

**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 people with disabilities and seniors. 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 rich 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 promise to all of the citizens of Nebraska. This State Transition Plan belongs to the people of Nebraska and represents Nebraska Department of Health and Human Services' (DHHS) commitment to stakeholder engagement, government transparency and continuous quality improvement.

b. *What is Medicaid?*

Medicaid is the main publicly-financed health care coverage for people who have low income and limited resources. It is funded jointly through a Federal and State partnership and helps pay for a variety of healthcare services. States design and administer their own Medicaid programs within broad federal guidelines Medicaid covers many people with disabilities and complex needs, and today, is a primary payer for nursing facility services, intermediate care facilities for persons 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 five 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;
- Developmental Disabilities (DD) Children's Comprehensive Services Waiver;
- DD Adult Day Services Waiver; and
- DD Adult Comprehensive Services Waiver.

MLTC administers the A&D Waiver and the TBI Waiver, whereas the DHHS Division of Developmental Disabilities (DDD) administers the three DD waivers. Combined, these HCBS waivers provide support to address the needs of Nebraska's seniors and people 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. This regulation is available at <https://www.medicaid.gov/medicaid->

[chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/home-and-community-based-services.html](http://www.dhhs.ne.gov/long-term-services-and-supports/home-and-community-based-services/home-and-community-based-services.html).

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

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, 2019 to meet requirements of the regulation. 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. The initial draft State Transition Plan and the CMS letter of feedback are available on Nebraska's HCBS State Transition webpage at <http://dhhs.ne.gov/Pages/Transition.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 and 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.

As 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 cadre 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 regulations as well as incorporates each waiver program's specific plan. In order to determine Nebraska's readiness to comply with the HCBS regulations, a variety of activities were undertaken. Providers serving individuals across the disability populations assisted with assessments of their residential and day services. MLTC and DDD developed work plans identifying tasks necessary to transition to compliance, for 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 regulation, consistent with the spirit of DHHS Chief Executive Officer Courtney Phillips' theme that "Together, We're Better!"

We look forward to your comments as we work together to improve the lives of Nebraska's seniors and people 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 for the HCBS regulations. 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 directly distributed to providers and contracted community services coordination agencies.

An initial round of public comment was conducted from September 3 through October 15 2014. At that time, the draft State Transition Plan was posted on a dedicated State Transition Plan website. The public comment for the current draft is March 28 through May 2, 2016. The State Transition website has been updated to include the current draft and additional resources. For both the 2014 comment period and the current comment period, notice was published in the Omaha World Herald, and MLTC and DDD each sent email blasts to stakeholders to invite comments. Individuals may request a printed copy of the updated State Transition Plan by contacting their assigned services coordinator, local DHHS office, or MLTC/DDD staff.

Anyone interested is invited to submit comments by:

- Emailing dhhs.hcbpubliccomments@nebraska.gov;
- Sending a fax to (402) 471-9156;
- Calling Donna Brakenhoff with MLTC at (402) 471-9147;
- Calling Tyla Watson with DDD at (402) 471-6038; or
- Mailing comments to Attention: HCBS Public Comments, DHHS Medicaid and Long-Term Care, P.O. Box 95026, Lincoln, Nebraska 68509.

Comments with responses by MLTC and DDD will be posted following the current comment period.

a. State Transition Plan Website (September 2014- March 2019)

This webpage <http://dhhs.ne.gov/Pages/Transition.aspx> 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 – May 2016) 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 facilitate attendance. Copies of the draft State Transition Plan were made available.

The following table identifies 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. The forum schedule is represented in the table below.

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 regulations 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: <ul style="list-style-type: none"> • 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 is holding 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
Lincoln	3/28/2016 10:00 AM - 12:00	Monthly Stakeholder Meeting, Nebraska State Office Building	All waivers
Omaha	4/11/2016 1:00 PM - 3:00 PM	Autism Center of Nebraska	All waivers
Norfolk	4/19/2016 1:00 PM - 3:00 PM	Norfolk Public Library	All waivers
Fremont	4/19/2016 5:30 PM - 7:30 PM	Keene Memorial Library	All waivers
Statewide	4/18/2016 5:30 PM - 7:30 PM	Statewide Streaming	All waivers

City	Date	Location	Focus
Kearney	4/25/2016 1:00 PM - 3:00 PM	Kearney Public Library,	All waivers
Grand Island	4/25/2016 5:00 PM - 7:00 PM	Edith Abbott Memorial Library	All waivers
	4/26/2016 10:00 AM - 12:00	Monthly Stakeholder Meeting, Nebraska State Office Building	All waivers

MLTC and DDD have established HCBS monthly stakeholder engagement meetings that include progress on the State Transition Plan as an agenda item. MLTC and DDD will also continue to utilize public forums throughout the transition period. A “Let’s Talk” round two tour of the state is planned for August and September 2016, in which the State Transition Plan update will be an agenda item.

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 new HCBS regulations and Nebraska’s State Transition Plan. Similar meetings were hosted by DDD beginning in the summer of 2015, as referenced in the above table. Ongoing meetings of 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 State Transition Plan website.

d. Summary of Public Comments

MLTC and DDD received comments via public forums, letters, emails and stakeholder meetings during two 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 during the recent March through May 2016 comment period.

A variety of individuals and organizations, including consumers, parents/guardians, advocates, providers, professional associations, providers and other system stakeholders provided comments, all of which are provided in the Appendix to this Plan. The Appendix indicates whether each individual comment led to a change in the plan or not, and if not, the reason for not incorporating a change.

In total, 84 individuals/organizations submitted comments, 48 of which were submitted in 2014 and 36 of which were submitted in 2016. A complete list of comments, the State’s response, and whether or not changes were made to the Plan as a result is provided in the Appendix. The State updated its responses to comments received in 2014 as part of the process of responding to comments received in 2016. Trends observed in the comments are described below:

- 18 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.
- 16 included comments about assisted living facilities, primarily regarding how the requirements apply in these settings.
- 14 included comments related to general concerns with the effects of the HCBS final rule, asking whether persons who need a structured environment would be forced into other environments.
- 13 included comments not directly related to the HCBS final rule, rather asking about services provided for specific individuals.
- 11 included comments regarding the need for additional outreach and education for individuals or families.
- 9 included comments related to the public comment opportunity/options provided.
- 7 included comments related to the format of the STP, specifically that it include more narrative and be more user-friendly.
- 7 included comments regarding the person centered aspect of the HCBS final rule.6 included comments regarding the lease requirements of the rule and how they would be addressed in the Plan.
- 4 included comments regarding advocacy.
- 2 questioned how the final rule may affect guardianship and power of attorney roles.
- 2 included comments regarding concerns and challenges associated with availability of transportation.

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

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

The regulation applies 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 five HCBS waiver programs are overseen by MLTC; two are administered by MLTC and three are administered by DDD.

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

DDD administers three HCBS waivers, each of which requires participants 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 Waiver. This waiver, initially approved in 2003, offers a menu of services and supports to maximize independence as individuals live, work, socialize and participate to the fullest extent possible in their communities. As of March 2016, the DD Adult Day Waiver was serving approximately 750 individuals.
- Developmental Disabilities (DD) Adult Comprehensive Waiver. This waiver, initially approved in 1987, offers the same menu of services and supports offered under the DD Adult Day Waiver, with the addition of Residential Habilitation. As of March 2016, the DD Adult Comprehensive Waiver was serving approximately 3,476 individuals.
- Developmental Disabilities (DD) Children's Comprehensive Waiver. This waiver, initially approved in 1989, offers a menu of services and supports for children with developmental disabilities and their families to promote a child's independence and integration into the community and to allow the child's family to support him or her in the family home. As of March 2016, the DD Children's Waiver was serving approximately 188 individuals, ages 21 or younger. Eligibility criteria for the DD Children's Waiver allow services for children younger than 21, or 21 and in special education with an active individual education plan (IEP).

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

MLTC administers two HCBS waivers, each of which requires participants 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 menu of services and supports for aged individuals and individuals all ages with disabilities. As of March 2016, the A&D Waiver was serving approximately 4,700 individuals. This included about 700 youth, 1,200 adults ages 18-64, and 2,800 individuals 65 years of age and older.

- Traumatic Brain Injury (TBI) Waiver. This waiver, initially approved in 2000, provides specialized assisting living for individuals aged 18-64 with a TBI. As of March 2016, the Waiver was serving 21 adults.

4. HCBS Settings Requirements

a. *Overview, HCBS Regulation 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 in the community. Some of these settings, however, may retain or appear to retain the 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 option to institutional care, the HCBS final rule better defines settings in which states can provide Medicaid HCBS. 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 people 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:

- 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 HCBS regulation, 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

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

a. A&D Waiver Settings

Assisted Living. A licensed residential setting that provides a menu of services to seniors and people with disabilities. Services must include socialization, meals, 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 people) or unlicensed (three or fewer people) setting that provides an array of structured social, habilitation 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 facilities. The facilities are as follows.

- Child Care Center: A facility licensed to provide child care for 13 or more children.
- 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 can include socialization, meals, 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). EFH is a continuous service delivered in a single family home setting by an employee of a provider agency or under a subcontract with a provider agency and are provider operated.

Residential Habilitation- Group Home. Group Home is a continuous service delivered in a provider-operated or controlled setting, such as a home with three or fewer individuals, or a licensed Center for the Developmentally Disabled (CDD) with four or

more individuals. Rental agreements with and payment for room and board to a provider are treated as landlord-tenant agreements.

Residential Habilitation-Companion Home. A Companion Home is a supported living option in Nebraska. Supported living is defined as residential habilitation provided to no more than three individuals in a residence that is under the control and direction of the individual(s). A companion home may be an apartment, a house, a condominium or a townhouse which the individual(s) owns or rents. The provider of residential habilitation services in a companion home must be able to document that the individual freely choose their residential setting and housemates and that the lease or mortgage is under the control of the individual. The owner or lessee of the property must be unrelated, directly or indirectly, to the provider of services.

Day Habilitation-Prevocational Workshop. Prevocational Workshop Habilitation services are formalized training and staff supports for the acquisition, retention or improvement in self-help, behavioral and adaptive skills that take place during typical working hours, in a non-residential provider-operated facility, separate from the individual's private residence or other residential living arrangement. Prevocational Workshop Habilitation services are provided to persons not currently seeking to join the general work force or participate in vocational planning services.

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

a. Approach

MLTC and 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 HCBS regulations, 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.

State regulations for the A&D Waiver are in Title 480 NAC at: http://dhhs.ne.gov/Pages/reg_medregs.aspx. State regulations for the TBI Waiver are currently being drafted. State licensing regulations for Assisted Living and Adult Day services are in Title 175, Chapters 4 and 5 of the NAC and are available at http://dhhs.ne.gov/Pages/reg_t175.aspx.

State program regulations for the DD Waivers are currently in Title 404 of the NAC and are available at http://dhhs.ne.gov/Pages/reg_t404.aspx. State licensing regulations for CDDs are in Title 175 of the NAC and are available at http://dhhs.ne.gov/Pages/reg_t175.aspx.

Approved waiver applications are available at:

- HCBS for Aged and Adults and Children with Disabilities
http://dhhs.ne.gov/Pages/hcs_programs_ad-waiver.aspx
- Traumatic Brain Injury Waiver
http://dhhs.ne.gov/Pages/hcs_programs_tbi-waiver.aspx
- Developmental Disabilities Adult Comprehensive Waiver
http://dhhs.ne.gov/developmental_disabilities/Documents/Nebraska-DDAC-waiver-2011.pdf
- Developmental Disabilities Adult Day Waiver
http://dhhs.ne.gov/developmental_disabilities/Documents/Nebraska-DDAD-waiver-2011.pdf
- Developmental Disabilities Children's Comprehensive Waiver
http://dhhs.ne.gov/developmental_disabilities/Documents/AmendedCDDWaiverNE4154.pdf

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. Statute §81-2268 (Medicaid Waiver funds and use authorized) will be amended to indicate that nothing in the statute authorizes Medicaid funds to be used for disqualified settings under Nebraska or Federal law.) Statute §83-1202 (Legislative intent, persons with developmental disabilities) will be amended to remove limiting language or will be applied 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, and 404, Community-Based Services for Individuals with Developmental Disabilities, will be updated with additional regulations to align them with federal requirements. All NAC rules supporting the DD Waivers will be re-drafted and incorporated as chapters in Title 480. In addition, both titles will be amended to include more specific language for some of the requirements, 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. Regulations for the TBI waiver are currently being drafted.

d. Waiver-Specific Applications

- *A&D Waiver.* The Waiver is being renewed and will conform to the requirements of the HCBS regulation. Language to address landlord tenant laws will be added.
- *TBI Waiver.* The TBI Waiver will require changes 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.
- *DD Waivers.* Currently, DDD is renewing all three DD Waivers through a collaborative stakeholder engagement process. The new waiver application submissions will be fully compliant with the HCBS regulations 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 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 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 services 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 the Participant Experience Survey (PES). Changes include revisions to the Needs Assessment and increased capture of quantitative data.
- *TBI Waiver.* Currently, verification includes on-site monitoring by services coordinators, on site-file reviews, off-site file reviews and the PES. Changes include revisions to the Needs Assessment and increased capture of quantitative data.
- *DD Waivers.* Currently, verification includes on-site monitoring by services 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.

g. Remediation

Remediation activities specific to the Systemic Assessment will include updating regulations, waivers, and policies and practices. Remediation activities and timelines are included in Attachment 1.

MLTC is engaging in a concurrent initiative, Long-Term Supports and Services (LTSS) Redesign, which will impact Nebraska's Medicaid waiver programs. Changes will be needed to operating agency regulations, waivers, and policies and practices. The concept paper for the LTSS redesign effort is available at:

<http://dhhs.ne.gov/medicaid/Documents/LTSSRedesignConceptPaper.pdf>. MLTC is procuring a consultant to assess the full range of Medicaid-funded LTSS and make 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 will be required to engage stakeholders regarding the redesign and provide a summary report of stakeholder engagement. The LTSS redesign consultant reports and draft redesign plan are anticipated by November 2016.

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 is a brief narrative describing the process for completion of the settings assessment.

Two rounds of site assessments were conducted as preparation for completion of the State Transition Plan. The first round was conducted in January 2015. For DD Waivers, the first round included self-assessments by residential habilitation providers, with oversight including guidance with completion of the assessments provided by DDD staff. For the A&D Waiver and TBI Waivers, the first round included assessments conducted by MLTC-contracted community agencies, i.e. Area Agencies on Aging (AAAs) of assisted living facilities.

DDD and MLTC benefitted from the ongoing series of webinars sponsored by CMS and determined the need for a second round, conducted in January-March 2016, to capture other settings not originally surveyed. For DD Waivers, the second round of assessments was conducted by DDD services coordinators, using a sampling methodology to verify the statistical validity of the initial round of findings and assess a sample of residential and non-residential services providers. For A&D Waiver, the second round 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 resource development staff and MLTC-contracted community agencies, i.e. Area Agencies on Aging (AAAs). In addition, the second round included assessment of a subset of assisted living facilities for which clarification was sought on initial assessment information to determine compliance. These assessments were conducted by the AAAs. A companion guide explaining the regulations was developed for the second round of assessments and made available for assessors via a SharePoint site.

For the A&D and TBI Waivers, the AAAs or MLTC staff completed a survey in-person with the administrator of each assisted living facility or adult day health settings. Each setting providing extra child care for children with disabilities, other than an individual's home or an individual provider's home, was contacted to determine if it was serving only A&D Waiver recipients or persons with disabilities. Any site serving populations without disabilities as well as A&D Waiver recipients was not assessed.

For DDD's sampling assessment, a randomized, stratified approach was utilized. This approach required a sample of 50 DD Waiver providers for the population. The data pull included certified and licensed sites as well as sites which served individuals receiving services based on behavioral and medical risk.

The following table summarizes the number of settings assessed.

Setting	# Settings (Self- Assessment)	# Settings (MLTC/DDD Staff or designee)
A&D Waiver Residential		
Assisted Living, Non-Specialized	183	183
Assisted Living, Specialized (Memory Care)		37
<i>Total A&D Waiver Residential</i>		220
A&D Waiver Non-Residential		
Extra Child Care for Children with Disabilities		2
Adult Day Health		49
<i>Total A&D Waiver Non-Residential</i>		51
Total A&D Waiver		271
TBI Waiver Residential		
Assisted Living, Specialized (TBI)		1
Total TBI Waiver		1
DD Residential		
Extended Family Home		28
Group Home	113	4
Companion Home		2
<i>Total DD Residential</i>	113	34
DD Non-Residential		
Prevocational Workshop		17
<i>Total DD Non-Residential</i>		17
Total DD Waiver	113	51
Total All Waivers	113	322

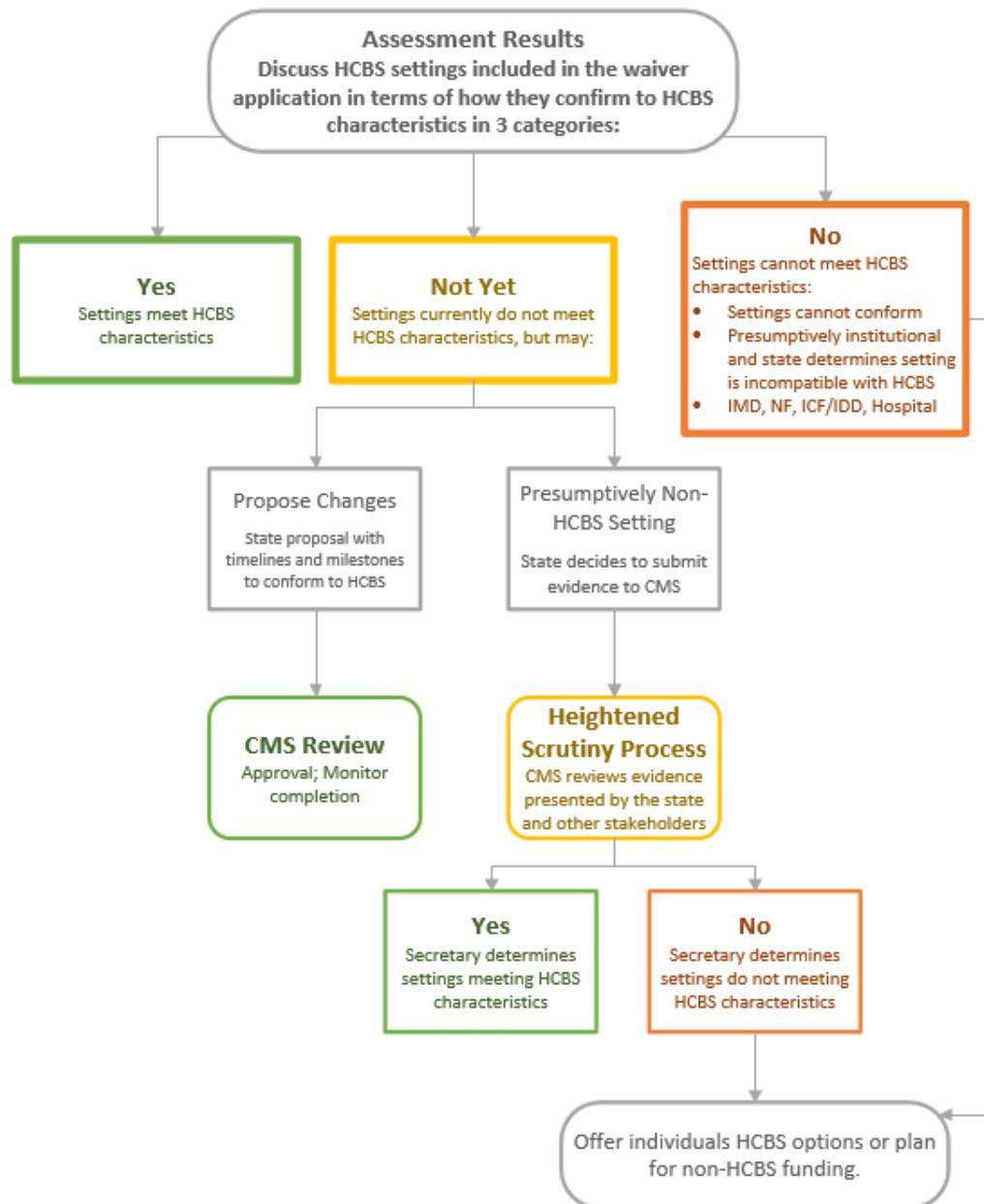
Site assessment for waiver settings evaluated specific topics organized by CMS-identified qualities and conditions for HCBS settings. Qualities listed in numbers 1-5 below must be present in all HCBS settings. The conditions listed in numbers 6-10 below are additional requirements for provider-owned 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 an option for 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 participant, 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



MLTC and DDD will conduct activities to validate preliminary on-site assessments throughout the remainder of 2016. Validation activities may include additional desk-review of settings’ policies and procedures, training documentation or other evidence

of compliance. MLTC and DDD will also use the results of the validation activities to determine the need for additional on-site assessments. For all settings requiring heightened scrutiny, MLTC will conduct additional site assessments following validation activities. Additional on-site assessments of residential and non-residential settings will provide DDD with a larger sample size and assess compliance specific to that setting type.

a. *A&D Waiver Residential*

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

- 156 assisted living facilities are categorized as fully compliant;
- 49 assisted living facilities are categorized as not compliant but could be with modifications; and
- 16 settings are categorized as unable to comply.

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

1. *Integration with the greater community.* Assisted living facilities offer activities and outings outside in the community. In addition, individuals have access and participate in community activities of their choosing. Individuals have and use public transportation if they choose. Where public transportation is limited, individuals have other resources to access the broader community.
2. *Selection of setting.* Assisted living residents have selected the setting from among setting options including non-disability specific settings. In some communities, due to the rural nature of the majority of the state, it may be that the assisted living facility was the only choice within reasonable travel distance.
3. *Freedom from coercion and restraint.* Assisted living facilities have 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.* In general, individuals residing at facilities participate in activities of their choosing. Service coordination monitoring and participant experience surveys gauge the extent individuals feel their autonomy is respected.
5. *Choice regarding services and supports.* Assisted living facilities do not require individuals to use one doctor, dentist or therapist. Some require the use of one pharmacy if they do not self-administer medication. This information is provided to the individual prior to move in.
6. *Legally-enforceable residential agreement.* The majority of assisted living facilities offer a legally-enforceable residential service agreement. Facilities will include the addition of apartment numbers to their residential service agreement as part of provider-level transition plans submitted.

7. *Privacy and freedom in living unit.* Assisted living facilities 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. Most apartments have lockable doors. For those that do not, it is because of health and safety issues due to the cognitive or functional impairments of the individuals. This information is documented in the Plan of Services and Supports. Assisted livings follow 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 building and apartments are in the same part of the building as private pay.
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 to. Choices of entrees and snacks are available. Choice to eat privately or sit in the dining room is available.
9. *Freedom to have visitors.* All individuals are able to have visitors at their time of choosing including overnight visitors.
10. *Physical accessibility.* Assisted living facilities have unrestricted access. This included the individuals were about to enter and leave at any time, come and go without a required scheduled return and that all apartments and common areas were free from physical barriers.

b. *A&D Waiver Non-Residential*

MLTC categorized non-residential settings as follows:

- 25 settings are categorized as fully compliant
- 7 settings are categorized as not compliant, but could be with modifications; and
- 20 settings are categorized as unable to comply.

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

1. *Integration with the greater community.* Twenty-six of 52 sites were in compliance with all topics in the category. All sites categorized as unable to comply have opted to discontinue providing non-residential A&D Waiver services. All remaining sites not fully compliant indicated they would be in compliance by March 2019.
2. *Selection of setting.* Thirty-one of 52 sites were compliant with all topics in the category.
3. *Freedom from coercion and restraint.* No assessed sites reported supporting use of restraints.

4. *Optimization of individual initiative, autonomy, and independence.* Thirty-one of 52 sites were compliant with all topics in this category.
5. *Choice regarding services and supports.* Thirty-one of 52 sites were compliant with all topics in this category.
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.* All assessed settings reported they offer individuals variety and choice in the food they eat and times they eat meals and snacks.
9. *Freedom to have visitors.* All assessed settings reported they support visitor attendance in their locations.
10. *Physical accessibility.* Surveyors noted accessibility to all areas commonly accessed by individuals including elevator access to multi-level settings.

c. *TBI Waiver Residential*

MLTC categorized the residential setting as follows:

- 1 is categorized as fully compliant.

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 offer activities and outings outside in the community. In addition, individuals have access and participate in community activities of their choosing. Individuals have 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. 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, dentist or therapist. The use of one pharmacy may be required if they do not self-administer medication. This information is provided to the individual prior to move in.
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. Most apartments have lockable doors. For those that do not, it is because of health and safety issues due to the cognitive or functional impairments of the individuals. This information is documented in the Plan of Services and Supports. 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 to. Choices of entrees and snacks are available, including a restaurant and bar on campus. Choice to eat privately or sit in the dining room is available.
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:

- 7 settings are categorized as fully compliant;
- 27 settings are categorized as not compliant but could be with modifications; and
- No residential settings are categorized unable to comply.

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

1. *Integration with the community.* Thirty of 34 sites reported compliance with all topics in the category. For the two sites not fully compliant in this category, one did not report providing interested individuals the opportunity to work in an

- integrated setting, 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. All sites indicated they would be in compliance by March 2019.
2. *Selection of setting.* Thirty-three of 34 sites were compliant with all topics in the category. Setting selection is evidenced by whether the provider indicated an on-file person-centered plan based on needs and preferences of the individuals served. The site indicated it would be in compliance by March 2019.
 3. *Freedom from coercion and restraint.* Twenty-nine of 34 sites were compliance with all topics in the category. For the five sites not fully compliant in this category, one setting did not reflect that policy and procedures address the individual's rights of privacy dignity, respect, and freedom from coercion and restraint. One setting did not have a process to inform individuals of their rights to privacy, dignity, respect, and freedom from coercion and restraint. One site did not reflect that the setting ensured communication about individual's medical conditions, financial situation, and other personal information were conducted in a place where privacy/confidentially is assured. Two sites did not offer a secure place for individuals to store personal belongings. All five of the sites found to be out of compliance with the HCBS rule did not reflect a process for filing an anonymous complaint. All sites indicated that they would be in compliance by March 2019.
 4. *Optimization of individual initiative, autonomy, and independence.* Thirty of 34 sites were compliant with all topics in this category. For the four sites, not fully compliant in this category, one of the sites did not reflect that the setting allowed for individuals to choose which activities to participate in. One of the four sites did not reflect that the setting allowed for an individual to dine alone or in a private area and two of the four settings did not allow for individual to do activities alone in the community. All sites indicated that that they would be in compliance by March 2019.
 5. *Choice of services and supports.* Twenty-nine of 34 sites were compliant with all topics in this category. For the five sites, not fully compliant in this category, one site did not reflect that the setting ensured individual are provided a choice regarding the services, provider and setting and the opportunity to visit/understand the options. Of the five sites not in compliance, none of the 5 sites reflect that the setting provided information about how to make a request for additional services or changes to their current services. All sites indicated they would be in compliance by March 2019.
 6. *Legally-enforceable residential agreement.* Twelve of 34 sites were compliant with all topics in this category. For the 22 sites that were not currently in compliance, 10 of the sites did not reflect that the setting provided individuals with a lease or, for a setting in which a landlord tenant laws do not apply, a written residency agreement. Fifteen of the sites did not reflect that the setting informed individual of

their rights regarding housing and when they could be relocated. All sites indicated they would be in compliance by March 2019.

7. *Privacy and freedom in living unit.* Fourteen of 34 sites were compliant with all topics in this category. For the 20 sites that were not currently in compliance, three of the sites did not reflect that the setting allowed for individuals to choose their roommate/house mate, eight sites did not reflect that individuals were informed how he/she can request a roommate change, 14 sites did not have locking bedroom doors and seven sites did not allow individuals to close and lock the bathroom door. All sites indicated they would be in compliance by March 2019.
8. *Control over schedule, including food.* Thirty-four of 34 sites were compliant with all topics in this category.
9. *Freedom to have visitors.* Thirty-four of 34 sites were compliant with all topics in this category.
10. *Physical accessibility.* Thirty-two of 34 sites were compliant with all topics in this category. For the two sites that were not currently in compliance, one site did not reflect that the setting provided full access to a kitchen with cooking facilities, dining area, laundry, and comfortable setting in shared areas and one site did not reflect that the site was physically accessible or lacked environmental adaptations such as a stair lift or elevator to ameliorate the obstruction. Both sites indicated they would be in compliance by March 2019.

e. *DD Waiver Non-Residential*

DDD categorized non-residential settings as follows:

- 5 are categorized as fully compliant;
- 12 are categorized as not compliant but could be with modifications; and
- No non-residential settings are categorized as unable to comply.

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

1. *Integration with the community.* Fourteen of 17 sites were compliant with all topics in the category. For the three sites not fully compliant in this category, one setting did not allow individuals the freedom to move inside and outside of the setting as opposed to one restricted room or area within the setting. One site reported that the setting was not completely physically accessible. Two of the three sites did not reflect that the setting provided opportunities for regular meaningful non-work activities in integrated settings for the period of time desired by the individual, the sites did not report that the setting afforded opportunities for individuals to have knowledge of or access to information regarding age appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc., outside of the setting nor did the sites provide individuals with contact information and access to and education/information on the use of public transportation nor that public transportation schedules and

telephone numbers were available in a convenient location. All three sites that were not currently in compliance did not report that the setting encouraged visitors from the greater community. All sites indicated they would be in compliance by March 2019.

1. *Selection of setting.* Seventeen of 17 sites were compliant with all topics in the category.
2. *Freedom from coercion and restraint.* Thirteen of 17 sites were compliance with all topics in the category. For the four sites not fully compliant in this category, one settings did not reflect compliance with confidentiality regarding assurances that staff do not talk to other staff about individuals in the presence of other persons or in the presence of the individual as if s/he were not present. One setting not currently compliant did not report that the setting ensured communication about individual's medical conditions, financial situation and other personal information are conducted in a place where privacy/confidentially is assured. One site did not report that the setting assures that staff interacts and communicated with individuals respectfully. Two settings were not compliant with confidentiality practices (i.e. OT/PT schedules posted or diet restrictions posted in the kitchen) and they did not offer a secure place for the individuals to store personal belongings. All sites indicated they would be in compliance by March 2019.
3. *Optimization of individual initiative, autonomy, and independence.* Fourteen of 17 sites were compliant with all topics in this category. For the three sites, not fully compliant in this category, one site had a coded locked door that would prevent individuals from exiting, one did not allow or support individual to engage in appropriate activates such as voting and two sites did not afford individuals with access to a dining area. All sites indicated they would be in compliance by March 2019.
4. *Choice of services and supports.* Fourteen of 17 sites were compliant with all topics in this category. For the three sites, not fully compliant in this category, two settings did not afford the individuals the opportunity to participate in meaningful activities in integrated community settings in a manner consistent with the individuals needs and preferences and two settings did not provide information to individuals about how to make a request for additional services, or changes to their current services. All sites indicated they would be in compliance by March 2019.

f. *Remediation*

Letters notifying providers of the preliminary results of their setting assessments were sent in early April 2016. Providers responded with comments regarding their results.

Following completion of validation activities, MLTC and DDD will clarify areas of improvement with providers, for which provider must submit provider-level transition plans. MLTC and DDD will make available provider-level transition plan templates by October of 2016 and will review and provide feedback on plans from February through

April of 2017. During this time, providers will continue to make progress toward compliance. Throughout 2017 and March of 2019, MLTC and DDD will monitor ongoing progress.

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 HCBS regulation 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 publicly or privately operated facility that provides inpatient institutional treatment;
- The setting is on the grounds of, or immediately adjacent to, a public institution; or
- 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 people who participate do not leave the site/participate in the broader community and/or a large number of people 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 people 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 people 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 people with disabilities multiple types of services and activities on the same site and individuals with disabilities have little to no interaction/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 people

- with disabilities have limited to no interactions/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 people 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 plan to provide specific guidance for settings requiring heightened scrutiny regarding the State's approach in the late fall of 2016. Examples of evidence/documentation that MLTC and DDD may request from providers requiring heightened scrutiny include, and is not limited to: written narratives regarding the setting and its characteristics and practices, how the setting overcomes the presumption of isolation and/or institutional in nature, 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 a person'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.

Additional assessment activities for all settings requiring heightened scrutiny will be completed by Spring 2017, including on-site visits of settings and submission of evidence packages by providers. MLTC and DDD will review information gathered as a result of additional assessment activities and identify settings to be submitted to CMS in the summer of 2017 and will conduct public input for these settings throughout the end of 2017.

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

- List the affected settings by name and location and identify the number of people served in each setting;
- Be widely disseminated with the intent of reaching HCBS participants, 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 will send evidence that each of the heightened scrutiny settings meets/will meet HCBS settings standards (if applicable) to CMS. According to its June 26, 2015 requirements document, CMS will review the information or documentation to ensure that all participants in the setting are afforded the degree of community integration required by the regulation 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 regulations by October 2018. The timeframe between October 2018 and February 28, 2019 assures that MLTC and DDD will have adequate time to provide notification to the individuals of the requirement to relocate to a compliant setting, give individuals the information, opportunity and supports necessary to make an informed choice about alternate settings and supports, use a person-centered planning process to identify the individual’s goals and preferences, and transition individuals by CMS’s final compliance deadline. Individuals may contact their services coordinator at any time during the transition period to discuss options, alternate settings and other services and supports.

Medicaid agreements for providers who are not willing or able to come into compliance with the HCBS regulation will be terminated no later than February 28, 2019.

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 practices compliance (Attachment 1) and the work plan for settings compliance (Attachment 5) provide benchmarks for identified modifications.

Individual. Monitoring efforts at the individual level includes review of person-centered service plans and information gathered about individual experience from the PES. 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, identifying areas that providers must address and will support 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 regulation will be generated through the assessment process, including identifying what modification 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 and 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 licensing 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. MLTC and DDD will work with DPH licensure and certification staff to reduce duplication of effort each Division's survey process.

b. *Continuous Improvement and Ongoing Monitoring for A&D and TBI Waivers*

MLTC will modify its quality improvement strategies, including individual survey instruments, as a result of HCBS final rule. MLTC will submit its A&D Waiver renewal application by July 1, 2016. It will include new performance measures specific to the settings assessments and will focus on providers who are fully compliant as well as those progressing toward compliance.

MLTC will incorporate setting assessment performance indicators in its initial and annual provider certification reviews, conducted by MLTC-contracted community agencies (e.g., AAAs). This will include determining sample sizes to ensure providers are complying with the HCBS regulations on an ongoing basis.

Continuous quality improvement is founded in good person-centered planning and, to that end, MLTC will 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 review 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 regulations. Setting assessments will be validated through needs assessments at the time of annual planning and the PES. MLTC's file review summaries will facilitate tracking progress in remediation efforts for HCBS setting-related issues identified on the needs assessment or plan of services and supports.

The PES will be updated to ensure that key elements of the HCBS regulation are incorporated and the sample size will be expanded. Currently, MLTC surveys five percent of individuals served every three years. In order to improve response rates, other methods (e.g., mail, telephone, and computer) of outreach will be investigated. MLTC will review and revise the PES with stakeholder input.

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 initially and prior to the expiration of the most recent provider certification. Forms and processes for the survey team are being reviewed and revised as a result of this change. The revised forms will add 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 is normally conducted by document reviews, telephone, and/or email (note – abuse/neglect allegations are investigated by the Division of Child and Family Services and/or law enforcement as appropriate).

DDD services coordination staff 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 is to assure that the services and supports in the service plan are occurring as developed by the team. Monitoring also focus 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, and involved family members, the advocate, contacts on behalf of the individual, or reviews of paperwork, such as financial records, medication records, etc. Full and ongoing reviews are documented on a monitoring form. The individual served, the guardian, involved family members, provider staff, the advocate and others as appropriate may participate in the review process. The form is maintained in the individual's electronic record.

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 goal 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 to inform 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				
Obtain CMS approval of revised waiver renewal timelines	DD	January 2016	DDD staff	CMS approved renewal timeline extension.
Establish stakeholder work groups for waiver renewal	DD	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	DD	January 2016	DDD staff	Services are unbundled and fair rate methodology is applied.
Develop and execute communication plan for waiver renewals	DD	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 submitted to CMS.

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	DD	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	DD	June 2016	DDD Director and staff	Self-directed service options opportunities are identified.
Submit waiver renewal application to CMS	A&D	April 2016	MLTC staff	Waiver renewal application incorporates relevant State Transition Plan and HCBS regulation requirements.
Revise waiver application based upon CMS feedback	A&D	May-July 2016	MLTC	CMS approval of waiver application.
Implement waiver renewal	A&D	August 2016	MLTC	Waiver is implemented.
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	DD	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.	DD	September 2016	DDD staff	Retirement services are clearly defined to include requirements and restrictions.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Submit sections of waiver applications to CMS	DD	May 2016-August 2016	DDD staff	CMS approval of waiver application sections.
Submit waiver applications to CMS	DD	September 2016	DDD staff	CMS approval of waiver applications
Conduct statewide training regarding revised waivers	DD	December 2016	DDD staff	State Transition Plan and HCBS regulations requirements incorporated in training.
Implement revised waivers	DD	January 2017	DDD staff	Waivers are implemented.
Nebraska Administrative Code				
Identify NAC changes necessary to ensure compliance	All	August 2014-March 2016	MLTC and DDD staff	Necessary changes are identified to address federal requirements for Title 404 and 480.
Promulgate updated regulations	TBI DD	December 2016	MLTC and DDD staff	Regulations address HCBS requirements.
Promulgate updated regulation	All	December 2017	MLTC and DDD staff	Regulations address HCBS requirements, incorporate all NE HCBS waivers in Title 480, and LTSS redesign initiatives.
Policies				
Identify MLTC Division internal policy and guideline changes needed	A&D TBI	April 2016	MLTC staff	MLTC Division policies and guidelines needing changes are identified.
Identify DDD Division internal policy and guideline changes needed	DD	April 2016	DDD staff	DDD Division policies and guidelines needing changes are identified.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Draft MLTC Division internal policy and guideline changes and establish implementation plan	A&D TBI	September 2016	MLTC staff	MLTC Division policies and guidelines align with federal requirements and implementation plan is established.
Draft DDD Division internal policy and guideline changes and establish implementation plan	DD	September 2016	DDD staff	DDD Division policies and guidelines align with federal requirements and implementation plan is established.
Review and revise services 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	DD	September 2016	DDD staff	Services coordinators have skills and tools required for implementing State Transition Plan and goals of the HCBS regulations.

Attachment 2 - Systemic Assessment Summary – A&D Waiver

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
1. The setting is integrated in and supports full access to the greater community to the same degree of access as individuals not receiving Medicaid HCBS, including:						

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Opportunities to seek employment and work in competitive integrated settings. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> 5-001 Amend to include specific language</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p><u>Compliant</u> 3-005.05</p> <p>Chapter 5 Not Applicable re licensing for Adult Day Services</p> <p>Title 391 Not applicable re childcare licensing</p>	No change needed	Change Needed	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Engage in community life, 	Not applicable	<p>Title 480 <u>Non-Compliant</u> 5-001 Amend to include specific language</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p><u>Compliant</u> 3-005.05 5-006.09 (Although could be amended to include “community activities” as appropriate to be more specific.)</p> <p>Title 391 <u>Compliant</u> 1-006 2-006 3-006</p>	No change needed	No change needed	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Control personal resources. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> 5-001 Amend to include specific language</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p>Title 175, Chapter 5 <u>Silent</u></p> <p>Title 391 Not applicable re childcare licensing</p>	No change needed	No change needed	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Receive services in the community. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> 5-001 Amend to include specific language</p> <p>Title 175 Chapter 3 Not applicable for purposes of licensure</p> <p>Title 175, Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p>Title 175 <u>Compliant</u> 5-001.01 5-002</p> <p>Title 391 Not applicable re childcare licensing</p>	No change needed	No change needed	<p>On-site file review</p> <p>Medicaid Home and Community Based Waiver Consent Form</p>	<p>Off-site file review</p> <p>Participant PES</p>

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>2. The setting is selected by the individual from among setting options, including non-disability specific setting and an option for a private unit in a residential setting.</p>						
<ul style="list-style-type: none"> The setting options are identified and documented in the person-centered plan. 	Not applicable	<p>Title 480 <u>Compliant</u> 5-001</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p><u>Compliant</u> 3-005.05</p> <p>Chapter 5 Not applicable to licensing for Adult Day Services.</p> <p>Title 391 Not applicable re childcare licensing</p>	No change needed	No change needed	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Are based ON the individual’s needs, preferences, and, for residential setting resources available for room and board. 	Not applicable	<p>Title 480 <u>Compliant</u> 5-001</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p><u>Compliant</u> 3-005 5-006.07 5-006.09</p> <p>Title 391 Not applicable to licensure for childcare facilities</p>	No change needed	No change needed	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>3. The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>Not applicable</p>	<p>Title 480 <u>Non-Compliant</u> 5-001 Amend to include specific language</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p><u>Compliant</u> 3-005 5-006 5-007</p> <p>Title 391 Compliant to extent relevant for licensure of daycare facilities.</p>	<p>No change needed</p>	<p>Include on revised rights consent document</p>	<p>On-site file review</p>	<p>Off-site file review PES</p>

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>4. 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.</p>	Not applicable	<p>Title 480 <u>Compliant</u> 5-005.B <u>Non-Compliant</u> 5-001 Amend to include specific language;</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p><u>Compliant</u> 5-006 5-007</p> <p>Title 391 Not applicable to childcare licensing</p>	No change needed	Make available ongoing education for providers and individuals/ guardians	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>5. The setting facilitates individual choice regarding services and supports, and who provides them.</p>	<p>Not applicable</p>	<p>Title 480 <u>Compliant</u> 5-001 5-003.B4A</p> <p>Title 175 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001)</p> <p>Chapter 3 <u>Compliant</u> 3-005.05</p> <p>Chapter 5 Not applicable to licensure of Adult Day Services</p> <p>Title 391 Not applicable to childcare licensing</p>	<p>No change needed</p>	<p>No change needed</p>	<p>Annual review of Plan of Services and Supports</p> <p>Medicaid HCBS Waiver Consent Form</p> <p>On-site file review</p>	<p>Off-site file review PES</p>

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>6. 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 protection from eviction that tenants have under the landlord/tenant law if 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 or other form of written agreement will be in place for each HCSB member, and that the document provides protections that address eviction process and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>	<p>§76-1401 Uniform Residential Landlord Tenant Act §71-406 Assisted Living Facility, defined</p> <p>Compliant; No change recommended</p>	<p>Title 480 <u>Non-Compliant</u> 5-005 Amend to include compliant language</p> <p>Title 175 Not generally applicable to licensure. Compliant to extent enforceable agreements are entered into for residential services.</p>	<p>Include language in the Waiver application</p>	<p>Address consistent use of a resident service agreement</p>	<p>Not addressed</p>	<p>Not addressed</p>
<p>7. Each individual has privacy in their sleeping or living unit:</p>						

<ul style="list-style-type: none"> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> 5-005. Amend to include compliant language</p> <p>Title 175 <u>Non-Compliant</u> 3-003.02H2 Update language regarding lockable units</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure for day services</p> <p>Title 391 Not applicable to childcare licensing</p>	No change needed	Change needed; monitor compliance	Not addressed	Not addressed
<ul style="list-style-type: none"> Individuals sharing units have a choice of roommates in that setting. 	Not applicable	<p>Title 480 <u>Compliant</u> 5-005B4</p> <p>Title 175 Chapter 3 <u>Silent</u></p>	No change needed	Change needed; monitor compliance	MLTC-21 Client Consent for Multiple Occupancy	Off-site file review

		<p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>			QA File Review	
<ul style="list-style-type: none"> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. 	Not applicable	<p>Title 175 Chapter 3 <u>Silent</u></p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p>	No change needed	Change Needed	Not addressed	Not addressed
<p>8. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	Not applicable	<p>Title 175 <u>Compliant</u> 3-005.05</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver</p>	No change needed	Make available ongoing education for providers and individuals/guardians	On-site review Monthly review of services and satisfaction	Off-site file review PES

		<p>services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure for Adult Day Services</p> <p>Title 391 Not applicable to childcare licensing</p>				
<p>9. Individuals are able to have visitors of their choosing at any time.</p>	Not applicable	<p>Title 480 <u>Silent</u> Add regulation consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.05 although allows restrictions based on medical necessity as documented by multidisciplinary team</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5</p>	No change needed	Make available ongoing education for providers and individuals/guardians	On-site review Provider Handbook	Off-site review PES

		<p>Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>				
<p>10. The setting is physically accessible to the individual.</p>	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-003</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 <u>Compliant</u> 5-007.02</p> <p>Title 391 <u>Compliant</u> 1-006 2-006 3-006</p>	Change Needed	No change needed	<p>On-site review</p> <p>Monthly review of services and satisfaction</p>	Off-site review PES

<p>11. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person centered plan.</p>	<p>Not applicable</p>	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.05</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>	<p>No change needed</p>	<p>No change needed</p>	<p>On-site review</p> <p>Monthly review of services and satisfaction</p> <p>Annual review of Resident Service Agreement</p>	<p>Off-site review PES</p>
<p>The following requirements must be documented in the person centered plan:</p>						
<ul style="list-style-type: none"> Identify a specific and individualized assessed need. 	<p>Not applicable</p>	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p>	<p>No change needed</p>	<p>No change needed</p>	<p>On-site review</p> <p>Monthly review of</p>	<p>Off-site review PES</p>

		<p>Title 175 <u>Compliant</u> 3-005.05</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>			services and satisfaction	
<ul style="list-style-type: none"> Document the positive interventions and supports used prior to any modification to the person-centered service plan. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p> <p>Chapter 4 Licensing provision of Chapter 4 does not</p>	No change needed	No change needed	<p>On-site review</p> <p>Monthly review of services and satisfaction</p>	Off-site review PES

		<p>apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>				
<ul style="list-style-type: none"> Document less intrusive methods of meeting the need that have been tried but did not work. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5</p>	No change needed	No change needed	On-site review	Off-site review PES

		<p>Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>				
<ul style="list-style-type: none"> • Include a clear description of the condition that is directly proportionate to the specific assessed need. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 <u>Compliant</u> 5-002 5-006</p> <p>Title 391 Not applicable to childcare licensing</p>	No change needed	No change needed	On-site review	Off-site review PES

<ul style="list-style-type: none"> • Include regular collection and review of data to measure the ongoing effectiveness of the modification. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>	No change needed	No change needed	<p>Not addressed</p> <p>Monthly review of services and satisfaction</p>	Not addressed
<ul style="list-style-type: none"> • Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p>	No change needed	No change needed	<p>On-site review</p> <p>Monthly review of</p>	Off-site review

		<p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>			services and satisfaction	
<ul style="list-style-type: none"> • Include the informed consent of the individual. 	Not applicable	<p>Title 175 <u>Compliant</u> 3-005.04 3-005.05</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p>	No change needed	No change needed	<p>On-site review</p> <p>Monthly review of services and satisfaction</p>	Off-site review

		<p>Chapter 5 Not applicable to licensure of day service settings</p> <p>Title 391 Not applicable to childcare licensing</p>				
<ul style="list-style-type: none"> • Include an assurance that intervention and supports will cause no harm to the individual. 	Not applicable	<p>Title 480 <u>Non-Compliant</u> Amend Chapter 5 to make it consistent with other Waiver regulations</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05</p> <p>Chapter 4 Licensing provision of Chapter 4 does not apply to Waiver services provided under the DD Services Act (4-001).</p> <p>Chapter 5 <u>Compliant</u> 5-006</p> <p>Title 391 <u>Silent</u></p>	No change needed	Update needs assessments	On-site review	Off-site review

Standards That Define Settings Presumed Not to be Home and Community –Based Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
Disqualified settings: NF, hospital, ICF-IID, IMD and other locations that have qualities of an institutional setting.	§81-2268 Should be amended to include compliant language	Title 480 Non-Compliant Amend Chapter 5 to make it consistent with other Waiver regulations Not applicable to Licensure under Title 175 or 391	No change needed	No change needed	Not addressed	Not addressed
Presumed disqualified: Any setting that is located in a building that is able publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to a public institution , or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.	Not applicable	Title 480 Non-Compliant Amend Chapter 5 to make it consistent with other Waiver regulations Not applicable to Licensure under Title 175 or 391	No change needed	No change needed	Not addressed	Not addressed

Attachment 3 – Systemic Assessment Summary – TBI Waiver

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
1. The setting is integrated in and supports full access to the greater community to the same degree of access as individuals not receiving Medicaid HCBS, including:						
<ul style="list-style-type: none"> Opportunities to seek employment and work in competitive integrated settings. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	On-site file review	Off-site file review PES
<ul style="list-style-type: none"> Engage in community life. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site file review	Off-site file review PES
<ul style="list-style-type: none"> Control personal resources. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site file review	Off-site file review PES
<ul style="list-style-type: none"> Receive services in the community. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	On-site file review Medicaid Home and Community Based Waiver Consent Form	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>2. The setting is selected by the individual among setting options including non-disability specific settings and an option for a private unit in a residential setting.</p>						
<ul style="list-style-type: none"> The setting options are identified and documented in the person-centered plan. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	On-site file review	Off-site file review
<ul style="list-style-type: none"> Are based ON the individual’s needs, preferences, and, for residential setting resources available for room and board. 	§71-406 Assisted Living Facility, defined Compliant; No change recommended	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	On-site file review	Off-site file review PES
<p>3. The setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	Include on revised rights consent document	On-site file review	Off-site file review PES
<p>4. 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.</p>	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	Make available ongoing education for providers and individuals/guardians	On-site file review	Off-site file review PES

Standards Applicable to All HCBS Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
5. The setting facilitates individual choice regarding services and supports, and who provides them.	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	Annual review of Plan of Services and Supports Medicaid HCBS Waiver Consent Form On-site file review	Off-site file review PES

Additional Standards Applicable to Provider-Owned or Controlled Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<p>6. 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 protection from eviction that tenants have under the landlord/tenant law if 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 or other form of written agreement will be in place for each HCSB member, and that the document provides protections that address eviction process and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>	<p>§76-1401 et. seq. Uniform Residential Landlord Tenant Act</p> <p>Compliant; No change needed recommended</p>	<p><u>Silent</u> Add regulations consistent with other Waiver regulations</p>	<p>Add language to address this requirement</p>	<p>Address consistent use of a resident service agreement</p>	<p>Not addressed</p>	<p>Not addressed</p>
<p>7. Each individual has privacy in their sleeping or living unit</p>						

Additional Standards Applicable to Provider-Owned or Controlled Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Unit have entrance doors lockable by the individual, with only appropriate staff having keys to doors. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	Change needed; monitor compliance	Not addressed	Not addressed written/agreement.
<ul style="list-style-type: none"> Individuals sharing units have a choice of roommates in that setting. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	MLTC-21 Client Consent for Multiple Occupancy QA File Review	Off-site file review
<ul style="list-style-type: none"> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	Change needed; monitor compliance	Not addressed	Not addressed
8. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	Make available ongoing education for providers and individuals/guardians	On-site review Monthly review of services and satisfaction	Off-site file review PES
9. Individuals are able to have visitors of their choosing at any time.	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	Make available ongoing education for providers and individuals/guardians	On-site review Provider Handbook	Off-site review PES

Additional Standards Applicable to Provider-Owned or Controlled Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
10. The setting is physically accessible to the individual.	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site Review Monthly review of services and satisfaction	Off-site review PES
11. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person centered plan.	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site Review Monthly review of services and satisfaction	Off-site review PES
The following requirements must be documented in the person centered plan:						
<ul style="list-style-type: none"> Identify a specific and individualized assessed need. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	On-site Review Monthly review of services and satisfaction	Off-site review PES

Additional Standards Applicable to Provider-Owned or Controlled Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Document the positive interventions and supports used prior to any modification to the person-centered service plan. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site review Monthly review of services and satisfaction	Off-site review PES
<ul style="list-style-type: none"> Document less intrusive methods of meeting the need that have been tried but did not work. 	Not applicable		Add language to address this requirement	No change needed	On-site review Monthly review of services and satisfaction	Off-site review PES
<ul style="list-style-type: none"> Include a clear description of the condition that is directly proportionate to the specific assessed need. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site Review	Off-site review PES
<ul style="list-style-type: none"> Include regular collection and review of data to measure the ongoing effectiveness of the modification. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	Not addressed SC monitoring but no quantitative data.	Not addressed
<ul style="list-style-type: none"> Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site Review Monthly review of services and satisfaction	Off-site review

Additional Standards Applicable to Provider-Owned or Controlled Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
<ul style="list-style-type: none"> Include the informed consent of the individual. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	No change needed	On-site Review Monthly review of services and satisfaction	Off-site review
<ul style="list-style-type: none"> Include an assurance that intervention and supports will cause no harm to the individual. 	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	Add language to address this requirement	Update needs assessment	On-site review	Off-site review

Standards That Define Settings Presumed Not to be Home and Community-Based Settings

Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Application	Practice	Verification Method	
					Monitoring by Services Coordinators	Monitoring by MLTC Staff
Disqualified settings: NF, hospital, ICF-IID, IMD and other locations that have qualities of an institutional setting.	§81-2268 Medicaid Waiver Funds; use authorized Recommend amending to include language consistent with the HCBS regulation	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	Not addressed	Not addressed
Presumed disqualified: Any setting that is located in a building that is able publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to a public institution , or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.	Not applicable	<u>Silent</u> Add regulations consistent with other Waiver regulations	No change needed	No change needed	Not addressed	Not addressed

Attachment 4 – Systemic Assessment Summary – DD Waivers

Standards Applicable to All HCBS Settings						
Standard	Applicable Statutes	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/ Certifications by DPH Staff
1. The setting is integrated in and supports full access of individuals receiving HCBS to the greater community to the same degree of access as an individual not receiving Medicaid HCBS, including:	§ 83-1202 DD Services Act ¹ Statute includes limiting language (i.e. “to the extent possible”) that is inconsistent with the regulation. Recommend removal of this language.	Title 404 Compliant Title 175 <u>Compliant:</u> 3-005.05	No change needed	No change needed	Not addressed in DD-SC37	P.I-I P.II-C
• Opportunities to seek employment and work in competitive integrated settings	§ 83-1202 (1,3) DD Services Act Same as above re subparagraph (3)	Title 404 Compliant 5-002.04 6-001.02 6-003.02 Title 175, Chapter 3 <u>Silent</u>	No change needed	No change needed	Not directly addressed in DD-SC37(21-25)	Not directly addressed in P.II-C P.II-Fb
• Engage in community life	§ 83-1202 (1,3,4,6) DD Services Act Same as above re: subparagraph (3) & (4)	Title 404 Compliant 5-002.03 5-002.04 6-002	No change needed	No change needed	Not addressed in DD-SC37	P.II-C P.II-Fb P.II-G

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

<ul style="list-style-type: none"> Control personal resources 	<p>§ 83-1202 DD Services Act</p> <p>Recommend amending to include specific language, if statute will be applied to individuals receiving HCBS. If statute is to apply to only state-funded services, no change is recommended.</p>	<p>Title 404 Compliant 4-005.05A 4-005.05B 4-005.05B1 4-005.05C 4-005.05D</p> <p>Title 175 <u>Compliant:</u> 3-005.05</p>	Refers to NAC	No change needed	DD-SC37 (5) and more broadly DD-SC37 (21-25)	P.I-D Personal Funds/Property P.II-C P.II F-f P.II F-h Individual's Personal Funds and Property
<ul style="list-style-type: none"> Receive services in the community 	<p>§ 83-1202 (1,3,4) DD Services Act</p> <p>Compliant; No changes recommended</p>	<p>Title 404 Compliant 6-001.02 6-002</p> <p>Title 175, Chapter 3 <u>Silent</u></p>	No change needed	No change needed	Not directly addressed in DD-SC37	P.II-B P.II-C P.II-G
<p>2. The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting.</p>	<p>§ 83-1202 DD Services Act</p> <p>Does not specifically denote right of choice. Recommend change unless the Statute will apply only to State funded services only.</p>	<p>Title 404 <u>Silent</u> Adopt a “choice” regulation, unless the regulations will not apply to Medicaid provided services</p> <p>Title 175, Chapter 3 Not applicable to licensure</p>	No change needed	No change needed	Not directly addressed in DD-SC37	Not directly addressed in P.II-C
<ul style="list-style-type: none"> The setting options are identified and documented in 	<p>§ 83-1209 (1d) DD Services Act</p>	<p>Title 404 <u>Compliant</u> 5-002 et. seq.</p>	No change needed	Enhance training to ensure	Not directly addressed in DD-SC37	Not directly addressed in P.II-C

the person-centered service plan.	Compliant; No changes recommended	Title 175, Chapter Not applicable to licensure		documentati on of non- disability specific settings and options.		
<ul style="list-style-type: none"> Are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 	<p>§ 83-1202 subparagraph 9. DD Services Act</p> <p>Does not specifically denote right of choice. Recommend change unless the Statute will apply only to State funded services only.</p>	<p>Title 404 <u>Compliant</u> 4-004.04A (1,2) 4-005.et. seq. 5-002 et seq.</p> <p>Title 175, Chapter 3 Not applicable to licensure</p>	No change needed	No change needed	Not directly addressed in DD-SC37	Not directly addressed in P.II-C P.II-B P.II F-f P.II-G
3. The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>§ 83-1202(6) DD Services Act</p> <p>Compliant; No changes recommended</p>	<p>Title 404 <u>Compliant</u> 5-003.02D <u>Non-Compliant</u> 4-007 6-002 4-011 Should include coercion/ restraint language</p> <p>Title 175, Chapter 3 Although generally compliant, recommend that language be updated to remove medical judgement from Human Rights Committee and</p>	No change needed	No change needed	DD-SC37 (1,3,5,6)- Need language regarding Coercion/restraint	P.I-D Notification of Rights P.I-I P.II-B P.II-C P.II F-d P.II-G

		make clear that it is based on medical necessity to prevent harm to self or others.				
4. 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.	§ 83-1202 (1), (3), (4), (6) DD Services Act Compliant; No changes recommended	Title 404 <u>Compliant</u> 5-002.01 (1,2,3) 6-002 (4,5,6,7,10) Title 175 <u>Compliant</u> 3005.05	No change needed	No change needed	Not directly addressed in DD-SC37	P.II-B P.II-C P.II-G
5. The setting facilitates individual choice regarding services and supports, and who provides them.	§ 83-1202 DD Services Act Recommend amending to specifically articulate right of choice; if statute will be applied to individuals receiving HCBS. If statute is to apply to only state-funded services, no change is recommended.	Title 404 <u>Compliant</u> 4-004.04A; 6-002 Title 175 <u>Compliant</u> 3-005.05	No change needed	No change needed	Not directly addressed in DD-SC37	Not directly addressed in P.II-C

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
<p>6. 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 protection 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 a written agreement will be in place for each HCBS member, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p>	<p>§ 71-406. Assisted-living facility, defined § 71-404. Adult day service, defined § 71-408 Center or Group Home defined § 76-1401 Uniform Residential Landlord Tenant Act</p> <p>Compliant; No changes recommended</p>	<p>Title 404 <u>Compliant</u> 5-002.03</p> <p><u>Non-Compliant</u> 5-002.03A EFH leases may be held by subcontractor. Include language to require sub-leases.</p> <p>6-001 Amend to include leases and eviction protections</p> <p>Title 175, Chapter 3 Not generally applicable to licensure. Compliant to extent enforceable agreements are entered into for residential services.</p>	<p>Not addressed</p>	<p>Enhance Services Coordinator training/support from Central Office regarding leases and landlord/tenant laws</p>	<p>Not addressed in DD-SC37</p>	<p>No current verification of leases/written agreement</p>

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
<p>7. Each individual has privacy in their sleeping or living unit.</p>	<p>§ 83-1202 DD Services Act</p> <p>Compliant; No changes recommended</p>	<p>Title 404 <u>Silent</u> Adopt regulation with appropriate and specific language.</p> <p>Title 175 <u>Compliant</u> 3-003.02</p>	<p>No change needed</p>	<p>No change needed</p>	<p>Not addressed in DD-SC37</p>	<p>P.II-C speaks to privacy when desired</p>
<ul style="list-style-type: none"> Unit has entrance doors lockable by the individual, with only appropriate staff having keys to doors. 	<p>§ 83-1202 DD Services Act</p>	<p>Title 404 <u>Silent</u></p> <p>Title 175, Chapter 3 <u>Non-Compliant</u> 003.02H2 Update language regarding lockable units</p>	<p>Not addressed</p>	<p>No change needed</p>	<p>Not addressed in DD-SC37</p>	<p>Not addressed in P.II-C</p>

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
<ul style="list-style-type: none"> Individuals sharing units have a choice of roommates in that setting. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Compliant</u> 5-002.03</p> <p><u>Non-Compliant</u> 5-002.03A (EFH) Include lease language</p> <p>Title 175, Chapter 3 <u>Silent</u></p>	No change needed	No change needed	Not addressed in DD-SC37	Not directly addressed by P.II-C
<ul style="list-style-type: none"> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. 	§ 83-1202 DD Services Act	<p>Title 404 Silent</p> <p>Title 175, Chapter 3 <u>Silent</u></p>	No change needed	No change needed	Not addressed in DD-SC37	P.II-B P.II-C P.II-G
<p>8. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	§ 83-1202 DD Services Act	<p>Title 404 Silent</p> <p>Title 175, Chapter 3 <u>Compliant</u> 3-004 3-005 3-006</p>	No change needed	No change needed	Not addressed in DD-SC37	P.II-C (activities and schedules- food not expressly stated) P.II-G

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
9. Individuals are able to have visitors of their choosing at any time.	§ 83-1202 DD Services Act	Title 404 Silent Title 175, <u>Compliant</u> 3-005.05 although allows restrictions based on medical necessity as documented by multidisciplinary team	No change needed	No change needed	Not addressed in DD-SC37	P.II-C
10. The setting is physically accessible to the individual.	§ 83-1202 DD Services Act	Title 404 Silent Title 175 <u>Compliant</u> 3-003	No change needed	No change needed	DD-SC-37 (41)	Not addressed in P.II-C

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
11. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered plan.	§ 83-1202 DD Services Act	Title 404 <u>Compliant</u> 4-005 et. seq. 5-003.02C 5-003.02D 5-003.02E 6-004.01 6-006 Title 175, Chapter 3 <u>Compliant</u> 3-005.05	No change needed	No change needed	DD-SC37 (2, 16, 17)	P.I-D FBA/BSP/Safety Plan P.I-E Restrictive Measures P.I-E Positive behavioral Supports P.I-E Habilitation P.I-E Programs and Supports P.I-E Assessments P.II-C P.II-F-d P.II-G
The following requirements must be documented in the person-centered service plan: Identify a specific and individualized assessed need						

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
<ul style="list-style-type: none"> Document the positive intervention and supports used prior to any modification to the person-centered service plan. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Compliant</u> 4-005.03 5-003.02C 6-004.01 et. seq.</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p>	No change needed	No change needed	DD-SC37(10, 11, 12, 13, 14, 15, 16, 17, 20)	P.I-D FBA/BSP/Safety Plan P.I-D IPP P.I-E Positive Behavioral Supports P.II-F-d
<ul style="list-style-type: none"> Document less intrusive methods of meeting the needs that have been tried but did not work. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Compliant</u> 6-004.01</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p>	No change needed	No change needed	Not directly addressed in DD-SC37	P.I-D FBA/BSP/Safety Plan P.I-D IPP P.I-E Restrictive Measures P.II-F-d
<ul style="list-style-type: none"> Include clear description of the condition that is directly proportionate to the specific assessed need. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Non-Compliant</u> 6-004.01 Amend to include requirement</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p>	No change needed	No change needed	DD-SC37	P.I-D FBA/BSP/Safety Plan P.I-D IPP P.I-E Habilitation

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
<ul style="list-style-type: none"> Include regular collection and review of data to measure the ongoing effectiveness of the modification. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Silent</u> 6-004.01 Amend to include requirement</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05 3-005.06</p>	No change needed	No change needed	DD-SC37 (11, 15, 20)	P.I-D FBA/BSP/Safety Plan P.I-D IPP P.I-E Habilitation
<ul style="list-style-type: none"> Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Compliant</u> 4-011 <u>Non-Compliant</u> 6-004.01A Amend to require periodic review</p> <p>Title 175 <u>Compliant</u> 3-005.06</p>	No change needed	No change needed	Not addressed directly under DD-SC37- Implied through annual and semiannual reviews	P.I-D FBA/BSP/Safety Plan P.I-D IPP Not addressed directly under P.I-E

Additional Standards Applicable to Provider-Owned or Controlled Residential Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code	Waiver Applications	Practice	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/Certifications by DPH Staff
<ul style="list-style-type: none"> Include the informed consent of the individual. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Compliant</u> 6-004.01 (6)</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05</p>	No change needed	No change needed	DD-SC37 (2) Speaks to team, guardian and the Rights committee- Does not directly reflect individual.	P.I-D FBA/BSP/Safety Plan P.I-D IPP P.I-D Consents P.I-E Restrictive Measures P.I-I P.II-F-d P.II F-f
<ul style="list-style-type: none"> Include an assurance that interventions and supports will cause no harm to the individual. 	§ 83-1202 DD Services Act	<p>Title 404 <u>Compliant</u> 6-004.01(7)</p> <p>Title 175 <u>Compliant</u> 3-005.04 3-005.05</p>	No change needed	No change needed	Not addressed directly- More broadly under DD-SC37(Rights)	P.I-E Restrictive Measures P.II-F d P.II-G

Standards That Define Settings Presumed Not to be Home and Community-Based Settings

Standard	Statutes (if applicable)	Nebraska Administrative Code Title 404	Waiver Applications	Practice Change	Verification Method	
					Monitoring by Services Coordinators	Site Surveys/ Certifications by DPH Staff
Disqualified settings: NF, hospitals, ICF-IID, IMD and any other locations which have the qualities of an institutional setting.	§81-2268 Medicaid Waiver Funds; use authorized Recommend amending to include specific language	Title 404 Compliant 3-003.02 Not applicable to Licensure under Title 175	No change needed	No change needed	Not addressed in DD-SC37	P.II-C
Presumed disqualified: Any setting that is located in a building that is able publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.	Not applicable	Title 404 Silent Not applicable to licensure under Title 175	No change needed	No change needed	No change needed	Ensure site certification tool addresses the physical location of sites for compliance

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	August 2014	MLTC and DDD staff	Settings are identified for each HCBS waiver.
Develop assessment tool for residential settings	A&D TBI	August 2014	MLTC staff	Assessment tool was developed incorporating federal requirements.
Develop self-assessment tool for residential settings	DD	August 2014	DDD staff	Assessment tool was developed based upon federal requirements.
Train assessors of residential settings.	A&D TBI	November 2014	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)	221 assisted living assessments were completed.
Conduct self-assessment (residential settings) and submit results to DDD	DD	January 2015	DD Waiver residential services providers	113 of 129 group homes licensed as CDDs completed self-assessments.
Establish sampling methodology in preparation for additional round of site assessments	DD	December 2015	DDD staff	DDD staff established methodology to identify stratified random sample of residential and non-residential providers.
Develop companion guides for assessment tools	A&D DD	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).

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Train assessors of residential and non-residential settings	All	January-February 2016	MLTC and DDD staff	MLTC-contracted Area Agencies on Aging, DHHS Children and Family Services staff and DDD services 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)	221 assisted living settings assessments (for clarification of previous results) were completed and 52 non-residential setting assessments were completed.
Conduct second round assessment of a sample of residential and non-residential providers	DD	February-March 2016	DDD services coordinators	34 residential and 17 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	March 2016	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.
Providers submit comments to MLTC or DDD regarding preliminary assessment results	All	April 2016	Providers	Summary of comments received.
Bringing Settings Into Compliance				
Make available technical assistance for providers regarding settings requirements	All	September 2014-March 2019	MLTC and DDD staff	Forums and meetings scheduled; technical assistance resources and links posted on website

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Make available provider-level transition plan template.	All	October 2016	MLTC and DDD staff	Template developed and distributed to providers.
Provide guidance regarding lease requirements for waiver participants living in provider-owned or controlled residential settings	DD	December 2016	DDD staff	Guidance regarding lease agreements included on website.
Review initial provider-level transition plans.	All	February 2017	Providers categorized as “not yet meeting HCBS characteristics but may be with modifications” to submit plans to MLTC or DDD	Provider-level transition plans received from applicable providers and approved by MLTC or DDD or a revised plan is requested.
Approve provider-level transition plans	All	April 2017	MLTC and DDD staff	Provider-level transition plans are approved.
Continue progress with/monitor provider level transition plans	All	April 2017-March 2019	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 persons 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	November 2016-April 2017	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	November 2016-April 2017	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 initiative public input process.	All	May –July 2017	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.		August-December 2017	MLTC and DDD staff	Public provides input regarding settings and determination to submit settings for heightened scrutiny.
Submit heightened scrutiny settings to CMS	All	Spring 2018	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.
Reassign quality assurance surveyors to the Division of Public Health	DD	December 2015	DDD staff	Surveyors report to the Division of Public Health
Implement additional assurance measures for regarding health and safety restrictive measures	A&D	August 2016	MTLC staff	Additional assurance measures are incorporated in monitoring processes

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Evaluate viability of utilizing National Core Indicators membership; or, research, develop and implement an alternative nationally-recognized, statistically valid participant experience survey	All	December 2016	MLTC and DDD staff	Participant experience survey is selected.
Modify Division of Public Health certification survey tools and process to more rigorously review human and legal rights processes	DD	December 2016	DDD staff	Certification survey tools incorporate setting requirements.
Collaborate with Division of Public Health to incorporate settings requirements and reduce duplication between divisions in the certification process	A&D TBI	December 2016	MLTC staff	Public health licensure tools and MLTC annual certification tools incorporate settings requirements without duplication.
Determine services coordination monitoring tools and policies to incorporate regulations	All	December 2016	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	December 2016	MLTC and DDD staff	Specific changes to monitoring tools and policies will be determined with input from stakeholders.
Identify new needs assessment tool or modifications for existing tool	A&D TBI	February 2017	MLTC staff	Needs assessment tool or modifications will be identified.
Modify services coordination monitoring tools and policies to incorporate setting regulations	All	February 2017	MLTC and DDD staff	Tools and policies updated and distributed.
Modify quality improvement monitoring tools and policies to incorporate settings requirements.	All	February 2017	MLTC and DDD staff	Tools and policies updated and distributed
Finalize process to monitor compliance regarding lease expectations	All	May 2017	DDD staff	Process to monitor lease expectations established

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Implement selected participant experience survey	All	May 2017	MLTC and DDD staff	Staff trained and processes in place to implement survey.
Implement services coordination and quality monitoring tools and policies	All	May 2017	MLTC and DDD staff	Staff trained and processes in place to implement tools and policies.
Stakeholder Outreach and Education				
Develop educational resource(s) for waiver participants, 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 participants, guardians, and families regarding settings requirements.	All	March 2018	MLTC and DDD staff	Services coordinators have knowledge and resources to provide education.
Services coordinators provide education to waiver participants, 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 2019	Services coordinators	Waiver participants, guardians and families understand and can access information about settings requirements, including rights restrictions and protection of individual rights.
Obtain public comments regarding State Transition Plan settings assessment	All	March-May 2016	MLTC and DDD staff	Updated plan to incorporate comments as appropriate
Open public input regarding heightened scrutiny settings	All	Summer/Fall 2017	MLTC and DDD staff	Public provides input regarding settings and determination to submit settings for heightened scrutiny
Relocation				
Reach out to integrated providers of retirement services to increase options available to retirees in developmental disabilities	DD	6/1/2016- 12/31/2016	DDD staff	Integrated providers of retirement services will be identified as options.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Evaluate options available for each specific setting's geographic region	All	September 2018	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	October 2018	MLTC staff, DDD staff, MLTC-contracted agencies providing services coordination	Plan and materials to support informing each individual are in place
Notify individuals	All	November 2018	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	December - February 2019	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	February 2019	MLTC and DDD staff	All settings with provider agreements are compliant with settings requirements.