includes limiting language (i.e. "to the extent possible") this inconsistent with* *Regulation. Legal recommends removal of this language from the Statue.* *1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community* *3) All persons with developmental disabilities shall have a right, to the maximum extent possible, to live, work, and recreate with people who are not disabled;* *4)All persons with developmental disabilities shall, to the maximum extent possible, be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;* *6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled;*		
(4)(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a	Title 404 Chapter 4 Compliant **4-004.04A** *Initial Orientation Requirements: Initial orientation must be completed by all new employees prior to working alone with individuals. Employees must complete the following training requirements:*	Although current regulatory language is technically compliant with the Final Rule,	See above.

[1] The DD Services Act is contained in Neb. Rev. Stat. §§83-1201 - 83-1226.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
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.	*1. Individual's choice;* *2. Individual's rights in accordance with state and federal laws;* **4-005** *SPECIALIZED PROVIDER SERVICE STANDARDS: The provider must ensure that all individuals receive habilitation, supports, health care, and other services consistent with the needs and preferences of the individual.* **4-005.01** *Habilitation: Each individual receiving services must receive habilitation services to acquire, retain, and improve the skills necessary so the individual is able to function with as much independence as possible; enhance choice and self-management; and participate in the rights and responsibilities of community membership. Habilitation must be observable in daily practice and identifiable in the IPP and supporting documentation. Habilitation must be an ongoing planned process that includes: comprehensive assessments, an individualized plan, training and supports, service delivery, documentation of the service delivery, measuring progress of the plan; monitoring the service to determine if the services continue to meet the needs of the individual.* *Habilitation requires that:* *1. The individual's program plan is developed based on the individual's preferences with input from the IPP team members, and strengths and needs that are accurately assessed.* *2. The IPP team must prioritize needs so that:* *a. The individual is challenged to overcome barriers that result in the need for specialized services; and* *b. The highest level of independence in all areas of community living is achieved.* *3. Strategies and supports must be developed that are:* *a. Based on prioritized needs;* *b. Relevant to the IPP;* *c. Functional;*	specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	d. Tailored to individual needs, and respectful of individual choice; and *e. Documented in the IPP.* *4. Training and supports are consistently implemented in all settings as the need arises and as opportunities occur. Incidental learning and appropriate behaviors are encouraged and reinforced.* *5. Activities and environments must facilitate acquisition of skills, appropriate behavior, greater independence, and personal choice.* *6. Performance is accurately measured and training or supports or both are modified based on data and changes in individual circumstances;* *7. Monitoring of service delivery must be provided and, if needed, cause actions to occur to ensure needs are addressed.* *Individuals with conditions that make further growth or development unlikely must receive training and supports designed to maintain skills and functioning and to prevent further regression to the extent possible.* **4-005.01A** *Assessments must be conducted for each individual to obtain accurate and complete information related to the individual's history, preferences, strengths, and abilities and needed services. The assessments must be the basis of development of the IPP. Assessments must be completed for each individual within 30 calendar days of entry to services; at least annually, the assessments must be reviewed and updated to reflect the individual's current status.* **4-005.01B** *Individual Program Plan (IPP): The IPP must be an individualized person centered plan that specifies agreed upon services to be delivered to the individual to meet identified needs. The IPP must be a plan to offer habilitation services and supports to individuals. The IPP must be based on individual's preferences and the comprehensive assessments. The provider must participate in development of the annual IPP and take the necessary steps to ensure that the IPP documents the IPP team review, discussions, and decisions.*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	4-005.01C *Programs and Supports: Services such as supports and programs to learn new skills must be identified in the IPP. The provider must develop a specific written plan with enough detail to consistently implement these services.* **4-005.01C1** *Supports are the assistance required by the individual to maintain or increase independence, achieve community participation, improve productivity, and for health and safety. Supports must be flexible and subject to change when circumstances change or the supports are no longer needed or effective.* **4-005.01C2** *Programs must be based on the goals identified in the IPP for the development of functional skills.* **4-005.02** *IPP Team Process: The IPP is developed through an IPP team process. The IPP team assigns responsibility for obtaining and providing s4-005.02A The IPP team consists of the individual, legal representative, if applicable, service coordinator, provider representative(s), and other individuals chosen by the individual served. The individual may raise an objection to a particular provider representative. When an individual raises an objection, the IPP team must attempt to accommodate the objection while allowing participation by provider representatives.* **4-005.02B** *The IPP team must utilize a team approach and work toward consensus development of a meaningful outcome driven IPP for the individual.* **4-005.02A** *The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.02 or any of its parts.* **4-005.03** *Positive Behavioral Supports: In addressing behaviors, the provider must develop and implement policies, procedures, and practices that emphasize*		

Standards Applicable to All HCBS Settings			
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	positive approaches directed towards maximizing the growth and development of each individual. The provider must ensure the following behavior supports and emergency safety interventions for emergency safety situations are in place: *1. The assessment must attempt to define the communicative function of the behavior for the individual;* *2. The assessment must focus on what purpose the identified behavior serves in the individual's life;* *3. A review of the individual's day supports, residential supports, and other relevant data must be incorporated in the assessment process;* *4. A plan for the individual must be developed that emphasizes positive meaningful activities and options that are inconsistent with the behavior targeted for change;* *5. There must be a combination of a planned meaningful day and individualized supports for the individual;* *6. The plan must include a description of potential stressors and triggers that may lead to the individual experiencing a crisis. Once identified, there must be a comprehensive safety plan developed and implemented; and* *7. There must be meaningful and individualized data collection and data analysis that track the progress of the individual. The data must be presented in a useful manner and collected through a range of methods that are valid and meaningful for planning and evaluation efforts.* **4-005.03A** *The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.03 or any of its parts.* **5-002** *PURPOSE: There are two major types of supports that fall under this Individual Support Options: Supported Living (SL) and Supported Day (SD).* **5-002.01** *Individual Support Options means that services can be provided for as long as 24 hours a day and can include both continuous and intermittent*		

Standards Applicable to All HCBS Settings			
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	supports. There must be flexibility of services that change, as the person's needs change, without the individual having to move elsewhere for services. These services must: *1. Be person centered;* *2. Demonstrate that the individual is in charge of his/her services and supports;* *3. Promote the freedom for an individual to live a meaningful life and participate as a member of the community as any other citizen;* *4. Promote the individual's rights and autonomy;* *5. Promote the use of generic services, natural supports, and options;* *6. Assist the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in his/her residence and as a member of the larger community; and* *7. Promote well planned and proactive opportunities for the individual and his/her family to determine the type and amount of support desired with meaningful direction from the individual, the individual's family or guardian (where appropriate) and the proposed or current provider (as appropriate and desired).* **5-002.02** Individual Support Options includes the provision of the following: *1. Habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual(s) receiving services;* *2. A combination of lifelong or extended duration support, training, and other services essential to daily living; and* *3. Protective oversight to do, to whatever degree necessary, what is required to ensure that basic health and safety are always provided and readily available.* **5-002.03** *Supported Living: Supported Living is defined as supports provided in the community for an individual eligible for developmental disability services, with no more than two other individuals with developmental disabilities in a*		

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	residence that it is under the control and direction of the individual(s). The residence must be in a community integrated setting. *Supported Living means that the individual(s) have control and choice over where and with whom they live. Providers may suggest potential roommates for individuals, but the recommendation must not be based on diagnosis alone but by the individuals' preferences and compatibility.* *The number of individuals with developmental disabilities alone does not define Supported Living. Supported Living is an option that can be considered by the individual receiving support and offered by providers as an option in their menu of services. If an individual chooses Supported Living, or if the provider chooses to offer Supported Living as a service option, the requirements of this chapter must be met for this option to be exercised.* *Supported Living options are for a maximum of three individuals with developmental disabilities (not including staff) who choose to live together in this type of arrangement. The provider of specialized DD services must be able to document that the individual(s) chose the supported living residence and that the lease or mortgage is under the control of the individual(s). The owner or lessee of the property must be unrelated, directly or indirectly, to the provider of specialized services.* **5-002.03A** *An Extended Family Home (EFH) situation may qualify as a Supported Living option if the requirements of Individual Support Option services described in this chapter are met. To be considered, it must be a residence for no more than two individuals with developmental with disabilities, owned or leased by the subcontractor providing supports. The individual, who is his/her own payee or representative payee, pays room and board directly to the subcontractor. Agency owned housing when the EFH provider is engaged as a subcontractor does not qualify as a Supported Living option.* **5-002.04**		

Standards Applicable to All HCBS Settings			
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	<u>Supported Day:</u> Supported Day is defined as day supports provided for three or fewer individuals as part of an array of supports in a non-facility based option. This is an option where a majority of the non-paid adults present are individuals without developmental disabilities who are part of the typical community. *Supports offered may include, but are not limited to, supported employment, self-employment, regular work, and other inclusive non-facility, participatory activities that bring monetary or social value to a person's life. These are all part of what may be considered a meaningful day.* **§ 83-1202** Compliant **83-1202.** *Legislative intent.* *It is the intent of the Legislature that:* *(1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;* *(2) All persons with developmental disabilities shall have access to a full array of services appropriate for them as individuals;* *(3) All persons with developmental disabilities shall have a right, to the maximum extent possible, to live, work, and recreate with people who are not disabled;* *(4) All persons with developmental disabilities shall, to the maximum extent possible, be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;*		

Standards Applicable to All HCBS Settings			
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	(5) All persons with developmental disabilities shall have the right to receive age-appropriate services consistent with their individual needs, potentials, and abilities; *(6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled;* *(7) Persons who deliver services to persons with developmental disabilities shall be assured a uniform system of compensation and training and a full range of work-site enhancements which attract and retain qualified employees;* *(8) The first priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons have sufficient food, housing, clothing, medical care, protection from abuse or neglect, and protection from harm; and* *(9) The second priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons receive appropriate assessment of their needs, planning to meet their needs, information about services available to meet their needs, referral to services matched to their needs, coordination of services delivered, support sufficient to allow them to live with their natural families or independently, transportation to facilitate access to services, and meaningful habilitation, education, training, employment, and recreation designed to enhance their skills, increase their independence, and improve their quality of life.* **§ 83-1209 (1d)** Compliant *1(d) ensuring that eligible persons have their needs assessed by a team process, have individual program plans developed by a team process to address assessed needs, which plans incorporate the input of the individual and the family, and have services delivered in accordance with the program plan,*		

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Title 404 Chapter 4 Compliant **4-007** *RIGHTS OF INDIVIDUALS RECEIVING SERVICES: Each individual receiving services has the same legal rights and responsibilities guaranteed to all other individuals under the federal and state constitutions and federal and state laws. These rights can only be modified or suspended according to state or federal law.* **4-011** *RIGHTS REVIEW COMMITTEE: The provider must establish a rights review committee that meets no less than semi-annually. The function of this committee is to review any situation requiring an emergency safety intervention, the use of psychotropic medication as outlined in 404 NAC 5-003.02E and 404 NAC 6-005, any restrictive measure as outlined in 404 NAC 6-004, and any situation where violation of an individual's rights occurred. The review may include obtaining additional information and gathering input from the affected individual and his/her legal representative, if applicable, to make recommendations to the provider. The rights review committee may utilize sub-committees to complete its work, but must document reports of the sub-committees to the overall committee in the minutes of meetings held. Interim approvals of psychotropic medications and restrictive measures are allowed in circumstances that require immediate attention. The interim approval may be done by a documented designee of the committee, who must be a current member of the rights review committee, and the meeting minutes must document final approval by the overall committee at its next meeting.* Title 404 Chapter 6 Compliant	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	6-002 *Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:* *1. Individuals are free from abuse, neglect, mistreatment, and exploitation;* *2. Health, safety, and well-being of the individual is a priority;* *3. Individuals are treated with consideration, respect, and dignity;* *4. Individuals' preferences, interests, and goals are honored;* *5. Individuals have daily opportunities to make choices and participate in decision making;* *6. Activities are meaningful and functional for each individual* *7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;* *8. Individuals live in a manner that is most inclusive;* *9. Individuals experience being part of the community; and* *10. Individuals are able to express their wishes, desires, and needs.* **6-006** *RESTRAINTS: The use of mechanical restraints is prohibited. If the provider agrees to serve an individual under 404 NAC 6 who has a physical restraint program in place at the time of the enactment of these regulations, then a program must be implemented within 180 days of enactment of these regulations which eliminates the use of such restraints. The use of physical restraints will be prohibited one year from the enactment of these regulations.* *An emergency safety intervention utilized pursuant to a safety plan is allowed to respond to an emergency safety situation. This is different than physical restraint because it is not used as a behavioral consequence. In instances where the individual must be kept from harm (i.e., running into traffic, leaving a moving car or other serious, unusual or life-threatening actions by the individual), the provider must use their reasonable and best judgment to intervene to keep the individual from injuring him/herself or*		

Standards Applicable to All HCBS Settings			
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	others. This may include hands-on guidance to safely protect the individuals and others from immediate jeopardy or physical harm. These situations are not predictable, are unusual, and are usually not reoccurring. In any instances other than these, there must be a positive behavioral supports program in place to work with the individual on alternative positive displays of behavior that are incompatible with other negative behaviors. *All such incidents must be documented and reviewed by the individual's IPP team and rights review committee to ensure that the emergency safety intervention was appropriate rather than an instance of mechanical or physical restraint.* **5-003.02D** *Restraints are prohibited, but an emergency safety intervention can be used in a situation where the individual is in danger of immediate jeopardy or harm. If there are disruptive or challenging behaviors displayed by an individual, then a safety and support plan must be developed utilizing the principles of positive behavioral supports (see 404 NAC 4-005.03).*		
(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, included, but not limited to, daily activities, physical environment, and with whom to interact.	Title 404 Chapter 5 Compliant **5-002.01** *Individual Support Options means that services can be provided for as long as 24 hours a day and can include both continuous and intermittent supports. There must be flexibility of services that change, as the person's needs change, without the individual having to move elsewhere for services. These services must:* *1. Be person centered;* *2. Demonstrate that the individual is in charge of his/her services and supports;* *3. Promote the freedom for an individual to live a meaningful life and*	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Title 404 Chapter 6 Compliant **6-002** *Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:* *4. Individuals' preferences, interests, and goals are honored;* *5. Individuals have daily opportunities to make choices and participate in decision making;* *6. Activities are meaningful and functional for each individual* *7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;* *10. Individuals are able to express their wishes, desires, and needs.* **§ 83-1202** Compliant *It is the intent of the Legislature that:* *(1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;* *3) All persons with developmental disabilities shall have a right, to the maximum extent possible, to live, work, and recreate with people who are not disabled;* *(4) All persons with developmental disabilities shall, to the maximum extent possible, be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;* *6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled;*	Administration Section, once promulgated.	
(4)(v) Facilitates individual choice regarding services	Title 404 Chapter 4 Compliant	Although current regulatory	See above.

Standards Applicable to All HCBS Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
and supports, and who provides them.	**4-004.04A** *Initial Orientation Requirements: Initial orientation must be completed by all new employees prior to working alone with individuals. Employees must complete the following training requirements:* *1. Individual's choice;* *2. Individual's rights in accordance with state and federal laws;* *3. Confidentiality;* *4. Dignity and respectful interactions with individuals; and* *5. Abuse, neglect, and exploitation and state law reporting requirements and prevention.* Title 404 Chapter 6 Compliant **6-002** *Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:* *1. Individuals are free from abuse, neglect, mistreatment, and exploitation;* *2. Health, safety, and well-being of the individual is a priority;* *3. Individuals are treated with consideration, respect, and dignity;* *4. Individuals' preferences, interests, and goals are honored;* *5. Individuals have daily opportunities to make choices and participate in decision making;* *6. Activities are meaningful and functional for each individual;* *7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;* *8. Individuals live in a manner that is most inclusive;* *9. Individuals experience being part of the community; and* *10. Individuals are able to express their wishes, desires, and needs.*	language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(4)(vi)(A) The unit or dwelling is a specific physical space 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 individual, and that the document provides protections that address eviction processes and	Title 404 Chapter 5 Compliant **5-002.03** *Supported Living: Supported Living is defined as supports provided in the community for an individual eligible for developmental disability services, with no more than two other individuals with developmental disabilities in a residence that it is under the control and direction of the individual(s). The residence must be in a community integrated setting.* *Supported Living means that the individual(s) have control and choice over where and with whom they live. Providers may suggest potential roommates for individuals, but the recommendation must not be based on diagnosis alone but by the individuals' preferences and compatibility.* *The number of individuals with developmental disabilities alone does not define Supported Living. Supported Living is an option that can be considered by the individual receiving support and offered by providers as an option in their menu of services. If an individual chooses Supported Living, or if the provider chooses to offer Supported Living as a service option, the requirements of this chapter must be met for this option to be exercised. Supported Living options are for a maximum of three individuals with developmental disabilities (not including staff) who choose to live together in this type of arrangement. The provider of specialized DD services must be able to document that the individual(s) chose the supported living residence and that the lease or mortgage is under the control of the individual(s). The owner or lessee of the property must be unrelated, directly or indirectly, to the provider of specialized services.* Title 404 Chapter 5 Non-compliant **5-002.03A**	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
appeals comparable to those provided under the jurisdiction's landlord tenant law.	*An Extended Family Home (EFH) situation may qualify as a Supported Living option if the requirements of Individual Support Option services described in this chapter are met. To be considered, it must be a residence for no more than two individuals with developmental with disabilities, owned or leased by the subcontractor providing supports. The individual, who is his/her own payee or representative payee, pays room and board directly to the subcontractor. Agency owned housing when the EFH provider is engaged as a subcontractor does not qualify as a Supported Living option.* Title 404 Chapter 6 Non-Compliant **6-001** *SCOPE: This chapter governs the requirements for residential and day community based services for persons with developmental disabilities delivered at provider operated/controlled settings.* Nebraska Revised Statue 71-404 Compliant **§71-404** *Adult day service, defined.* *(1) Adult day service means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.* *(2) Adult day service does not include services provided under the Developmental Disabilities Services Act.* Nebraska Revised Statue 71-408		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Compliant **§71-408** *Center or group home for the developmentally disabled, defined.* *Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.* Nebraska Revised Statue 76-1401 Compliant **§76-1401 et seq.** *Sections 76-1401 to 76-1449 shall be known and may be cited as the Uniform Residential Landlord and Tenant Act* Nebraska revised Statue 76-1402 Compliant **§76-1402** *Purposes; rules of construction.* *(1) The Uniform Residential Landlord and Tenant Act shall be liberally construed and applied to promote its underlying purposes and policies.* *(2) Underlying purposes and policies of the act are:* *(a) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;* *(b) To encourage landlord and tenant to maintain and improve the quality of housing; and* *(c) To make uniform the law among those states which enact it.* Nebraska revised Statue 76-1408		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Compliant **§76-1408** *Exclusions from application of sections.* *Unless created to avoid the application of the Uniform Residential Landlord and Tenant Act, the following arrangements are not governed by the act:* *(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.* *(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his or her interest.* *(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.* *(4) Transient occupancy in a hotel or motel.* *(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.* *(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.* *(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.* *(8) A lease of improved or unimproved residential land for a term of five years or more.* Nebraska revised statue 76-1430 Compliant **§76-1430.** *Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.* *If the landlord unlawfully removes or excludes the tenant from the premises or willfully and wrongfully diminishes services to the tenant by interrupting or*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent as liquidated damages, and a reasonable attorney's fee. If the rental agreement is terminated the landlord shall return all prepaid rent and security recoverable under section 76-1416.		
(4)(vi)(B) Each individual has privacy in their sleeping or living unit: **(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.**	Title 404 (Complete) Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.
(2) Individuals sharing units have a choice of roommates in that setting.	Title 404 Chapter 5 Compliant **5-002.03** *Supported Living: Supported Living is defined as supports provided in the community for an individual eligible for developmental disability services, with no more than two other individuals with developmental disabilities in a residence that it is under the control and direction of the individual(s). The residence must be in a community integrated setting.*	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and	See Above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Supported Living means that the individual(s) have control and choice over where and with whom they live. Providers may suggest potential roommates for individuals, but the recommendation must not be based on diagnosis alone but by the individuals' preferences and compatibility. *The number of individuals with developmental disabilities alone does not define Supported Living. Supported Living is an option that can be considered by the individual receiving support and offered by providers as an option in their menu of services. If an individual chooses Supported Living, or if the provider chooses to offer Supported Living as a service option, the requirements of this chapter must be met for this option to be exercised. Supported Living options are for a maximum of three individuals with developmental disabilities (not including staff) who choose to live together in this type of arrangement. The provider of specialized DD services must be able to document that the individual(s) chose the supported living residence and that the lease or mortgage is under the control of the individual(s). The owner or lessee of the property must be unrelated, directly or indirectly, to the provider of specialized services.* Title 404 Chapter 5 Non-Compliant **5-002.03A** *An Extended Family Home (EFH) situation may qualify as a Supported Living option if the requirements of Individual Support Option services described in this chapter are met. To be considered, it must be a residence for no more than two individuals with developmental with disabilities, owned or leased by the subcontractor providing supports. The individual, who is his/her own payee or representative payee, pays room and board directly to the subcontractor. Agency owned housing when the EFH provider is engaged as a subcontractor does not qualify as a Supported Living option.* Nebraska Revised Statute 83-1202	Title 403 Regulations – HCBS Administration Section, once promulgated.	

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Silent **§83-1202** *(1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;* *(2) All persons with developmental disabilities shall have access to a full array of services appropriate for them as individuals;* *(3) All persons with developmental disabilities shall have a right, to the maximum extent possible, to live, work, and recreate with people who are not disabled;* *(4) All persons with developmental disabilities shall, to the maximum extent possible, be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;* *(5) All persons with developmental disabilities shall have the right to receive age-appropriate services consistent with their individual needs, potentials, and abilities;* *(6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled;* *(7) Persons who deliver services to persons with developmental disabilities shall be assured a uniform system of compensation and training and a full range of work-site enhancements which attract and retain qualified employees;* *(8) The first priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons have sufficient food, housing, clothing, medical care, protection from abuse or neglect, and protection from harm; and* *(9) The second priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons receive appropriate assessment of their needs, planning to meet their needs, information about services available to meet their needs, referral to services*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	matched to their needs, coordination of services delivered, support sufficient to allow them to live with their natural families or independently, transportation to facilitate access to services, and meaningful habilitation, education, training, employment, and recreation designed to enhance their skills, increase their independence, and improve their quality of life.		
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Title 404 (Complete) Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.
(4)(vi)(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Title 404 (Complete) Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and	See Above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
		Title 403 Regulations – HCBS Administration Section, once promulgated.	
(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.	Title 404 (Complete) Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.
(4)(vi)(E) The setting is physically accessible to the individual.	Title 404 (Complete) Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and	See Above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
		Title 403 Regulations – HCBS Administration Section, once promulgated.	
(vi)(F) Any modification of the additional conditions under §441.301(c)(4)(vi)(A) through (D), 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: **(1) Identify a specific and individualized assessed need.** **(2) Document the positive interventions and supports used prior to any modifications to the person-**	Title 404 Chapter 4 Compliant **4-005.01** *Habilitation: Each individual receiving services must receive habilitation services to acquire, retain, and improve the skills necessary so the individual is able to function with as much independence as possible; enhance choice and self-management; and participate in the rights and responsibilities of community membership. Habilitation must be observable in daily practice and identifiable in the IPP and supporting documentation. Habilitation must be an ongoing planned process that includes: comprehensive assessments, an individualized plan, training and supports, service delivery, documentation of the service delivery, measuring progress of the plan; monitoring the service to determine if the services continue to meet the needs of the individual.* *Habilitation requires that:* *1. The individual's program plan is developed based on the individual's preferences with input from the IPP team members, and strengths and needs that are accurately assessed.* *2. The IPP team must prioritize needs so that:* *a. The individual is challenged to overcome barriers that result in the need for specialized services; and* *b. The highest level of independence in all areas of community living is achieved.*	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
centered service plan. **(3) Document less intrusive methods for meeting the need that have been tried but did not work.** **(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.** **(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.** **(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.**	*3. Strategies and supports must be developed that are:* *a. Based on prioritized needs;* *b. Relevant to the IPP;* *c. Functional;* *d. Tailored to individual needs, and respectful of individual choice; and* *e. Documented in the IPP.* *4. Training and supports are consistently implemented in all settings as the need arises and as opportunities occur. Incidental learning and appropriate behaviors are encouraged and reinforced.* *5. Activities and environments must facilitate acquisition of skills, appropriate behavior, greater independence, and personal choice.* *6. Performance is accurately measured and training or supports or both are modified based on data and changes in individual circumstances;* *7. Monitoring of service delivery must be provided and, if needed, cause actions to occur to ensure needs are addressed.* *Individuals with conditions that make further growth or development unlikely must receive training and supports designed to maintain skills and functioning and to prevent further regression to the extent possible.* **4-005.01A** *Assessments: Assessments must be conducted for each individual to obtain accurate and complete information related to the individual's history, preferences, strengths, and abilities and needed services. The assessments must be the basis of development of the IPP. Assessments must be completed for each individual within 30 calendar days of entry to services; at least annually, the assessments must be reviewed and updated to reflect the individual's current status.* **4-005.01B** *Individual Program Plan (IPP): The IPP must be an individualized person centered plan that specifies agreed upon services to be delivered to the individual to meet identified needs. The IPP must be a plan to offer habilitation services and supports to individuals. The IPP must be based on individual's preferences and the comprehensive assessments. The provider*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
(7) Include informed consent of the individual. **Include an assurance that interventions and supports will cause no harm to the individual.**	*must participate in development of the annual IPP and take the necessary steps to ensure that the IPP documents the IPP team review, discussions, and decisions.* **4-005.01C** *Programs and Supports: Services such as supports and programs to learn new skills must be identified in the IPP. The provider must develop a specific written plan with enough detail to consistently implement these services.* **4-005.01C1** *Supports are the assistance required by the individual to maintain or increase independence, achieve community participation, improve productivity, and for health and safety. Supports must be flexible and subject to change when circumstances change or the supports are no longer needed or effective.* **4-005.01C2** *Programs must be based on the goals identified in the IPP for the development of functional skills.* **4-005.02** *IPP Team Process: The IPP is developed through an IPP team process. The IPP team assigns responsibility for obtaining and providing services to meet the identified needs of the individual.* **4-005.02A** *The IPP team consists of the individual, legal representative, if applicable, service coordinator, provider representative(s), and other individuals chosen by the individual served. The individual may raise an objection an objection to a particular provider representative. When and individual raises an objection, the IPP team must attempt to accommodate the objection, the IPP team must attempt to accommodate the objection while allowing participation by providers representatives* **4-005.02B** *The IPP team must utilize a team approach and work toward consensus development of a meaningful outcome driven IPP for the individual.* **4-005.02A**		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.02 or any of its parts. **4-005.03** *Positive Behavioral Supports: In addressing behaviors, the provider must develop and implement policies, procedures, and practices that emphasize positive approaches directed towards maximizing the growth and development of each individual. The provider must ensure the following behavior supports and emergency safety interventions for emergency safety situations are in place:* *1.The assessment must attempt to define the communicative function of the behavior for the individual;* *2. The assessment must focus on what purpose the identified behavior serves in the individual's life;* *3. A review of the individual's day supports, residential supports, and other relevant data must be incorporated in the assessment process;* *4. A plan for the individual must be developed that emphasizes positive meaningful activities and options that are inconsistent with the behavior targeted for change;* *5. There must be a combination of a planned meaningful day and individualized supports for the individual;* *6. The plan must include a description of potential stressors and triggers that may lead to the individual experiencing a crisis. Once identified, there must be a comprehensive safety plan developed and implemented; and* *7. There must be meaningful and individualized data collection and data analysis that track the progress of the individual. The data must be presented in a useful manner and collected through a range of methods that are valid and meaningful for planning and evaluation efforts.* **4-005.03A** *The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.03 or any of its parts.* Title 404 Chapter 5		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	Compliant **5-003.02** *<u>Certification Requirements:</u> The Individual Support Options provider must develop and implement policies and procedures that encompass the following:* **5-003.02C** *Restriction of rights, person, or property is not allowed in Individual Support Options services* **5-003.02D** *Restraints are prohibited, but an emergency safety intervention can be used in a situation where the individual is in danger of immediate jeopardy or harm. If there are disruptive or challenging behaviors displayed by an individual, then a safety and support plan must be developed utilizing the principles of positive behavioral supports (see 404 NAC 4-005.03).* **5-003.02E** *Psychotropic medications taken by the person due to diagnosed mental illness (a dual diagnosis of a severe and persistent mental illness in conjunction with a developmental disability) must be prescribed by a physician, who has authority in his/her scope of practice to determine the diagnosis, and used only with the consent of the individual in services. If symptoms reappear and the ongoing use of medication is no longer effective, a positive behavioral supports plan must be established and in place to address those symptoms when they occur. No specific plan is required to reduce or eliminate the medication.* *Psychotropic medications used solely for the purpose of modifying behaviors may be used only with the consent of the individual, with a plan to reduce and eliminate the medication, and in conjunction with a positive behavioral*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	supports plan. There must be evidence that a less restrictive and more positive technique had been systematically tried and shown to be ineffective. No positive behavioral supports plan is required when an individual is prescribed a medication that has the effect of behavior modification, but is prescribed for other reasons, as documented by a physician. *All psychotropic medications must be reviewed by the rights review committee as outlined in 404 NAC 4-011. There must be an annual review by the prescribing physician and a semi-annual review by the IPP team of all psychotropic medications utilized. There must be clear and convincing evidence that the individual has a person-centered plan demonstrated by data and outcome measures.* Title 404 Chapter 6 Compliant **6-004.01** *Restrictive Measures: To the fullest extent possible, an individual's rights may not be suspended or restricted. In the event where a restrictive measure is considered:* *1. The restrictive measure determined necessary for one individual must not affect other individuals who receive services in that setting;* *2. The restrictive measure must not be used as punishment, for the convenience of staff, due to shortage of staff, as a substitute for habilitation, or as an element of a positive behavior support plan;* *3. The restrictive measure must be the least restrictive and intrusive possible;* *4. There must be a goal of reducing and eliminating the restrictive measure;* *5. Prior to proposing a restrictive measure, there must be documented evidence that other less restrictive methods had been regularly applied by trained staff and failed; and* *6. The individual or their legal representative, if applicable, must give consent to the restrictive measure;* *7. The restrictive measure must be safe for the individual; and*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	8. The restrictive measure and these considerations must be documented in the IPP. **6-004.01A** *Review and Approval of Restrictive Measure: Prior to implementation of a restrictive measure, the provider must ensure review and approval by the IPP team and rights review committee as outlined in 404 NAC 4-011.* **6-006** *RESTRAINTS: The use of mechanical restraints is prohibited. If the provider agrees to serve an individual under 404 NAC 6 who has a physical restraint program in place at the time of the enactment of these regulations, then a program must be implemented within 180 days of enactment of these regulations which eliminates the use of such restraints. The use of physical restraints will be prohibited one year from the enactment of these regulations. An emergency safety intervention utilized pursuant to a safety plan is allowed to respond to an emergency safety situation. This is different than physical restraint because it is not used as a behavioral consequence. In instances where the individual must be kept from harm (i.e., running into traffic, leaving a moving car or other serious, unusual or life-threatening actions by the individual), the provider must use their reasonable and best judgment to intervene to keep the individual from injuring him/herself or others. This may include hands-on guidance to safely protect the individuals and others from immediate jeopardy or physical harm.* *These situations are not predictable, are unusual, and are usually not reoccurring. In any instances other than these, there must be a positive behavioral supports program in place to work with the individual on alternative positive displays of behavior that are incompatible with other negative behaviors.* *All such incidents must be documented and reviewed by the individual's IPP team and rights review committee to ensure that the emergency safety intervention was appropriate rather than an instance of mechanical or physical restraint.*		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A **Regulation §441.301**	**B** **Areas of Compliance, Non-Compliance or Silence**	**C** **Remediation**	**D** **Action Steps and Timeline**
	6-006.01 *Prohibited Methods: The provider must prohibit the use of mechanical or physical restraints (except as noted above), aversive stimuli, corporal punishment, seclusion, verbal abuse, physical abuse, emotional abuse, denial of basic needs, discipline, or implementation of an intervention of an individual in services by another individual in services, or other means of intervention with the behavior that result in, or is likely to result in injury to the individual.*		

Attachment 5 - Work Plan for Settings Compliance

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Assessment				
Identify settings to be assessed	All	November 2017	MLTC and DDD staff	Settings are identified for each HCBS waiver.
Develop assessment tool for residential settings	A&D TBI	August 2014-September 2018	MLTC staff	Assessment tool was developed incorporating federal requirements.
Develop self-assessment tool for residential settings	DDD	August 2014	DDD staff	Assessment tool was developed based upon federal requirements.
Train assessors of residential settings.	A&D TBI	November 2014 – December 2018	MLTC staff	Resource development staff at MLTC-contracted Area Agencies on Aging were identified and trained to assess assisted living providers.
Conduct assessment of residential settings and submit results to MLTC	A&D TBI	January 2015	MLTC-contracted agencies (i.e., Area Agencies on Aging)	All assisted living assessments were completed.
Conduct self-assessment (residential settings) and submit results to DDD	DDD	January 2015	DD Waiver residential services providers	A sample of group homes licensed as CDDs completed self-assessments.
Establish sampling methodology in preparation for additional round of site assessments	DDD	December 2015	DDD staff	DDD staff established methodology to identify stratified random sample of residential and non-residential providers.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Develop companion guides for assessment tools	A&D DDD	January 2016	MLTC and DD staff	Companion guides were developed for residential settings assessment tool (used for DD Waiver settings) and non-residential settings assessment tool (used for DD and A&D settings).
Train assessors of residential and non-residential settings	All	January 2016-March 2018	MLTC and DDD staff	MLTC-contracted Area Agencies on Aging, DHHS Children and Family Services staff and DDD service coordinators were trained in preparation for an additional round of assessments.
Conduct second round assessment of residential and first round of non-residential settings and submit results to MLTC.	A&D TBI	February-March 2016	MLTC-contracted agencies (i.e. Area Agencies on Aging)	All assisted living settings assessments (for clarification of previous results) were completed and all adult day health non-residential setting assessments were completed.
Conduct second round assessment of a sample of residential and non-residential providers	DDD	February-March 2016	DDD service coordinators	A sample of residential and non-residential assessment were completed.
Classify assessed settings per CMS categories, i.e. compliant, not yet meeting HCBS characteristics but may be with modifications, will require heightened scrutiny, and cannot comply.	All	December 2018	MLTC and DDD staff	Settings assessed are classified according to CMS categories.
Notify providers of preliminary assessment results	All	March 2016	MLTC and DDD staff	Letters sent to providers with results.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Conduct self-assessments for DDD Group Homes and Extended Family Homes	DDD	February 2017-December 2017	DDD Staff	100% of Group Homes and Extended Family Homes completed self-assessments.
Developed MLTC non-residential self-assessment tool.	MLTC	January 2018	MLTC Staff	Assessment tool was developed based upon federal requirements.
Conduct on-site assessments of 100% of non-residential settings	DDD	February 2018-December 2018	DDD Staff	100% of non-residential settings were assessed on-site
Train assessors for additional non-residential settings identified	A&D	March 2018	MLTC	Resource Developers trained on HCB settings final rule process for enrolling a new provider.
Conduct on-site assessments of 100% of Group Homes and Centers for the Developmentally Disabled	DDD	May 2018-December 2018	DDD Staff	100% of Group Homes and Centers for the Developmentally disable were assessed on-site.
Conduct on-site assessments for a sample of the Extended Family Homes	DDD	September 2018-December 2018	DDD Staff	252 Extended Family Homes were assessed on-site.
Conduct second round of non-residential settings and submit results to MLTC	A&D	January 2018 – March 2019	MLTC	Complete review and verification of non-residential settings
Bringing Settings Into Compliance				
Make available technical assistance for providers regarding settings requirements	All	September 2014-March 2022	MLTC and DDD staff	Forums and meetings scheduled; technical assistance resources and links posted on website
Provide instructions to providers regarding actions needed to be in compliance with Final Rule requirements.	All	June 2017	MLTC and DDD staff	Instructions developed and distributed to providers.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Provide guidance regarding lease requirements for waiver individuals living in provider-owned or controlled residential settings	DDD	December 2016	DDD staff	Guidance regarding lease agreements included on website.
Review initial provider-level remediation plans.	All	May 2019	Providers categorized as " not yet meeting HCBS characteristics but may be with modifications" to submit plans to MLTC or DDD	Provider-level remediation plans received from applicable providers and accepted by MLTC or DDD or a revised plan is requested.
Accept provider-level remediation plans	All	December 2019	MLTC and DDD staff	Provider-level remediation plans are accepted.
Continue progress with/monitor provider level remediation plans	All	July 2017-October 2021	Providers/MLTC and DDD staff	Providers make progress toward compliance in identified areas and MLTC and DDD monitor progress.
Process for Heightened Scrutiny				
Identify the state's approach to heightened scrutiny and individuals to be involved in reviewing heightened scrutiny settings information.	All	October 2016	MLTC and DDD directors	Process and persons to be involved in reviewing heightened scrutiny settings information are identified.
Make available technical assistance for providers in the presumed institutional category regarding evidence packages	All	March 2017-March 2022	MLTC and DDD staff	Notice of technical assistance mailed and resources posted on website.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Initiate additional heightened scrutiny assessment activities per the determined approach.	All	March 2017-December 2019	MLTC and DDD staff or designee; Providers categorized as "presumed institutional" to submit evidence packages to MLTC and DDD	Heightened scrutiny activities are initiated.
Review information gathered as a result of additional assessment activities for settings requiring heightened scrutiny. Identify settings to be submitted to CMS and initiate public input process.	All	March 2017-March 2020	MLTC and DDD staff	Settings to be submitted for heightened scrutiny are identified and public input process for heightened scrutiny is initiated.
Conduct public input activities for settings requiring heightened scrutiny which will be submitted to CMS.	All	March 2020-October 2020	MLTC and DDD staff	Public provides input regarding settings and determination to submit settings for heightened scrutiny.
Submit heightened scrutiny settings to CMS on a rolling basis.	All	October 2020-May 2021	MLTC and DDD staff	MLTC and DDD provide evidence including public input.
Monitoring and Verification				
Identify performance metrics and data sources that demonstrate level of compliance with regulation requirements, e.g. individual experience survey, quality improvement data	All	December 2015-December 2016	MLTC and DDD staff	Identify data sources in updated State Transition Plan.
Implement selected participant experience survey	DDD	May 2016	DDD staff	Staff trained and processes in place to implement survey.
Reassign quality assurance surveyors to the Division of Public Health	DDD	December 2015	DDD staff	Surveyors report to the Division of Public Health

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Implement additional performance measures regarding health and safety restrictive measures	A&D	August 2016	MTLC staff	Additional performance measures are incorporated in monitoring processes
Evaluate viability of utilizing National Core Indicators (NCI) membership; or, research, develop and implement an alternative nationally-recognized, statistically valid participant experience survey	All	December 2016	MLTC and DDD staff	NCI, and NCI-AD are selected.
Modify Division of Public Health certification survey tools and process to more rigorously review human and legal rights processes	DDD	December 2016	DDD staff	Certification survey tools incorporate setting requirements.
Implement NCI participant experience survey	DDD	June 2016	DDD Staff	DDD's Participation in the NCI survey begins.
Implement NCI-AD participant experience survey	MLTC	July 2017	MLTC staff	Staff trained and processes in place to implement survey.
Identify new needs assessment tool or modifications for existing tool	MLTC	February 2020	MLTC staff	Needs assessment tool or modifications will be identified.
Determine services coordination monitoring tools and policies to incorporate regulations	All	March 2022	MLTC and DDD staff	Specific changes to monitoring tools and policies will be determined with input from stakeholders.
Determine quality improvement monitoring tools and policies to incorporate regulations	All	March 2022	MLTC and DDD staff	Specific changes to monitoring tools and policies will be determined with input from stakeholders.
Modify services coordination monitoring tools and policies to incorporate setting regulations	All	March 2022	MLTC and DDD staff	Tools and policies updated and distributed.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Modify quality improvement monitoring tools and policies to incorporate settings requirements.	All	March 2022	MLTC and DDD staff	Tools and policies updated and distributed
Implement services coordination monitoring tools and policies	All	March 2022	MLTC and DDD staff	Staff trained and processes in place to implement tools and policies.
Implement quality monitoring tools and policies	All	March 2022	MLTC and DDD staff	Staff trained and processes in place to implement tools and policies.
Stakeholder Outreach and Education				
Obtain public comments regarding State Transition Plan settings assessment	All	March-May 2016	MLTC and DDD staff	Updated plan to incorporate comments as appropriate
Develop educational resource(s) for waiver individuals, guardians, and families regarding settings requirements.	All	December 2017	MLTC and DDD staff	Educational resource(s) are available in accessible formats.
Train services coordinators to educate waiver individuals, guardians, and families regarding settings requirements.	All	October 2018	MLTC and DDD staff	Services coordinators have knowledge and resources to provide education.
Service coordinators provide education to waiver individuals, guardians, and families as part of Individual Service Planning process. Education includes information about rights restrictions and protection of individual rights.	DD	April 2018-March 2022	Service coordinators	Waiver individuals, guardians and families understand and can access information about settings requirements, including rights restrictions and protection of individual rights.
Obtain public input regarding heightened scrutiny settings	All	October 2020	MLTC and DDD staff	Public provides input regarding settings and determination to submit settings for heightened scrutiny
Relocation				

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Evaluate options available for each specific setting's geographic region	All	March 2021	MLTC staff, DDD staff, MLTC-contracted agencies providing services coordination	List of options developed for each setting requiring relocation
Prepare information and supports necessary for individuals to make informed choice about alternate settings	All	June 2021	MLTC staff, DDD staff, MLTC-contracted agencies providing services coordination	Plan and materials to support informing each individual are in place
Notify individuals	All	September 2021	MLTC staff, DDD staff, MLTC-contracted agencies providing services coordination	Individuals informed of requirements and options are identified based upon person-centered planning process
Assure services and supports are in place at the time of relocation and facilitate relocation	All	September 2021 – February 2022	MLTC staff, DDD staff, MLTC-contracted agencies providing services coordination	Services and supports are incorporated in person-centered service plans and ongoing monitoring.
Terminate provider agreements for providers not in compliance	All	March 2022	MLTC and DDD staff	All settings with provider agreements are compliant with settings requirements.

NEBRASKA

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DEPT. OF HEALTH AND HUMAN SERVICES

Appendix A
HCBS State Transition Plan
Public Comments

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
1	9/16/2014	Email	DD Waiver	In regard to the ruling requiring home and community based services to be provided in "community-like" settings: First, I will address the issue of "home based services". I must ask the obvious question: How can "home based services" be taken out of the home and into the community and still be "home based"? Seems like an impossibility to me! This does not affect my special needs adult daughter right now, but I suspect it could in the future, and I don't want to have to worry about what that could mean. A question that comes to mind is," Will my daughter and others like her be forced into large group home settings in the future instead of smaller, more home-like environments? And now I will address the issue of "community based services". It is my opinion that this will be very harmful to many of the special needs adults in Nebraska. From my observation there are many in the special needs adult community who do not do well out in the "community", some because of "sensory overload", others because they haven't the ability to communicate well enough to hold a normal job, or socialize appropriately with other people, to be able to work with others out in the "community". I believe such persons derive great benefit from "sheltered" workshops which are supervised by a trained staff. These persons gain self esteem and pride from being able to work and earn money much like other people. I believe that this is good for them as it will make them happier and more well adjusted members of our community. Thank you for allowing me to comment on this ruling.	Under the Home and Community Based Services (HCBS) Final Rule and State Transition Plan (STP), HCBS waiver services may still be provided in a range of settings currently used as long as the settings have qualities defined in the Final Rule. The HCBS Final Rule includes additional requirements for person-centered planning to ensure individual goals, needs and choice determine services provided and the settings in which they are provided.	No	The response addresses the question and did not require a change in the plan.
2	9/15/2014	Email	UNK	I am writing to express my concern about the effect of legislation CMS 2249-F and CMS 2296-F. I am aware that not every person with special needs can function in the community. Some persons needs are best served in a controlled environment. Those persons, who can function in a controlled environment, cannot function in the general community. I feel that the legislation tries the "one approach fits all". Please do not place a segment of the special needs population in an environment that will be counter productive to these individuals. In essence and in fact, you are doing a greater injustice to those special needs individuals that best function in a controlled environment. I can't imagine the stress and unhappiness a segment of the special needs population will be forced to endure if this legislation is followed.	The Centers for Medicare and Medicaid (CMS) CMS-2249-F and CMS 2296-F are federal regulations that Nebraska Medicaid Home and Community Based Services (HCBS) waivers must follow. It is agreed it is important not to create stress and unhappiness for individuals receiving waiver services. States have until March 2019 to comply with requirements, and during that time, State staff will make available technical assistance resources for providers to help them understand and comply with requirements. HCBS waiver services may be still provided in the range of settings currently used, as long as the settings have qualities defined in the HCBS Final Rule and do not have qualities of an institution or have the effect of isolating an individual from the broader community. In addition, Nebraska Medicaid HCBS waivers will continue person-centered planning to ensure approaches are not "one approach fits all" but rather delivery of services in a manner that reflects personal preferences and choices and contributes to the assurance of individual health and welfare.	No	The response addresses the question and did not require a change in the plan.
3	9/19/2014	Email	A&D/TBI	I have a few thoughts about improvements that could be made in AL's- Med carts are very institutional. Food-More choice about when and where they can eat and some way to assure that it is prepared properly and appealing (at least to most residents). It seems like food in AL's attached to NF's is more likely to be poor quality and cold (since it comes from across the building). Availability of condiments to season their food more to the client's preference. (Hot sauce, Mrs. Dash, etc.). Requiring containers that the client can open them selves-no packets. Accessible toaster, microwave, coffee pot, milk with a variety of snacks they can help themselves to. Activities-Separate programs for them with their peers and in the AL space. Not much-but a few ideas.	Thank you for your comments. The Assisted Living Setting Assessment Tool used for assisted living settings assessment included questions about many of the topics raised.	No	The response addresses the question and did not require a change in the plan.
4	9/30/2014	Email	UNK	By saying homelike do mean in an actual home (residence) or are you also including people the are living in an assisted living facilities that are homelike. And what about people that receive some type of out patient treatments such as physical therapy at a nursing facility or other type of treatments. And does this have anything to do with the type of assistance received in a persons home.	The Home and Community-Based Services (HCBS) Final Rule and State Transition Plan (STP) apply to all settings in which Medicaid HCBS waiver funds are used to provide services, including in assisted living facilities and in a person's home. Physical therapy services provided at a nursing facility and other outpatient treatments are not paid for with Medicaid HCBS waiver funds and therefore the HCBS Final Rule and STP is not applicable for these services.	Yes	The updated plan includes added narrative (Section 5, Applicable Nebraska HCBS Waiver Settings) to provide improved explanation.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
5	9/28/2014	Email	UNK	Did I do something wrong Why didn't you respond to my Email do I not have a right to receive answers, or is that just reserved to special personal even if you think my questions are stupid you should be polite and respond. By saying homelike do mean in an actual home (residence) or are you also including people the are living in an assisted living facilities that are homelike. And what about people that receive some type of out patient treatments such as physical therapy at a nursing facility or other type of treatments. And does this have anything to do with the type of assistance received in a persons home.	Thank you for your comments, and please accept a delayed apology for not providing a personal response previously. Please see the response to your comment immediately above.	Yes	Please see the description of the change made to the State Transition Plan in the immediately preceding comment.
6	9/30/2014	Public Meeting	All	Do people who have been given Power of Attorney by their disabled family members lose the ability given them in helping make decisions? Who has the final say, the State or those given POA by their family member who is disabled? Is the State able to "limit" our POA or guardianships? Can we be overruled? In our decisions?	The Home and Community-Based Services (HCBS) Final Rule does not alter the scope of an individual's authorized representatives role in helping make decisions. The HCBS Final Rule prohibits use of HCBS waiver funds to pay for services in settings that are not compliant with settings requirements in the Final Rule after March 2019. It is recommended that more specific questions about the role of legal representatives, such as guardians or powers of attorney, be addressed more specifically with an attorney.	No	The HCBS Final Rule does not alter the scope of an individual's authorized representatives role in helping make decisions, and this is not applicable to the State Transition Plan.
7	9/30/2014	Public Meeting	All	What is the impact on an individual who has a guardian? Will the presence of a guardian and their wishes be a reasonable justification for modification of requirements documented in the "person-centered-plan". If there a danger that people with guardians who fear the community will continue to find themselves confined to congregate settings?	Please see the response to comment #6 above for answers to your first two questions about impact on an individual who has a guardian and the role of a guardian in development of a person-centered plan. A goal of the Home and Community-Based Services (HCBS) Final Rule is to ensure that individuals receiving services through HCBS programs have full access to the benefits of community living and that all settings where HCBS services are provided do not have the effect of isolating (or confining) individuals from the broader community. HCBS services may still be provided in the range of settings they are now, as long as the chosen setting has required qualities, and not the qualities of an institution or the effect of isolating the individual.	No	The HCBS Final Rule does not alter the scope of an individual's authorized representatives role in helping make decisions, and this is not applicable to the State Transition Plan.

Appendix A
HCBS State Transition Plan
Public Comments

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
8	9/30/2014	Public Meeting	ALL	My name is Kathy Hoell and I'm here testifying as an individual. First of all, I would like to thank DHHS for all the work they put into the Home and Community Based Services process and the changes that have been involved to make this comment period accessible to individuals with disabilities, family members and services providers. However, I am concerned about the number of people that are not going to be able to testify. Transportation is such a big issue in Nebraska, especially accessible and affordable. Since DHHS has access ro videoconferencing system that reaches statewide it would have been possible to obtain public comments from all corners of the state at minimal expense. After extensive review of CMS's final rule on HCBS, I really like the final rule and I hope the state of Nebraska will make a sincere effort to implement these tules as they have been presented. However I do have some concerns about he transition plan that you released: 1) The repeated use of the term "community like." I am not sure what that means. "Community like" is not used in the Final Rule. It says that people with disabilities have to be included in the community like their non-disabled peers or they use the term community based. 2) I found the transition plan to be rather confusing. No settings that are currently in existence are identified as HCBS. The timelines are not consistent throughout the document. There is a lack of a narrative to fully describe how this process would evolve. 3) I believe some HCBS settings in Nebraska will not comply with the definition as defined by CMS, for example the TBI Waiver which only funds Quality Living which is an institution and their Assisted Living Apartments are on their property, plus the Autism Waiver which remains unfunded but not addressed. CMS has indicated that states should provide autism services. So why not included? The Transition Plan seems to gloss over places that don't meet the definition, The Final Rule talks about a heightened scrutiny process to evaluate these sights. 4) I Realize that the state has no responsibility to educate and make consumers aware of these changes but I think it would be to the advantage of DHHS in done so. I understand that DHHS has undertaken a number of programs that are all operating as the same time. I'm sure this is rather problematic however it is imperative that people with disabilities arnd seniors are able to live independently as possible with dignity and respect, just like anyone else. I would encourage you to remain involved with consumers and other advocacy organizations who share their concerns with you and to be active partners with them as everyone moved forward on this process.	The public comment forum schedule for the updated State Transition Plan includes a webinar with live streaming and recording for viewing after. Opportunity to provide comments via telephone and email were provided throughout the comment period. Comments regarding narrative, terminology, timelines, and identification of Nebraska settings have been incorporated in the updated plan. The Autism Waiver, which was never funded or implemented, has been terminated, effective September 14, 2014. Nebraska Medicaid covers applied behavioral analysis for children with autism spectrum disorder through the Medicaid State Plan. DHHS Divisions of Medicaid and Long-Term Care and Developmental Disabilities are committed to involvement with consumers and advocacy organizations in implementing the State Transition Plan.	Yes	The updated draft includes narrative, terminology consistent with the federal regulation, identification of Nebraska settings, and consistent timelines. In addition, the updated plan addresses the heightened scrutiny process for settings categorized as presumed institutional per results of completed settings assessments.
9	9/30/2014	Public Meeting	ALL	Question number of Clients. Question Cost of Transition and result programs and services. Question Who funds the costs?	The updated State Transition Plan (STP) includes the approximate number of individuals served by each Nebraska Home and Community-Based Services (HCBS) waiver. The state has not quantified the cost of implementing the STP. To minimize cost and administrative burden, activities associated with transitioning to and maintaining compliance will be incorporated into existing processes where possible. The costs are funded through existing Nebraska Department of health and Human Services (DHHS) budgets.	Yes	The number of individuals served by each waiver has been included in the updated plan.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
10	9/30/2014	Public Meeting	DD Waiver	I believe the time frames are reasonable and the plan makes sense to improve the lives of people with Disabilities. I believe my major concerns would be surrounding leases management of personal funds, transportation, and the provider operated settings we rely on community modified. I am concerned about individuals receiving support being held responsible for damages to property that could be passed to be approached with caution. Providers are often obligated to manage.	Comments regarding leases have been addressed in the updated State Transition Plan (STP), which includes plans to coordinate with stakeholders to design a lease template, make available technical assistance regarding lease agreements, and monitoring lease expectations. In moving forward with systemic changes to support compliance with the Home and Community-Based Services (HCBS) Final Rule, The Nebraska Department of health and Human Services (DHHS) Division of Medicaid and Long-Term Care(M-LTC) and Developmental Disabilities (DD) will continue to reach out to individuals, parents/guardians, providers and other stakeholders to ensure any changes to the Nebraska Administrative Code which govern the use of personal funds and property and providers' role in supporting individuals in managing those resources are clear and offer protections for individuals served as well as providers. It is agreed that public transportation availability is a challenge in some communities. It is expected that staff in HCBS settings are knowledgeable about the broad range resources that are available, including public, commercial, and other transportation options. Other transportation options may include partnering with a local churches, using an individual's natural/informal supports, or developing a relationship with a local business. Area Agencies on Aging have transportation resources for their regional areas, and the Nebraska Department of Roads Transit Directory, http://www.nebraskatransit.com, lists several transportation options.	Yes	Consideration of issues of leases and personal funds management will be incorporated in implementation of systemic changes to support compliance with the HCBS final rule.
11	9/30/2014	Public Meeting	ALL	Disabilities Rights Nebraska is the designated Protection and Advocacy organization for people with disabilities in Nebraska. We appreciate this opportunity to comment on the proposed transition plan for home and community-based waivers in Nebraska. We are still in the process of reviewing and analyzing the new federal regulation under which the waivers discussed will function. Thus our comments today will be brief, with more comment to follow by the October 15th deadline. 1. Narrative description It is difficult to gather a clear conceptualization of how the state plans to process to accomplish transition. Reading the matrix, while helpful when deciding what tasks will be assigned to achieve a set of benchmarks, is not "user friendly" when trying to understand what the goals are and how Nebraska plans to accomplish those goas. The overall goals of the federal regulations are known as are the minute details of tasks, schedule and actors involved displayed in the matrix, but what is missing is a narrative description of how the details create the path to transitions. 2. Education Education (sic) the public, and especially those individuals receiving services, about the new federal regulations is critical to achieve the goals set forth by the regulations is critical to achieve the goals set forth by the regulations, to ensure accountability, and to receive high quality public and stakeholder input. Public and stakeholder input has been recognized as an integral part of making the new regulations effective and accountable. We would suggest that the transition plan include and clarify more opportunities to educate providers, service recipients and families if applicable/appropriate, advocacy groups,/stakeholders and the public about the transition plan/components, the pertinent federal regulations regarding a particular waiver(s), and how far the state is along in meeting its milestones/goals of new waiver regulations. More educational activities along these line should be included in the transition plan. 3. Clarity of Definition and Accountability It is unclear from reading the matrix how assessment of certain requirements (e.g., location adjacent to an institution, provider, and compliance) will be handled and by whom. For example: Will the service provider be assessing their own services/facilities for compliance? If not, what entity will be? And who will comprise the panel of assessors? What will be the criteria? How will leases be handled if an individual loses or no longer needs services? Additionally, we feel the transition plan would benefit from some definitional clarification. For example, what is meaning of "privacy"? How is that measured and assessed using what criteria? Lack of definition can lead to erroneous assessments and unaccountability. The transition plan does not seem to provide much context to the work plan matrix.	Comments regarding narrative description have been addressed in the updated plan. Throughout the transition period, Nebraska Medicaid Long Term Care (M-LTC) and Nebraska Developmental Disabilities Division (DDD) staff will provide information to waiver participants and their authorized representatives regarding settings requirements. The Home and Community-Based Services (HCBS) State Transition website will be updated throughout the transition period with additional opportunities for education and provides assessment tools used for settings assessment.	Yes	The updated plan includes narrative and terminology consistent with the HCBS final rule and identifies milestones for stakeholder outreach and education activities. The updated plan explains the approach to settings assessment and includes timelines for transition activities.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
				The new federal regulation have created an opportunity to realize a cultural shift in the way home and community services are provided in Nebraska. The new Federal regulation are a step in the right direction and we are willing to collaborate, in the capacity that we can, to help advance a better way for Nebraskan's with disabilities.			
12	10/8/2014	Fax	A&D/TBI	Hi Guys. My name is Jeremy Wolzen. I am a resident at QLI in Omaha and have been for over 12 years and I want to say that to me and my parents and siblings think that this is a wonderful facility and I couldn't ask for a better fit for me as they employ good, quality people and with me being less disabled than several of the residents who are more disabled than I am so I'm allowed to come and go as I please as long as I have my medication with me which is my responsibility. It is a well run and organized facility that I feel blessed to call home and I just wanted to add my comments and I have. thank you for allowing me to do so.	Thank you for the comments about your experience. Comments from individuals receiving services and all stakeholders are valuable and are encouraged during the transition process.	No	This comment expressed gratitude for a current Home and Community Based Services (HCBS) waiver service provider, rather than thoughts regarding plan content.
13	10/8/2014	Fax	A&D/TBI	Our Son, Jeremy Wolzen, has lived at QLI for 12+ years and we continue to be impressed with his care. The administration and staff always put the residents and their needs first. They continue to strive for improvements/updates in all areas of QLI's facilities. The environment is "home like" and well maintained. It's the complete package to meet all of Jeremy's needs. QLI is indeed the quality of living that fits Jeremy perfectly....there's no better facility!!!! You are much more appreciated than there few words convey. Thank you for an outstanding facility!!!	Thank you for the comments about your experience. Comments from individuals receiving services and all stakeholders are valuable and are encouraged during the transition process.	No	This comment expressed gratitude for a current Home and Community Based Services (HCBS) waiver service provider, rather than thoughts regarding plan content.
14	9/30/2016	Email	All Waivers	I received a post card notice about public meetings being held regarding compliance regulations for community based services that began 3/17/14. I want to share that I do enjoy this option to use my funding for CLDS services. This allows me more independence and choices in my daily life. While it is difficult in some cases to 'find' and hire people willing to work these services, I have been fortunate so far. I worry, though, about replacing them if that becomes necessary. This is a huge issue for those of us who do not have access to a place to find others to fill these hours. Has this concern been addressed or is there an avenue I am not aware of? Secondly, these regulations are particularly restrictive when I need my non-specialized attendant to be with me on over night excursions or vacations. This makes it hard for me to ask them to take or go with me when they are not compensated for attending to my physical needs. Sometimes I need toileting, a medication, a drink, or to be covered/uncovered while sleeping. There is always the possibility of an emergency situation to have to leave the room. All these issues are important and a concern for those of us not able to totally care for ourselves. Also, sometimes I am ill and need someone to spend the night with me to attend to those needs. There could be other reasons that I would need an attendant with me at night that no one can even imagine until that 'issue' would arise. So, in conclusion, what I am saying is that I feel I am being restricted from using my 'hours' for my community like needs. I try to live as normal a life as possible and by not being able to utilize my attendants to do those things that 'non-physically disabled' people can do without as much dependence on others--seems to be a contradiction of why this option exists. As much as my attendants want to give of their time to assist my overnight needs, they must be compensated for the time they spend with me. It's called a JOB and they should be paid.	The Home and Community-Based Services (HCBS) Final Rule establishes qualities settings where HCBS waiver services are provided must have. In the State Transition Plan (STP), Nebraska settings affected by the rule include Extended Family Homes, Group Homes, Companion Homes, and pre-vocational workshop settings. CLDS services are not provided in settings and it is not anticipated that CLDS services would be affected by the HCBS final rule. Questions and concerns about CLDS services and utilization have been directed to the assigned services coordinator.	No	The State Transition Plan scope does not include utilization of CLDS attendant services.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
15	10/2/2014	Email	A&D/TBI	I appreciate the opportunity to comment on the Transition Plan to Implement Settings Requirements for Home and Community-Based Services Adopted by CMS on March 17, 2014 for Nebraska's Home and Community-Based Services Waiver. The implementation of the new rules could have significant impact on people who need and use home and community-based services that are funded through DHHS programs. I appreciate the challenge facing the Department, the serious effort that you have made to develop a comprehensive plan and offer the following recommendations. If I can provide any clarification of these comments, please contact me. Aged and Disabled and Traumatic Brain Injury – Page 13 of 70 1. Outreach General Requirements Identify and implement effective strategies… AARP wholeheartedly supports the expected outcome. To achieve that outcome I suggest that DHHS staff schedule regular meetings with a coalition of stakeholder organizations that has formed to discuss the implementation of the new CMS regulations that are the subject of this transition plan. Regular meetings with the coalition would be an efficient means of sharing information about the status of the transition plan and obtaining suggestions and recommendations on how the transition can best be implemented. 2. Outreach General Requirements Educate providers… The expected outcome is as follows. "Inform providers and public." I recommend that the outcome statement be expanded to indicate the content of the information provided and its purpose. It wasn't clear to me. 3. Outreach General Requirements Waiver participants understand… This is a laudable action item and expected outcome. As was the case in Recommendation 1, I would suggest that the coalition would be an effective resource in achieving the outcome. I recommend that the Department schedule regular meetings with the coalition to facilitate participant education. 4. Each of the previous action items (1-3) have a targeted implementation date of "ongoing" which adds a degree of ambiguity to the action item. I recommend including a means of measuring the degree to which the action item has been accomplished and including a targeted completion date. I also recommend that the plan be amended to incorporate outreach action steps throughout the document rather than in a separate section so that it is clear that DHHS will consult stakeholders throughout the process. I did see some references to stakeholder involvement, but I believe that it would be useful to the Department to have direct stakeholder involvement in every step of the development and implementation of this plan. Aged and Disabled and Traumatic Brain Injury – Page 9-10 of 70 5. Identification Community Integration Residential Identify residential services settings… I wasn't sure if this action item was intended to produce a list of specific residential facilities that are not community-based or if it was intended to produce a set of criteria that would be used to make that determination. I did note the Transition Plan Addendum including the section "Qualities of an HCBS Setting". It is stated that the AD waiver will assess the degree to which providers comply with the requirements. Presumably, there will be criteria developed to complete that assessment. So if that wasn't the intent of this action step, I recommend adding such an action step right before this one. This is potentially the most controversial part of the transition plan. While I support the concept of assuring the HCBS Waiver services are provided in a community setting, I wonder how the qualities will be applied to a residential facility that specializes in care of persons with dementia. If the effect of the rules is to force an assisted living facility resident with dementia who is covered by an HCBS Waiver to move to a nursing facility where he would be covered by Medicaid	This response addresses the intent of the comments provided in 2014, focusing on those not specifically explained in the updated plan. The Nebraska Department of Health and Human Service (DHHS) Divisions of Medicaid and Long-Term Care (M-LTC) and Developmental Disabilities (DD) have begun implementing stakeholder outreach activities regarding current initiatives, include Long-Term Supports and Services (LTSS) Redesign and the State Transition Plan (STP) and will continue these efforts throughout the transition period. Updated information regarding implementation of the STP can be found at the STP website (http://dhhs.ne.gov/Pages/Transition.aspx) . Stakeholders interested in additional information regarding the STP are encouraged to contact the State Transition Plan team at dhhs.hcbspubliccomments@nebraska.gov, call the Division of Medicaid and Long-Term Care at (402)471-9147, call the Division of Developmental Disabilities at (402) 471-6038. Regarding application of Home and Community-Based Services (HCBS) qualities to residential facilities specializing in care of persons with dementia, these individuals have the same rights to autonomy and choice as other individuals who do not have dementia. Most individuals in dementia care units or facilities, because of advancing dementia or other issues, need to access the community with the help of an escort, such as family, friends or staff to assure safety. If an individual is not able to access the community by themselves, the reason for the restriction must be documented and supported in the individual's person-centered plan. Individual restrictions should be revisited regularly and based upon the individual's needs to assure they remain appropriate.	Yes	The updated plan content and format addresses questions in this comment.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
				State Plan, the new rules would be counterproductive. I did note that under the heading of Nebraska Health and Human Services Resources is "Listing of all residential settings that meet at least one of the 'not likely' community criteria". I interpret this to mean that a list of facilities that may not be eligible for HCBS Waiver reimbursement has been developed. If that assumption is correct, I recommend that the list be made available to the public so that there is clearer understanding of the impact of the proposed rules. Aged and Disabled and Traumatic Brain Injury – Page 12-13 of 70 6. Identification Community Integration All I recommend taking a closer look at the Start and Completion Dates. Many of the action steps had a six-month range for completion. As I look at the action steps there seems to be a logical sequence for performance. Setting sequential completion dates would aid in managing the process and in providing a clearer understanding to the public about how the transition process will work. 7. Analysis Community Integration Distinguish "likely not" community… While the matrix provides a comprehensive overview of the action items, I did have difficulty distinguishing things that are considered Identification from those that are considered Analysis. It is my understanding that this action steps related to Analysis represent the application of the criteria developed in the Identification section. And I assume that the next action step following Analysis would require the development of a process through which a provider that does not meet the criteria can achieve compliance. But these assumptions are called into question when I look at the start and completion dates and see that the Analysis precedes the Identification, which would mean that, if my assumptions were correct, the criteria would be applied before they are developed. It would be helpful to clarify the intent of the actions steps as they relate to the process of developing a list of residential facilities that are not in compliance with the new rules. General Comment 8. Performance Metrics There are action steps related to development of performance measures throughout the plan. It is essential to be able to measure progress. But the development of some measures seems to be sequenced late in the process. I recommend that the performance metrics be developed as early in the planning process as possible and be revisited often. What we measure is often what we get. Attention to the development of the right performance measures is essential.			
16	10/8/2014	Mail	A&D/TBI	In response to your letter asking for comments for individuals who receive waiver services. I'm a single female of 70 years. I receive several of your services. These services are a tremendous help in enabling me to remain in my own home and maintain a level of independence. I'm on oxygen 24/7. A-Fib heart condition and COPD. I am missing a left hand (birth defect) and I spent nearly 3 months in the hospital. With a class of C-Diff which greatly weekend my immune system; also my physical capabilities. I take a variety of daily medications. Chore services helps me to maintain a clean and healthy living environment. Also to any assistance with bathing and cooking. Midland aging has been a Good send. Helping out with home repairs and variances changes to help me with devices for bath room safety. and safety home entrance etc. The staff I have contact with are awesome. Kind, patient, helpful, caring. They show genuine care; concern for my health & safety. I appreciate all they do to help me retain as much dignity and independence as is possible in my condition. I have nothing but positive comments concerning "HCBS services".	Thank you for your comments.	No	This comment expresses support of HCBS services in received in an individual home setting, rather than thoughts regarding plan content.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
17	10/9/2014	Mail		I would like to submit the following comments on behalf of the Nebraska Planning council on Developmental Disabilities on the "Transition Plan to Implement the settings Requirements for the Home and Community based Services Adopted by CMS on March 17, 20014 for Nevraska's Home and Community-based Waivers." We appreciate the opportunity to comment on the plan and acknowledge the work that went into its development. The follow are offered for your consideration: The plan may be improved and made more user friendly for self-advocates, families, and others by expanding the section titled Nebraska's' Transition Plan to include more detail about the outreach, identification, analysis, and remediation activities and the overall process. The impact and final outcomes of these could be described for those who find the matrix format overwhelming or too difficult to follow. It does not need to be lengthy, nut the document would benefit from a more detailed explanation of what is planned during the transition. • We commend the Division of Medicaid and Long Term Care for including stakeholder advisory council, and the Quality Council in the identification and analysis tasks proposed. The inclusion of the individuals from outside the Department in these tasks insures meaningful input early in the process. • In contrast we could not see that the Developmental Disabilities Division had involved any external group in the identification and analysis other than as resources in gathering the survey data. We encourage them to consider adding groups like their own Developmental Disabilities Advisory Committee or the Nebraska Planning Council on the Developmental Disabilities as partners in both the identification and analysis tasks. These groups could assist then with not only the task of identifying rules and regulation, setting s etc., but also with the analysis of what may need to be revised to meet the new regulations. • The Nebraska Planning Council on Developmental Disabilities is pleased to see that we are included in the matrix as a resource under both outreach and remediation for the Developmental Disabilities waivers. The Council supports efforts for needed systems change. However, the Council does believe that their activities would have greater impact if they were coordinated with the Developmental Disabilities Division during the entire process, including all four tasks. Again, we thank you for the opportunity you have given us to comment. We are looking forward to working with both Division as they implement this Transition Plan to encourage true integration for individuals on Home and Community-based Services waivers in Nebraska.	The updated plan addresses comments and suggested about user-friendly information. It is agreed that external stakeholder group input and involvement is important and that activities of the Nebraska Planning Council and the Division of Developmental Disabilities are most effective when coordinated. The Division of Developmental Disabilities has implemented a monthly stakeholder meeting. Information about additional stakeholder engagement is included in the updated plan.	Yes	The updated plan content and format addresses recommendations about the plan's user friendliness and stakeholder engagement.
18	10/14/2014	Email	DD Waiver	Thank you for giving us an opportunity for comments on the DHHS's proposed plans regarding home and community based services. Home and Community based services were designed to respect and appreciate each person's individual abilities in the context of their specific aspirations and unique circumstances. It's role is to support people in the appropriate atmosphere where self-expression, self-understanding and personal growth can flourish. Each individual is to be encouraged to participate in the design of a personal plan that would help them achieve their goals. Objectives are to be determined by the individual and his/her support team, and are to be reviewed and updated periodically. Our tax dollars are dedicated to providing services to accommodate each individual to the fullest extent possible. For our son, this perfect environment has been found with a portion of his hours each day being spent in his care provider's home. Adam is a 24 year old young man with Down Syndrome. He resides with his us, his biological parents. He is the third child of five, with one younger sibling still living in the home. The long term placement for Adam is that he will reside with us until that is no longer possible. At that time, he will live with one of his siblings. Arrangements have been made for his care. Adam's speech is limited to one to two word utterances, which make him difficult for the general public to understand. He has limited fine motor skills in his fingers. He has received many years of occupational therapy and still has difficulty with pinching, handwriting, and grasping. Adam is not toilet trained. He continues to wear men's diapers and requires changing for urination and bowel movements. Adam has had a full-time job coach at the Super 8 Motel in Alma, NE, where he vacuumed and took out the trash. This job site did not remain permanent because he required very close supervision, he had difficulties staying on task and completing his jobs. He is not able to complete more than 10-15 minutes continuous vacuuming. He required hand over hand assistance to complete tasks. He has also had a full-time job coach assisting him at the Agri Coop Hardware. At this business, he faced the shelves. This also required hand over hand assistance and was not sustainable employment. Adam is active in his local community through his parents' involvement. He attends church. At church, he participates as an usher where he helps collect offering. Adam has tapped the drums or tambourine during the church service. He will sing or play the drum with his family when they travel to different churches to perform at church services and other musical events. Adam goes bowling weekly with a group of other developmentally disabled peers of all ages. Adam has been receiving services from Julie Ott for two years. A portion of these services have been provided in the Ott home. Adam is able to receive one-on-one care and attention. Julie is a trained teacher. Adam is able to learn the trade of gardening on the Ott's vegetable farm. This trade has the biggest long term employment potential for Adam. Most importantly, for the first time in Adam's life, he has a normally developed peer as a friend and role model. The Ott's	DHHS Divisions of Medicaid and Long-Term Care and Developmental Disabilities agree with your expressed philosophy about the design of home and community-based revises and importance of personal plans to help achieve individual goals. Thank you for sharing your son's story and goals, which reflect a great deal of effort and care. Comments regarding the individual service plan were forwarded to the assigned services coordinator.	No	The comment was not related to the contents of the State Transition Plan, but related to the individual's use of CLDS services.

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				youngest child, who is 17 years old, interacts with Adam. He is teaching Adam how to interact appropriately. Adam's language has grown because he has a normally developed peer that talks to him. Adam uses one to two word utterances. It is important to increase the words that Adam uses in his vocabulary. The Ott's youngest child has been a role model for Adam when Adam is in public. Adam wants to model his behavior after his friend. Following are HIS and OUR (his parents and legal guardians) goals for him, and how these goals are being met in the Ott's home and in the community: Goal: Physical Activity to Maintain Health Agenda: Twice a week Adam will go to the YMCA of Holdrege to swim, lift weights, play basketball and walk. Daily he will participate in yard work (sweeping, raking, picking up sticks, shoveling snow, blowing leaves) He will swim, under adult supervision, during warm weather at the Ott home. Adam will participate in sports with the Ott's children, under adult supervision. Goal: Work Skills to Prepare Adam for future Employment Possibilities Agenda: Adam will learn to increase his time on-task by doing the following activities and increasing his daily time: sweeping inside and out and vacuuming. Our goal is that Adam will learn gardening so that he can have his own garden and sell his produce at the weekly Farmer's Market in his home town. The Ott's teach him how to plant the seeds, water the plants, weeding and harvesting the produce. They have a variety of produce in their garden. This will allow him to learn and get hands on experience. Adam already has strengths in technology skills. He enjoys taking videos and pictures with cameras and phones. The Otts are working with him on building his videography capabilities. We hope that this will allow him to assist the local school district in videoing sports activities. Adam has assisted with baseball, basketball and football games since he was seven years old. He has been an assistant student manager for all these athletic events. He continues this role in his local school. His responsibilities include getting out the equipment and sitting on the sideline with the team. Adam has volunteered at the local theater by picking up trash and vacuuming following the movie. The local theater board will be contacted to inquire if this can be a scheduled volunteer opportunity. All positions at the local theater are voluntary. Goal: Improving Daily Living Skills Agenda: Adam will work on toilet training; both urination and bowel movements. He will also work on personal hygiene – (instructions from Julie and opportunities to practice) Activities will include: bathing himself, grooming, and brushing his teeth. Adam will prepare light meals with close supervision and assistance. He will engage in shopping trips for groceries or personal items where he will learn making wise choices, money management, and learning how to pay. Adam will practice bringing the items home and learning how/where to put them away. He will practice setting the table, clearing the table, and stacking the dishwasher. Adam will practice time management skills by writing on his calendar upcoming events and preparing for them. Ott's have Adam keep a weekly calendar. Adam practices his handwriting everyday by copying simple sentences in his own handwriting book by the Ott's. This daily practice keeps his handwriting legible and works on his fine motor skills. Goal: Recreational Skills to Prepare Adam for Appropriate Socializing and Emotional Health Agenda: Adam will attend the YMCA twice a week. Adam will attend church every Sunday where he participates as an usher, collects offering, and participates in musical			

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
19	10/15/2014	Email	A&D/TBI	Subject: NHCA Comments on Nebraska's HCBS Transition Plan Thank you for the opportunity to comment on the draft Medicaid Home and Community-Based Services (HCBS) Transition plan developed by the Nebraska Department of Health and Human Services (DHHS). The Nebraska Health Care Association (NHCA) understands this transition plan describes the process by which Nebraska will ensure services included in its HCBS waivers meet the community-like expectations set forth by the Center for Medicare and Medicaid Services (CMS). NHCA is a not-for-profit trade association representing more than 500 skilled nursing facilities, assisted living facilities, and hospice agencies that provide a continuum of long-term care services to more than 20,000 Nebraskans each day. It appears Nebraska was visionary in its development of assisted living. Over the years, stakeholder commitment to a social model of service delivery means Nebraska's assisted living facilities continue to be structured around consumer choice and autonomy. The rights of assisted living residents are set forth in regulation and include their right to "self-direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions about care and treatment." [175 NAC 4-006.04] NHCA respectfully offers the attached suggested changes to the Aged and Disabled Medicaid Waiver regulations [480 NAC5] and the following recommendations: 1) NHCA recommends DHHS not preemptively conclude the following types of facilities and services are "not HCBS," based solely on their physical location NHCA does not believe the facilities and services in this category can automatically be assumed to isolate individuals from the broader community. In fact, they serve a critical function in meeting the needs of Nebraska's consumers. NHCA respectfully suggests that it would not be appropriate to determine an entire category of settings is not in compliance with the new HCBS rule without individual analysis. The federal regulations repeatedly emphasize a true HCBS setting is one that offers consumers opportunities for community engagement and choice, helps ensure they are treated with dignity and respect, and protects their privacy and autonomy. NHCA concurs with CMS that these aspects are of far more importance to consumers than the physical location of the place they have chosen as their home. a. Facilities and services immediately adjacent to or on the grounds of a public inpatient facility DHHS supported the development of these home and community-based facilities and services in rural communities a number of years ago by offering financial incentives for the establishment of alternatives to nursing facility care. As a result, Nebraska has several small city or county-owned assisted living facilities that were created in response to consumer demand and effectively increased the supply of community-based services for rural consumers. Often these settings are located within a residential neighborhood or adjacent to a school or church, which helps facilitate the active integration of residents into community activities. If these services were eliminated, it would force older Nebraskans to travel or move many miles from their hometowns in order to receive the services they need.	Physical location alone will not be the determining factor in whether a setting has the Home and Community Based Services (HCBS) qualities defined by the Centers for Medicare and Medicaid Services (CMS). This determination will be made based upon site-specific assessment results, review of provider-level transition plans. In addition, for settings matching CMS criteria for requiring heightened scrutiny, the determination will also be based upon an evidence package presented to CMS by the state. The evidence package will include information submitted by the provider, input from the public and other information the State may provide demonstrating that the setting meets the qualities for being home and community-based and does not have the qualities of an institution. CMS has defined the criteria for settings which require heightened scrutiny, and the State does not have flexibility to alter these criteria. For settings meeting CMS criteria for heightened scrutiny, CMS makes the determination regarding whether settings possess HCBS qualities. For settings not meeting CMS criteria for heightened scrutiny, the State makes the determination regarding whether settings possess HCBS qualities. Settings meeting an of the following criteria must be subject to the heightened scrutiny process: 1) in a publicly or privately-owned facility that provides inpatient institutional treatment; 2) on the grounds of, or immediately adjacent to, a public institution; or that have the effect isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS. The State intends to support providers subject to heightened scrutiny through the process. Please see the response to comment #15 above regarding residential facilities specializing in care of persons with dementia.	No	The HCBS final rule establishes qualities required for HCBS settings and the criteria for settings subject to heightened scrutiny. The State must abide by this federal regulation.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
				b. Specialized facilities and services located on grounds of a privately-operated inpatient facility DHHS supported the development of inpatient and home and community-based facilities and services to meet a specific consumer need for specialized traumatic brain injury (TBI) services. The co-location of the continuum of TBI services allows consumers easy access to the professional staff and the specialized services they need and helps them gain the skills necessary to transition to the broader community. The co-location also means consumers can easily and quickly move between levels of care as their needs change or in the event of an emergency. c. Secure facilities and services As the incidence of Alzheimer's disease and other dementia continues to increase, there is an increasing need for a continuum of long-term care services to meet varying consumer needs. There are times when a consumer with a mild cognitive impairment can be safely served in an unsecure assisted living facility, with a minimal amount of assistance. More often the individual requires a secure living area to ensure their safety, so they do not endanger their health or well-being during those times when they experience confusion. Without the ability to provide a secure perimeter to a memory care unit, facilities would not be able to safely admit or retain residents at risk for wandering or who are physically healthy and mobile, but lack the cognitive ability to know when they are in danger. d. Multiple facilities co-located and operationally related For the same reasons outlined above, these facilities should not automatically be assumed to not be HCBS based solely on their co-location. Often these co-located facilities offer more opportunities for consumers to engage with the broader communities because of their access to additional transportation, staff and financial resources. In Nebraska, these co-located facilities can also include independent housing, which again enhances the opportunities for interaction with the broader community. These co-located facilities also offer an option for spouses to remain in close proximity, should they need different levels of care. 2) NHCA recommends DHHS offer stakeholders opportunities for collaborative involvement throughout the transition process and assist providers to comply with the new rules NHCA recommends DHHS create a small, streamlined and focused workgroup, which could be quickly assembled and composed of assisted living representatives, Medicaid Waiver policy staff, and resource developers to work on very specific tasks, such as development of (1) an assisted living facility self-survey, (2) HCBS requirement assessment tool, (3) educational resources, and (4) technical assistance and informal appeal processes to help facilities comply with the new rules. A self-survey could serve as an educational tool for providers. Providing robust technical assistance would help facilities identify possible changes they could implement prior to the assessment process. It would also be helpful to establish an informal appeal process for providers who disagree with a "non-HCBS" determination to submit additional information demonstrating their compliance. Additionally, a workable timeline is crucial to allow providers time to make changes, if necessary, and allow consumers to remain in their home. 3) NHCA recommends DHHS establish a process to allow Medicaid Waiver participants who choose to continue to reside in an assisted living facility that is determined to no longer meet HCBS criteria to be grandfathered in their current setting during the five-year transition period NHCA recommends DHHS consider this option as a way to allow consumers to remain in their current assisted living facility if their individual conditions indicate moving from the current setting would reasonably pose a risk to their physical or psychological well-being. This would be a way to prevent or lessen the negative impact a sudden involuntary move can have on vulnerable consumers, most often referred to as "transfer trauma" or "relocation stress." Addendum The attached Addendum includes NHCA's suggested changes to the Aged and Disabled Medicaid Waiver regulations, which would incorporate the consumer's individualized Plan of Services and Supports into the consumer's Resident Service Agreement, as an Addendum, and ensure copies are provided to each involved party. The suggested changes would also incorporate the new HCBS requirements into Nebraska's Aged and Disabled Medicaid Waiver regulations and reference the rights of assisted living residents already protected under Nebraska's licensure regulations, which are very similar to those identified in the new federal regulations. [42 CFR 441.301(c)(4)]	The Divisions of Medicaid and Long-Term Care (M-LTC) and Developmental Disabilities (DD) will make available technical assistance resources and continue to engage providers and provider associations throughout the transition process. The Nebraska Department of Health and Human Services (DHHS) may not establish a process to allow Medicaid Waiver participants who choose to continue to reside in an assisted living facility that is determined unable to comply with HCBS final rule requirements by March 2019. Medicaid waiver funds may not be used to pay for waiver services in not yet meeting HCBS characteristics settings after March 2019. The State Transition Plan includes a process for relocating individuals to alternate compliant settings.		
20	10/15/2014	Mail	A&D/TBI	I received notice by my social worker, Amit Theis that I am to express my views on the Waiver Services. I have been a resident of the Assisted living at Midwest Conenant Home in Stromsburg for hour plus years now. I am very appreciative of their services. If it wasn't for that I could not afford to be here and receive the wonder case I am getting. Thank you	Thank you for your comments.	No	This comment offered support of Home and Community Based Services (HCBS)received in an specific setting, rather than a comment regarding plan

Appendix A
HCBS State Transition Plan
Public Comments

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
21	10/15/2014	Email	DD Waiver	This past weekend October 10th-12th of 2014, People First of Nebraska had their annual conference in Kearney. One of the breakout sessions for the conference focused on the impending changes to Home and Community Based Services that will impact all waivers the state of Nebraska has under Medicaid. This breakout session included examining how existing services are delivered. Pasted below is a chart developed to reflect the comments from the people in attendance. Group Home - 12, Extended Family Home-10, Assisted Living - 6, Own Home - 9, Living with Parents/Family - 0, Team Support: 1 No 3 Yes, Choice of Roomate 2 No 0 Yes, Able to Decorate Room 1 No 20 Yes, Visitors Anytime 9 No 3 yes, Key to Your Room 0 No 28 Yes, Key to your house 0 No 0 Yes, Food of Your Choice 0 No 18 Yes 13, Access to Food 18 No 13 Yes Do you live in an inclusive community with people with disabilities 2 No 8 Yes, Do you have a housing lease and other legal documents? 9 No 10 Yes. Had a lease only for the first year living in the apartment, then became a month to month tenant. Also one person stated that there is a lack of transportation and that hinders a lot of his lifestyle choices. Support staff are verbally abusive and sometimes it is perceived that the abuse is directed towards the person. Individual rents a room from another individual who does own the home. The renter is required by the owner to provide 24 hour notice prior to having any visitors. I am just forwarding these. Based on the conversations and comments from this breakout session at the convention, it becomes clear that the state needs to be certain to incorporate the voice of individuals receiving services into the transition planning, implementation and into the quality improvement process to insure optimal quality, oversight and transparency. If we rely only on providers and staff (serving individuals and DHHS staff) to report, evaluate and provide oversight, we miss out on hearing directly from the individual receiving the services. We would encourage DHHS to work with the disability community to educate Nebraskans about what Home and Community Based Services are, how they are being changed under the new HCBS rule and also prior to any waiver amendment or renewal. Individuals receiving services and organizations supporting them know where there are gaps and barriers. We need to work together to improve and eliminate these and make certain that our system incorporates choice, participation, and independence into all aspects of home and community based services. Thank you for allowing us to provide comments on this very important issue. Home and Community Based Services are an integral part of community access.	It is agreed that the voices of individuals receiving services provide important input for transition planning, implementation and quality improvement processes. It is also agreed that working together to improve the service delivery system supports choice, participation and independence in Home and Community-Based Services (HCBS). The State Transition Plan (STP) includes continued engagement of stakeholders, including People First Nebraska, throughout the transition period. throughout the transition period. The HCBS State Transition website will be updated throughout the transition period with additional opportunities for education.	No	The plan has added narrative to make emphasize and stakeholder engagement activities more apparent; however, the initial plan did include these activities.

Appendix A
HCBS State Transition Plan
Public Comments

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
22	10/15/2014	Email	All Waivers	RE: Nebraska's Draft Transition Plan for Home & Community Based Services The Nebraska HCBS Coalition is composed of a broad and diverse group of stakeholders representing aging, physical and developmental disabilities, traumatic brain injuries, mental health, independent living, self-advocates and other groups who are interested in Medicaid long-term services and supports within the community. The HCBS Coalition was formed as one means to address the new CMS regulations redefining HCBS but also to acknowledge the recent incorporation of the federal Aging, Independent Living and Intellectual and Developmental Disabilities offices into the Administration for Community Living. The Nebraska HCBS Coalition would like to thank the Department of Health and Human Services staff for meeting with us and for your extensive work on the Draft Transition Plan for Home and Community Based Services. We appreciate that the Department is now offering four face-to-face meetings with stakeholders in locations across the state per suggestions from advocacy agencies. We would also like to acknowledge that the Department has had to respond to many federal requirements in this process and appreciate the efforts that have been made to address these. To that end, the HCBS Coalition would like to offer our members as a resource to the Department as we would like to have involvement as the Department works to support these processes, for example identifying and creating plans to address settings and procedures found out of compliance with the Center for Medicare and Medicaid's new rules and the quality improvement process. In addition, we propose the following considerations related to the state's HCBS transition plan: • Provide the final transition plan written in a more easy to understand format including a summary narrative for each Waiver. In addition, alternative formats need to be provided such as in braille or an audio recording insuring true stakeholder engagement. • Provide additional details in the final plan on the settings that the Department currently believes does not fit the new regulations for home and community based settings in the final plan. • Hold public hearings to detail the settings, processes and providers that need heightened scrutiny. Take public comments for 30 days and provide the methods that the state will be undertaking to assist these providers/settings to come into compliance. • Replace the language "community-like" with "home and community based" (making the document more consistent with CMS' language) in the final transition plan submission to CMS. Using consistent language helps to set high expectations and insures that the next administration will use the same language for interpretation. • Identify and detail the personnel, methods and processes currently in place for the "quality improvement process" in the final transition plan. The quality improvement process needs to have conflict-free, on-site evaluation with transparency and process in place so that individuals in services and staff know the process to report concerns. • Incorporate the HCBS Coalition into the quality improvement process and adopt the National Core Indicators to access the outcomes of services to individuals and families. • Post all stakeholder comments on Nebraska DHHS' website on the same page as HCBS Transition Plan. • As a standard practice moving forward, post upcoming waiver amendments and/or renewal applications on the same page on the HCBS Transition Plan website; assuring optimal transparency and acknowledging stakeholder input is vital to the successful implementation of these processes. • Identify and notify key advocacy organizations, for example via the HCBS coalition membership, regarding waiver renewal applications or amendments; this is equally critical to a transparent and efficient process. Again, we greatly appreciate the Department's significant work on this draft plan and would like to again state that the HCBS Coalition's members stand ready to serve as a resource to you through this process. Please contact Kathy Hoell, Executive Director of the Nebraska Statewide Independent Living Council (NE SILC) with future communications and she will forward these to the HCBS Coalition members.	The updated plan is provided in a more easy to understand format and, per the Centers for Medicare and Medicaid Services (CMS) guidelines, includes a process for obtaining public input regarding settings subject to heightened scrutiny. The updated plan includes language consistent with CMS terminology. The updated plan details Nerbaska's approach to site assessment and identifies verification and monitoring tools for the transition process. This includes use of an updated Participant Experience Survey including common questions across Divisions and questions to assess the individual's experience of service setting. The Divisions of Medicaid and Long-Term Care (M-LTC) and Developmental Disabilities (DD) are evaluating the National Core Indicators to assess individual experience for the longer term. It is the plan that stakeholder comments, waiver amendments and renewal applications are to be posted with links to upcoming waiver amendments and/or renewal applications on the same page as the Home and Community Based Services (HCBS) Transition plan.	Yes	The updated plan content and format addresses questions in this comment.

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23	10/15/2015	Email	All	Disability Rights Nebraska is the designated Protection and Advocacy organization for people with disabilities in Nebraska. We appreciate this opportunity to comment on the proposed transition plan for home and community-based waivers in Nebraska. It is difficult to gather a clear conceptualization of how the state plans to proceed to accomplish transition. The format of the Nebraska plan is not easy to read and it is difficult to gain a full understanding of the transition process or goals. California and Oregon, for example, have produced 12-page and 14-page transition plans, respectively, that describe their plans in a narrative format. Nebraska's plan is simply a 70-page spreadsheet work plan. Reading the matrix, while helpful for department staff when deciding what tasks will be assigned to achieve a set of benchmarks, is not "user-friendly" when trying to help the public, service recipients, or stakeholders to understand what the goals are and how Nebraska plans to accomplish those goals. The overall goals of the federal regulations are known as are the minute details of tasks, schedule, and actors involved in the matrix, but what is missing is a narrative description of how the details create the path to transition. Furthermore, in the September 5, 2014 "Statewide Transition Plan Toolkit for Alignment with the Home and Community-Based Services (HCBS) Final Regulation's Setting Requirements", CMS has stated1 (emphasis added): "What does CMS expect to see in a Statewide Transition Plan? Presence of the following items will facilitate CMS review of the states' submitted plans: • A detailed description of the state's assessment of compliance with the home and community-based settings requirements and a statement of the outcome of that assessment. A detailed description of the remedial actions the state will use to assure full compliance with the home and community-based settings requirements, including timelines, milestones and monitoring process. • When relocation of beneficiaries is part of the state's remedial strategy, the Statewide Transition Plan should include: o An assurance that the state will provide reasonable notice to beneficiaries and due process to these individuals; o A description of the timeline for the relocation process; o The number of beneficiaries impacted; and o A description of the state's process to assure that beneficiaries, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice of an alternate setting that aligns, or will align, with the regulation, and that critical services/supports are in place in advance of the individual's transition." We do not believe there is enough explanation or description in the proposed transition plan for Nebraska. The lack of description will have a direct impact on how well the public, service recipients (and their families), stakeholders, and perhaps key staff (such as service coordinators) understand the new federal rule and how to apply the rule to individual situations. The proposed transition plan includes data and performance metrics, for example page 2 of the TBI waiver matrix (page 30 of 70 of the comprehensive draft transition plan), but there is scant description about what data will be collected (or how it will be collected) and little identified public, recipient (and family), or other stakeholder input into the types of data the state will collect. Educating the public, and especially those individuals receiving services, about the new federal regulations is critical to achieve the goals set forth by the regulations, to ensure accountability, and to receive high quality public and stakeholder input. Public	The updated plan format is intended to provide information addressing what The Centers for Medicare and Medicaid Services (CMS) and stakeholders expect to see. Additional comments regarding the updated plan format are welcome.	Yes	The updated plan content and format addresses questions in this comment.

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				and stakeholder input has been recognized as an integral part of making the new regulations effective and accountable. However, the paucity of description will have a direct impact on the quantity and quality of public, stakeholder, and service recipient (and family) input. It is our belief that not enough attention has been paid to educating stakeholders, providers, and service recipients (and families) about the nature of the new federal rule (let alone the transition plan), how it will impact service recipients and providers, and the process by which the rule will be implemented (e.g., facility assessment process and appeals, who is performing assessments, data collection, etc.). Stakeholders have basically been forced to educate themselves. This has been compounded by multiple versions of the proposed rule creating confusion among stakeholders. Additionally, the proposed transition plan mentions stakeholder engagement and public/stakeholder outreach, but there is little description regarding how this will be achieved and what opportunities will be available for input regarding segments of the transition plan implementation. We would suggest that the transition plan include and clarify more opportunities (at all stages) for the relevant state departments to reach out and educate providers, service recipients and families if applicable or appropriate, advocacy groups or stakeholders and the public about the transition plan; the pertinent federal regulations regarding any particular waiver; what initiatives are planned to implement the transition; how the public, service recipients (and family), and other stakeholders can participate and support the transition process; and how far the state is along in meeting its benchmarks. We note that in Oregon's transition plan2, attention is directed at educating all relevant stakeholders. Pages 6-8 of the Oregon plan describe activities the state will perform to educate individuals and families, service providers, and service delivery staff (e.g., case managers, service coordinators, etc.) independently about the requirements of the new rule and person-centered planning. The Oregon plan also describes the planned development and dissemination of educational materials for and to each of these groups. Nebraska's proposed transition matrix lacks clarity in this regard. Since much of the responsibility for compliance monitoring will fall upon service coordinators (especially when assessing continuous compliance), it is imperative that the proposed transition plan include a description of educational activities for key system staff. Additionally, we feel the transition plan would benefit from some definitional clarification. For example, what is the meaning of "privacy"? How is that measured and assessed, using what criteria? Lack of definition can lead to erroneous assessments and unaccountability. The transition plan does not provide much context to the work plan matrix. In particular, the Transition Plan Addendum's explanation of the major requirements of home and community-based settings of the Aged and Disabled Waiver (A&D Waiver) and the Traumatic Brain Injury Waiver (see pp. 26-28 of 70 in the draft plan) overly simplifies some of (and omits others) the final rule's criteria on residential settings deemed community-based3. We are also submitting a copy of the final rule's description of what defines a setting as community-based with these comments. It is much more specific and comprehensive than what is described in the Transition Plan Addendum for the A&D waiver and Traumatic Brain Injury Waiver. The proposed transition plan recognizes there will be settings which will be presumed not to meet the new federal rule			

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				standards. The proposed transition plan indicates the preferred course is to submit evidence to CMS for the "heightened scrutiny" process, rather than work collaboratively to change these settings so that they can be in compliance. Nebraska should identify these settings specifically, conduct site visits to the settings and include assessment input from people who live, work, and receive services in those settings. It is unclear from reading the matrix how assessments of certain requirements (e.g., location adjacent to an institution, provider compliance) will be handled and by whom. We would suggest that there be independent compliance monitoring of facilities under the auspices of the new federal rule. This independent monitoring should utilize the input of providers, service recipients and family members, and other stakeholders to ensure that there is an accurate and accountable assessment of facility and service provider compliance. Service coordinators will be mainly responsible for ongoing compliance monitoring, which only serves to strengthen the need to educate staff about compliance requirements under the federal rule. The high turnover rate for service coordinators makes continuous education imperative. We would also suggest that Nebraska include in the transition plan opportunities to train families, individuals, advocacy organizations and staff working in community programs in values-based philosophy. The federal rule and values-based philosophy are congruent. We feel this opportunity would provide educational values and strengthen understanding of the purpose of the new rules. We suggest that a place to incorporate a values-based orientation is the training and other practices identified on page 18 of the Comprehensive Matrix: "Routinely review and revise Service Coordination hiring tools, orientation, training curriculum, monitoring tools and other supports to ensure a continued focus on person centered practices, recognition of and advocacy for individual rights, and ensuring that all individuals are supported in the most integrated settings possible". A values-based orientation reinforces the stated outcomes of the routine review above: "Service coordinators have the skills and tools to facilitate planning that reflects individual needs and preferences and conduct plan monitoring to ensure individual rights, optimize independence, facilitate choice and maximize opportunities to access community and receive services in the most integrated setting". Disability Rights Nebraska has developed programs to provide values-based education and training. We would be happy to discuss opportunities to work with appropriate agencies to incorporate a values-based training into the review and orientation process noted above. The new federal regulations have created an opportunity to realize a cultural shift in the way home and community services are provided in Nebraska. The new federal regulations are a step in the right direction and we are willing to collaborate, in the capacity that we can, to help advance a better way for Nebraskans with disabilities.			

Appendix A
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24	10/15/2014	Email	All	I would like to thank you all for your hard work in preparing the State for this transition process. As an employee of a waiver service provider in the State of Nebraska, I appreciate the goals of CMS to ensure that individuals receiving waiver services are receiving those services in a non-restrictive, community setting. My comment pertains to what is considered a community setting. I just wanted to say that I appreciate the fact that, as you say on your Transition web page: "In response to comments received during the rule making process, CMS moved away from defining these settings based on specific characteristics. The final rule requires that "community-like" settings be defined by the nature and quality of the experiences of the individual receiving services and applies to both residential and day services settings." I fully support this shift from looking only at the physical characteristics of a facility or environment to instead evaluating the nature and quality of experience of the individual who is receiving services. Some of our most specialized and most sought after waiver services (the TBI waiver for example) are provided in settings that may not reside strictly in a traditional neighborhood community; however the TBI waiver provides an invaluable resource to our State. If we have providers who are meeting a clear need, who are making every effort to ensure the privacy and independence of their clients, and who have happy and satisfied clients and families, I can't see how it could be in anyone's best interest to consider removing those settings as waiver options when our State already struggles at times to provide enough appropriate housing and support for individuals with disabilities.	The updated plan format is intended to provide information addressing what the Centers for Medicare and Medicaid Services (CMS) and stakeholders expect to see. Additional comments regarding the updated plan format are welcome.	No	The comment expressed appreciation for the goals of the HCBS final rule settings requirements, rather than thoughts regarding plan content.
25	10/15/2014	Email	UNK	A good clean beautiful home like place I think would be very effective in in the critical state of recovery. And I would also like to see them put in washers and dryers do it yourself laundry. And on weekends make brownies. And a Place to go outside. I'm one if I don't get out to the country side once in a while I don't do so well. My mom noticed something in my voice and asked, Do we need to go somewhere? I asked what do you mean? Well the country side. I would not expect to be driven to the country side but just to help you understand that the outdoor time is important to me too. And doctors not evaluating people on Sunday's a religious holy day Sabithday unless the behavior is to odd to ignore. It doesn't add to the terror a person goes through as they recover. So basically I love and agree to a more homelike setting I think you have a good plan.	Thank you for your comments. Comments regarding the individual service plan were forwarded to the assigned services coordinator.	No	The comment is support of HCBS final rule requirements rather than thoughts regarding plan content.
26	10/7/2014	Public Meeting	UNK	My name is Mary Angus I represent Adapt Nebraska and my first comment is and it may be my only comment that we cannot comment on a plan for a plan. We cannot provide intelligent comments on a plan we have not seen. It's a matrix. In fact it has not been written make comments on a plan that has not been written. We cannot comment on a nonexistent plan.	The updated plan offered for public comment includes a narrative format rather than the matrix format.	Yes	The updated plan is presented in a more user-friendly format.
27	10/7/2014	Public Meeting	A&D/TBI	Hi Julie Kaminski leading age Nebraska and I guess I have several comments and my hope would be they would help craft the plan so the fact we don't have a plan isn't as concerning to me. As hopefully the comments we share can be used as you craft the plan. You mentioned that you think Nebraska is different from any other state so I think being able to take into account some of those unique pieces and one of them would be memory care units and it's going to be very challenging for memory care in the assisted living setting to have those locked doors and the resident to have a key. So that is one of our concerns I think as you craft the plan to address that. A couple other pieces are how you're going to define community integration and full access to the greater community. So those are very specific in CMS's requirements and I guess we would like greater clarification around that as to how an assisted living meets that criteria. You know I know that many of them will bring individuals into the assisted living setting and you know how are you going to define that I guess would be helpful. Another piece would be the land lord tenant laws and how those will integrate with the existing discharge and grievance processed that are in the assisted living regulations because I believe that's a piece of the CMS ruling is the land lord tenant laws. So knowing how those are going to mesh together would be helpful as you create that plan. Umm…Seems like there was one more. Choice of roommate, that's another piece especially in the memory care units. We always try to give that piece but I think especially in the memory care units choose of roommate might be one and then many of our rural members their assisted living is connected to the nursing home and I know when they defined those residential settings they said they can't share activity space and they can't share dining space and unfortunately there are some small rural assisted living locations that is the case so I think keeping those things in mind while you create the plan. I think that's it.	Please see the response to comment #15 regarding application of Home and Community-Based Services (HCBS) qualities to residential facilities specializing in care of persons with dementia. For more information on how HCBS qualities may be operationalized in assisted living (and other residential) settings, please refer to the Centers for Medicare and Medicaid Services' (CMS) document, Exploratory Questions to Assist States in Assessment of Residential Settings (https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-re-settings-characteristics.pdf). The updated plan includes updates to Nebraska Administrative Code (NAC)to address requirements that HCBS units or dwellings are owned, rented, or occupied under a legally enforceable agreement. This will include consideration of discharge and grievance regulations.	No	The requirements for settings in the plan follow CMS requirements, and while more clearly explained in the updated plan, the requirements for settings are unchanged.

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28	10/7/2014	Public Meeting	A&D/TBI	I am Kate with Research and Development with the Eastern Nebraska Office on Aging and my comment is when it talks about resident participation for the informal activities in the communities going shopping, church, or lunch and friends are the facilities going to be expected to pay for this transportation for these other activities that they are going to because it can be a challenge already with them providing the required medical transportation. That would be a real concern to me also and that that would be taken care of. Thank you.	Please see the response to comment #10.	No	This comment was a request for clarification regarding responsibilities of assisted living providers, rather than a comment regarding plan content.
29	10/7/2014	Public Meeting	All	Janelle Cox with the Eastern Nebraska Office on Aging, aged waiver. I wanted to expand a little bit on what Julie brought up about community integration and I think another piece we need to keep in mind especially in assisted living is that we do have family and informal supports that are there to provide that community integration piece typically those things happen on the weekend where residents aren't going to want to participate in activities throughout the week. They rest. They save their energy for family time during the weekend and get that community integration piece which you know in the assisted living and the documentation that may not always be noted where a resident is going and how they are spending their time with their informal supports so we want to make sure we keep that in mind. With the memory care units and the assisted living units I feel very strongly that we need to advocate for that in Nebraska. In working with folks with dementia in seeing the difference between the nursing facility setting and the assisted living setting, those are day and night and folks that are in that early sometimes moderate state of dementia if they are placed in that nursing facility setting they want out. And we need to be able to provide safe alternatives. I believe and think that's what the waiver was set up for. And I think that in providing evidence we need to use CMS's own verbiage back to them because some of things in the very beginning of this program we were insuring folk's health, safety, and welfare and we need to be able to do that for those folks with dementia that can have a lesser restrictive environment. But we have to be able to keep them safe. Along with the choice of roommate this would be a welcome site for the aging population where sometimes the dementia units get limited because of that fact that we don't have an established relationship. I guess I see it on the flip side, I see it as a good thing for us because a lot of times folks will be able to live very in a room that maybe didn't have a long standing relationship at that point in time and we see the adverse effects when you uproot a dementia client from a familiar setting and place them somewhere else. So I think in that sense we could actually see this as a place to make some progress.	Thank you for your comments regarding activities, memory care and assisted living.	No	This comment offered support of HCBS final rule settings requirements as an opportunity for progress, rather than commenting on plan content.
30		Public Meeting	DD Waiver	My name is Michael Chittenden I am the executive director of ARC of Nebraska I serve on the Governors DD Advisory Committee. My first comment is that in concern is we had a change in venue for today and I don't feel there was adequate notice given for that. Secondly as I tried to find my way to find the building there was no signage anywhere outside of the building to show where this was to take place so people with cognitive disabilities might have a hard time finding this area. In which to give comments so we might have a very representative field of people providing comments today. As to the plan, and I use that term vaguely because I think that is the key to this plan. It's Vague. It talks about community like not community based. And if we are going to really offer services with disabilities or aged or whatever we really need to community based. Having access to community is not being in and participating in and being in the life of the community. The second comment to the plan would be like it as already put out there by some other people it's a matrix not a plan. People with cognitive disabilities would have a very hard time understanding it. I would like to think of myself as not having any cognitive disabilities, I have a hard time understanding it. So the plan needs to be more concrete. It needs to have better timelines that are currently projected they are not realistic at all. With the Plan CMS talked about being able to assess and pass heightened scrutiny. Who's doing the assessment? Where's the transparency in that? Who is being represented through that assessment process in particular people that are being served through these waivers? Are they part of the assessments and their families, and their advocates and their representatives? Where's the transparency when the assessments are done? Where are they posted? How is that information being processed and put out into the general public and how are we taking comments on a continual basis. Because any plan that is put out there needs to be constantly updated and redefined. I also have a big issue with the State of Nebraska self-policing its self-heightened scrutiny. This is a state that continually lacks an Olmstead plan and because of that there is no heightened scrutiny available that we can see. We would like heightened scrutiny to come from not only CMS but through stakeholders throughout that state. Finally antidotal evidence presented to the ARC of Nebraska, it shows that realistically currently and proposed person centered planning is not being used. It's planning to fit the services that are being offered not services that are being offered to for fill needs. I've even heard the statement "if you don't go to a day program you don't get services" and that's not appropriate. If we are going to be person centered plan those plans need to be built around the needs of the individuals and not around the services being offered. Thank you.	The updated plan format is intended to provide information in a more user-friendly and transparent format, and the plan uses the Centers for Medicare and Medicaid Services (CMS) terminology, i.e. home and community-based versus "community-like." Additional comments regarding the updated plan format are welcome. The Home and Community-Based Services (HCBS) State Transition website includes settings assessment resources and will be updated throughout the transition period. The Divisions of Medicaid and Long-Term Care (M-LTC) and Developmental Disabilities (DD) will identify a process for review of heightened scrutiny information. It is agreed that person-centered plans need to be built around the needs of individuals.	Yes	The plan format has been changed to include more narrative and the HCBS State Transition site information expanded. A milestone for identifying process and persons involved in review of heightened scrutiny settings information has been added to the plan.

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31	10/7/2014	Public Meeting		I am Janine Brooks. I usually come to these things. My daughter is 28 years and she has a primary diagnosis of autism and a secondary diagnosis of ADHD and a ??? disorder. For the last eight years under Medicaid waiver long term care and disabled, which is what she has been on since she is not eligible for DD services because her autism wasn't diagnosed before age 29 or age 18 and because she is not eligible for PASS. This is what has been offered to her. That or a recommendation by Dr. Adams to go to jail. Umm it is not person based. My person is a prisoner in her own home. She is not allowed to participate in her own treatment. She asks for certain services such as an appropriate day services, she is denied that. I believe this plan including the waiver program summary including the transition plan addendum is grossly missing a major segment of our population adults with autism. Since we do not offer an autism waiver under this program which is what our adult autistic individuals are put on if they are living in the home or married. This is what they are offered. We need to offer them options allow them access to places where they can get things like the opportunity to gain skills. The opportunity the gain cognitive skills to maybe move further on their own. Programs in Omaha currently do not offer those. I have letters I would like to submit as well as my summary comments that show why they won't take anyone with autism in these programs. I'm not saying we need an autism but I am saying we need to modify this plan to include that segment of the population.	Thank you for your comments.	No	This comment expressed request for services targeted to adults with autism, rather than plan content.
32	10/7/2014	Public Meeting	All	I have another comment. It's not in the plan but it has to do with the individuals on this plan that may have difficulties advocating for themselves. So if they don't have someone like a family member or a legal guardian overseeing their care. They are pretty much not being taken care of. I know this from others I take care. I would like to see in addition to this, is somebody these people have an option to talk to besides the case manager. Magellan has an advocate that you can all and talk to about your issues with the programs. I ask why none of the Medicaid waivers have this option. It should be something that is very clear. If you have cognitive issues it is very difficult to figure out what to start doing. I am also a representative a network of advocates in the state and I'm also the niece a in a woman in an assisted living setting. I'm not sure if she is on the A&D waiver but she is on a Pace program so I'm also reflecting that family caregiver role. And I have another one but I need to be in a memory unit (LONG PAUSE). I remember my other comment. I'm sorry. I knew what the building was and the room was. I had difficulty finding it. I live about a mile away. I had difficulty finding it and there was absolutely no signage had there been one on Sorenson. There was NOTHING. I went down to the other place. There was no signage. I live here a mile away and I could not find it. (Voice responding unable to hear)	Thank you for your comments. Individuals who have difficulty advocating for themselves may appoint an authorized representative to participate in service planning and to assist with program issues. Services coordinators are the initial point of contact for questions and concerns. If assistance is needed beyond what a services coordinator may provide, individuals may also contact program staff within the Divisions of Medicaid and Long-Term Care or Developmental Disabilities for further information. Natural supports may be developed by the service planning team and providers also may provide information to the services coordinator. Advocacy groups also may be a resource.	No	This comment posed questions about resources for individuals with difficulty advocating for themselves, rather than about plan content.
33	10/7/2014	Public Meeting		Your true stakeholders have cognitive disabilities a map is not going to help. Signs, arrows, they need directions you know you really need to think who your customer is not necessarily you advocates or other stakeholders. You really have to go to that person who is you base consumer and make sure they know. My name is Mike Chittenden and I approve this message.	Thank you for your comments and suggestions.	No	This comment offered suggestions for signs and arrows to direct individuals with cognitive disabilities to meeting locations, rather than
34	10/7/2014	Public Meeting		My name is Sara Swanson. Has the state considered using the National Core indicators for quality assessments in all the programs? They have some great survey tools for families, individuals, and providers and I see that there is like the majority of the states in the United States are using this standard. So I would consider looking into that.	The Division of Developmental Disabilities has decided to implement National Core Indicators. The Division of Medicaid and Long-Term Care will evaluate future use of National Core Indicators for Aging and Disability.	Yes	The STP includes consideration of use of National Core Indicators or another nationally-recognize survey of individual
35	10/7/2014	Public Meeting		My name is Mary Angus and I remember the comment. Well it's a question. I want to know when the transcripts or the comments, these hearings and the states response which will all be sent to CMS. I want to know when they will be on the website for the public to view. I have never seen that done before and that is the only way to be transparent for the comments from across that state and the responses to those comments be available on the website.	The updated State Transition Plan will include a summary of comments. Individual comments with responses will be posted on the website.	No	The comment pertained to posting individual comments and responses for the public, rather than plan content.
36	10/7/2014	Public Meeting		This is Mary Angus, maybe for the first time I don't remember. I was wondering if you have the provider self-assessment tool. The date for completion was 9/30/2014.	Site assessment tools are posted on the Nebraska Home and Community-Based Services (HCBS) State Transition website at http://dhhs.ne.gov/Pages/hcs.aspx.	No	This comment was a request for the provider self-assessment tool, rather than for plan content.

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37	10/7/2014	Public Meeting		I should also comment I am a graduate student in English Composition in English Lit and this documentation that presented here today is horrid. It's very difficult for someone for cognitive disabilities to read. That is part of the reason my daughter did not come today. It was so spread out she couldn't make heads or tails about what she should be talking about. The plan is not outlined in a way that is favorable. I want to take it a step further and say the website the plan comes from is in very poor taste as well. Yesterday I was talking to someone from long term care disabled services because my daughter needs additional help right now she cannot access. Which goes to show how personal care is involved because she has been needing this care for over a year. We have adult protective services investigating me because she's not on medication and she's not receiving appropriate services. But this is what she is offered as a solution. On the website it will tell you, you can go to a day program if you have emotional, mental, or physical issues. In Omaha, even though Lincoln doesn't seem to be fully aware of it, the only two programs you can access on Medicaid waiver are community alliance and friendship program both which require a mental health diagnosis and if you don't have one you are screwed. My daughter is not able to access the autism center of Nebraska she is not able to access Ollie Web. She is not able to access Angel Guardians. Those are all very good programs in the state or city of Omaha that have very positive results. But they are all DD funded. I want to know if we are going Person services why don't we treat them like individuals and look at their individual needs. The other comment I have to make has to do with my neighborhood. I've been in my neighborhood for 27 years. It's supposed to be community based care. That would mean I would think that not only is the care in of my child, my adult child, but also for myself, her care, the people coming into our home, and the people that live around the home. My daughter has gone out numerous times flashing knives at little kids threatening to kill herself. She can't go to a residential treatment center because her level of care are to high for someone like Emanuel or Lasting Hope to handle. So she is sent back home for me to take care of and the only support I have with the Medicaid waiver is transportation and also her being able to have a ??? in the home. So why can't sure obtain services that she needs to allow her to live as the plan suggests as independently as possible. In the summary thing that they have the transition plan setting requirements for home and community based services on page two in the summary it states if there are opportunities to seek employment in work in competitive settings and to engage in community life, control personal resources, participate in the community just as people who live in the community do. Presently, as far as I know Medicaid refuses to offer any job opportunity for those on the aged and disabled waiver plan. I was told yesterday that that is not the responsibility of what the aged and disabled waiver is about. Also in regards to these some concerns I have a concern in regards to her quality of work. If she is not able to get out to work to gain those skills to work how can she ever achieve it. For some of these program connections vocational rehab. To get into their programs to go to a day program she has to have a job first. How can one get a job if they don't have the skills for it. If we are going to have person based, person centered care a person needs to be directly involved. And we need to look for options when we are not able to provide that care for them whether it's Medicaid waiver, DD, or Behavioral Health. In the definition of who they serve they mention adults between the ages of 18 and 65 with physical disabilities but they do not mention adults with other types of disabilities that would probably be cognitive and mental disabilities on Medicaid and Long Term Care. This is not specified in the new plan. Thank you.	The updated plan is provided in a narrative format and is intended to be easier to read. Nebraska Medicaid is working to continually improve information provided on its HCBS State Transition website, and additional comments are welcome. The Aged and Disabled Waiver program does not include a service providing assistance with employment; however individuals on the Aged and Disabled Waiver may be referred to Vocational Rehabilitation for assistance with employment.	Yes	The updated plan format is changed to make it easier to read and understand.
38	10/7/2014	Public Meeting		Kate with Eastern Nebraska Office on Aging. So we have time to work with our facilities because I do have the fear which I shared with Gwen in past about some of the animosity we may get just due to the functioning of their facilities to get some of this done. The facilities I worked in, in Northeast Nebraska, I've worked in 41 facilities. I know the rural I know the metro area here. They are doing a lot of these things but not all of them and I could see very valid concerns with some of the requirements. We just want to make sure there is patience and understanding and support with the aging programs and the DD programs with helping and working with these programs so it goes forward and does not, is not detrimental to the individuals we serve now. The time frame can be very scary and cause challenges	Settings providing Home and Community-Based (HCB) waiver services have until March 2019 to transition to compliance with the final rule requirements. The Divisions of Medicaid and Long-Term Care (M-TLC) and Developmental Disabilities (DD) will make available technical assistance for providers transitioning to compliance. For settings that do not comply by March 2019, the State assures in the updated plan that reasonable notice, due process and information and supports will be provided to individuals who need to find alternate compliant settings and services. In addition, the State assures in the updated plan that services and supports needed will be in place at the time of any relocation.	Yes	The updated plan explains the timeline for overall compliance, the intent to make available technical assistance for providers and assurance that needed services and supports would be in place at the time of any relocation.

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39	9/29/2014	Public Meeting		My name is Tim Kolv K-O-L-V as in Victor. I am the executive director and CEO of the KFDE foundation of Disability education. One the things that troubles me about the language of the plan is the reference to Community like because it present a gray area. CMS regulations aren't quite distinct about making the same as making a difference between in that which is and that which is not. So using the term community like presents doubt. Assisted living in regulations, CMS is saying they cannot be attached or in adjacent to a nursing home and be an HCBS services. Now that so, I realize that community like is not going to be changed the language of CMS documents. There needs to be a very clear distinction. I hope the methods being used to make those decisions are followed. There needs to be a clear distinction as to what is and what is not an HCBS service. Another area I am concerned about is the DD Community there is problem with Day services in Nebraska for persons with developmental disabilities. There is a problem in that we currently have a DD waiting list and it is a very big list. That cannot get services so there is going to be a "trickle down" service for those people rather direct immediate services that is available direct with the other waivers. I think that's it.	The updated plan includes the Centers for Medicare and Medicaid Services (CMS) terminology, i.e. home and community based qualities or characteristics, rather than community-like. The state is applying CMS criteria that specify the following settings are "presumed to have the qualities of an institution": 1) any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; 2) any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution; or 3) any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS. The State's interpretation of "facility that provides inpatient institutional treatment" in the first criteria includes facilities providing 24-hour acute level of care treatment. Physical location alone does not determine compliance; rather it is the extent to which the setting has the qualities of home and community-based service setting or the qualities of an institution. For settings meeting CMS criteria for presumptively institutional, CMS requires a heightened scrutiny process and more information to determine if the setting has qualities of home and community-based services or an institution. The Division of Developmental Disabilities (DDD) is taking proactive steps to improve access to service and management of the waiting list, e.g. reorganization of staff responsibilities and expansion of services coordination services.	Yes	The updated plan format is changed to use CMS terminology.
40	9/29/2014	Public Meeting		My name is Lisa Mercer. I advocate for a number of adults with DD. I also served on the board of directors for buffalo county. I am wondering if there is a feedback Methodism if one will be put in place for people to report concerns. To report concerns or to log complaints about a particular providers. For example we have a number of homes in Kearney and we have our ARC, is very active in providing opportunities, community opportunity activities, inclusive sports for our young adults. It has in the past been that some of the homes that main staffing especially on the evenings and weekends are a young college age. We have offered to come and get individuals to come to parties or picnics or girls nights out. And the response has been we do not have enough staff, when they have enough staff. Our perception is they have enough staff but it takes someone motivated to help the guys shave and put on clean cloths to come to the events and we are talking quality of community life. Living that allows them to have that social connection. I ben lamentably lacking in some instances. What sort of mechanism is there to help us with that. In the past when we've mentioned it. The young adults take the hit. It hasn't been a popular thing to advocate for them.	The Division of Developmental Disabilities provides a complaint form accessible at http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx. Individuals or their advocates may also call 1 (877) 667-6266 to express concerns or complaints.	No	This comment was a request for information about how to express concerns, rather than input for plan content.
41	9/29/2014	Public Meeting		I have a question. Can you tell me about cooking in assisted living… I'm sorry I'm Linda Zinnell and have in assisted living. And one of your comments was they are going to be allowed to cook in their room. I wanted to voice a concern that they need to be able to determine the safety of them cooking in their room per individual bases and they have permission to do that.	Each individual participating in a Home and Community-Based Services (HCBS) waiver is required to have a person-centered service plan, which includes addressing safety concerns. The HCBS final rule requires that individuals have freedom and support to control their own schedules and activities, and have access to food at any time. It does not require that an individual must be able to cook food in their own unit.	No	This comment expressed concern about individual safety within a setting, rather than input for plan content.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
42	9/29/2014	Public Meeting	All	We rent both buildings separately and one is skilled and one is assisted living. I guess that bothers me a little bit. The regulations say not adjacent or attached. To Tim's comment, we have residents there that there only there we give 3 meals a day and activities to daily living themselves. We limit to them a setting where there just for that we limit a lot of people. Not everybody in our assisted living are not able to that for themselves. Assisted living people who need 3 square meals a day and give medications on time because at home they weren't getting that.	Location alone does not define whether a setting is compliant or can transition to compliance with the Home and Community- Based services (HCBS) Final Rule. Compliance is based upon the extent to which a setting has the qualities of home and community-based services as defined by the Centers for Medicare and Medicaid Services (CMS). The HCBS Final Rule requires that individuals have freedom and support to control their own schedules and activities, and have access to food at any time. It requires that individuals must have a person-centered service plan and the rights of privacy, dignity and respect. The HCBS Final Rules does not affect required provision of meals or timeliness of providing medication.	No	CMS requirements and the transition plan are consistent with the comment.
43	9/29/2014	Public Meeting		My concern I guess what my concern is we're talking about where were from we have a group facility. I know a lot of them aren't from group facilities. Ok, we're in a different situation we have individuals that have been taken out of the group homes and now live with family members or whatever and they're in the community based program where they are out in the community. Who is it who decided what their activities out in the community are? Are you saying that should be the person in the program the individual on what they want to do like she said go to dances and stuff like that? Who determines that? An like we have social workers going no you need to do this with them, you need to do that with them or you need to that. What if the individual doesn't want to do that and certain disability situations you can't everybody to a dance. They might not enjoy that or you may have a person that can't have shots and the people at that dance is a hepatitis carrier so they can't go do those activities. Who determines the activity based for the community based waiver and what they should be doing out in the community? On the Medicaid waiver for assisted living I know there are a lot of facilities no longer doing that care. Has the state done any surveys or projections as to how many more assisted facilities are going to take less there won't be any availability for any of them to be in the assisted living under the Medicaid waiver program.	The community activities an individual participates in (or does not participate in) are to be based upon the individual's interests and goals as part of a person-centered planning process. As part of settings assessment, assisted living facilities were assessed by Area Agencies on Aging, as contractors to the Division of Medicaid and Long-Term Care (MLTC). MLTC will support providers with technical assistance in transitioning to compliance with Home and Community Based Services (HCBS) settings requirements. Any assisted living facility that chooses not to or cannot become compliant by March of 2019 would no longer be able to receive funding through the HCBS waiver program.	No	The comment asked about how activities an individual participates in are determined and about participation of assisted living facilities in the HCBS program, rather than providing input for the plan content.
44	9/30/2014	Public Meeting	All	I have a comment similar to Linda's. I want to go on the record of stating that assisted living fulfills a crucial niche in our care in our services to totally think they are not in line I don't believe is accurate and I don't think is fair to the facility. Just because they are hooked on to a nursing home does not mean they don't have the philosophy that they have a separate staff maybe it's their adjacent through a door that it's available if you have a 911 or emergency call that they don't have to run across the parking lot to get there. I think their interpretation is going to be really important and being able to justify it on a piece of paper, but I agree what Linda what they said back here about working with what we have because if those go away there are a lot of people. I'm an RN I worked home health hospice, home infusion those home based services, we just can't do without that huge piece of the care delivery system or we are hosed. Where will these people go? They don't have family so in my experience in our assisted living they have a better social life than I do. They have a bingo comes in and they have birthday parties and they have cards. I think that is over and above the call of duty. They don't have to truck in the freezing cold to church because the church ladies bring birthday cake and pass out presents for everybody who had a birthday in sept. I think writing it in the plan and justifying and showing the rationale as to why we do that is really important. It also makes me another comment on that I have with nursing homes and nursing facilities they have surveyors who come in and spot check and make sure they are in compliance. I'm assuming maybe a really strong assumption that in the case where for example in the assisted living is an outlier. I would like to see them have a surveyor go in and see how they do comply because I think a lot of them can comply even if they are a hook on facility. I think the definition is faulty, but we're stuck with that definition. So, you made a very salient point that what is the interpretation of that definition and I think they should meet the definition.	It is agreed that assisted living settings fulfill a crucial niche in the care delivery system. Location alone does not determine compliance with the Home and Community-Based Services (HCBS) Final Rule. The determination of compliance is based upon whether the setting operates with qualities of a home and community based setting or has institutional qualities, as described by CMS. Assisted living facilities who meet certain CMS criteria, such as being located on the grounds of a public institution, are required to provide additional information as part of being assessed for compliance, per CMS requirements. The community activities an individual participates in (or does not participate in) are to be based upon the individual's interests and goals as part of a person-centered planning process.	No	The comment expressed the importance of the role of assisted living facilities and asked about the relationship between physical location and compliance. It
45	9/29/2014	Public Meeting		Jane Ludlow. My question is the home providers and the day service and home services. With these choices where to go and what to do becomes a problem with transportation. Are these waivers going to provide funds for the transportation of these people. Because transportation the costs are higher and higher and you have to have drivers and supervision and things. My question will that provide any financial transportation support?	Please see the response to comment # 10 regarding transportation.	No	The comment was about availability and funding of transportation, rather than plan content.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
46	9/28/2014	Public Meeting		I was just going to point as well, my name is Sarah Briggs. That for the A & D waiver for example they talk about identifying the distinguishing in the likely not settings by March 31st of 2015. So, I think it will be interesting to for the providers and everybody to understand what will that process be for making that distinguish between the likely not and likely in and how do those lists get made? Because it says the outcome will be a list.	Thank you for your comments.	No	The comment was about interest in the process and results of site assessments, rather than input for plan content.
47	9/30/2014	Public Meeting	All	Again, in the same day service or residential setting you have people who have different function, brain functions levels. You may have someone who is very high brain functioning that can do a lot of things on their own and you may have one that's not. And so, what she is saying if they have to go in 2 different directions, how are you going to get them there because the one that is not high functioning is going to need supervision to be able to be out in the community doing what they want to do. And so they're talking about these community based services, but you're going to run in a lot of issues in the community group homes. These people in the community doing something they all want to do at the same time if you only have 2 staff people and 4-5 clients who want to go into different settings and I think that's when you are going to run into the situations. That goes back to. That's not an issue for me because I'm in a single based situation with the person I work with, but then we're going back to the boundaries of sometimes you're talking the assisted living, sometimes you're talking about is this the waiver just to do with assisted living facilities and group homes. What about the residential home how is it effecting a person that lives at home with a guardian. This whole waiver. Does the social worker at that point have a right to say well I don' think this community based waiver no I have think you should take him to the library. Well, what if he doesn't like going to the library? But he can't talk, but we know what know what he likes to do by his actions obviously as a worker that takes him places you know what they like and what they don't. Why are we restricting it you need to do this when obviously they don't like that. I mean that's what I'm asking, Who do you speak to as to where those guidelines are? Who do you address those questions when the social worker says, I don't know but I think you should be writing this because my supervisor says you know they should be doing this. Where do we address those questions?	Specific questions about developing care plans for an individual can be asked of the assigned services coordinator. The Division of Developmental Disabilities provides a complaint form accessible at http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx. Individuals or their advocates may also call 1 (877) 667-6266 to express concerns or complaints.	No	The comment was about development of service plans and who questions about services may be directed to, rather than plan content.
48	9/29/2014	Public Meeting		To answer your question it's written very broadly for a reason. It's a good good thing that we now write it broadly. The only stipulation is the safety end of it. So it's common sense. Whatever the person centered plan says. It seems like your SC and your team doesn't understand Person Centered Planning. If they actually said "they're going to go to the Library" that is wrong wrong wrong. You pick up the phone and you call Jodi Fenner, she's the head of DD. They only know in Lincoln what we tell them. My son is 42 years old and he has a very good life. You know why? Because a service provider said to me "the squeaky wheel gets greased first" I have never forgotten that, and don't any of you that advocate for people forget that. I used to be a part of the Governor's Advisory Council. If you go on the DD State Site you can find a listing of the people on the DD council. They meet every three months. You just can't sit out here and whine. You have to speak. I'm very adamant about person centered planning and I bet you will be too now. I just go to the top. Start at the top, she'll listen.	Thank you for your comments. Please see the response to comment #47.	No	The comment was about how to resolve questions and issues regarding care plans, rather than plan content.
49	1/7/2016	Email		I have a few questions about a letter I received this Friday, 1.22.16, without any attachments: • Is there a timeframe in which I should expect to hear from DHHS? In which I should expect to complete the assessment? • Will the assessment be scheduled or unscheduled? • How long do you expect the assessment to take? • Are there sample questions? (The letter refers to attachments but nothing was included in the mailing I received) • How will you notify providers about the public meetings? • How will you notify a provider that is determined not to meet requirements? • Have you received additional guidance from CMS on handling memory care issues like locking doors? If so, can you share it?	Contracted community agencies completed on-site assessment of assisted living settings in the first quarter of 2016. The assessment tool used is available on the State Transition Plan website. A letter with a summary of results was mailed to providers with preliminary results. Settings with locked doors where individuals have either codes or keys are permissible, however only individuals who would be compromised by going into the community without assistance may have limitations and such limitations should be per a person-centered service plan.	No	The response addresses the question and did not require a change in the plan.

Appendix A
HCBS State Transition Plan
Public Comments

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
50	1/25/2016	Email		I have not received a response to my inquiry yet. I did get some questions answered through LeadingAge Nebraska, but the following remain: • How will you notify providers about the public meetings? • How will you notify a provider that is determined not to meet requirements? • Have you received additional guidance from CMS on handling memory care issues like locking doors? If so, can you share it?	Public notices of meetings were posted on our State Transition Plan website, in local newspapers, and information was available for review at locate area League and AAA offices. Please see the response to question 49.	No	The response addresses the question and did not require a change in the plan.
51	3/28/2016	Public Meeting	All	I want to makes sure the plan lists "home and community based services" instead of "community like."	The current draft of the State Transition Plan (STP) consistently uses the term "home and community based services." The term community like does not occur in the current draft. At this time there is no intention of using the term community like.	No	No change is needed in the current draft of the STP as the term community like does not appear. DHHS opted to use the term "home and community based services."
52	3/28/2016	Public Meeting	All	We all understand what it means to have a rental agreement. Most places to live require a 30 day notice or 360 day lease when talking about a legally enforceable lease. What are the responsibilities of the renters? What happens when someone is half way through a year lease and they want to move. I would like more discussion on that.	The Centers for Medicare and Medicaid Services (CMS) has clarified that all provider-owed or controlled home and community based setting are to ensure that the individuals served have a lease or other legally enforceable agreement providing similar protections. The specific language as well as duration and clauses for breaking the lease would be negotiable for individuals receiving Home and Community- Based Services (HCBS) the same as those who are not.	No	The response addresses the question and did not require a change in the plan.
53	3/28/2016	Public Meeting	All	Will there be public input on heighted scrutiny? What will it look like? Will people just get a list of all of the locations that have heighted scrutiny and they will send in comments or will there be individual meetings?	In its June 26, 2015 guidance, The Centers for Medicare and Medicaid Services (CMS) describes generally the type of evidence states may submit to overcome the presumption a setting has institutional qualities, for each of the three presumptively institutional criteria. The State will make available additional information to clarify its expectations for evidence packages; however, in the meantime, settings are advised to review CMS guidance. When a state makes a request to CMS to use the heightened scrutiny process for a particular setting or settings, CMS reviews all information presented by the state and other parties. Information submitted for settings subject to heightened scrutiny should include information the state received during the public input process.	Yes	The plan is updated to include a milestone for providing state-level guidance on heightened scrutiny, including public input.
54	3/28/2016	Public Meeting	DD Waiver	On Page 16. Why does it say "Day Habilitation-Prevocational Workshop". Why is this not just called Day Habilitation-Pre-vocational.	The Division of Developmental Disabilities (DDD) has elected to use the term "Day Habilitation-Prevocational Workshop" to ensure transparency with stakeholders and the Centers for Medicare and Medicaid Services (CMS) as currently there are Pre-Vocational workshops operating in Nebraska.	No	No change made to the plan.
55	3/28/2016	Email	All	Follow-up email from Public Meeting: I just wanted to make sure that the old language "Home and Community Like Services (HCLS)" was now replaced by "Home and Community Based Services (HCBS)." The former word "Like" created a doubt about whether some providers would actually be providing true home and community-based services or something that only looked like it. For example, it could be said that a facility (e.g. a nursing home) certainly has a community of people who are being served in a city and since a city constitutes a community of citizens, it could be said that such a placement (i.e. a city) could constitute a community "like" service.	Please see response to question 51.	No	Please see question 51.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
56	4/7/2016	Voicemail		Hello. This is Maryann Verson (*spelling?*). I have a brother who is in Region V, in their program. I understand that the State of Nebraska, I mean the Federal government is pushing for cliental to be out in the community all the time. He is 70 years of age and doing something all the time and sometimes going all the time is tiring. I think that going all the times is not natural. I think the people that should be making these decisions are the personnel that are caring for these people not the federal government. I am not the kind of person that likes to be involved in everything. Sometimes I love to stay home and I'm sure there are clients that feel the same, that would love to stay home and not be dragged out daily on tour of the county. Just wanted you to know. Thank you very much. Bye Bye. *No phone number provided.*	Thank you for your comment. One of the main focuses of the Home and Community-Based Services (HCBS) Rule change was ensuring person centered planning is driving the provision of services. The decision to access the community should be made by the individual receiving the HCBS services.	No	No change made to the plan.
57	4/11/2016	Name not provided		Will CMS do on-site visits?	For settings meeting the criteria for presumptively institutional, The Centers for Medicare and Medicaid Services (CMS) will review information submitted and determine if it is sufficient to overcome the presumption of institutional or isolating qualities. If regulatory requirements are met, the setting will be determined to be home and community based. If not all requirements are met and the setting is in the State's transition plan, the state may use the remaining transition period to bring the setting into compliance. If CMS has further questions, CMS may conduct a site visit.		
58	4/11/2016	Name not provided		Will legally enforceable lease agreements be needed in Extended Family Home arrangements?	The Centers for Medicare and Medicaid Services (CMS) has clarified that all provider-owed or controlled home and community based setting are to ensure that the individuals served have a lease or other legally enforceable agreement providing similar protections.	No	No change made to the plan.
59	4/11/2016	Name not provided		What happens to the places that will not comply? Is there a chance that they will close?	The state and provider have until March 2019 to bring the setting into compliance with the rule. If a setting is not in compliance by March 2019, Nebraska Medicaid will no longer be able to fund those services using the Home and Community- Based Services (HCBS) waiver dollars. Any providers deemed not in compliance in March 2019 will need to make a business decision regarding the impact and next steps.	No	The response addresses the question and did not require a change in the plan.
60	4/11/2016	Name not provided		The Assisted Living that are not utilizing waiver services there is a concern to be listed as non-compliant.	Providers not currently in compliance may indicate that they opt not to offer provider-level transition plans. If this is the case, the setting would be determined unable to comply effective March 2019.	Yes	The plan is updated to explain that certain settings not currently in compliance have indicated they are opting not to offer provider-level transition plans.
61	4/11/2016	Name not provided		In a provider-owned residential setting what qualifies as choice of roommate? Do they need to choose from a roommate and housemate? Or is there a difference?	The Centers for Medicare and Medicaid Services (CMS) provided guidance in this area by stating that the individual's choice of roommate must be documented in the person-centered plan. The person-centered plan documents how choice was provided to and exercised by the individual. Conflicts should be addressed if they occur and mediation strategies should be available to address concerns. CMS did not directly identify a difference between roommates or housemates. Based on the spirit of the Home and Community- Based Services (HCBS) Final Rule in regard to person centered planning, The Nebraska Department of Health and Human Services (DHHS) is interpreting housemates and roommates as the same.	No	No change to the plan.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
62	4/11/2016	Name not provided		What will the evidence packet contain?	Please see the response to question 53.	Yes	Please see question 53.
63	4/11/2016	Name not provided		AL's were encouraged and received $ to create Assisted Living from some NF and this is now why they are connected. It would be a tragedy if people would have to now move some 30 miles away from their home.	The Nursing Facility Conversion Cash Fund, established in 1998 by LB1070, provided grants for nursing facilities to convert existing nursing facility beds to assisted living and other alternatives to nursing facility care such as respite and adult day care. Regardless of a setting's participation in this program, all settings must meeting requirements for home and community based services per the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Final Rule, published in 2014. The State will support providers not in compliance with the rule in transitioning to compliance, and it is anticipated that providers who desire to do so and take steps needed in their provider-level transition plans, will be able to be in compliance by March of 2019.	No	The response addresses the question and did not require a change in the plan.
64	4/11/2016	Name not provided		What does the evidence package look like/have in it?	Please see the response to question 53.	Yes	Please see question 53.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
65	4/25/2016	Email		Thank you for meeting to discuss NHCA's concerns regarding Nebraska Department of Health NHCA has revised our initial comment letter to include the new information discussed at our meeting, as well as additional suggestions on Nebraska's State Transition Plan. Please accept this letter as a replacement of the former. NHCA is the only state trade association representing the majority of proprietary and non-profit assisted living and nursing facilities throughout the state. Many of NHCA's members provide assisted living, adult day, and/or respite services under the Aged and Disabled and Traumatic Brain Injury Medicaid Waiver programs. CATEGORIZATION OF HCBS SETTINGS DHHS' preliminary survey of HCBS settings resulted in their assignment to the following categories: Group A – Settings that fully comply; Group B – Settings that do not comply but could with modifications; Group C – Presumptively institutional in nature; and Group D – Settings that cannot comply. Group A: NHCA is pleased the vast majority of Nebraska's assisted living facilities and adult day services settings were determined to be in compliance with the new HCBS rules. From its origin, Nebraska's Aged and Disabled Waiver was designed to maximize and support participant independence, privacy, choice and decision-making. Group B: Based on conversations with NHCA's assisted living members, NHCA recommends this category be renamed "Settings in the process of meeting the new HCBS requirements." It is NHCA's understanding these settings have several months to make necessary modifications, such as installing locks on residents' doors. This is an expense that must be budgeted in advance and cannot occur immediately. NHCA feels there should be recognition given to facilities willing to take on an additional unfunded expense for the benefit of its residents. Group C: NHCA recommends this category be renamed "Settings that are adjacent to or on the grounds of a publicly-owned nursing facility or hospital or that offer memory care." "Institutional in nature" has a negative connotation and does not accurately describe Nebraska's facilities. The suggested term is more understandable and less alarming for consumers. PUBLIC INSTITUTION "Public institution" has been interpreted to mean a publicly-owned nursing facility or hospital. As a result, if an assisted living facility is nearby a publicly owned nursing facility or hospital, there has been a presumption the assisted living facility is "institutional in nature." NHCA's legal counsel reviewed relevant federal statutory and regulatory use of the term, "public institution" and offers the attached analysis, indicating a publicly-owned nursing facility or hospital does not appear to meet the federal criteria of a "public institution," and therefore, a nearby assisted living facility would not need to be "presumed institutional in nature." LOCKED UNITS NHCA thinks there may have been a misuse of the term "locked unit," in reference to assisted living facility memory care. Many memory care units have delayed egress exits in order to protect the safety of residents. To exit, pressure is applied to the door and it opens after a 15- second delay. There may also be a keypad on either side of the exit-entry point. In these situations, the code is often posted near the keypad. For individuals with cognitive challenges, this makes it more difficult to exit, but does not prevent it. NHCA recommends any assisted living facility assigned to Group B, C or D because it has a "locked unit" be reassessed to determine if it is possible to exit. NURSING FACILITY CONVERSION PROGRAM Nebraska has several small city and county owned nursing facilities, mainly located in Nebraska's rural and frontier counties. In some geographic regions, the nursing facility is the only health care provider available for miles. In 1997, Medicaid put together a task force and spent two years traveling the state and assessing Nebraska's long-term care needs and service gaps. One result of this study was an innovative program offering Medicaid-funded grants to nursing facilities willing to convert a portion of their beds to assisted living. This successful program was designed to offer a community-based alternative to nursing facility care. Many of our state's city and county owned nursing facilities took advantage of this program to remodel a portion of their nursing facility or construct a new building and license it as an assisted living facility. If it is impossible for them to meet the new HCBS requirements, it means the only Medicaid-funded option for Nebraskans residing in these rural and frontier counties will be a nursing facility. Group D: It is NHCA's understanding "Group D" consists of Waiver-certified assisted living facility and adult day service	Based upon questions submitted during public comment, the State intends to conduct validation assessments throughout the remainder of 2016 prior to categorizing settings according to their level of compliance. Physical location alone does not determine a setting's level of compliance, and a setting may be both in the process of working toward compliance and at the same time meet The Centers for Medicare and Medicad Services (CMS) criteria for heightened scrutiny (e.g., on the grounds of or adjacent to a publicly-owned facility). The revised plan clarifies this, indicating that a setting may meet CMS first two criteria for "presumptively institutional," and be at any level of compliance (fully complaint, partially compliant with plans to transition to full compliance, or non-compliant). In its' guidance "Questions and Answers Regarding Home and Community-Based Settings," CMS answers the question "What does CMS consider a public institution? Is a privately owned nursing facility a public setting?" CMS' answer is "For purposes of this regulation, a public institution is an inpatient facility that is financed and operated by a county, state, municipality, or other unit of government. A privately-owned nursing facility is not a public institution." Please see the response to question 49 regarding locked doors in settings providing care for individuals with dementia. Please see the response to question 63 regarding the Nursing Facility Conversion Cash Fund.	Yes	The plan is updated to reflect validation assessments prior to categorizing settings' level of compliance. The plan is updated to explain that certain settings not currently in compliance have indicated they are opting not to offer provider-level transition plans.

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				providers who informed DHHS they wished to terminate their Waiver participation. Listing these providers as "settings that cannot comply" seems inaccurate. NHCA recommends not including them on the list at all, as they are no longer Waiver providers. As we discussed, it is concerning the HCBS assessment criteria are so restrictive some providers decided it was impossible for them to participate in the Waiver program, meaning there will be fewer options for Nebraskans. For example, some NHCA members offer adult day services to a small number of Waiver participants in their communities, on an as-needed basis, to help them remain in their homes as long as possible. The loss of this community resource may hasten nursing facility admissions, which seems counter to the purpose of HCBS. It also seems there may have been an inconsistency in the statewide application of the assessment process, as some facilities possessing certain characteristics are labeled as noncompliant, while other facilities with the same characteristics are identified as fully compliant. Additionally, it appears some facilities may have been assigned to a category in error. For example, a facility received a letter from DHHS indicating it was not compliant because residents did not have a choice of meal times. However, this information was incorrect, according to the facility, the representative from the Area Agency on Aging who performed the assessment, and the resulting assessment document. NHCA would be glad to work with DHHS to review the facilities listed in Groups B, C and D to help ensure the assessment results are accurate and consistent. LANDLORD TENANT ACT Federal HCBS rules require that residents of assisted living facilities have "protections similar to, or exceeding, the state's landlord/tenant act." NHCA's legal counsel reviewed the relevant Nebraska statutory and regulatory requirements and offers the attached analysis, indicating assisted living resident service agreements offer greater protections than Nebraska's Landlord Tenant Act. DEFICIENCIES NHCA has a question about a statement found on page 28 of the State Transition Plan, "No formal deficiencies will be issued for HCBS settings standards until after October 1, 2018." Nebraska's licensure of assisted living facilities already includes an inspection/complaint investigation process to ensure providers' compliance with established standards. Does Medicaid plan to implement a similar process in addition to the current one and, if so, what would be considered a "deficiency" and what are the proposed consequences? ASSESSING QUALITY As the federal HCBS requirements emphasize the state's responsibility to ensure Waiver participants are receiving quality care, NHCA recommends DHHS consider contracting with an outside entity having nationally-recognized expertise in this area, to implement a statewide resident satisfaction survey process for both nursing and assisted living facilities, using one consistent tool. NHCA appreciates the opportunity to submit these comments and looks forward to further discussion and collaboration. Sincerely, Heath G. Boddy President and CEO (ATTACHMENTS OF Definitions Relating to Public Intuition or Institutional Status & Nebraska's Landlord Tenant Act also included with Letter)			

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
66	4/25/2016	In person meeting in Kearney	Both	I wish the state would look at the screening and evaluation of high behavioral youth going into YRTC. There have been a lot of escapes lately. Are they being evaluated like they should be? There needs to be something done.	Our primary goal at the Youth Rehabilitation and Treatment Center-Kearney is to ensure the safety of youth, our staff and members of the Kearney community. Escapes are a concern and priority. Courts commit youth to the YRTC when they feel that community-based services are no longer an effective effort in their rehabilitation and treatment. The youth's court, probation and other information are considered in designing a youth's treatment program, in addition to the analysis of YRTC mental health and other staff. We are making a comprehensive review of the entire facility – treatment programs, behavioral health assessments, staff ratio, policies, housing, etc. – to identify why youth choose to escape. We will continue to address this issue to keep youth, staff and Kearney safe.	No	YRTC is not a facility under the Home and Community Based (HCBS) waiver. No change made to the plan.
67	4/25/2016	In person meeting in Kearney		I am uncomfortable with no one over-seeing BSDC now that the Department of Justice is not. The state has not paid attention to BSDC for so long and they need to keep looking at them. The rate at BSDC is much higher than in the community.	Auditing responsibilities for the Beatrice State Developmental Center (BSDC) fall under The Nebraska Department of Health and Human Services Divison of Public Health. In addition, BSDC abuse and neglect investigations are reviewed by Disability Rights Nebraska via reports sumbitted by BSDC on a weekly basis. BSDC also has a Quality Improvement (QI) Team and the Investigative Services Office (ISO) Team shared with the Nebraska Division of Developmental Disabilities (DDD)-Community Based services for additional checks and balances. Additionally the legislature has tasked the DDD with preparing a report for ongoing recommendations for BSDC which will also address the financial impact of the facility and the services provided.	No	No change made to the plan.
68	4/25/2016	In person meeting in Kearney		Is the state actually replacing MMIS? What is the MMIS system? When will it be gone?	Nebraska's current Medicaid Management Information System (MMIS) performs all of the necessary functionality to process claims for the Nebraska Medicaid Program. The vision for Nebraska Medicaid and Long Term Care (M-LTC) is to transition the existing MMIS from a single system to multiple modular solutions where components are connected in an interoperable architecture. There will be a phased implementation of each modular component, and the date has not yet been established for when the current MMIS will be sunset.	No	The response addresses the question and did not require a change in the plan.
69	4/25/2016	In person meeting in Kearney		When is the DD waiting list going to be gone? It is a violation of Title 2 and the ADA which says there must be accessible services to individuals with disabilities. There is an Olmstead decision that should apply to Nebraska. There is no excuse for having a DD waiting list.	The Registry of Unmet Needs is being reviewed to increase the functionality of the waitlist for planning purposes. A stakeholder group meets to discuss practices and provide input to assist with further defining capacity and how to meet the needs of those requesting services across all service arrays. The Nebraska Department of Health and Human Services (DHHS) is actively communicating with the legislature and within the Division regarding Olmstead and the impact on Nebraskans.		The Home and Community Based Services (HCBS) waivers allow for both waitlists as well as reserved capacity for priority populations.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
70	4/29/2016	Email		I do not see the Quality Review Team mentioned in the Transition Plan. Per state statute 83-1213, the Quality Review Team must be making quarterly reports. The Quality Review team must be independent of any governmental agency or instrumentality or any specialized program. To our knowledge, this is currently not being done and is not a part of the transition plan. This needs to be addressed and made part of the plan.	The Quality Review Team (QRT) is required by statute. Although the QRT is not specifically mentioned in the State Transition Plan, the Division of Developmental Disabilities (DDD) does anticipate the QRT playing a role in ongoing verification of compliance with the Home and Community-Based Services (HCBS) rule. DDD will continue to work with individuals, parents/guardians and other stakeholders in identifying how the QRT can provide the most impact for individuals in services.	No	The QRT is not specifically addressed in the STP nor it is required by the STP.
71	4/30/2016	Email		I am very concerned that Quality Review Teams are not addressed in the new DHHS State Plan. As a parent who uses Nebraska providers and knows the laws, it is in Nebraska law that citizens form a Quality Review Team to review Nebraska's DD providers. As a parent, these teams have been out of compliance for way too long. Parents have been unhappy with services and the state for the last several years. You are serving our children, who are our most precious daughters and sons. Many of them cannot communicate when things are not right. We have to see changes in behavior or physical marks in order to know things aren't right. Quality Review Teams shed another light and eyes on what is going on. I feel these need to be reinstated as they are the law. I realize all of the things your new management team need to rectify and Quality Review Teams are a must. Please reconsider and add them to your state plan.	See #70	No	The QRT is not specifically addressed in the STP nor it is required by the STP.
72	5/2/2016	Email		I do not see the Quality Review Team mentioned in the Transition Plan. Per state statute 83-1213, the Quality Review Team must be making quarterly reports. The Quality Review team must be independent of any governmental agency or instrumentality or any specialized program. To our knowledge, this is currently not being done and is not a part of the transition plan. This needs to be addressed and made part of the plan.	See #70	No	The QRT is not specifically addressed in the STP nor it is required by the STP.
73	5/3/2016	Email		I do not see the Quality Review Team mentioned in the Transition Plan. Per state statute 83-1213, the Quality Review Team must be making quarterly reports. The Quality Review team must be independent of any governmental agency or instrumentality or any specialized program. To our knowledge, this is currently not being done and is not a part of the transition plan. This needs to be addressed and made part of the plan.	See #70	No	The QRT is not specifically addressed in the STP nor it is required by the STP.
74	4/25/2016	In person meeting in Kearney		Why is CMS not playing fair between Public and Private institutions being looked at under Final Rule?	The State will follow the Centers for Medicare and Medicaid Services (CMS) criteria for identifying settings subject to heightened scrutiny, which include settings located in a public or private facility that provides inpatient, institutional treatment; and settings on the grounds of or adjacent to a public institution; and settings with the effecting of isolating individuals receiving Medicaid Home and Community-Based Services (HCBS) from the broader community of individuals not receiving HCBS. In reviewing public comment and other states' transition plan, Nebraska Medicaid identified this topic as an area where clarification is needed for stakeholders.	No	Changes to the plan were not needed; however the State will address clarifications needed via an Answers to Commonly Asked Questions document on its State Transition Plan website.
75	4/25/2016	In person meeting in Kearney		I am concerned about nursing homes being connected to assisted living facilities. It would be easy to just look at a person and move them over to the nursing home that is connected and not look at other community options.	Physical location alone will not be the sole factor determining if a setting is considered home and community-based per the Centers for Medicare and Medicaid (CMS) definition. This determination will be made based upon whether a setting demonstrates compliance with Home and Community Based Services (HCBS) qualities.	No	The response addresses the question and did not require a change in the plan.
76	4/25/2016	In person meeting in Kearney		Universal housing should be looked at by the state. You can go online or google it. It looks like an option.	Thank you for your comment regarding the benefit of universal design.	No	While universal design is one option for reducing barriers and making environments usable by as many people as possible, it is not directly related to the requirements of the State

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77	4/25/2016	In person meeting in Kearney		For locked doors, maybe a fire department could have a key to people's rooms as an alternative.	Thank you for your comment.	No	No change to the plan was warranted as the availability of the fire department does not change requirements of the Home and Community Based
78	4/25/2016	In person meeting in Kearney		Did CMS do a re-write of the rule earlier this year. The terminology changed where CMS backed away from "Home and Community like" language. This is what Courtney Miller said.	The Centers for Medicare and Medicaid Services (CMS) did not re-write the rule, but has provided additional guidance and answers to frequently asked questions regarding the rule.	No	The response addresses the question and did not require a change in the plan.
79	4/25/2016	In person meeting in Kearney		Have you thought about having Courtney Miller go on the news to talk about HCBS rule or on TV somehow to educate people?	Thank you for the comment. As the process for the Centers for Medicare and Medicaid (CMS) Final Rule evolves, opportunities to engage with the public and share information will be evaluated. The Nebraska Department of Health and Human Services (DHHS) strives to be transparent and communicate across many avenues and will assess opportunities to do so in the future.	No	The response addresses the question and does not require a change in the plan.
80	4/25/2016	In person meeting in Kearney		For lease agreements, Residential Service Agreements should cover leases as they are more detailed in what is expected than the Tenancy Act that is in statute.	A Residential Service Agreement which provides the protections in the required by the Home and Community-Based Services (HCBS) Final Rule would be considered compliant.	No	The response addresses the question and did not require a change in the plan.
81	4/25/2016	In person meeting in Kearney		Recommendation to have more time for public input. There does not seem like a lot of time between when the notice was posted and when stakeholder meetings are taking place.	Thank you for your comment. The State will consider additional time for public input, beyond the Centers for Medicare and Medicaid Services ' (CMS) requirement for 30 days, for future public comment periods.	No	The response addresses the question and did not require a change in the plan.
82	4/25/2016	In person meeting in Kearney		I would like to see better public input timeframes and hold meetings farther out to western Nebraska so small communities that have small Assisted Livings who want to learn and be part of the discussion can attend.	Thank you for your comment. For the current draft of the State Transition Plan, The Nebraska Department of Health and Human Services (DHHS) held seven in person public comment meetings as well as a statewide Live Webinar Stream on the NET website on 04/26/2016. Public comment notice opportunities were published on March 22nd, 2016. Additionally DHHS provided 30 full days for individuals to submit their comments via phone, email, fax or US Postal service if they were unable to patriciate in one of the public comment meetings.	No	The response addresses the question and did not require a change in the plan.
83	4/25/2016	In person meeting in Kearney		I am very happy that the state is not posting results of site assessments quite yet. Also recommend using softer language as alternative to "presumed institutional". This has a negative connotation to facilities.	Thank you for your comment. In order to be transparent and communicate clearly The Nebraska Department of Health and Human Services (DHHS) used the language provided by the Centers for Medicare and Medicaid Services (CMS) in the State Transition Plan efforts wherever possible. The use of the term "presumed institutional" was not intended to be negative but to simply assist DHHS and our system partners in establishing common language which was consistent with CMS.	No	The response addresses the question and did not require a change in the plan.

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84.a	4/25/2016	Email, row 1		The Nebraska HCBS Coalition is composed of a broad and diverse group of stakeholders representing aging, physical and developmental disabilities, traumatic brain injuries, mental health, independent living, self-advocates and other groups who are interested in Medicaid long-term services and supports within the community. The HCBS Coalition was formed as one means to address the new CMS regulations redefining HCBS but also to acknowledge the recent incorporation of the federal Aging, Independent Living and Intellectual and Developmental Disabilities offices into the Administration for Community Living. The HCBS Coalition has previously provided comment to Nebraska's first transition plan. Members had concerns with the previous plan and recognize the significant work that went into this revised version as well as the Medicaid Waiver renewals. We would like to credit the Department for acknowledging Nebraska's rich history in paving the way for home and community-based services and for incorporating the following changes from the previous plan: -Updating Nebraska's transition plan to be written in a more understandable format. - Providing specific numbers in the transition plan on the settings that the Department currently believes does not fit the new regulations for home and community based settings. - Removing the language "community-like" as opposed to "home and community based" (making the document more consistent with CMS' language) in the transition plan submission to CMS. - Posting all stakeholder comments on Nebraska DHHS' website on the same page as HCBS Transition Plan. - Taking public comments for the current revised Transition Plan. The undersigned agencies and organizations would however, like the following items to be addressed and further clarification provided in the current transition plan: Rights and Protections: - Please provide more details about Nebraska's Person-Centered Planning Process. o How does the state insure the quality of person-centered planning within all its Medicaid Waivers? - Is there a state training for the person-centered planning process for all services coordinators? - Is there a training for individuals in need of long-term services and supports? - A training for family members to understand the process and insure fidelity of it?	Nebraska's Home and Community-Based Services (HCBS) Waivers' person-centered planning process has been developed in accordance with CMS guidance received to date. Nebraska Medicaid will review its regulations for compliance with newer person-centered planning requirements under the HCBS Final Rule and provide guidance and training for services coordinators. The Nebraska Department of Health and Human Services (DHHS) Developmental Disabilities Service Coordinators do attend a three day training which includes person centered practice focus and concepts. Contracted service coordinators must complete and pass an online competency training module that includes person centered philosophy and concepts. Currently, there is not formal training for individuals in need of long term services and supports or family members. This is an area that will be reviewed as the state moves forward with reviewing processes and planning strategies.	No	The response addresses the question and did not require a change in the plan.
84.b	4/25/2016	Email, row 2		Please explain the process for an individual who may be receiving NE Medicaid Waiver services to report concerns of abuse or neglect without concerns of retaliation from the provider. (Is there a process for this to occur anonymously?) - We know that individuals with disabilities and children have a higher incidence of abuse and neglect. How does Nebraska Medicaid and DD Services collaborate with Adult Protective Services or Child Protective Services to insure that the rights of individual rights are protected? - Are CPS/APS calls tracked to see if there are recurrent calls to a specific Extended Family Home or Provider? - Are there processes in place to insure that individuals with Intellectual Disabilities are viewed as credible witnesses?	All service providers, and service coordination staff are considered mandatory reporters. A client could share their concerns with their service coordinator or directly contact the Nebraska Department of Health and Human Services Abuse and Neglect Hotline at 1-800-652-1999. The caller can request they remain anonymous. If the client fears for their safety they should contact their local police department immediately. Nebraska Medicaid Long Term Care (M-LTC) has ensured that all incidents of abuse or neglect are appropriately reported without violating any HIPAA regulations. Individuals who receive services funded through the Nebraska Division of Developmental Disabilities (DDD) are provided (at a minimum of one time yearly) information regarding their rights as well as information regarding how to report abuse or neglect. Each agency providing services funded through DDD has policies developed which are reviewed and approved by DDD staff regarding how individuals, guardians or other stakeholders can file an anonymous complaint. All reports of abuse and neglect received by APS or CPS regarding individuals served by a Developmental Disabilities Service provider are shared with the Public Health surveyors responsible for licensing and certifying DDD providers and facilities. Likewise, if Services Coordinator or a Public Surveyor receives a report of abuse or neglect that staff make a report to Adult Protective Services (APS)/Child Protective Services (CPS) as appropriate. APS and CPS maintain a data base of all calls and allegations of abuse and neglect. Information from previous reports is used as part of the assessment process when new allegations of abuse and neglect are reported. M-LTC and DDD encourage the commenter to provider more information regarding the question about individuals with intellectual disabilities being viewed as credible witnesses.	No	The response addresses the question and did not require a change in the plan.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
84.c	4/25/2016	Email, row 3		Please explain how Nebraska's Human and Legal Rights Committees function. - Who trains Human and Legal Rights Committee members to insure understanding of and fidelity of their role in insuring the rights of individuals with disabilities?	In Nebraska all agencies who are funded through the Division of Developmental Disabilities must establish a Human and Legal rights Committee (HLRC). The HLRC are charged with reviewing any rights restrictions imposed on an individual served. More information on the HLRC can be found at http://www.sos.ne.gov/rules-and-regs/. The committee members must be persons free from conflict of interest and who will ensure the confidentiality of information related to individuals served. The person responsible for approving the individual's program and any staff who provides direct services to the individual cannot participate as decision makers. At least half of the committee members must be individuals, family, or other interested persons who are not provider staff.	No	The response addresses the question and did not require a change in the plan.
84.d	4/25/2016	Email, row 4		Please explain the quality review process within the Medicaid Waiver programs. (Do individuals with disabilities participate? Families?) Does the state plan to implement the National Core Indicators? If not, what is the process for insuring quality within the state Medicaid Waiver Programs? How will the selection of the participant tool be decided? How are stakeholders being engaged in this determination?Please provide details on how individuals and families will know their rights in having a lease? (Or what should be included in the lease?) Heightened Scrutiny:The TBI Waiver only funds 1 location. Please explain how this can be grouped as 'Group A. Settings that fully comply" and how this offers choice to participants if they only have 1 choice in which they can reside.	The Home and Community-Based Services (HCBS) Waiver Quality Improvement System activities that involve participant or family input include incident and complaint reporting, Participant and Family Experience Surveys, and representation on the HCBS Waivers Quality Council. The HCBS Waivers Quality Council is in place to advise The Nebraska Department of Health and Humans Services (DHHS) on strategies to improve all aspects of waiver quality management, particularly strategies related to health and safety. The State does intend to implement the National Core Indicators and is in the process of determining the timeline for each of its HCBS waivers. The State Transition Plan includes milestones for developing educational resources for waiver participants, guardians, and families regarding settings requirements; for training services coordinators, and for services coordinators to provide education. This education will include rights regarding leases. Nebraska does currently have one location that receives funding through the Traumatic Brain Injury (TBI) waiver. Historically, there has not been significant interest in providing services through the TBI waiver which subsequently is the reason there is only one provider. DHHS hopes this will change in the future. DHHS is required to assess and therefore to determine compliance with the CMS Final Rule. DHHS will continue to review options and opportunities for additional services as part of the re-design and in future discussions.	No	The response addresses the question and did not require a change in the plan.

Number	Date Comment Received	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
84.e	4/25/2016	Email, row 5		Using a randomized stratified sample for DD Waiver setting assessments seems inconsistent with the assessments used for the A&D Waiver and TBI Waivers. There is much variation between DD Providers and settings - (ie. Group home, companion home, extended family home). How does this process fully comply with the HCBS rule? How will a heightened scrutiny process be determined to identify settings out of compliance if not all equally assessed? DDD staff to answer - Please provide greater explanation of those settings that need heightened scrutiny and what the process of determining compliance will be. o When will the specific settings be named? o How will public comments be sought and stakeholders engaged for input for settings classified as: - Group B. Settings that do not comply, but could with modifications - Group C. Presumptively institutional in nature; and - Group D. Settings that cannot comply. Competitive Integrated Employment: - Please explain how Nebraska will come into compliance with implementing competitive, integrated employment within all its Medicaid Waiver programs. -What will be the process for determining those who are not able to be in a competitive work setting? Again, we greatly appreciate the Department's significant work on this draft plan. Members of the undersigned agencies would welcome the opportunity to be a resource to you through this process. Please contact Kathy Hoell, Executive Director of the Nebraska Statewide Independent Living Council (NE SILC) with future communications and she will forward these to the HCBS Coalition members.	Guidance provided by the Centers for Medicare and Medicaid Services (CMS) indicated that a randomized stratified sample would be acceptable to determine the sites for assessment. That being said, additional assessment of sites will be completed in the coming months to validate the results which have already come in as well as provide an opportunity to review additional sites based on stakeholder feedback. The State will further define the heightened scrutiny process in line with CMS guidance. States are required to solicit public input for sites the state has identified as subject to heightened scrutiny. The milestones in the current plan draft call for this process to occur in the fourth quarter of 2017. It is anticipated that competitive integrated employment will need to become a service of all HCBS waivers in the future. This topic will be considered as part of Long-Term Supports and Services Redesign (LTSS). Currently, the Nebraska Department of Developmental Disabilities (DDD) has a vocational service option that is focused on competitive and integrated employment under the 1915 (c) waivers. DDD continues it's work with technical assistance from CMS to stabilize all DDD waiver services . CMS has addressed the question regarding if there is a minimum number of residential settings that must be offered to an individual. There is no minimum number of options, but an individual must be able to select among setting options that include non-disability-specific settings and an option for a private unit in a residential setting. All decisions made by or on behalf of individuals receiving services are approached through a person centered planning process. It will be the responsibility of the individual's team to support the individuals in the decision if he/she would like to continue to work or seek completive employment. Nebraska intends to comply with the Home and Community Based Services (HCBS) Final Rule to implement processes to ensure competitive, integrated employment options are available through partnerships with our current community providers and other stakeholders.	No	Clarification for next steps will be reviewed to insure representation in the plan.

Appendix B
HCBS State Transition Plan
Public Comments

	Date Comment Received	Location	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
1	6/3/2018	Lincoln	Verbal	AD/TBI/DD	We would like the number of non-compliant sites/settings.	Information on number of settings is located in the plan.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
2	6/3/2018	Lincoln	Verbal	AD/TBI/DD	We believe you are not reaching out effectively to parents for the public comment period	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
3	6/3/2018	Lincoln	Verbal	AD/TBI/DD	The DHHS Website is difficult to navigate	DHHS Business Plan for July 2018-June 2019 addresses the need for a more user friendly website and the timeline for completion.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
4	6/3/2018	Lincoln	Verbal	DD	Parents are nervous about the final rule, and how it will affect the services their children receive.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
5	6/3/2018	Lincoln	Verbal	DD	If any of the workshops paying sub-minimum wage will not be compliant, parents need to know and need to have a say. Many are happy with their piece work and sub-minimum wage jobs because they have been determined disabled by Social Security, and the Social Security definition of disabled is that the person has the lack to achieve gainful employment.	The presence of a sub-minimum wage certificate does not automatically make a provider non-compliant with the final rule. Each day service site is being surveyed to determine compliance.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
6	6/3/2018	Lincoln	Verbal	DD	I hope that the STP will help the state of Nebraska get caught up in designing effective self-employment services, because today families don't know the options available to them, such as comprehensive benefits planning services from a certified benefits planner.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
7	6/3/2018	Lincoln	Verbal	AD/TBI/DD	We request a facts and myths document on the STP, and what settings will and won't be compliant.	Thank you for your comment. The settings that will not be able to comply with the final rule will be posted on the DHHS website toward the end of the transition period. Specific questions about the STP (including facts and myths questions) can be directed to: DHHS.HCBSPublicComments@nebraska.gov.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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8	6/3/2018	Lincoln	Verbal	AD/TBI/DD	Do the Heightened Scrutiny packets go to the Regional CMS office in Kansas City or to the CMS Central Office?	Heightened Scrutiny packets are sent to the CMS Central office.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
9	6/3/2018	Lincoln	Verbal	AD/TBI/DD	What does the assistance that will be given to providers on Heightened Scrutiny look like?	The assistance given to heightened scrutiny settings will be specific to the needs of each setting. Providers will be given information on how to request technical assistance from the State.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
10	6/3/2018	Lincoln	Verbal	DD	What does the assistance with provider selection look like? Will it still be independent case management?	Assistance with provider selection is offered as a part of service coordination duties for all three waivers. The current model of service coordination is not changing due to the final rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
11	6/3/2018	Lincoln	Verbal	DD	For public comment, can the state send letters to providers to share with parents and guardians?	Pursuant to 42 C.F.R. §441.301(c)(6)(iii), the Nebraska Department of Health and Human Services (DHHS) is required to give public notice related to the state's plan to comply with the federal regulation governing the settings in which the delivery of services to Medicaid Home and Community-Based Services waiver recipients may be provided. The pubic comment period is announced through website postings and notices in a newspaper.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
12	6/3/2018	Lincoln	Verbal	DD	Can Service Coordinators be encouraged to share info about the STP and the public comment period with families on their caseloads?	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
13	6/4/2018	Public Comment Mailbox	Written	AD	I am the administrator for Hillcrest Terrace AL in Alma, NE. Is this something that we need to be completing?	A state employee will reach out to you.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
14	6/7/2018	Public Comment Mailbox	Written	AD	I want to verify that Immanuel Courtyard in Omaha, NE is not subject to heightened scrutiny.	A state employee will reach out to you.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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15	6/8/2018	Public Comment Mailbox	Written	AD/TBI/DD	Although the relationship between this plan and the recent review of the proposed adoption of Title 403 Medicaid HCBS for Persons with DD Chapters 1-5 to the NAC (conducted in January 2018) is briefly addressed in paragraph c. on pages 19-20, what is missing is an explanation as to how the two documents are related and fit into the overall process of bringing Nebraska DHHS into compliance with Medicaid regulations. Rationale: When persons such as myself, a parent of a DD daughter, are asked to comment upon various documents coming from Nebraska DHHS, it is difficult to provide substantive input without the fundamental understanding of how the big picture process is supposed to be working.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
16	6/8/2018	Public Comment Mailbox	Written	AD/TBI/DD	There is no attachment listing all acronyms used in the plan, their full working, and a brief description of the entity represented by the acronym. Rationale: Such an attachment would be very useful to any reader (not intimately familiar with jargon used in the Plan) to understand the Plan	Thank you for your comment. All acronyms are spelled out the first time they are used in the document.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
17	6/8/2018	Public Comment Mailbox	Written	AD/TBI/DD	Page 3 is the second page of the Table of Contents. Under paragraph 10 on that page, there are 5 attachments, including: Attachment 4 - Systematic Assessment Summary - DD Waivers, Page 101. Attachment 5 - Work Plan for Settings Compliance. When turning to page 101, the reader finds at the bottom right corner of the page that the page is part of Attachment 5. This error continues through page 135. Page 136 correctly identifies that page as part of Attachment 5. Rationale: Consistency leads to clarity	Pagination will be corrected. Thank you for your comment.	change	Pagination will be corrected.

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18	6/8/2018	Public Comment Mailbox	Written	AD/TBI/DD	Pages 11-12, under paragraph d. Summary of Public Comments: In the second paragraph and in the following 12 bulletized sub-paragraphs, there are blanks where there should be the actual number of comments. For example, the first two sentences in that paragraph now read: In total, ___ individuals/organizations submitted comments, 48 of which were submitted in 2014 and 36 of which were submitted in 2016/ ____ were submitted in 2018. Rationale: Apparently, these blanks were meant to be filled in prior to publishing this version of the Plan, but were not.	Blanks are intended to be completed once public comments have been received.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
19	6/11/2018	Lincoln	Verbal	AD/TBI/DD	Are you making sure the Services Coordinators aren't making provider selections for clients?	Person-centered planning is a core part of the Final Rule. Service Coordinators are trained in person-centered planning, which would include how to assist participants in making provider selections. Service Coordinators will not make provider selections for participants.	No change	Person-centered planning is a core part of the Final Rule. Service Coordinators are trained in person-centered planning, which would include how to assist participants in making provider selections. Service Coordinators will not make provider selections for participants.
20	6/11/2018	Lincoln	Verbal	DD	Are there more Non-Residential DD Waiver settings to be assessed?	Yes, there are approximately 125 Non-Residential DD settings that will be assessed.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
21	6/11/2018	Lincoln	Verbal	DD	I have a low functioning child with DD. He is 28 years old, and is a runner. My vision for him is a secured ranch or campus. Are there even going to be similar options here?	Though there are no options like this currently, DHHS encourages providers to be creative in how they set up their programs, as long as they meet all state and federal statutory and regulatory standards. The options outlined in the comment would likely be considered a facility or institutional in nature and would not likely meet the integration requirements of the final rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
22	6/11/2018	Lincoln	Verbal	DD	What do DD non-residential settings have yet to do in order to be compliant with the final rule?	Each non-residential DD setting will be surveyed to determine compliance. If the setting is found to be non-compliant in any area, steps may be taken by the agency to come into compliance. Technical assistance from DD is available for providers to assist them with coming into compliance.	No change	Each non-residential DD setting will be surveyed to determine compliance. If the setting is found to be non-compliant in any area, steps may be taken by the agency to come into compliance. Technical assistance from DD is available for providers to assist them with coming into

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23	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Who made the final rule? Was it elected officials?	The Center for Medicare and Medicaid Services (CMS) issued the final rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
24	6/12/2018	QLI 3:00 p.m.	Verbal	DD	How does this affect the Beatrice State Developmental Center?	Because the Beatrice State Developmental Center (BSDC) is categorized as an Intermediate Care Facility for Developmental Disabilities/Intellectual Disabilities (ICF-DD/ICF-ID), it does not fall under the purview of the Final Rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
25	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	What is the transition, and why, and who is transitioning?	The transition refers to providers transitioning to the new regulations outlined in the HCBS final rule. This regulation was put into place in 2014, and states are required to assure that all providers of HCBS are compliant.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
26	6/12/2018	QLI 3:00 p.m.	Verbal	DD	My daughter has been in system since she was 5 years old. She has some skills, and likes sorting. What are she, and others like her, to do, with these and other learned skills, now with the final rule requirements for integration?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. Integration requirements in the Final Rule will not prevent participants from maintaining and learning new skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
27	6/12/2018	QLI 3:00 p.m.	Verbal	DD	Who is requiring the state to make these changes? My loved one is autistic and doesn't want to be on a van all day to go somewhere or drive around town. It is not the best for them. If this type of service costs more, will the state stop? They are trying to put all crayons in one box, but we are all different. Is it costing the state more now?	Person-centered planning is a central element to HCBS Services. All HCBS services should be matched to the individuals wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
28	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	When does the final rule go into effect?	New settings are required to be compliant with the rule as of March 17, 2014. Existing settings have a transition period to come into compliance which ends March 17, 2022. The state is to receive final approval from CMS on the Statewide Transition Plan by 2019.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
29	6/12/2018	QLI 3:00 p.m.	Verbal	DD	Is any of this based on the ICAP and on what a waiver participant can do and can not do?	The objective assessment process (of which the ICAP is a part) is separate from the Final Rule. Person-centered planning is a central element to HCBS and services should be matched to the individuals' wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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30	6/12/2018	QLI 3:00 p.m.	Verbal	DD	What if I don't understand what the changes are to the services my son is receiving, after reading the state transition plan?	The State will provide additional information to the public via the DHHS website regarding the State Transition Plan.	No change	The State will provide additional information to the public via the DHHS website regarding the State Transition Plan.
31	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Is the Final Rule for residential settings the same for all settings?	The Final Rule is for settings that are owned and operated by the provider to ensure that is it being run in a Home and Community Based manner instead of an institutional manner.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
32	6/12/2018	QLI 3:00 p.m.	Verbal	AD/DD	If my child is receiving services in my home, is there less chance of having to make any changes, so his services are not affected in his own home?	Individuals who are served in private homes that are not provider owned, operated, or controlled, are presumed compliant with the rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
33	6/12/2018	QLI 3:00 p.m.	Verbal	DD	What are the goals for extended family homes? If it is working now, why change?	Extended family homes are a part of the Medicaid HCBS DD Comprehensive waiver services array. In upcoming wavier changes, the name of the service will be changed to Shared Living/Host Home, but the primary function of the service will remain the same. At this time there is no plan to add or eliminate any residential services.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
34	6/12/2018	QLI 3:00 p.m.	Verbal	DD	Is the goal of the final rule to only have extended family homes?	Extended family homes are a part of the Medicaid HCBS DD Comprehensive waiver services array. In upcoming wavier changes, the name of the service will be changed to Shared Living/Host Home, but the primary function of the service will remain the same. At this time there is no plan to add or eliminate any residential services.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
35	6/12/2018	QLI 3:00 p.m.	Verbal	AD/DD	How will the final rule affect apartments for the handicapped?	If the apartment is owned, operated, or controlled by a Medicaid HCBS Waiver provider, it is subject to the Final Rule. If the apartment is not owned, operated, or controlled by a Medicaid HCBS Waiver provider, it is not subject to the Final Rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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36	6/12/2018	QLI 3:00 p.m.	Verbal	DD	How will the final rule affect group homes and how they function? My loved one lives in a group home, and makes his own decisions.	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. No group homes are being forced to close. A participant may still choose to live in a group home an exercise autonomy as they wish. The final rule does not impair or impede the decision-making of a participant living in such.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
37	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	What if some settings don't want to comply?	If settings choose not to comply, effective March 2022, Medicaid HCBS Waiver funds can no longer be used to pay for the services in those settings.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
38	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	The participant's HCBS Waiver money needs to go with the participant and their parent/guardian. The decision of how to spend the money should be the parent's, because parents know what the participants need.	State policies and legislative appropriations along with the Medicaid Federal Match program determine how much money is available for services. Because of this, how much money is available to each participant and how the money is used is regulated based on State and Federal rules. Guardians and parents are encouraged to be involved in the team decision-making processes, to help select the best services that meet the needs of the participant.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
39	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Who should we contact if we have questions about the STP or final rule?	All questions about the final rule may be sent to DHHS.HCBSPublicComments@nebraska.gov	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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40	6/12/2018	QLI 3:00 p.m.	Verbal	DD	What will happen with workshops? How does the final rule affect settings with a sub-minimum wage certificate, and participants receiving a piece rate or less than minimum wage?	At this time, there are no plans to eliminate the workshop service. Sub-minimum wages are still currently allowed by the Federal Department of Labor, so those sites working under a sub-minimum wage certificate can still continue to do so as long as it is allowed. The State currently requires that any partipant who expresses interest in working, be referred to Vocational Rehabilitation for an assessment. The Medicaid HCBS DD Waivers also offer several different job codes to assist participants in gaining competitive, integrated, employment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
41	6/12/2018	QLI 3:00 p.m.	Verbal	DD	Once the final rule is in effect, can you comment if there will be different reimbursements for services? For example, will there be a different rate for the compliant service that replaces a workshop service that is not compliant?	The reimbursement rates are dependent upon the services provided and are determined by a rate methodology. The methodology takes into account the actual cost to provide the service, overhead costs, employee costs, etc. The methodology is completed utilizing the data from current providers as well as data for similar services in surrounding states.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
42	6/12/2018	QLI 3:00 p.m.	Verbal	DD	Vocational settings, doing piece work, how do the people reviewing the settings determine if the people working are only DD waiver participants, or if persons without disabilities are also working there, and how do they know if the setting is compliant?	In order to be compliant, settings where individuals receiving Medicaid HCBS DD Waiver service work side-by-side with those who do not receive the waiver services should generally have no differentiation between the work done by one person or the other. The staff/providers cannot be the only persons not on the Medicaid HCBS DD Waiver.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
43	6/12/2018	QLI 3:00 p.m.	Verbal	DD	The amount of dollars is important in our culture, but it needs to be considered to not take away their wages.	In order to be compliant, settings where individuals receiving Medicaid HCBS DD Waiver service work side-by-side with those who do not receive the waiver services should generally have no differentiation between the work done by one person or the other. The staff/providers cannot be the only persons not on the Medicaid HCBS DD Waiver.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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44	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	If places where my son receives his day services close, what is going to replace them? My son is already on a waiting list for residential services. Would he go back on a waitlist for day services?	Your son would not need to go back on the waitlist for day services. If a setting closes due to inability to comply with the HCBS Final Rule, a relocation plan is required for each participant that will be disrupted by the closure. Service coordination will work with your son and his team to determine the best services for him.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
45	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Are individual providers affected by the Final Rule?	Yes, they can be. All settings are subject to compliance of the final rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
46	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	What do you mean by services need to be provided “in the community”?	"In the community" means that the participants are receiving services in a setting in which they are able to interact with the general public, rather than in an isolated or facility-like setting.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
47	6/12/2018	QLI 3:00 p.m.	Verbal	DD	There is already trouble finding staff, what about having an enclave? Dealing with private business is not easy and it will cost, now it won’t be cost effective with one to one assistance. The value of work, doesn’t have the same value of $’s but the work is valued and gives them self-worth, there is a great work ethic in our people	Enclave continues to be a service offered through the Medicaid HCBS DD Waiver program.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
48	6/12/2018	QLI 3:00 p.m.	Verbal	DD	For those community services where the providers just drive the participants around town in the van, to say that they are "in the community," what value is that?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. DD does not promote or condone practices in which participants are driven around in a van all day long just to be out in the community, as this does not meet the definition of any waiver service, nor is it best practice.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
49	6/12/2018	QLI 3:00 p.m.	Verbal	DD	My loved one has worked in 4 Mosaic print-making settings after their group home closed. None of the other participants can work longer than 3 months with her. She has different needs. How will the STP and final rule address this?	The final rule does take into account participant needs, as person-centered planning is a core element of the rule. For participants with high needs, it is important that the ISP team have in-depth discussions about the participant's needs and attempt innovative solutions to help the participant become successful.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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50	6/12/2018	QLI 3:00 p.m.	Verbal	DD	The final rule will result in participants not being able to do what they want to do if they can't be paid what CMS says is enough, or not being able to be with the people they know. I hate to see pressures on the workshops. It has been long road to get this far, and parents are scared that their children will be pulled out of the workshops. I think CMS and the state just want to save a buck.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
51	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Do senators know about CMS looking at all states' Heightened Scrutiny packets? That is a waste of tax payers dollars.	It is unknown if US Senators know that CMS is looking at all states' Heightened Scrutiny Packets. At this time, CMS has clarified that they will only be looking at a portion of the Heightened Scrutiny Packets, and have clarified the submission requirements of the packets, which would eliminate a great number of them. This clarification can be found in the publication titled "March 2019 Updated Frequently Asked Questions on Heightened Scrutiny Provision" which may be found here: https://www.medicaid.gov/medicaid/hcbs/guidance/settings/index.html.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
52	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	When is technical assistance going to be given by the state to the providers?	Technical assistance in regards to the final rule will be given to any provider/setting who requests it from the State.	No change	Nebraska DHHS interprets that the comment does not warrant a change to the transition plan.
53	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	When are settings subject to heightened scrutiny going to be posted?	The State has until October 2019 to identify the number of settings that fall under heightened scrutiny (and which category they fall in). The list of these settings must be submitted to CMS by July 2020 (for category 1 and 2) and October 2020 (for category 3). These settings will be posted prior to submission to CMS. This posting will be HIPAA compliant.	No change	Nebraska DHHS interprets that the comment does not warrant a change to the transition plan.
54	6/12/2018	QLI 3:00 p.m.	Verbal	DD	For the settings subject to heightened scrutiny - families do not want their participants to get concerned if they see their setting online. They may not understand.	All postings regarding the final rule will be HIPAA compliant. Additional information will be provided by CMS on posting settings for public comment.	No change	Nebraska DHHS interprets that the comment does not warrant a change to the transition plan.

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55	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	What is the most valuable thing parents can do?	Parents and guardians can do many things to make sure they have the most up-to-date information about the State Transition Plan. These things include subscribing to the STP portion of the DHHS Website, subscribing to Medicaid.gov's STP pages in their website, attending/commenting during public comment periods, and attending parent/advocate meetings that are held by various groups.	No change	Nebraska DHHS interprets that the comment does not warrant a change to the transition plan.
56	6/12/2018	QLI 3:00 p.m.	Verbal	DD	My son's funding got cut by 40%. He was in the hospital and sent to a different home. Does the final rule mean that I will have to put him in a private home? Nobody is listening to those that are going to private homes unsuccessfully, when they were happy in their group home. As we, parents and caretakers, get older, what will happen to our kids when no one else is around to step in? I think agencies are changing. The last agency he was at gave us 60 day notice of ending my son's services with them, but then where does he go? It is big fear. With these proposed changes, what if they find a good workshop but it doesn't pay enough, but it is good for my kid and for us?	Funding for settings comes directly from participant budgets. Settings may close because of funding issues, but that is not directly related to the Final Rule. If a setting chooses to close due to inability to comply with the HCBS Final Rule (in any part), a relocation plan is required for each participant that will be disrupted by the closure.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
57	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	How will our children with disabilities be treated in new settings with people without disabilities?	Providers, families, friends, advocates, service coordinators, and all other stakeholders are encouraged help educate community members about inclusivity and integration. Providers are further encouraged to do this through their policies and practices. State regulations require that agencies have policies and procedures about dignity and respect.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
58	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Why can't the Medicaid HCBS Waivers fund settings like gated communities, such as Quality Living Inc. or Boys Town, for persons with DD?	Gated communities typically do not meet the standards required in order to be considered home and community-based due to being facility/campus-like settings, which are presumed institutional.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
59	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Persons with autism have different needs and are ever changing.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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60	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	How many DD providers have gone out of business as a result of the final rule?	As of the end of the public comment period, no DD Settings have been required to close due to inability to comply with the HCBS Final Rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
61	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Our main concern is the feds come up with scenarios to fit all disabled persons, but they are all so different. These same choices for all are not always “good”.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
62	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Somehow, the each person's individual needs should be considered. One approach is not going to work for all. My son makes choices to do nothing and that is not good. We are aging and how much longer will we be around to help our kid?	Person-centered planning is a central element to HCBS Services. Part of this process is to work with the individual's team to plan for current and future needs of the individual.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
63	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	The final rule is working against the security parents have with the current ways of service delivery. This is not good.	Thank you for your comment. The State is required to come into compliance with the final rule. As part of the transition to the new services and supports that are compliant the teams, including participants. and parents and guardians (as applicable), will be actively involved in the decisions.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
64	6/12/2018	QLI 3:00 p.m.	Verbal	AD/TBI/DD	Rates are pretty typical, maybe state could do survey to ask what services families want and put higher rate to certain ones. The focus needs to be that the staff is valued and paid appropriately, and teach worthy vocations.	Rates are determined using a CMS approved rate-methodology process. The methodology includes factors such as: staffing ratios, bureau of labor statistics wage categories, cost of doing business, etc.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
65	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	What are the requirements for the providers to come into compliance with the final rule?	Please review the state transition plan for requirements. For setting specific requirements contact the State.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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66	6/12/2018	QLI 7:00 p.m.	Verbal	DD	My biggest concern for is for individuals with DD. The final rule states that they must work beside someone without disabilities, but a lot of our children with DD don't interact well with people without disabilities and are only very comfortable with others with DD. Workshops today only have people with DD and they are enjoying it! Someone without disabilities would be bored at those jobs.	The final rule promotes the positive impact of integration and inclusion into the community for people with disabilities. This can take many forms including making sure the participants have the ability to go into the community to places they want to go. While it may be true that the current jobs available in workshop settings are not desired by persons without disabilities, it is important to remember that participants with disabilities must have the same ability to access opportunities as the public, regardless of their disability.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
67	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	How are the settings going to look different?	The final rule promotes the positive impact of integration and inclusion into the community for people with disabilities. The final rule requires that settings not be institutional in nature.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
68	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	I have an issue with my daughter's service provider having to prove in a system that they are taking her into a community setting, with the final rule. My daughter has a lot of community activities, such as going to the zoo, available to her. Some days she wants to go and some days she does not want to. Will participants be offered their choice?	Person-centered planning is a central element to HCBS Services. All services are matched to the individuals' wants, needs, and skills. The Medicaid HCBS DD waivers provide an array of day services, both in the community and in day service settings. While participants have a choice about what to do from day to day, if their choice is not within the service array, support may not be able to be provided through the Medicaid HCBS DD waivers.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
69	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	Is the Code of Federal Regulations the same as law?	Yes, all states must be in compliance with the final rule and with all applicable Code of Federal Regulations.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
70	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	The final rule passed in 2014. Did the feds take a first stab at the requirements for compliance, then reconsider? Are the feds looking at options or is it set?	The Final Rule regulation has not changed since it was passed in 2014. CMS continues to provide technical guidance to states to clarify the requirements and assist states in transitioning their services and settings in the least disruptive way possible to waiver participants and their providers.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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71	6/12/2018	QLI 7:00 p.m.	Verbal	DD	Our sister had to change day services, because it had to be inclusive of community. She is aged, and the aged don't have the energy to go out every day. How are their different needs handled?	Person-centered planning is a central element to HCBS Services. All services are matched to the individuals' wants, needs, and skills. The DD waivers are habilitative waivers. The goal of the services are to build and maintain skills to help the individual live in the community as independently as possible.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
72	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	What if the setting our loved one is in closes? What do we do, even though we are happy with the service and setting they are currently in?	If a setting chooses to close due to inability to comply with the HCBS Final Rule, the State will work with each participant to develop an individualized transition plan based on their choices and needs.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
73	6/12/2018	QLI 7:00 p.m.	Verbal	AD/DD	My loved one is aged, and has down syndrome and Alzheimer's. Last year she was no longer allowed to stay in her home all day and now has to leave daily to go to a day service. That's not choice. It was dictated to her that she had to go to day service. We have an aging population, and requiring her to receive services in the community is not at an appropriate level for her. The day service was just driving her around in the van, and she was just sleeping. If services are supposed to be person centered, then make them that - what the person really wants to do. Our loved ones have no choices, because the services they receive are driven how much money is directed to them. I celebrate the participants being in the community, but consider each person's individual needs. I don't see our aging population being considered.	Thank you for your comment. Any concerns with HCBS waiver services being received should be discussed with the participant's services coordinator.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
74	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	What are you finding after all the assessments? Are the changes going to be the best outcomes for the participants? Are you finding any major problems with major providers?	A summary of the site assessments results will be made available on the DHHS website. Any areas of non-compliance are being addressed with the provider.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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75	6/12/2018	QLI 7:00 p.m.	Verbal	DD	Define intermediate care facility? That's the ones where they work and live there? They are not in this setting rule then? How is that funded?	Pursuant to 42 C.F.R. §435.1009: Institution for individuals with intellectual disabilities means an institution (or distinct part of an institution) that -- 1. Is primarily for the diagnosis, treatment, or rehabilitation of the intellectually disabled or persons with related conditions; and 2. Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his greatest ability. These institutions are funded separately from HCBS settings through CMS and State dollars.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
76	6/12/2018	QLI 7:00 p.m.	Verbal	DD	What do we do if we can't send a participant to day service?	Person-centered planning is a central element to HCBS Services. All services are matched to the individuals' wants, needs, and skills. The Medicaid HCBS DD waivers provide an array of day services, both in the community and in day service settings. While participants have a choice about what to do from day to day, if their choice is not within the service array, support may not be able to be provided through the Medicaid HCBS DD waivers.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
77	6/12/2018	QLI 7:00 p.m.	Verbal	AD/DD	What to do with participants who are aged and/or have Alzheimer's, who are being expected to go to day services? They have a right to retire, like anyone else over 65 yrs. They need services that do not make them work for the day.	The Final Rule requires person centered planning which means each persons plan should be centered around that person. The DD waivers are habilitative waivers. The goal of the services are to build and maintain skills to help the individual live as independently as possible. This does not mean that all participants have to work, just that their services have to be integrated into the community.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
78	6/12/2018	QLI 7:00 p.m.	Verbal	AD/DD	Participants need to be able to retain their current therapies, so they do not decline and end up in a wheelchair. How do you enable them to keep the skill sets they have acquired? There are ways that can be done.	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. Therapy is a State Plan Medicaid service and is not part of the HCBS services available to an individual so they are not affected by the final rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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79	6/12/2018	QLI 7:00 p.m.	Verbal	DD/AD	My daughter had the perfect set up until last September, and had community access, as she was able to tolerate. We need to look at the length of time in the community that an individual can tolerate. For example, my daughter cannot sit through a movie. We should not make them do things that are not comfortable for them. Person-centered from the state is nonsense. It sounds wonderful but while you delve into the people that you are creating services figure out what habilitation means for each one of them, my daughter is dying. I just left her a few minutes ago, and she is exhausted and confused. The system does not know how to handle her. There is not one person in the house where she lives that knows how to handle her Alzheimer's. We need to see someone who will hold her and support her for the last years of her life. She cries every day when she has to go to the day service. She is one of many that does not have a voice. My daughter has no one else to help her, like siblings. I am glad I will watch her die first before me, because I do not trust the system to support her without me. I am not trying to put you down but it is short-sighted. You need to figure out what is really going on.	There are several different waiver options that provide different services based on need. The DD waivers are habilitative in nature. The AD waiver does not provide habilitative services. The service coordinator can assist you in finding the most appropriate waiver and services for your daughter.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
80	6/12/2018	QLI 7:00 p.m.	Verbal	DD	All DD waivers are habilitative. Is there an option in Nebraska for a waiver to not being habilitative? Would requirements be the same? Can participants on the DD waivers transition to the AD waiver?	The majority of Home and Community Based services for individuals with DD is habilitative in nature. Certain services offered through the Medicaid HCBS DD Waivers may be considered non-habilitative. More information can be found on the DHHS DD Website. Individuals who are receiving Medicaid HCBS DD Waiver services may choose to transition to the Medicaid HCBS AD Waiver, if they meet the qualifications to do so.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
81	6/12/2018	QLI 7:00 p.m.	Verbal	AD/DD	Are there people receiving AD Waiver services in DD settings?	Both AD and DD Waiver services can be provided in a variety of community settings. There are settings in which individuals on several waivers are receiving services at the same time.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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82	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	Is NE taking a look at best practices in other states, in regard to aging individuals?	It is standard practice to look at best practices across states in all waiver services. As a part of the research process that goes into renewing and amending waivers, other states' practices and processes are examined. CMS also provides guidance about best practices and promising practices from other states.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
83	6/12/2018	QLI 7:00 p.m.	Verbal	DD	I want to point out the range of individuals on the waivers. My daughter has down syndrome and just turned 19. I am divorced and can't really afford her care. I've been looking at day jobs and volunteering for her, but her abilities, which aren't very good, make it hard. I blame it on the school system. She may be autistic, but school wouldn't take it up. I went to the ARC association meeting in February and some parents are upset because the kids are doing so well and getting to the threshold, make too much money and will lose Medicaid. I can't really come up with a job for her. Maybe vacuuming. You keep talking about habilitative services, but I can't ever train her to do many things because there are too many networks in her brain. I've been asked, "Can't you leave her home and teach her to learn the microwave? Could she be taught how many seconds to type in on it?" She can't and she burns some things. An employer would have to stand by her and cue her on all tasks at all times. She hasn't made much progress through the years of school. Millard school couldn't teach her and I blame them. I had talked to them about holding her back to let her brain catch up, but they never did. She couldn't comprehend "Stop, Drop, and Roll" that was on a paper she brought home in kindergarten. You can't lump all diagnoses into groups. They can all be different. My daughter is on the low end of Down Syndrome, and will never lose Medicaid because she makes too much money. The people in congress don't understand the variation.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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84	6/12/2018	QLI 7:00 p.m.	Verbal	DD	In the DD assessment, you are asked about the ability of your child and all of their disabilities. My daughter has a variety of different issues. There are a lot of our children like that and a lot of them are in day services. The abilities of everyone are so wide and varied. The assessment we filled out asked about all the different issues for the individual. Can she do work? Not really. There are a lot of our kids like that and we are worried about them not being able to hold jobs. The day services are taking good care of them now, and getting them the community. They do things like outings to the petting zoo. There is no such thing as habilitative services for them.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
85	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	My son goes to a day center. Given the STP assessments, with the spectrum of aged adults, what will the state advise to the settings? What is the universal recommendation and what will CMS accept?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
86	6/12/2018	QLI 7:00 p.m.	Verbal	DD	If individuals are not going to be in the community 5 days a week, who is going to be working with them? Will schools do a buddy thing for a day? What will qualify?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. The waivers offer a variety of day services, some of which are in the community, and some of which are based in a day setting location. Participants who are under 21 receive day services through the school system. Participants over age 21 can pick from the service array in order to meet their needs.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
87	6/12/2018	QLI 7:00 p.m.	Verbal	DD	Are individuals who are going to a day service site to do a craft going to be considered okay?	Each non-residential DD setting will be surveyed to determine compliance. If the setting is found to be non-compliant in any area, steps may be taken by the agency to come into compliance.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
88	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	Where will we get staff for all the places? There is a 3% unemployment rate in Nebraska right now. We can't get staff.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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89	6/12/2018	QLI 7:00 p.m.	Verbal	AD/DD	Agencies cannot keep staff. A new staff person comes in for only a month, which is just long enough for our kids to get know them, then leaves. Our kids get depressed when that worker leaves.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
90	6/12/2018	QLI 7:00 p.m.	Verbal	DD	Before I learned the ropes, I was big on inclusion. Rather than send my daughter to kindergarten, they were stock piling kids with disabilities into 4 schools. My son without disabilities was never exposed to kids with disabilities and vice versa.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
91	6/12/2018	QLI 7:00 p.m.	Verbal	DD	Once middle school hit, there was a more noticeable difference between my disabled daughter, and other girls. They were heads above her. If we are not going to educate all about the disabled, how are we going to be accepted into society now? We had kids with DD doing jobs in the warehouse and they were “over there” and not with the others. They saw each other but DD was “over there.” I have not had good experiences with DD in the real world. Why are senators making these laws when they do not understand them? My daughter is falling behind in school. That emotional strain affects her. My daughter does not have an expressive ability to tell me what's wrong, and I can’t understand her words. There is a communication gap.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
92	6/12/2018	QLI 7:00 p.m.	Verbal	AD/TBI/DD	Everybody is unique and we appreciate your effort. We want you guys to be flexible in how things are implemented, you cannot expect a provider to do a “one size fits all” because it won’t be person centered. We don’t want providers to have to kick out some because they don’t fit the services that particular provider can provide.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
93	6/12/2018	QLI 7:00 p.m.	Verbal	DD	My daughter loves working in one of the sheltered workshop. You guys wouldn’t like to be working in a job that you enjoy and then be pulled out just because someone said so.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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94	6/12/2018	QLI 7:00 p.m.	Written	DD	Why are the parents/guardians not being asked or allowed to say how we want our child provided for and how services should be utilized and their funding used? We know them better than those making these rulings. They do not have in the best interest of all individuals. My child is autistic that gets over stimulated, does not want to be in a loud van driving around all day. Some days he may want to go shopping etc. and other days he will refuse to go anywhere and want to stay home and watch a movie. The service provided should be paid for staffing regardless of what he chooses to do. If he is expected to be forced to do things, his behaviors will escalate. What kind of quality of life is that for him? He is in a group home, but the push is for the extended family homes. This once again is not in the best interest of these clients with high needs or behaviors. Extended Family Homes would get burned out with his behaviors, so he would be constantly moved from home to home. is that in his best interest, once again what kind of quality of life is this for him, if he has no stability. I am recently widowed and would like to have some peace in knowing that when I am not here, that the provider will be able to continue to provide a quality of life for him and the government will not be making rulings for a one size fits all kind of service. The providers would not be scrutinized, or we will not have anyone to provide services. They need to be supported and encouraged, and reimbursed for the wonderful services they provided for our loved ones.	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
95	6/12/2018	QLI 7:00 p.m.	Written	DD	My son who is 44 years old and mentally at age 1 1/2 needs a workshop setting. He is high needs and medically fragile. He can't handle being out in the community and on vans all day long. One size does not fit all! We need stability. He can't voice his choices. Do you know if this is costing the tax payer more money?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. The final rule does not represent any additional cost to the State.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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96	6/13/2018	North Platte	Verbal	DD	Are there any DD workers out presenting statewide?	Questions about the HCBS State Transition plan may be directed to dhhs.HCBSPublicComments@nebraska.gov	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
97	6/13/2018	North Platte	Verbal	DD	There are over 5,000 people on the DD Waiver and they are not traveling the state and presenting?	Questions about the HCBS State Transition plan may be directed to dhhs.HCBSPublicComments@nebraska.gov	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
98	6/13/2018	North Platte	Verbal	DD	When you say roommate, do you mean housemate or roommate? Roommates share a bedroom.	Roommate and Housemate are used interchangeably in the Final Rule depending on the setting. The required choices regarding this section apply to both roommates and housemates.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
99	6/13/2018	North Platte	Verbal	AD/DD	Does the final rule apply to Liberty House?	Any setting that provides waiver services needs to be in compliance with the Final Rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
100	6/13/2018	North Platte	Verbal	DD/AD	If we do not own the property, why do we have to comply?	Any settings that are considered provider owned, operated, or controlled are subject to the HCBS Final Rule, and thus are required to comply.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
101	6/13/2018	North Platte	Verbal	AD/TBI/DD	For Heightened Scrutiny, what do you tell providers on prong one?	Prong I settings are in a publicly or privately operated facility that provides inpatient institutional treatment. Providers who fall under Prong I are sent a letter asking to describe the interconnectedness between the facility and the setting in question, including administrative, financial, staff, transportation, and other services. They are asked if there are separate entrances and signage. Is the setting integrated in the community? These providers build an evidence package for State review.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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102	6/13/2018	North Platte	Verbal	DD/AD	You mentioned 2 things, training on person centered and not sharing direct care staff, as part of the remediation plan.	Each setting will be assessed for compliance with the Final Rule. Remediation plans will be specific to each setting.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
103	6/13/2018	North Platte	Verbal	AD/TBI/DD	I appreciate your statement of overachieving policy, that is something we can use to help come into compliance.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
104	6/13/2018	North Platte	Verbal	AD/TBI/DD	The burden of contact about the settings and whether they are compliant or not is on the provider, not on the state. It is unfortunate the effort was not made to contact each person. I think it was the wrong way to handle the notification.	Thank you for your comment. If a site is not compliant they will be given opportunity to create a remediation plan to transition into compliance. Participants in settings that cannot comply will be notified by the State and a transition plan will be developed with the participant, Service Coordinator, provider and team.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
105	6/13/2018	North Platte	Verbal	AD/TBI/DD	What does conflict free case management mean?	Conflict free case management means the Service Coordination Agency does not also provide waiver services for that individual.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
106	6/13/2018	North Platte	Verbal	AD/TBI/DD	Providers don't just need to be person centered, the state needs to be person centered.	Person-centered planning occurs utilizing a person-centered team approach. The participant, guardian, service coordinator, and others, as needed, are a part of the team to assist the participant in making decisions about their life. DD service coordinators are state employees who are trained in person-centered planning and help participants (and the team) understand the options available and what is required for each.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
107	6/13/2018	North Platte	Verbal	AD/TBI/DD	Medicaid Eligibility needs to be person centered	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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108	6/13/2018	North Platte	Written	DD	How is this information being shared with DD families and individuals?	Information about the HCBS Settings Final Rule can be located at https://www.medicaid.gov/medicaid/hcbs/guidance/hcbs-final-regulation/index.html. Further information can also be found on the DHHS website.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
109	6/13/2018	North Platte	Written	DD	How or what is the expectation for a residential setting that is not provider owned? How can we or the individuals incur the cost of putting locks on individual bedrooms in a home that is shared?	Settings that are provider owned, operated, or controlled are subject to the Final Rule. A setting that is not owned by the provider but is still operated by the provider (e.g. agency rents the apartment and runs a group home in it) still fall under the purview of the final rule. Costs associated with implementation of the final rule are expected to be absorbed by the agency provider as a part of operation costs.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
110	6/13/2018	North Platte	Written	DD	In DD, what is conflict free case management? What would this be? Give examples please.	Conflict free case management means the Service Coordination Agency does not also provide waiver services for that individual.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
111	6/14/2018	Ogallala	Verbal	AD/TBI/DD	Has anyone talked about the Medical side of schedule? I.e. If a person wants to stay up to 11 PM and takes a sleeping pill, and the pill is given to them at 7 PM. Then the individual is not able to choose their schedule.	If a participant wishes to consistently stay up until 11:00 PM but their medications are given at a time that does not work with that, the team should have a discussion about the participant's desire and assist the participant in discussing this issue with their doctor.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
112	6/14/2018	Ogallala	Verbal	AD/TBI/DD	We need an opportunity for the public to learn about how to approach people with disabilities and how to treat them: A one stop shop for information on how to be a good neighbor to someone with disabilities.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
113	6/14/2018	Gering	Verbal	AD/TBI/DD	Will the heightened scrutiny label be removed once a provider passes the CMS heightened scrutiny process?	Once the setting has been determined to overcome the presumption of an institution, the process for that setting will be complete.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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114	6/14/2018	Gering	Verbal	AD/TBI/DD	Do providers need to go through the heightened scrutiny process every year?	Providers will need to go through the heightened scrutiny process one time. However, there may be several steps to the process. Once the setting has been determined to overcome the presumption of an institution, the process for that setting will be complete.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
115	6/14/2018	Gering	Verbal	AD	When will a decision be rendered regarding heightened scrutiny for Assisted Living settings?	As stated in the Statewide Transition Plan, the public comment period for the identified settings will beginning October 2019 and heightened scrutiny packets will be submitted to CMS on a rolling basis.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
116	6/18/2018	Public Comment Mailbox	Written	DD	Need a definition of what qualifies as a community service. Need direct information.	The phrase "community service" was edited to say "service coordation" in the State Transition Plan on page 8. Thank you for bringing this to our attention.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
117	6/20/2018	Hastings	Written	AD	Is there an opportunity for Assisted Living Facilities who currently provide services for people who do need constant supervision to become part of a plan to provide services and support? Especially SCH, which is rural, slower paced, fewer distractions and can focus on helping people get stabilized with their needs and therapy.	Assisted Living Facilities can chose what services they want to offer as long as it is within the licensure for Assisted Living Facilitates in Nebraska.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
118	6/20/2018	Hastings	Written	DD/AD	I'd like to see a plan that supports people who have been diagnosed with severe and chronic mental illness who may need constant supervision.	Thank you for your comment. Participants who have been diagnosed with severe and chronic mental illness have specific needs. For the DD waiver, the service tiers take into account the needs that go with mental illnesses, which can provide the proper funding for safe supervision levels. For the AD waiver, the participant's needs are address in their individual's plan of services and supports.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
119	6/20/2018	Hastings	Written	DD	The State Transition Plan, page 42, documents that MLTC and DDD are dedicated to opportunities for competitive employment. I believe that Nebraska's current systems/supports are seriously inadequate to maximize opportunities for competitive employment for HCBS Waiver participants	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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120	6/20/2018	Hastings	Written	DD	What characteristics will be present/seen in a setting that "supports opportunities to seek employment and work in competitive integrated settings"?	The Medicaid HCBS DD Waivers offer a variety of employment services that can be delivered in a competitive and integrated job setting.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
121	6/20/2018	From Mosaic	Written	DD	Additional clarity should be provided about expectations about community integration in work settings, specifically, clarity about expectations related to reverse integration and/or transitions needed for existing workplace settings.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
122	6/20/2018	From Mosaic	Written	DD	In the assessment process, providers have been given feedback about community settings. In follow-up up to the assessments and in the final plan, additional clarity should be provided regarding the expectations required under the final rule and the justification for those expectations. Providers need clear feedback about expectations for compliance based on the final rule, verses suggestions or options not required under the final rule.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
123	6/20/2018	From Mosaic	Written	DD	Options must be developed that comply with the final rule but also allow choice and self determination for individuals of retirement age.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
124	6/20/2018	From Mosaic	Written	DD	Requirements should not be applied to Nebraska providers that are not included in the final rule. For example, staff ratios are not included in the final rule and should be unfairly assessed or applied to Nebraska providers.	The Final Rule supplies only a portion of the requirements for Nebraska Providers. Additional requirements found in Nebraska Regulations, State Law, and the Medicaid HCBS DD Waivers may not be reflected in the Final Rule, but are still required to be met.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
125	6/20/2018	From Mosaic	Written	DD	In order to truly meet the goals of the final rule, goals which include community integration, independence and self-determination, Nebraska must adequately invest in appropriate rates and services and specifically must invest in supportive employment services.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
126	6/20/2018	From Mosaic	Written	DD	Mosaic appreciates the State of Nebraska's commitment to technical assistance, options for service models and other support through the heightened scrutiny process. Any support should be research-based, robust and responsive.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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127	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	I think this is a wonderful idea on how to incorporate and interact with others. It will promote independence and make them feel apart of the community. It will be a good learning experience for everyone involved.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
128	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	The HCBS Plan represents the largest change in service delivery since the development of Community Based Services. Such large changes require the input and participation of parents/guardians, individuals with loves ones in services, and service providers (Stakeholders SH). Based on the information I have, it appears the State's outreach effort needs review and some major changes.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
129	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	I attended a meeting in Lincoln and was the only parent that was not on official time. The scheduled times for the meetings are during the day when the majority of SH"s are employed, taking care of family members, etc. I pointed this out to the rep at the meeting I attended and I see the State did change one Public Comment meeting in out-State NE, to an evening time frame. So that means only 2 of the 8 scheduled meetings were in the evening.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
130	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	The State's basic outreach effort is to post meeting times on their website, but there has been little, if any direct outreach to SH"s. I believe the registration sheets from the meetings will show few parents.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
131	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	We sent a direct email notice to the individuals on The Persons for Appropriate Special Services mailing list, and I think we had 10-20 parents at the 2 Omaha meetings. So clearly SH's would be more involved if they were informed about the nature of the meetings.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
132	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	While I think the State has made a good faith effort within their normal process, I think it clearly does not reach it's intended audience.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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133	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	Most SH's do not have the time to look through the website or the experience to navigate the various parts of a complicated site. An inexpensive direct out reach method would be for the State to send enough notices to each provider to be distributed SH's. The only direct cost to the State would be some minor paper and printing cost	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
134	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	The other concern, is the actual information being presented. The Power Point presentations only deal with the administrative process and time line of evaluating the providers. At the meeting I attended, and the ones in Omaha, little or no information was provided about the impact of the changes on current service delivery	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
135	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	With such a large change coming you cannot really expect SH's to be able to comment without understanding the impact on services. I did hear a rumor that further meetings will be held to explain the impact of the waiver, but once approved, no changes will be possible.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
136	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	I think the State should rethink their outreach efforts and delay implementing the Waiver until they have more input from across the SH community.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
137	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	The printed material also fails to address a number of major consequences of the waiver.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
138	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	First there is no clear explanation or guidance to providers on what is acceptable community participation. Because of this lack of definition there is also no evaluation mechanism to determine if the activity meets the standard.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
139	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	Will the State consider activities such as driving around looking at the local airport, a bridge, a state or local park, taking one's lunch to the mall Community Involvement? These activities seem more like a tourist on vacation then someone connecting with their community. Also, what happens in the Winter, or on the days when the weather makes it inappropriate for a client to be out diving around?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

	Date Comment Received	Location	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
140	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	The written document is silent on any direction to the providers on what is “community activity," other than the current shelter workshops or sheltered work stations in industry have to be reconstructed so they are integrated with at least 1 non-handicapped individual for every 3 handicapped individuals. The plan also suggests that pay at a piecework rate must result in wages that meet the Federal Minimum Wage.	Community activities are activities that take place in the community setting. These activities can include things such as bowling, YMCA, going to a concert, going out to eat, etc. There is no specific requirement that current workshops must be integrated in a specific ratio. Integration requirements are currently being developed. Piecework is still allowed to be paid at the sub-minimum wage level as it is allowable by the US Department of Labor. All settings that pay sub-minimum must meet the standards set and should this provision be outlawed by the US government, then it will not be an option for DD providers.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
141	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	Does the State have an estimate if any of the current work stations in industry or sheltered workshops will remain open, or any plans on how to modify the current programs to meet the new standard of integrated employment?	As of the end of the public comment period, no workshops or workstations have been required to close due to inability to comply with the HCBS Final Rule. Nebraska DD has a partnership with Nebraska Vocational Rehabilitation in order to maximize integrated employment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
142	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	The Plan does not contain any information on how it will address the loss of income for the individual’s currently in these situations, if they are not able to find any supported employment?	As of the end of the public comment period, no workshops or workstations have been required to close due to inability to comply with the HCBS Final Rule. Nebraska DD has a partnership with Nebraska Vocational Rehabilitation in order to maximize integrated employment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
143	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	How many individuals currently qualify for supported employment in the community, and what capacity does the State have to increase these numbers. Will their be a waiting list for individuals determined to qualify for supported employment? If so, does the State have to meet any standard for how long an individual is on the waiting list?	It is unknown at this time how many individuals qualify for supported employment in the community as the assessment process through Vocational Rehabilitation has not yet been completed for all individuals in services. Currently Vocational Rehabilitation has a waiting list for their services, but they are expected to resume activities in October 2018.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
144	6/22/2018	Public Comment Mailbox	Written	AD/TBI/DD	While the plan is complicated and far reaching it does appear we are implementing a plan where we do not clearly understand the full impact of its intended and unintended consequences.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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145	6/23/2018	Public Comment Mailbox	Written	DD	A recurring thought for me, in reading this Transition Plan, is that there needs to be a capacity in "the system" to accommodate the significant limitations of my daughter, Emma K. Lynn, and the many others who are like her, to participate in the self-directed aspects of HCBS waiver services. Emma has very, very limited ability to make choices about matters that have not been part of her everyday routine for a very, very long period of time. Due in part to her very limited motor control (gross and fine) Emma's mental ability has been consistently evaluated as the equivalent of a 15 - 24 month old. She is much more capable than that in many different settings, but to illustrate: A. In matters that have been part of her routine for a long time - we are talking months and years here - she will be quite responsive. Some examples: Dad: Emma, what is the Spanish word for Saturday? Emma: Daddy? Dad: yes, Emma Emma: sabado. Dad: Good memory, Emma. What do we do on almost every sabado? Emma: Daddy? Dad: yes, Emma. Emma: we go to the balloon store in Kearney. Dad: How do we get to Kearney? Emma: Daddy? Dad: yes, Emma Emma: in the van. Dad: What time do I come in van to pick you up for the drive in the van to Kearney? Emma: Daddy?	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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146	6/23/2018	Public Comment Mailbox	Written	DD	Therefore, with regard to the quoted passage in page 5: “The regulations require that all settings in which Medicaid HCBS are delivered:” "1. Make possible full participation in greater community life, beyond the walls for the setting itself;” My specific comments: a. “full participation” as defined by me for Emma, would be very close to the services she presently receives from South Central Developmental Services, Cozad, including (being offered the opportunity to use the bathroom every 2 hours, periodic events sponsored by People First, personal visits with friends in Holdrege and Grand Island, and periodic outings with immediate family) but not limited to: Sunday: - get (showered and) dressed - have breakfast, - do program per ISP - have lunch - get picked up by Dad between 12:30 - 1:00 PM, loaded into Dad’s lift van - drive from group home in Lexington to Lake Side Lanes in Gothenburg for bowling with a group of 8 - 14 DD individuals and 3-4 staff - Dad also bowls - return to group home between 3:00 - 4:00 PM - assist Dad in gathering and identifying items from all 4 apartments that can be recycled (clean plastic, paper, cans, glass, packing materials) - do program per ISP, including 60 minutes in a personalized stander to increase overall bone density - have time on her computer, playing educational software	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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147	6/23/2018	Public Comment Mailbox	Written	DD	I have recently learned that a certain service provider has been directed to “take their individuals out into the community for a minimum of 7 hours out of every 8 hour week-day.” There are numerous problems that I see in this exceedingly misguided directive, misguided from the points of view of both the excessive resources required and the minimal benefit to the individuals: - individuals and staff spend a great deal of time just to accomplish the transportation of being “out in the community” - staffing requirements for individuals “out in the community” are greater than when individuals are in a supportive setting, such as a day site/workshop - for example, taking care of paying for individuals (and staff) when at a restaurant or a museum that charges admission - feeding and bath-rooming individuals “out in the community” requires more staffing than when individuals are in a supportive setting and can be quite a challenge when bathrooms are not handicapped accessible - individuals in general do not have more than $20 a month in personal spending money, so that becomes a limiting factor in taking individuals “out in the community” when many of those places “out in the community” charge for admission - Many individuals, including my daughter, minimally benefit from more than occasional ventures “out into the community” more than I provide to her. Therefore, I would strongly object to removing Emma from any of the supportive week-day services that she is presently receiving from South Central Development Services.	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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148	6/23/2018	Public Comment Mailbox	Written	DD	Since Emma was just a few years old (born 1976) I have been opposed to overly “inclusive” directives from on high because I have seen the benefits of specialized education for Emma and the adverse affects of overly “inclusive” educational settings. Specifically, from 1979-1983, Emma attended a school where we lived in Virginia (where I was stationed in the Navy) , Independent Hill School, that was devoted to disabled students. She thrived there, because every staff member, from the principal (a Ph. D) to the janitors, were personally involved in the lives of their students. We knew the staff and they all knew Emma. For a year, 1983 - 1984, Emma attended a school in California (where I was stationed in the Navy) again, devoted to developmentally disabled students. Their she received swimming therapy in a hot pool due to her muscle stiffness and one day, to our great surprise, she emerged from the handicapped school bus, driving an electric wheelchair. The school had the resources to give Emma the chance to become more independent. She has been in an electric wheelchair ever since. When we returned to Virginia (where I was again stationed), Independent Hill School had been closed down and we were forced to enroll Emma in the special education program at the local elementary school. The change was dramatic; instead of an entire school devoted to the welfare of its handicapped students, Emma was placed in a special education classroom within in the regular public school. The staff and students in that classroom were essentially segregated from the rest of the school, because the teachers and staff were virtually on their own, with no effective support from the rest of the school or from the parents of normal kids. Our disappointment was such that we removed Emma from the public school system and for all practical	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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149	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	Provide the final transition plan written in a more easy to understand format including a summary narrative for each Waiver. In addition, alternative formats need to be provided such as in braille or an audio recording insuring true stakeholder engagement. We are extremely happy to see that DHHS did in fact do this. However, while reviewing the plan further we noted that there are dates indicating when settings will become compliant. We are concerned that it does not say how the state will determine compliance. Will you just accept their word, or will you develop some process to review each individual location? We would like to see a detailed plan on how compliance will be determined.	Specific documents to assess settings have been developed as well as standard training for all. The documents are available on the Nebraska DHHS website. The state will develop transition plans individual to each setting and will work closely with the setting to assist them with compliance.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
150	6/25/2018	Public Comment Mailbox	Written	TBI	TBI Waiver Residential MLTC categorized the residential setting as follows: • One is categorized as fully compliant. First, we are extremely concerned about their only being one setting. One of the very basic tenets of Independent Living is “choice”. Upon further investigation we determined that the one location is in Omaha and you are limiting choices individuals make about where they live. Essentially you are telling people that live in the western part of the state, and who have brain injuries and an existing support system, that you must abandon them and move to Omaha to get the supports and services you need. Another concern we have is that the assisted living facility is located on the campus of the long-term care facility. It is described as east and west campus but is in fact one solid piece of land. So we are unsure of how this can be compliant with the CMS setting rule. We would therefore like to see this more clearly explained in the transition plan.	Nebraska DHHS encourages any interested providers that are able to provide the TBI waiver services, to sign up.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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151	6/25/2018	Public Comment Mailbox	Written	TBI	Our final issue of concern is in regard to access to the community. After review of their website it says that residents have access" into" the community. We are not sure what this means. Does the provider put limits on when and where the residents go? We know because of their physical location residents can't access the various components of the community at will but this goes against the Independent Living philosophy. Because of that we hope this too can be clarified.	Any questions in regards to a provider's website should be directed to that specific provider.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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152	6/25/2018	Public Comment Mailbox	Written	DD/AD	Plan is too general about non-compliant sites coming into compliance. The transition plan documents that most sites have been assessed as being compliant with the federal final rule regarding home and community-based settings. That is good. However, the plan also documents a number of sites that are not compliant with the final rule's regulations. For example, on pages 33 and 35, the plan reports that under "DD Waiver Residential" there are 25 settings that are not compliant (only 7 are compliant); that only 2 of the 10 settings requirements were met by all 32 sites. The report goes on to conclude that "sites will come into compliance by 2019", but that does not describe how they will become compliant. There is no discussion of how these sites will be compliant—the state plan just says they will come into compliance by fiat. This lack of specificity is present for each type of setting throughout the document. Moreover, there need to be changes in the landlord/tenant laws in order for sites to be compliant with the "Legally enforceable resident agreement" criteria of the Final Rule. The transition report indicates not all sites are ready for this. Again, individuals served and their families should not settle for "trust us, they will be compliant". These issues must be resolved before approval is granted. Physical accessibility (see p. 34): when will the sites that are not compliant now be compliant? The plan does not explain how these barriers will be overcome and the deficiencies cited in the plan appear costly and time-consuming. Additionally, who has oversight and will ensure that the accessibility changes are adequate, meet legal requirements, and in place by 2019? There is no detailed strategy for relocation (see p. 38).	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
153	6/25/2018	Public Comment Mailbox	Written	AD	Assessment validity and return rate. We have concerns about the number of self-assessments returned described on page 22. A 10% return rate seems a little low in order to draw conclusions. This section is also light on the explanation of how the assessments were conducted and to whom the satisfaction surveys were distributed	Thank you for your comment. Please refer to the HCBS website for additional assessment information.	yes	The types of childcare providers settings were listed. Wording was updated to provide clarification.

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154	6/25/2018	Public Comment Mailbox	Written	DD	Habilitative Workshop and other Services Clarification The plan should provide more description of the types of activities in habilitative workshop and other services on pages 17-18.	This list is reflective of the Medicaid HCBS DD Waiver definition for this service and is not intended to be all-inclusive.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
155	6/25/2018	Public Comment Mailbox	Written	AD	Private Settings On page 27, the plan discusses the evaluation of private settings, but does not discuss how these settings are evaluated regarding isolation.	The setting would be evaluated by level of access for clients at that setting, to reach to other activities and people in the greater community.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
156	6/25/2018	Public Comment Mailbox	Written	DD/AD	Increased Attention to Transportation Issues The report glosses over the problems that people with disabilities face in terms of transportation (see p. 28). For example, the plan addresses how ridesharing can be used for transportation; however, ride sharing is not available in all areas, especially smaller, rural communities and is not guaranteed to be accessible for people with disabilities. Transportation remains a huge problem issue for Nebraskans with disabilities and will require much more attention and resources than this plan assumes.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
157	6/25/2018	Public Comment Mailbox	Written	AD	Privacy Restriction Assessment Specificity is needed on the assessment of an individual's capabilities necessitating lack of privacy/lockable doors (see p. 29); a loss of what capabilities (and how much loss is needed) would trigger loss of privacy? The plan proposed does not address a need for review of those assessments if the individual's capabilities improves or if there would be an exception policy.	The Waiver Services coordinator would address any changes in the client's capabilities monthly or as needed. The waiver plan of services and supports would also indicate any exception policy that the clients has. This is part of the on-going services coordination and the monitoring of any changes in the client's needs to ensure their health and safety.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
158	6/25/2018	Public Comment Mailbox	Written	DD/AD	Person-Centered Planning definition "Person-centered planning" must be defined and implemented in a manner that ensures the people being served are fully educated and informed on the community options available to them. This means that the options are defined in multiple modalities, whether visual, auditory, and/or technological by definition. A person's voice needs to be heard and respected, not just assumed or passively obtained.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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159	6/25/2018	Public Comment Mailbox	Written	DD	Plan to increase integration, supports, and employment What is the plan to increase integrated, supportive environments, activities, and employment; how will the state diversify settings to ensure meaningful access to “non-disabled” settings?	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. As a part of the person-centered planning process, the setting choices offered include both disability and non-disability specific settings.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
160	6/25/2018	Public Comment Mailbox	Written	DD/AD	Monitoring a. Is there a plan for ongoing monitoring and how often? (see p. 39-40) b. The plan must ensure that Final Rule training is updated and consistent to accommodate survey and training personnel turnover. c. Monitoring should take the form of both face-face meetings as well as paperwork review (see pp. 40-41).	Ongoing monitoring will differ from waiver to waiver as the needs for participants and the types of services provided differ widely. Ongoing monitoring processes for specific waivers will be posted on the DHHS website as these plans are developed. The monitoring processes will include a variety of strategies including on-site, in-person reviews, records reviews, and interviews with providers and participants. The process for bringing providers into compliance should they be found have fallen out of compliance will vary between the waivers, but will be immediately addressed.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
161	6/25/2018	Public Comment Mailbox	Written	DD/AD	Automatic Heightened Scrutiny Sites/facilities that are currently isolating, should automatically go through the heightened scrutiny process.	The determination of Heightened Scrutiny is made on a case by case basis for each setting. Because there are a multitude of factors that determine whether or not a setting is "isolating", there cannot be an automatic, across-the-board determination.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
162	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	We would request that Disability Rights Nebraska be notified when each individual setting requiring heightened scrutiny is identified.	CMS requires that the State post settings for public comment that are subject to heightened scrutiny. All postings regarding the final rule will be HIPAA compliant. Additional information will be provided by CMS on posting settings for public comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
163	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	With regard to meeting the HCBS Final Rule goals which include community integration, independence, and self-determination, Nebraska must adequately invest in fair and appropriate provider rates and services. Providers are key to the success of the Final Rule implementation, and adequate rates stabilize the service delivery system. Particular focus should include adequate investment for supportive employment services.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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164	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	Continue the commitment to providing technical assistance to providers to bring clarity on issues such as community integration in work settings and the transitions needs for existing workplace day settings.	Technical assistance is available to any provider who requests it. Technical assistance can be requested for any topic related to the Final Rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
165	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	The Council agrees that all Nebraskans should have equal opportunities to choose and maintain a good job, use their talents and skills, earn competitive wages, increase their self-support, and contribute to the economic prosperity of their communities. The state needs to embrace an “Employment First” philosophy that establishes the expectation of employment as the first option to support people in exercising their employment rights and choices. The Council recognizes that successful supported employment requires intensive and continuous provider supports.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
166	6/25/2018	Public Comment Mailbox	Written	DD	In order to promote competitive, integrated employment, the State of Nebraska should continue to evaluate the adequacy of benefits planning services to individuals with developmental disabilities who want to pursue community employment. With Nebraska Vocational Rehabilitation recently closing Priority Group One and going into an order of selection, the benefits planning service has been impaired. The State should investigate adding a career planning waiver service definition for providers to use, or create another strategy to ensure families and individuals receive robust and qualified comprehensive support from benefits planning services.	Benefits planning can be done as a part of the HCBS DD Waivers service array, as long as activities meet the service definition. Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
167	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	The State Transition Plan overlooks the problems that people with disabilities face in terms of transportation (p. 28). Transportation is a significant barrier for people with disabilities, especially for those who live in smaller, rural communities. Adequate transportation resources (i.e. services and provider rates) are necessary to fulfill the intent of the Final Rule’s goal for community integration and improved access.	Thank you for your comment. The Final Rule encourages participants to access public transportation when available. Many DD services include transportation as a part of the rate and the DD waivers have non-medical transportation as part of the service array. All transportation provided under the AD waiver is non-medical transportation. Service Coordinators work closely with the AD waiver clients to find transportation resources.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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168	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	“Person-centered planning" must be defined and implemented in a manner that ensures the people being served are fully educated and informed on the community options available to them. People with disabilities would benefit from person-centered training; therefore, policies should be redesigned so that person-centered planning is a priority. The waiver delivery system should consider what’s possible rather than what is expedient. A person's voice needs to be heard and respected, not just assumed or passively obtained.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
169	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	How will waiver services provide flexibility to support an individual’s preference and choice to stay at home once they have attained retirement age?	Person-centered planning is a central element to HCBS Services. Part of this process is to work with the individual's team to plan for current and future needs of the individual.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
170	6/25/2018	Public Comment Mailbox	Written	DD	Please share whether the changes being made to the Extended Family Homes in the waiver and regulations are enough to bring Nebraska into compliance with CMS. Extended Family Homes are an important service delivery model to support persons with developmental disabilities to experience integration and inclusion in their communities.	The changes being made to the Extended Family Home (EFH) model are to come into compliance with CMS requirements. These changes include splitting up the current Residential Habilitation service (which included EFH) into Host Home, Shared Living and Continuous Home. Additional information about these new services can be found on the DHHS DD website.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
171	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	Please share how DHHS plans to communicate to individuals and families any changes resulting from the Final Rule.	Thank you for your comment. Participants in settings that cannot comply will be notified by the State and a transition plan will be developed with the participant, Service Coordinator, provider and team. Ongoing changes in DD services, due to the Final Rule, or otherwise, are shared with families and stakeholders in a variety of ways, including but not limited to emails, information on the website, and public meetings.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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172	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	Please provide specifics on the process to conduct on-site re-assessments of settings identified as either fully out of compliance or partially compliant in three or more areas as noted on page 27. Disability stakeholders desire specifics on why a setting is out of compliance in the area of "integration with the greater community." MLTC and DDD are encouraged to provide these providers with technical assistance to bring them into compliance.	DD settings that were found to be partially compliant were asked to complete a remediation plan to bring them into compliance. Quarterly reports are required for these remediation plans until completion. Research and baseline information is being collected in order inform this decision of level of integration of services. Technical assistance is always available to providers regarding questions about the Final Rule.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
173	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	The Council requests that the state publish all supporting evidence along with the names of each of the settings undergoing heightened scrutiny when it seeks public comment. Consumers and other interested parties need to be able to evaluate the information themselves and not rely on a summary.	All heightened scrutiny settings will be posted in a HIPAA compliant fashion.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
174	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	The Council recommends that the state inform HCBS recipients and family members about the heightened scrutiny process, whether their setting must go through the process, and, if so, how to submit evidence regarding their setting. Individuals receiving HCBS have first-hand knowledge of what the setting is like and have a lot at stake if their setting goes through the heightened scrutiny process.	Thank you for your comment. HCBS participants will be notified if the setting that they are utilizing does not overcome the presumption of an institution.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
175	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	The current plan is too general about non-compliant sites coming into compliance. The report does note that "sites will come into compliance by 2019," but it does not describe how these sites will become compliant. Additional details are needed.	Sites that are out of compliance will be required to complete a remediation plan. This plan is evaluated by the State to determine if it addresses the non-compliant areas. Settings will also be monitored for continued compliance until such time that the final rule language can be incorporated into standard NE Quality Assurance processes and regulations.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
176	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	How will MLTC and DDD support those entities under heightened scrutiny? Technical assistance will help providers come into compliance, so please provide examples of what remediation by a provider might look like or provide sample remediation plans.	MLTC and DD will support providers through the heightened scrutiny process by offering 1:1 technical assistance in order to come into compliance. More information about Heightened Scrutiny can be found at https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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177	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	The plan must include the state's process for relocating HCBS beneficiaries when a provider cannot or chooses not to comply with the HCBS settings criteria. DHHS should consider creating an information sheet to educate participants about why relocation may be necessary, options, rights, and what to expect during the relocation process. Trauma and distress can be minimized when factors such as control, choice, decision-making, and sufficient time are part of the relocation process. If relocation is necessary, a person-centered, informed choice relocation process should be in place to set forth essential elements of person-centered practice and detailed step-by-step information to follow when a person moves from one setting to another.	Thank you for your comment. HCBS participants will be notified if the setting that they are utilizing does not overcome the presumption of an institution.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
178	6/25/2018	Public Comment Mailbox	Written	AD/TBI/DD	There need to be changes in the state's landlord/tenant laws or site policies. The State Transition Plan indicates that not all sites are ready to address the Final Rule lease requirement.	Thank you for your comment. Landlord/tenant laws are set by the Nebraska Legislature as well as local authorities.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
179	6/25/2018	Public Comment Mailbox	Written	TBI	For Nebraskans receiving services on the Traumatic Brain Injury waiver, efforts must be made to expand services to additional community settings. Currently there is only one location in Nebraska that provides TBI waiver services - QLI in Omaha. This provider will also be subject to heightened scrutiny, and currently only 20 of the 40 slots are filled at QLI. To promote choice, the state needs to expand TBI waiver services to an additional provider in another location in Nebraska that meets the Final Rule settings requirement.	Nebraska DHHS encourages any interested providers that are able to provide the TBI waiver services, to sign up.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
180	5/22/2019	Lincoln	Verbal	AD/TBI/DD	How will notice be given to stakeholders of settings subject to Heightened Scrutiny?	CMS requires that the State post settings for public comment that are subject to heightened scrutiny. All postings regarding the final rule will be HIPAA compliant. Additional information will be provided by CMS on posting settings for public comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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181	5/22/2019	Lincoln	Verbal	AD/TBI/DD	What are the characteristics of institutional settings including examples?	CMS has identified as institutional as being one of the following: 1) The setting is a publically or privately-owned facility that provides inpatient treatment; 2) the setting is located on the grounds or immediately adjacent to a public institution; or 3) the setting has the effect of isolating individuals receiving home and community based services from the broader community. Some examples of these may be found on the CMS website.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
182	5/22/2019	Lincoln	Verbal	AD/TBI/DD	How will parents and families know when a setting was determined to not be in compliance?	If a setting closes due to inability to comply with the HCBS Final Rule, a relocation plan is required for each participant that will be disrupted by the closure.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
183	6/5/2019	Public Comment Mailbox	Written	DD	Service coordination staff should receive further training on person-centeredness, community integration, and best practices. Service coordination should use this training to inform discussions at team meetings.	Thank you for your comment. Trainings and in-services for Service Coordination staff are routinely updated and new topics are added in order to remain consistent with best practices.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
184	6/5/2019	Public Comment Mailbox	Written	DD	Community integration decisions should be made at the team level on a person-by-person basis, with a preference for community integration based on HCBS guidance and principles.	Person-centeredness is at the core of the Final Rule and Nebraska practices. Further discussions of integration will be had with providers and stakeholders in order to establish Nebraska's integration requirements going forward.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
185	6/5/2019	Public Comment Mailbox	Written	AD/TBI/DD	The State of Nebraska should establish a statewide goal to achieve more community integration in the aggregate.	Nebraska's ongoing goals include increasing integration of participants in HCBS waivers.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
186	6/5/2019	Public Comment Mailbox	Written	DD	There should not be a minimum percentage expectation of community integration for individuals or sties. Instead, decisions should be made in a person-centered manner at team meetings.	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills. Further discussions of integration will be held with providers and stakeholders in order to establish Nebraska's integration requirements going forward.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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187	6/5/2019	Public Comment Mailbox	Written	AD/TBI/DD	The State of Nebraska should provide technical assistance to providers to achieve this goal and should provide providers with incentives for implementing best practices leading to increased integration.	Technical assistance in regards to the final rule has been, and continues to be given to any provider/setting who requests it from the State.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
188	6/5/2019	Public Comment Mailbox	Written	AD/TBI/DD	Assure that funding is provided for the appropriate staffing levels and adequate transportation options needed to offer both group and individualized options that facilitate optimal community engagement.	DD has been conducting rate-rebase activities, and all states are required to conduct a rate rebase in which funding levels are examined every 5 years. As new integration expectations are formulated, the payment rates will also be considered prior to implementation.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
189	5/14/2019	Public Comment Mailbox	Written	DD	In regards to the Transition Plan, I would just like to address a few concerns I have as a parent of an adult son who is disabled. I would first like to say I believe in inclusion and making every effort to include those with a disability into the community. With that said the disabled community encompasses a wide range of abilities, behaviors and needs. My prayer is that all of them would be considered when making these regulations in the best interest of the individual.	The State of NE understands the range of abilities, behaviors, and needs of the participants in the HCBS waivers can vary widely. This range is considered when creating new regulations, policies, practices, and procedures.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
190	5/14/2019	Public Comment Mailbox	Written	DD	The push for Extended Family Care is putting those with high needs at a disadvantage as many of the group homes have been closing. My son is not a good fit for EFC homes due to his needs he would be constantly moved from home to home because of burn out on the care taker. I and many other parents have expressed the desire to keep group homes available for those who want them for their loved ones. My husband unexpectantly passed away 2 years ago, I know how life can change in a moment. As any parent would want for their child it is a stable and safe home when we are no longer here to make those decisions. Moving them from home to home is not in the best interest of them, it only encourages anxiety, fear and behaviors in them when they have to get use to not only new care givers but a new home.	Group homes are not being required to close, and the current DD waivers allow for group homes. While Extended Family Homes are an option for participants, there are other residential options that do include group homes.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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191	5/14/2019	Public Comment Mailbox	Written	DD	Also the push to get them in the community is good but it should not be paid to providers only if they are out in the community. My son enjoys going in the community, but not for six hours a day or having to be driven around in vans all day so the are out of the house and providers can get paid. There are days my son will not go out in the community, he would prefer to stay home and watch a movie. Because he refuses to go the provider should still be paid. We are told it is all about the clients choices. So if it is better for my son to be in a group home he should have that option or if he chooses to not go out in the community and wants to stay home and watch a movie his choices should be honored without penalty to the provider.	The current DD waivers offer multiple services a participant can choose to utilize. Some services require time in the community in order to be utilized. Other services do not. There is no requirement that the participant always be in the community in order for a provider to be paid, since a provider can be paid under a different service if the participant doesn't wish to go into the community. All-day van rides do not meet the definition of any waiver service, nor are they best practice.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
192	5/14/2019	Public Comment Mailbox	Written	DD	What choices will my son have if the providers are not getting reimbursed for his care?	The providers have the ability to be reimbursed for care given to participants as long as the care is provided in the manner outlined by the service definitions in the DD waivers, and the provider is qualified and authorized to provide the service.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
193	5/14/2019	Public Comment Mailbox	Written	DD	As his mother, I only want to make decisions that is the in the best interest of my son. Those decisions should be given back to the clients, parents/guardians to make. It is not a one size fits all and I hope you will make decisions in the best interest of all clients and not just some of them.	Person-centered planning is a central element to HCBS Services. All services should be matched to the individuals' wants, needs, and skills.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
194	5/14/2019	Public Comment Mailbox	Written	DD	Throughout the transition plan you refer to IPP's. Shouldn't that be ISP's?	The section of the STP that refers to IPPs is the Systemic Assessment which outlines the DD regulations. DD regulations will be updated to reflect the change in terminology from IPP to ISP in the near future.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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195	5/14/2019	Public Comment Mailbox	Written	DD	Great for the folks that it affects positively. Tragic for the ones, like my son, who worked full time and was Very good at his job, to the point of getting certificates and congratulations on the amount and dedication he had to his job. His job, which he no longer has, because he works better alone and apparently that is No longer acceptable, he was told one day last year, no more job,, because of a law that didn't quite get it right. So for over a year, the guy that has spent his life only wanting to "do the right thing",, who worked years to be able to graduate and work... now sits home,, So I'm happy for the folks that lives are changed for the better, but keep in mind, it's devastated my 29 year olds son life.	Thank you for sharing your experience with us. We have passed along your concerns to the DD team to follow up with you and your son.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
196	5/14/2019	Public Comment Mailbox	Written	DD	PS: I work Alone 7 nights a week, if the state/government decides it's not "good for me" then Jared and I will be homeless and the state/fed.goverment will pay even More then they are now to keep someone willing, able and good at working, to stay at home and .....?	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
197	5/15/2019	Public Comment Mailbox	Written	DD	In the plan you refer to IPP's throughout and shouldn't it be ISP's?	The section of the STP that refers to IPPs is the Systemic Assessment which outlines the DD regulations. DD regulations will be updated to reflect the change in terminology from IPP to ISP in the near future.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
198	5/16/2019	Public Comment Mailbox	Written	DD	I don't understand why they are changing where services are done. It makes no sense to go to an individuals home for services when their parents are home. I understand if they live alone. Many individuals count in seeing their providers and do many things with them.	DD services can be provided in a participant's home, in a provider owned/operated setting, or in the community. Where services are provided depends on which service it is and what is in the individual's person-centered plan.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
199	5/16/2019	Public Comment Mailbox	Written	DD	I am a provider and have been doing services for one individual 7 years and my husband another for 4 years. My daughter has just become a provider as well. In our home we teach meal prep, Wii games and exercises, go to movies, go fishing, gardening, zoo, reading and pronunciation, and of coarse programs and so much more.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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200	5/16/2019	Public Comment Mailbox	Written	DD	How do we explain going from almost daily and weekends to nothing? I was told we could do respite, once again major drop in amount of time they get out to do things with other people. One individual has planted some potatoes in my garden and noticed yesterday how much they've grown, total excitement, she will dig them and then eat them!	Each participant's services and goals are decided by the participant and their ISP team. The number of hours and when a service should be provided is a team decision.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
201	5/16/2019	Public Comment Mailbox	Written	DD	I feel the parents should have a choice where their child receives services. I feel as do these parents the change from doing services in an independent providers home will be more hurtful on the individuals we service. They are the ones who will be affected the most.	Participants and guardians are a part of the ISP team. Family members (including parents who are or are not guardians) can also be members of the ISP team if the participant wishes. Team members have a choice what services a participant receives as well as when and how many hours these services are rendered. The services can only be performed in a manner that is congruent with federal and state law, regulations, and rules (which can impact where the services are performed).	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
202	6/14/2019	Public Comment Mailbox	Written	DD	In this updated STP is this added language to sub-paragraph 7. e. *1* . on page 40 - last line and on the following page 41 the remainder of paragraph: a. There was no similar language in the previous STP version dated May 25, 2018, therefore this issue, that is how to define what level of integration is compliant, has at least been included in the STP as an issue needing clarification.	Thank you for your comment.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
203	6/14/2019	Public Comment Mailbox	Written	DD	b. The first attempt (at defining what level of integration is compliant) by NE DHHS DDD was that DD individuals must be away from any central location for 60% or more of each weekday. I have recently learned that some concerned stakeholders are using the short hand term "van therapy" for the attempt to get DD individuals "out in the community" per the Final Rule from CMS. As I understand it, that % figure changed several months ago to 50%, after pushback from persons such as myself and from other stakeholders. The fact that the 50% figure was not used in this most recent update tells me that NE DHHS DDD recognizes that there is not a simple way to determine what a compliant level of integration should be.	No percentage of integration for participants has been set, at this time. The 60% you are referring to is for the specific service "habilitative community inclusion." However there are many other services outlined in the DD waivers in which integration can occur. Person-centeredness is at the core of the Final Rule and Nebraska practices. Further discussions of integration will be had with providers and stakeholders in order to establish Nebraska's integration requirements going forward.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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204	6/14/2019	Public Comment Mailbox	Written	DD	My position is that the “compliant level of integration” is different for each DD individual and should be determined through the ISP process for each DD individual and not by some arbitrary, un-scientific and universally applied dictate that does not recognize the wide variety of abilities of individuals in the DD population. In the case of my daughter, Emma K. Lynn, who is totally dependent on others for all daily activities, she thrives in a group of her DD peers, who know and accept and interact with her in a manner that is fulfilling for her. Subjecting Emma to "van therapy" would have several adverse consequences: - effectively isolating her from her peer group, rather than any integrating function - removing her from the personal care facilities which best keep her properly fed, bathroomed, medicated - filling her week days with transportation rather than organized, tailored activities at a central location	Person-centeredness is at the core of the Final Rule and Nebraska practices. There will be further discussions of integration with providers and stakeholders in order to establish Nebraska's integration requirements going forward.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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205	6/14/2019	Public Comment Mailbox	Written	DD	I have witnessed first hand the distinct and significant disfunctionality of “van therapy” as described in the paragraph below. Emma’s previous services provider contacted me last summer with a request that a number of those DD individuals who were with Emma at her previous workshop setting wanted to “visit” Emma. As it turned out, the previous service provider needed to have a “van therapy” destination and “visiting” Emma was one way of creating such a destination. At the time of this request, I was unaware that “van therapy” was being put into practice by any DD services provider. I made arrangements with the service provider to meet Emma’s former workshop DD individuals for lunch at a local restaurant in Cozad and I coordinated with the local restaurant to establish exactly when, where and how our gathering of DD individuals would be placed and served in the restaurant. There was a room at the back of the restaurant that the restaurant staff open up as needed to handle any larger than usual number of customers. When the previous provider arrived with their DD individuals, about 15 of them along with about 5 staff in three vans, we discovered that the hallway leading from the front of the restaurant to the back, was not wide enough to handle wheel chairs. So, we rerouted those DD individuals in wheel chairs around the block to the alley where there was an access door at the back of the restaurant. However, there were two steps leading up to that door, and using planks that I carry in the van that I use to transport Emma, we were able to maneuver everyone into the back of the restaurant and find them places at tables.	Person-centeredness is at the core of the Final Rule and Nebraska practices. There will be further discussions of integration with providers and stakeholders in order to establish Nebraska's integration requirements going forward.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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206	6/14/2019	Public Comment Mailbox	Written	DD	The next challenge was placing orders for every DD individual and staff member, as staff had to keep separate every DD individual for payment tracking purposes. The next challenge was for staff to render the assistance that each DD individual needed to prepare their food entries for eating and/or to help those who needed help in eating to actually eat their lunches. The next challenge was for staff to administer any noon-time medications. The next challenge was to address needs for bath rooming. There was only one bathroom in the restaurant and it was located in the hallway, the same hallway that was too small for wheelchairs. It was not handicapped accessible. The next challenge was making all the payments, since each DD individual has his/her own account to track. The next challenge was to return everyone to their three vans. Of the total time involved at the restaurant, from about 11:30 to about 2:00, there were about 5 minutes of interaction between the visiting DD individuals and Emma. The rest of the time was used for moving DD individuals from the vans into the restaurant, placing everyone's order for meals, preparing the meals for each person to be able to eat, assisting the DD individuals with eating, taking DD individuals to the bathroom, paying for everyone's meal, and moving everyone from the restaurant back to their three vans. This 11:30 - 2:00 time period does not include the approximate travel time for 40 minutes from the point of origin to Cozad and then again back from Cozad, and does not include the time to load everyone into the vans at their point of origin and then unload them after returning from Cozad. I estimate this loading/unloading time to be 30 minutes on each end. So, the total time expended by the service provider for this event was approximately 10:20 - 3:10. The next challenge was placing orders for every DD individual	Person-centeredness is at the core of the Final Rule and Nebraska practices. There will be further discussions of integration with providers and stakeholders in order to establish Nebraska's integration requirements going forward.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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207	6/17/2019	Public Comment Mailbox	Written	AD/TBI/DD	Overall, the portion of the plan dedicated to spelling out the process and implementation of Continuous Improvement and Ongoing Monitoring could be clearer, more specific, and expanded. The portion of the 49-page narrative dedicated to monitoring and actions to ensure compliance totals 2.5 pages. Within those 2.5 pages there is a significant lack of specificity regarding activities that will occur. For example, at the Provider level (page 46), the plan states that the two compliance strategies are “Ongoing licensing inspections and certification reviews” and “Ongoing HCBS setting compliance monitoring”. However, the plan should specify the frequency of “ongoing” (e.g., twice a year, quarterly, or monthly).	Ongoing monitoring will differ from waiver to waiver as the needs for participants and the types of services provided differ widely. Ongoing monitoring processes for specific waivers will be posted on the DHHS website as these plans are developed.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
208	6/17/2019	Public Comment Mailbox	Written	AD/TBI/DD	The plan also needs to specify what types of inspection activities will be employed in “compliance monitoring”. We would suggest that the compliance monitoring activities need to be more involved than a simple records review or email/phone calls to providers—to be sure that parties are working consistent with the HCBS rules there must be more intensive examination such as on-site reviews so that inspectors can probe and accurately assess the extent to which providers are compliant, especially given the nature of many of the provider non-compliance issues identified earlier in the report. Additionally, there is no discussion about what happens when a compliant provider might slip and become non-compliant or how the State will help providers return to compliance.	The monitoring processes will include a variety of strategies including on-site reviews, in-person reviews, records reviews, and interviews with providers and participants. The process for bringing providers into compliance should they be found to be out of compliance will vary between the waivers, but will be immediately addressed.		

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209	6/17/2019	Public Comment Mailbox	Written	DD	We urge the state to work with providers to ensure that the provider non-compliance issues identified in the report are fixed before March 2022. We note some particularly concerning non-compliance issues identified in the report: -one site did not have a policy requiring the individual and/or representative grant informed consent prior to the use of restraints or restrictive interventions and document these in the person-centered plan -six sites did not provide or post individual rights -three sites did not support individuals engaging in age-appropriate activities -three sites did not support individuals engaging in age-appropriate activities such as voting -one site did not allow individuals the freedom to move about inside and outside the setting -four sites were not physically accessible and/or there were no adaptations to ameliorate the obstructions -five sites did not afford a variety of meaningful activities that are responsive to the wants/needs of the individuals and/or the physical environment did not support a variety of individuals goals and needs -two sites did not afford the individuals the opportunity to choose with whom to do activities and/or individuals were assigned to only be with a certain group -forty-seven sites did not allow for the filing of an anonymous complaint -two sites did not assure that information about participants was kept private -three sites did not have a process to ensure that each individual's supports and plans to address identified needs are specific to the individual and/or not restrictive to all individuals receiving support in the setting	All settings found to be out of compliance are in the process of being remediated. For DD day services, more than half of the sites have fully remediated (other than the ongoing integration discussions) at the time of the public comment period.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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	Date Comment Received	Location	Source	Related Waivers	Comment	Response	Plan Change	Change Made or Rationale for No Change
210	6/17/2019	Public Comment Mailbox	Written	DD	We believe that the March 2022 timeframe is too lax for these and other issues. First, the nature of some of the issues is of grave concern and should not be allowed to continue for another month, let alone another 2-3 years. Second, the nature of many of the provider non-compliance issues seem to require tweaks of existing process and/or policy and as such should not require a lengthy timeframe; yet the providers are granted until March 2022 to come into compliance for all issues identified. We recognize that it may take some time to make some changes, such as changing a building's physical, structural, or physical accessibility. However, we are not convinced that it should take 3 years to post/educate individuals about their individual rights, allow them to exercise their voting rights, have policies in place requiring consent before using restraints, provide supports and activities that are either specific to the individual or age-appropriate, or provide the residents with leases. Third, the number of providers that need to make modifications so they come into compliance is relatively small. We fail to understand why 3 years should be allowed for 29 sites to allow individuals to close and lock the bathroom door, one site to allow an individual access to his/her financial assets, 81 sites to provide a locking bedroom door, or 58 sites to offer a secure place to store belongings. Yet for every remediation required by providers, the plan gives them until March 2022.	All settings found to be out of compliance are in the process of being remediated. For DD day and residential services, more than half of the sites have fully remediated at the time of the public comment period. Though the providers technically have until 2022 to come into compliance, DD is working diligently with the providers to attain compliance as soon as possible.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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HCBS State Transition Plan
Public Comments

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211	6/17/2019	Public Comment Mailbox	Written	DD	Page 45 of the report states that “Providers must be in full compliance with the regulations by September 17, 2021”. The time period between September 17, 2021 and March 2022 is a period so that the Medicaid and the Developmental Disability Divisions “will have adequate time to provide notification of the requirement to relocate. This will give individuals ample time and opportunities to learn about the variety of compliant settings, disability and non-disability specific, that are available.” But the list of identified compliance issues providers are currently experiencing (see pages 39-41) says compliance by March 2022 for each issue—not notification. Furthermore, language on page 45 of the proposed transition plan says that Medicaid agreements for non-compliant providers will be terminated no later than March 17, 2022 — six months after providers should have been fully compliant (inferring that there is six further months of non-compliant services delivery, such as non-lockable bathroom doors or the freedom from restraints).	The reason the notification date is six months prior than the final transition date is to allow for participants to have time to find a different provider and relocate, if needed. Any sites that cannot or will not comply with the rule by September 2021 will not be able to accept new participants into services and will not be able to operate as an HCBS setting after March 2022. The Medicaid agreements will not be terminated until all participants have been relocated. Participants and their guardians utilizing settings that cannot or will not comply will be given notice of this; however it is the goal that all sites will become compliant much sooner than 2022 and that this process will be required.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
212	6/17/2019	Public Comment Mailbox	Written	DD	Moreover, given the severity of some of the identified non-compliance issues, a simple desk record review or checking items off a check list will be insufficient. For example, how does an investigator know if and how well providers are sticking to the person-centered plans, or if people have been adequately informed of their rights? Just because there is a policy about consent before use of restraints, how will the state know that the plan is being followed? The proposed State Transition Plan must include more on-site visits and interviews to be included as a central, key component of compliance monitoring.	Onsite reviews and interviews were completed for settings in order to assess for compliance with the final rule. Ongoing monitoring will continue in order to assure that the final rule continues to be followed.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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213	6/17/2019	Public Comment Mailbox	Written	DD	Which poses another overarching question: how did these issues arise and continue in the first place? This begs for an even more robust, intensive, frequent, and consistent compliance monitoring system and process than what was in place.	Thank you for your comment. Any health or safety issues found during reviews were addressed immediately. STP monitoring is part of an array of monitoring that occurs throughout DD. Though the language of the violations can seem alarming, rest assured that any major concerns were addressed immediately. Most of the violations that were seen had mostly to do with inadequate documentation, or policies and most of the violations have already been remediated.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments
214	6/17/2019	Public Comment Mailbox	Written	DD	We also suggest that the language be changed regarding follow up to complaints about violations of NAC 404 violations. Given the serious issues that are covered by NAC 404 (especially in Chapter 4), we do not believe that follow-up on-site visits should be permissive. We recommend changing the language in the State Transition Plan to read (see page 47): “On-site visits may shall be conducted for follow up to complaints against providers regarding potential violation of Nebraska Administrative Code 404 rules. Further follow-up activities, in addition to the required on-site visits shall include but not be limited to Follow-up may be conducted through additional on-site visits, document reviews, telephone, and/or email”.	Violations of 404 NAC are part of the purview of the DD surveyors in the Division of Public Health (DPH). DPH has separate practices for investigating possible regulatory violations. DD and DPH work closely together on issues that are presented in order to assure they are adequately addressed.	No change	No changes were necessary and none were made to the Statewide Transition Plan as a result of these comments

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215	6/17/2019	Public Comment Mailbox	Written	AD/TBI/DD	If there is a situation or compliance check that can be performed though means other than a site visit, these should be spelled out specifically in the transition plan. The HCBS rules require that in all settings, "the setting is selected by the individual from options that include non-disability specific settings and options for privacy in residential settings (i.e. a private room or unit.) Individuals must have choice of providers, services, and settings and that choice must be documented in a person-centered plan" (see page 17 of the State Transition Plan). We recommend that there be stronger language on page 32 to ensure accurate reflection of this HCBS rule. We suggest the following language: "Individuals should shall be afforded the opportunity to select from non-disability specific settings and select roommates if applicable."	Thank you for your comment. The language outlined on page 17 is reflective of the final settings rule. The assessments conducted do examine the issue of selection of settings and roommates.	Yes	The language outlined on page 17 is reflective of the final settings rule. The assessments conducted do examine the issue of selection of settings and roommates.