

**State of Nebraska  
Department of Health and Human Services**

# **State Transition Plan**

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

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## 1. Summary for Nebraska Stakeholders

### a. *Nebraska's Commitment to Stakeholder Engagement*

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

### b. *What is Medicaid?*

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

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

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

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

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

### d. *The HCBS Regulations*

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

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

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

The CMS HCBS regulations require states to submit a transition plan within one year of the March 17, 2014 effective date. All states have until March 17, 2023 to meet requirements of the regulations. Each state was required to submit an initial plan to CMS to explain how the state would update its policies, determine if its service settings were meeting requirements, and remedy any instances when settings were not meeting requirements.

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

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

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

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

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

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

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

## 2. Stakeholder Input

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

An initial round of public comment was conducted from September 3, 2014 through October 15, 2014. At that time, the draft State Transition Plan was posted on a dedicated State Transition Plan website. A second public comment period was conducted from March 28, 2016 through May 2, 2016 for the second submitted draft (that resulted in initial approval from CMS). The comment period for the proposed final approval draft submission was conducted from May 23, 2018 through June 25, 2018. Changes were made to the document prior to the submission, so another public comment period was conducted from May 10, 2019 through June 17, 2019. An additional public comment period was conducted from February 1, 2021 through March 2, 2021 as numbers of settings assessments were finalized. The State Transition website has been updated to include the current draft and additional resources.

Notices to the tribes were sent for the most recent submission of the State Transition Plan. These notices were sent on September 26, 2018, March 28, 2019, May 22, 2019, and February 1, 2021. No comments were received as a result of these notices.

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

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

### *a. State Transition Plan Website (September 2014- March 2023)*

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

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

*Fall 2014*

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

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

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

*Summer/Early Fall 2015.*

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

City	Date/Time	Location
Kearney	Aug. 17, 2015; 3:00-4:00 p.m. CST	Educational Service Unit #10
Grand Island	Sept. 02, 2015; 3:00-4:00 p.m. CST	Nebraska Department of Health and Human Services
Norfolk	Sept. 22, 2015; 3:00-4:00 p.m. CST	Lifelong Learning Center
Lincoln	Sept. 24, 2015; 1:30-3:30 p.m. CST	Included Video Conference Option: <ul style="list-style-type: none"><li>• <b>Columbus</b> – Columbus Public Library</li><li>• <b>North Platte</b> – ESU #16, Distance Learning Room</li><li>• <b>Omaha</b> – Omaha State Office Building</li></ul>

*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.

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

*Spring 2016.*

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

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

Lincoln	Apr. 26, 2016; 10:00 a.m.-12:00 p.m. CST	Monthly Stakeholder Meeting, Nebraska State Office Building	All waivers
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A second “Let’s Talk” tour of the state occurred in August and September 2016, in which the State Transition Plan update was an agenda item.

*Summer 2018.*

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

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

*Summer 2019*

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

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

		call-in option	
Statewide	May 30, 2019 5:30-7:00 p.m., CST	Live Webinar with call-in option	All waivers
Statewide	Jun. 5, 2019 1:30-3:00 p.m., CST	Live Webinar with call-in option	All waivers

*Winter 2021*

In February and March of 2021, the final public comment period was held in order to give share final counts of assessments completed for the submission of the State Transition Plan and gather stakeholder and public input on the proposed submission. The following identifies dates, and times for the scheduled public comment sessions.

City	Date	Location	Focus
Statewide	Feb 18, 2021 2:00-3:00 p.m., CST	Live Webinar with call-in option	All waivers
Statewide	Feb 23, 2021 5:00-6:00 p.m., CST	Live Webinar with call-in option	All waivers

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

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

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

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

*d. Summary of Public Comments*

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

In total, 303 individuals/organizations have submitted comments, 48 of which were submitted in 2014, 36 of which were submitted in 2016, 177 of which were submitted in 2018, 34 of which were submitted in 2019, and 46 of which were submitted in 2021. All public comments are provided in the Appendices to this Plan. Appendix A lists comments from 2014-2016, Appendix B lists comments from 2018-2019, Appendix C lists comments from 2021. The Appendices indicate whether each individual comment led to a change in the plan or not, and if not, the reason for not incorporating a change. Through all of the public comment periods, the following trends were observed and are categorized and described below (some comments were categorized under multiple categories):

- **87** included comments about the assessment of HCBS sites and the heightened scrutiny process, inquiring about public input process, assessment tools used, and settings that will require heightened scrutiny.
- **13** included comments about assisted living facilities, primarily regarding how the requirements apply in these settings.
- **43** included comments related to general concerns with the effects of the HCBS final rule, asking whether individuals who need a structured environment would be forced into other environments.
- **43** included comments not directly related to the HCBS final rule, rather asking about services provided for specific individuals.
- **25** included comments regarding the need for additional outreach and education for individuals or families.
- **18** included comments related to the public comment opportunities/options provided.
- **78** included comments related to the format of the STP, specifically that it include more narrative and be more user-friendly or asked for clarification in regards to language used in the STP.
- **68** included comments regarding the person-centered aspect of the HCBS final rule, as well as support for community integration and self-determination.
- **7** included comments regarding the lease requirements of the rule and how they would be addressed in the STP.
- **10** included comments regarding advocacy.

- **7** questioned how the final rule may affect guardianship and power of attorney roles.
- **8** included comments regarding concerns and challenges associated with availability of transportation.
- **9** comments related to questions about the origin of the Final Rule.
- **5** comments related to the need for technical assistance and support for providers and service coordinators.
- **5** comments expressed satisfaction with the individual's current living arrangement and services.
- **10** comments requested development or expansion of services within the waivers.

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

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

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

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

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

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

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

- Developmental Disabilities (DD) Adult Day Services Waiver. This waiver, initially approved in 2003, offers a variety of services and supports to maximize independence as individuals live, work, socialize, and participate to the fullest extent possible in their communities. As of July 2019, the DD Adult Day Services Waiver was serving approximately 665 individuals.
- Comprehensive Developmental Disabilities (DD) Services Waiver. This waiver, initially approved in 1989, offers a variety of services and supports for children and adults with developmental disabilities and their families to promote independence and integration into the community, to allow the child's family to support him or her in the family home, and to allow the adults to maximize their independence as they live, work, socialize, and participate to the fullest extent possible in their communities. As of July 2019, the DD Comprehensive Waiver was serving approximately 4,106 individuals.

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

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

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

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

#### 4. HCBS Settings Requirements

##### a. *Overview, HCBS Regulations, and Settings*

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

##### b. *Requirements for All Settings*

In all settings, the final rule requires that:

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

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

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

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

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



d. *Settings Requiring Heightened Scrutiny*

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

- Any setting that is located in a building that is publicly or privately operated facility that provides inpatient institutional treatment;
- Settings on the grounds of, or immediately adjacent to, a public institution; or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

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

**5. Applicable Nebraska Medicaid HCBS Waiver Settings**

The following are the identified service setting types to be evaluated for compliance with the new rule. Setting types are current as of the date of final submission (September 27, 2019). Setting is defined as locations where habilitation services and/or supports are delivered. An individual's or family's own home is not provider-owned, controlled, or operated, and therefore is not included for the purposes of this State Transition Plan.

a. *A&D Waiver Settings*

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

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

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

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

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

*b. TBI Waiver Setting*

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

*c. DD Waiver Settings*

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

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

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

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

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

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

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

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

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

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

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

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

As of the submission of this plan, Adult Day Services have not yet been assessed as there are no DD settings that only offer Adult Day Services. Many DD day services settings offer a combination of Habilitative Workshop, Habilitative Community Inclusion and Adult Day. Those settings have been assessed. Adult Day Services are a new service, effective May 1, 2017.

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

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

### *a. Approach*

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

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

Statutes reviewed for the Developmental Disabilities (DD) Waivers systemic assessment included: [§83-1202](#) (Legislative Intent), [§83-1209](#) (Director; Duties) of the DD Services Act, [§71-408](#) (Center or group home for the developmentally disabled, defined), [§76-1401](#) (the Uniform Residential Landlord Tenant Act, how cited), [§76-1402](#) (Purposes; rules of construction),

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

Approved waiver applications are available at:

- [Aged and Disabled Waiver](#)
- [Traumatic Brain Injury Waiver](#)
- [Comprehensive Developmental Disabilities Services Waiver](#)
- [Developmental Disabilities Day Services Waiver for Adults](#)

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

*b. Statutes*

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

*c. Nebraska Administrative Code (NAC)*

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

*d. Waiver-Specific Applications*

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

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

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

e. *Practice*

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

f. *Verification*

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

has identified the need for revisions to the assessment processes, the person-centered plan of services and supports and the consent form.

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

*g. Remediation*

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

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

## **7. Settings Assessment**

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

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

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

The AAAs, League of Human Dignity, or DHHS Resource Developers (RD) are responsible for initial and annual renewals, which includes the assessment of the settings. These approvals are for agency and individual providers participating in the A&D Waiver and TBI Waiver.

DDD and MLTC benefitted from the ongoing series of webinars sponsored by CMS and MLTC determined the need for a second round of assessments for the A&D Waiver, conducted in January-March 2016, to capture other settings not originally surveyed. For A&D Waiver, the second round only included assessments of settings providing extra childcare for children with disabilities and adult day health settings. These assessments were conducted by DHHS Division of Children and Family Services RD staff and MLTC-contracted community agencies. In addition, for any assisted living facility with an initial assessment that showed areas of non-compliance, a second round of onsite reviews was conducted and a provider transition plan was completed. These plans stated the areas of deficiency and a detailed plan with date of completion to come into compliance. For settings in all four waivers, for which a transition period applies, all modifications are to be completed by September 1, 2022, to allow an appropriate amount of time for individual relocations as well as an appeal process prior to March 17, 2023.

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

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

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

Training was provided to the AAA, League of Human Dignity, and DHHS RD in March 2018 to ensure 100% of all extra care for children with disabilities and respite settings are assessed uniformly. As of April 1, 2018, all newly applying



and renewing providers will have their setting assessed using the State's age-appropriate tool to determine compliance. The settings tool was modified for the childcare settings to account for age-appropriateness. The age-appropriate tool accounts for limitations in access due to age of the individual and normal restrictions that would be found in any setting that provides child care services compared to the Nebraska child care licensure regulations. The childcare providers who completed self-assessments initially, had follow-up, in-person assessments at contract renewal.

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

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

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

For DDD's third round of assessment (conducted in 2017 and 2018) several approaches were used. Agencies providing Extended Family Home and Group Home services were given self-assessments. These were then validated by DDD staff through on-site assessments (with the exception noted below). 100% of Group Homes had validation activities performed in 2018. Validation for EFH homes included an initial randomized, stratified sample in 2018. Validation of the remainder of the EFH homes was conducted in early 2020 which brought the validation of EFH homes to 100%\*. Also in the third round of assessment, 100% of Centers for the Developmentally Disabled and 100% of day services settings were assessed by DDD staff through on-site assessment processes. These day services settings included Habilitative Workshops and Other Non-Residential settings. Settings classified as "Other Non-Residential" included those settings providing multiple services such as Habilitative Workshop, Habilitative Community Inclusion, and Adult Day Services. In Nebraska, group

employment settings that are provider owned, operated, and controlled are Habilitative Workshops.

It should be noted that the majority of the EFH homes that were validated in 2020 included an on-site assessment, however due to the COVID-19 pandemic and subsequent national emergency, forty-one (41) sites had validation activities conducted over the telephone. These sites will be assessed in-person later in 2020 or as soon as it is safe to do so.

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

Setting	# Settings (Self-Assessment)	# Settings (In-person Completed by MLTC/DDD Staff or designee)
A&D Waiver Residential		
Assisted Living, Non-Specialized	0	190
Assisted Living, Specialized (Memory Care)	0	33
<b>Total A&amp;D Waiver Residential</b>	<b>0</b>	<b>223</b>
A&D Waiver Non-Residential		
Extra Child Care for Children with Disabilities	90	99
Adult Day Health	0	29
<b>Total A&amp;D Waiver Non-Residential</b>	<b>90</b>	<b>128</b>
<b>Total A&amp;D Waiver</b>	<b>90</b>	<b>351</b>
TBI Waiver Residential		
Assisted Living, Specialized (TBI)	0	1
<b>Total TBI Waiver</b>	<b>0</b>	<b>1</b>
DD Residential		
Extended Family Home	700	424*
Group Home	289	267*
Centers for the Developmentally Disabled (CDD)	0	111
<b>Total DD Residential</b>	<b>989</b>	<b>802</b>
DD Non-Residential		
Habilitative Workshop	0	67
Other Non-Residential Sites	0	57

<b>Setting</b>	<b># Settings (Self-Assessment)</b>	<b># Settings (In-person Completed by MLTC/DDD Staff or designee)</b>
<b>Total DD Non-Residential</b>	<b>0</b>	<b>124</b>
<b>Total DD Waiver</b>	<b>989</b>	<b>925</b>
<b>Total All Waivers</b>	<b>1079</b>	<b>1177</b>

\*The number of on-site validation assessments for extended family homes and group homes represents 100% of the homes that were both self-assessed and were still in existence at the time of validation. Voluntary closure of a number of group homes and extended family homes occurred between the self-assessment and on-site validation periods. All new settings are verified to be compliant with the HCBS final rule prior to Medicaid HCBS waiver services being provided in the setting.

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

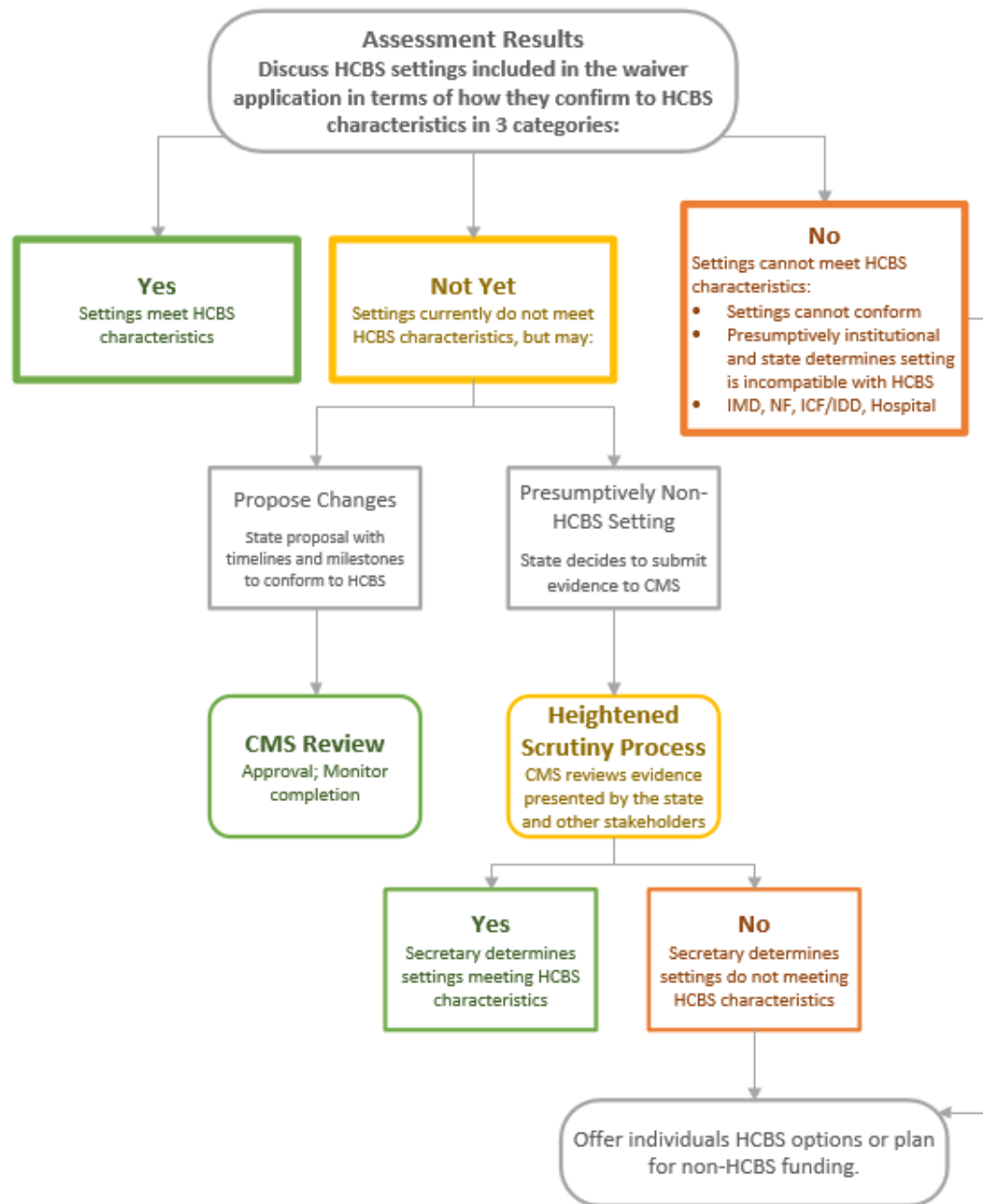
1. *Integration with the greater community.* The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
2. *Selection of setting.* The setting is selected by the individual from among setting options including non-disability specific settings and a private unit in a residential setting. The settings options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
3. *Freedom from coercion and restraint.* The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.
4. *Optimization of individual initiative, autonomy, and independence.* The setting optimizes, but does not regiment, individual initiative, autonomy, and

independence in making life choices including, but not limited to: daily activities, physical environment, and with whom to interact.

5. *Choice regarding services and supports.* The setting facilitates individual choice regarding services and supports, and who provides them.
6. *Legally-enforceable residential agreement.* The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord/tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS individual, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.
7. *Privacy and freedom in living unit.* The setting provides for privacy in units, including entrance doors lockable by the individual with only appropriate staff having keys, choice of roommates/housemates, and freedom to furnish and decorate the sleeping or living units within the lease or other agreement.
8. *Control over schedule, including food.* Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
9. *Freedom to have visitors.* The setting provides individuals the freedom to have visitors of their choosing at any time.
10. *Physical accessibility.* The setting is physically accessible to the individual.

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

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



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

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

Nebraska makes the presumption that privately owned or rented homes and apartments of individuals living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where individuals who do not receive home and community-based services also reside. For DDD, a private residence that is owned by an unrelated caregiver who is paid for providing HCBS to the individual would be considered an EFH, and thus was assessed. For MLTC, if the participant lives with an unrelated caregiver, the Plan of Services and Supports will be updated and this setting will be required to be assessed and validated. At this time there are no A&D Waiver participants in this setting type. If any of the settings are in question in regards to the presumption of being institutional in nature, the state will submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In regard to private residences, settings are also evaluated on whether they are isolating to the individuals.

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

*a. A&D Waiver Residential*

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

- 221 assisted living facilities out of the 223 are categorized as fully compliant;
- Two (2) settings were categorized as non-complaint as they refused to be assessed due to planned closures.
- 54 residential settings were identified as being on the grounds of, or adjacent to, a public institution (Prong II) and underwent a State of Nebraska heightened scrutiny review. One (1) is determined to be fully compliant with heightened scrutiny, 44 submitted heightened scrutiny packets and ten (10) did not submit heightened scrutiny packets. Letters were sent out in August 2019 requesting additional information for these settings and the ten (10) settings that still needed to provide heightened scrutiny packets. The response to the request for additional information were received with no concerns including the remaining ten (10) settings. A list of these settings will be submitted to CMS for further review after the heightened scrutiny public comment period.

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

1. *Integration with the greater community.* 208 of 223 of assisted living facilities provided evidence that they offer activities and outings in the community. Assisted Living activity calendars, client attendance records, facility activity policies, facility transportation policies, transportation logs, or community transportation options were reviewed and it was determined that these assisted living facilities ensure that individuals have access to and participate in community activities of their choosing. Individuals have access to and use public transportation if they choose. In urban areas city bus passes can be obtained at a discounted rate on an as-needed basis for public transportation. City Handi-Van rides are also available at a discounted rate on an as-needed basis. Local taxi services as well as ridesharing are also available in numerous areas. For more rural areas, county-sponsored transportation is available at affordable and/or reduced rates for social and medical needs on an as-needed basis. Some counties offer free rides for caregivers to escort their individuals. Individuals are choosing to use public transportation and local communities are expanding public transit services. Nebraska has a [Public Transit](#) website and a phone service that provide information about local transportation available in all counties. Where public transportation is limited, or not available, individuals utilize unpaid supports, such as family or friends, or the assisted living facility provides transportation to access the broader community. In small communities many destinations are within walking distance. Of the 15 that are considered noncompliant with heightened scrutiny, ten (10) have yet to submit a heightened scrutiny packet and five (5) did not include sufficient evidence to be considered compliant with heightened scrutiny.
2. *Selection of setting.* 213 of 223 assisted living facilities ensure that residents have selected the setting from among options including non-

disability specific settings such as private apartments and homes in both rural and urban areas. During the service coordination process, the individual is given the option to choose from assisted living options in their local area as well as across the state. Ten (10) assisted living facilities were considered noncompliant with heightened scrutiny in this area only because they have not submitted heightened scrutiny packets.

3. *Freedom from coercion and restraint.* 212 of 223 assisted living facilities submitted their facility policies that indicate that the individuals are treated with respect, have privacy, and are free from coercion and restraints. 11 assisted living facilities are considered noncompliant with heightened scrutiny at this time, with ten (10) not having submitted a heightened scrutiny packet and one (1) not submitting any facility policies, therefore they could not be considered compliant until the policies are available for review.
4. *Optimization of individual initiative, autonomy, and independence.* 208 of 223 assist living facilities provided evidence that they ensure individuals residing at facilities participate in activities of their choosing, in the facility and in the community, based on a review of submitted assisted living activity calendars, client activity attendance records, facility activity policies, facility transportation policies, transportation logs, or community transportation options. Of the 15 that are considered noncompliant with heightened scrutiny in this area, ten (10) have not submitted heightened scrutiny packets and five (5) did not include submit sufficient evidence to be considered compliant with heightened scrutiny. Individuals work with the facility, family, friends, and the community to gain transportation to activities of their choice. Facilities will aid individuals who need assistance with setting up transportation. Individuals are given the opportunity in the provider-owned, provider-controlled or provider-operated setting in which they reside to be a part of a resident council. The resident council is where individuals' issues and concerns are discussed and can be presented to management, as well as where choices are made regarding what social activities they would like to have available. The State Long-Term Care Ombudsman as well as State licensure's contact information is available for residents' use.

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

5. *Choice regarding services and supports.* 210 of 223 assisted living facilities do not require individuals to use a specific doctor, dentist, or therapist.



Some settings choose to use a specific pharmacy for consistency in medication administration and specific packaging. Each individual is given the option to use the assisted living facility's chosen pharmacy or agrees prior to admission to choose their own pharmacy, which may require them to pay an additional fee to have the medication repackaged if necessary. Of the 15 that are considered noncompliant with heightened scrutiny, ten (10) have yet to submit a heightened scrutiny packet and three indicated that they charge extra fees for services and/or supports that should be included in their monthly payment.

6. *Legally-enforceable residential agreement.* 208 of 223 assisted living facilities offer a legally enforceable residential service agreement as evidenced by their submission of a copy of the resident service agreement that they have all residents sign at the time of admission. Facilities will include the addition of apartment numbers to their residential service agreement as part of provider-level transition plans submitted. Provider agreements will be terminated for assisted living facilities that do not have a legally enforceable residential service agreement or lease by September 2022. Of the 15 that are considered noncompliant with heightened scrutiny, ten (10) have yet to submit a heightened scrutiny packet and five (5) did not submit a copy of their Resident Service Agreement with their heightened scrutiny packet.
7. *Privacy and freedom in living unit.* 188 of 223 assisted living facilities provided clear evidence that they value resident privacy and freedom amongst the living unit and provide specific training regarding the home and community based service model to their staff. They protect each individual's privacy by not posting personal information or discussing services in public. Medication is distributed per the individual's preference and individuals are able to have private conversations. Assisted living facilities have Resident Service Agreements that state that each individual is able to furnish and decorate his or her apartment as desired and to have specific apartments. Apartments have lockable doors and staff are instructed to knock and wait for resident's reply before entering. For those that do not have lockable doors, it is because an individual assessment of their capabilities has been completed. The assessment takes into consideration health and safety issues due to any cognitive or functional impairments of the individual. If an individualized modification of removing locks is determined to be needed, it would occur after less intrusive methods have been tried and have been found not to work. This specific assessed need and information is justified in the Plan of Services and Supports and case management narratives. MLTC assures any modifications of this condition align with all of the setting criteria laid out at 42 CFR 441.301(c)(4)(vi)(F). Assisted living facilities follow the Home and Community-Based Services policy, which provides for multiple occupancy only on an exceptional basis. Residents that have multiple occupancy have an established relationship with and have chosen

their roommates. Individuals are not restricted from any area of the building and apartments are in the same part of the building as private pay. Of the 35 that are considered noncompliant with heightened scrutiny, ten (10) have yet to submit a heightened scrutiny packet and 25 did not submit copies of their training specific to home and community based services and/or person centered thinking.

8. *Control over schedule, including food.* 198 of 223 assist living facilities provided clear evidence that they support individual autonomy in regards to the residents' schedules. Individuals are not required to adhere to a set schedule of waking, bathing, eating, or activities. Individuals are able to cook and do their own laundry if they choose. Congregate meals offer multiple choices of entrees for residents to choose from, and snacks are always made available to residents. Residents have the choice to eat privately in their own apartment or in the congregate dining room. Individuals have either a full kitchen or kitchenette in their apartments or have access to a community kitchen. Individuals are able to access the laundry room or, in assisted living facilities that do not have a laundry room, the facility will provide transportation to and from the Laundromat and pay for the use of the machines. Individuals have the choice to utilize a laundry service at their own cost and as available. 25 assisted living facilities are considered noncompliant with heightened scrutiny in this area, with ten (10) having yet to submit their heightened scrutiny packets and 15 indicating that they may not have a staff member trained in the home and community based service model present in the assisted living facility at all times. They are now being asked to change this practice so that each resident has access to a staff member at all times based on their individual schedule.
9. *Freedom to have visitors.* 212 of 223 assisted living facilities submitted policies that verify that they support all individuals being able to have visitors at their time of choosing including overnight visitors. 11 assisted living facilities are considered noncompliant with heightened scrutiny at this time, with ten (10) not having submitted a heightened scrutiny packet and one (1) not submitting any facility policies, therefore they could not be considered compliant until the policies are available for review.
10. *Physical accessibility.* 212 of 223 assisted living facilities submitted policies that verify that they support individuals generally having unrestricted access the assisted living facility. Residents can come and go at any time without a known schedule. All apartments and common areas are free from physical barriers. All apartments have lockable doors except for those of individuals who are identified as having health or safety issues related to cognitive or functional impairments. Individual modifications are made following a specific assessed need, informed consent, itemized list of less intrusive methods that have been tried and found not to work, data-gathering, and time limits. 11 assisted living facilities are considered noncompliant with

heightened scrutiny at this time, with ten (10) not having submitted a heightened scrutiny packet and one (1) not submitting any facility policies, therefore they could not be considered compliant until the policies are available for review.

b. *A&D Waiver Non-Residential*

MLTC categorized non-residential settings as follows:

- There are 99 Extra Child Care for Children with Disabilities settings, and 29 Adult Day Health settings, with a total of 128 settings.
- Five (5) Adult Day Health settings were located in a publicly or privately-owned facility providing inpatient treatment (Prong I) and were categorized as unable to comply after completing the setting assessment.
- Sites categorized as unable to comply during the initial assessments have opted to discontinue providing non-residential A&D Waiver services. The transition process has been completed for all participants.

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

1. *Integration with the greater community.* 128 of 128 were in compliance with all topics in the category. All settings indicated that they include all clients that they provide care for in all activities and field trips, when offered. All settings indicated that they encourage all clients to interact with other clients, and children were encouraged to interact with other children of the same age.
2. *Selection of setting.* 128 of 128 sites were compliant with all topics in the category. All clients in all facilities were granted the same opportunities and choices, regardless of payment source. All settings that provide care to multiple children have all children of similar ages participate in the same activities and there are no restrictions because of payment source.
3. *Freedom from coercion and restraint.* 128 of 128 sites were compliant with all topics in this category. All settings indicated that they don't restrain clients in their care and encourage all clients to freely move about the inside and outside of the setting, as appropriate for the client's age and supervision level. No settings restricted a client's access to activities or areas of the setting unless contrary to the safety and wellbeing of the individual.
4. *Optimization of individual initiative, autonomy, and independence.* 128 of 128 sites were compliant with all topics in this category. All settings indicated that they provide activities that are responsive to the client's goals, interests and needs.

5. *Choice regarding services and supports.* 128 of 128 sites were compliant with all topics in this category. All settings meet the client's needs based on the service authorization or plan of services and supports. For settings that specifically provide care to children, those settings indicated that they provide a schedule to parents focusing on activities of each child in their care.
6. *Legally-enforceable residential agreement.* This category is not applicable.
7. *Privacy and freedom in living unit.* This category is not applicable. However, all assessed sites reported supporting individual privacy by providing appropriate areas for individuals to obtain privacy due to personal choice or for personal care needs.
8. *Control over schedule, including food.* 128 of 128 sites reported they offer individuals variety and choice in the food they eat and times they eat meals and snacks. For settings that specifically provide care to children, those settings indicated that they provide a schedule to parents focusing on activities of each child in their care and encourage all children to eat together.
9. *Freedom to have visitors.* 128 of 128 sites reported they support visitor attendance in their locations.
10. *Physical accessibility.* In 128 of 128 sites, surveyors noted accessibility to all areas commonly accessed by individuals including elevator access to multi-level settings in commercial settings. No elevators were observed in any settings where extra care for children with disabilities was being provided and items such as tables and chairs were deemed to be accessible to all children.

c. *TBI Waiver Residential*

MLTC categorized the residential setting as follows:

- One (1) of one (1) is categorized as fully compliant and not subject to heightened scrutiny review.

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

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

2. *Selection of setting.* Assisted living residents have selected the setting from among setting options including non-disability specific settings.
3. *Freedom from coercion and restraint.* The assisted living facility has policies that indicate that the individuals are treated with respect, have privacy, and are free from coercion and restraints.
4. *Optimization of individual initiative, autonomy, and independence.* Individuals residing at the facility participate in activities of their choosing. Individuals decide what activities they would like the assisted living facility to provide. The assisted living facility provides access to local newspapers and the internet for individuals to see what activities are offered in the broader community. Service coordination monitoring and participant experience surveys gauge the extent individuals feel their autonomy is respected.
5. *Choice regarding services and supports.* The assisted living facility does not require individuals to use one doctor, pharmacy, dentist, or therapist.
6. *Legally-enforceable residential agreement.* The assisted living facility offers a legally enforceable residential agreement.
7. *Privacy and freedom in living unit.* The assisted living facility protects each individual's privacy by not posting personal information or discussing services in public. Medication is distributed per the individual's preference and individuals are able to have private conversations. The assisted living facility Resident Service Agreement states that each individual is able to furnish and decorate his or her apartment as desired and to have specific apartments. All apartments have lockable doors. The assisted living facility follows the Home and Community-Based Services policy, which provides for multiple occupancy only on an exceptional basis. Individuals are not restricted from any area of the campus.
8. *Control over schedule, including food.* Individuals are not required to adhere to a set schedule of waking, bathing, eating, or activities. Individuals are able to cook and do their own laundry if they choose. Individuals have access to the campus kitchen and laundry room. Choice of entrees and snacks is available, including a restaurant and a bar on campus. Individuals may choose to eat privately or sit in the dining room.
9. *Freedom to have visitors.* All individuals are able to have visitors at their time of choosing including overnight visitors.
10. *Physical accessibility.* The assisted living facility has unrestricted access. This includes individuals' ability to enter and leave at any time, come and

go without a required schedule, and that all apartments and common areas are free from physical barriers.

d. *DD Waiver Residential*

DDD categorized residential settings as follows:

- 557 of 802 are categorized as fully compliant;
- 245 settings are categorized as not compliant, but could be with modifications; and
- No residential settings are categorized as unable to comply.
- Seven (7) residential settings were identified as presumed to have the qualities of the institution (Prong III) and underwent a State of Nebraska heightened scrutiny review. These settings were determined using the information gathered in the settings assessments and observations of the settings. Of those settings, seven (7) will be able to remediate the issues causing the heightened scrutiny review before July 1, 2021.

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

1. *Integration with the community.* 798 of 802 sites reported compliance with all topics in the category. For the four (4) sites not fully compliant in this category, one (1) did not report permitting individuals the opportunity to come and go at will, one (1) 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, and two (2) lived in settings where the physical characteristics were not consistent with community standards. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
2. *Selection of setting.* 802 of 802 sites were compliant with all topics in the category. Setting selection is evidenced by whether there is an indication of the individual's choice in the person-centered plan.
3. *Freedom from coercion and restraint.* 711 of 802 sites were compliance with all topics in the category. For the 91 sites not fully compliant in this category, eight sites did not have a complaint/grievance process for participants, 81 sites did not allow for the filing of an anonymous complaint, three (3) sites did not assure that information about participants was kept private, one (1) site did not have a policy requiring the individual and/or representative grant informed consent prior to the use of restraints or restrictive interventions and document these in the person-centered plan, six (6) sites did not have a process to ensure that each individual's supports and plans to address identified needs are specific to the individual and/or not restrictive to all individuals receiving support in the setting, four (4) sites were not free from the use of delayed egress devices or secured perimeters, and one (1) site did not offer a secure place to store belongings. Remediation plans have

been or will be submitted by all sites and all indicated they would be in compliance by March 2023.

4. *Optimization of individual initiative, autonomy, and independence.* 792 of 802 sites were compliant with all topics in this category. For the ten (10) sites not fully compliant in this category, two (2) sites did not reflect that the setting allowed for individuals' choice to participate in which activities they want (including legal, age-appropriate activities), three (3) sites did not allow for individual to do activities alone in the community, two (2) sites did not allow participants to have access to communication tools, and two (2) sites did not allow individuals to have access to their personal financial assets. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
5. *Choice of services and supports.* 802 of 802 sites were compliant with all topics in this category. All sites indicate individuals were provided a choice for services and a chance to visit and understand options. All sites indicate individuals were supported to exercise autonomy to the greatest extent possible and policies ensured individuals were supported in developing their plans to support needs and preferences. All sites also indicated that information was provided to individuals about how to make a request for additional services or changes to their current services.
6. *Legally-enforceable residential agreement.* 735 of 802 sites were compliant with all topics in this category. For the 67 sites that were not currently in compliance, 55 of the sites did not reflect that the setting provided individuals with a lease or, for a setting in which landlord/tenant laws do not apply, a written residency agreement. 34 of the sites did not reflect that the setting informed individual of their rights regarding housing and when they could be relocated. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
7. *Privacy and freedom in living unit.* 648 of 802 sites were compliant with all topics in this category. For the 154 sites that were not currently in compliance, one (1) site did not provide the participant the opportunity to visit new settings prior to a participant move, 12 of the sites did not reflect that the setting allowed for individuals to choose their roommate/housemate, two (2) sites did not indicate that married couples could share/not share a room by choice, 106 sites did not have locking bedroom doors, 38 sites did not allow individuals to close and lock the bathroom door, 13 sites did not inform participants how they could request a roommate/housemate change, and 14 sites were not free of cameras or monitoring devices. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.

8. *Control over schedule, including food.* 799 of 802 sites were compliant with all topics in this category. For the three (3) sites that were not currently in compliance, all three did not indicate individuals could eat at any time. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
9. *Freedom to have visitors.* 795 of 802 sites were compliant with all topics in this category. For the seven (7) sites that were not currently in compliance, one site did not allow a participant to have visitors at the time/place of their choosing, and six sites did not allow for visitors to take participants outside the setting for the period of time as desired by the participant. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
10. *Physical accessibility.* 786 of 802 sites were compliant with all topics in this category. For the 16 sites that were not currently in compliance, 11 sites did not reflect that the setting provided full access to a kitchen with cooking facilities, dining area, laundry, and comfortable seating in shared areas, eight (8) sites were not free of barriers preventing the individuals' entrance or exit from certain areas of the setting, and nine (9) sites did not reflect that the site was physically accessible or lacked environmental adaptations such as a stair lift or elevator to ameliorate the obstruction. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.

e. *DD Waiver Non-Residential*

DDD categorized non-residential settings as follows:

- 42 of 124 are categorized as fully compliant;
- 82 are categorized as not compliant but could be with modifications; and
- No non-residential settings are categorized as unable to comply.
- Four (4) non-residential settings were identified as presumed to have the qualities of an institution (Prong III) and underwent a State of Nebraska heightened scrutiny review. These settings were determined using the information gathered in the settings assessments and observations of the settings. Of those settings, four (4) were able to remediate the issues causing the heightened scrutiny review before July 1, 2020.

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

1. *Integration with the community.* 81 of 124 sites were compliant with all topics in the category. For the 43 sites not fully compliant in this category, two (2) sites did not provide opportunities for meaningful work or non-work activities in integrated community settings for the period of time as desired by the individual, one (1) site did not afford opportunities for individual schedules that focus on the needs and desires of the individuals, one (1) site did not afford opportunities for individuals to have knowledge of or



access to information regarding age-appropriate activities, one (1) site did not allow individuals the freedom to move about inside and outside the setting, five (5) sites were not in the community/building located among other private businesses that facilitates integration with the greater community, ten (10) sites did not encourage visitors or other people from the greater community to be present and/or visitors were not present at regular frequencies, two (2) sites did not provide individuals with the opportunity to negotiate their schedule, break/lunchtimes etc. to the same extent as those not receiving HCBS, 33 sites did not provide individuals with contact information, access to, or education about public transportation and/or did not have these schedules/phone numbers available in a convenient location, in one (1) site where public transportation was limited, the site did not provide information about other resources to access the broader community, three (3) sites did not assure that tasks and activities were comparable to tasks and activities for people of similar ages who do not receive HCBS, and four (4) sites were not physically accessible and/or there were no adaptations to ameliorate the obstructions. Remediation plans specific to integration included strategies to increase participant knowledge of outside activities, increasing the number of activities offered to participants, increasing participant choices in offered activities, increasing staffing levels to accommodate more participant choice, increasing volunteer activities, and an increased focus on individual schedules. All settings were reminded that reverse-integration practices would not meet the criteria for this category. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.

2. *Selection of setting.* 118 of 124 sites were compliant with all topics in the category. Of the six (6) sites that were not fully compliant in this category, one (1) site did not reflect individual needs and preferences and/or its policies did not reflect informed choice of the individual, five (5) sites did not offer non-disability specific settings or engage in general non-disabled community activities, and three (3) sites' options did not include the opportunity for individuals to choose to combine more than one service delivery setting or service type in any given day/week. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
3. *Freedom from coercion and restraint.* 53 of 124 sites were compliant with all topics in the category. For the 71 sites not fully compliant in this category, seven (7) sites did not assure that all information about individuals was kept private, 24 sites did not support providing personal assistance in private areas, three (3) sites did not have a process to assure that each individual's supports and plans to address identified needs are specific to the individual and/or not restrictive of others in the site, and 57 sites did not offer a secure place for individuals to store belongings. Remediation plans have been or

will be submitted by all sites and all indicated they would be in compliance by March 2023.

4. *Optimization of individual initiative, autonomy, and independence.* 105 of 124 sites were compliant with all topics in this category. For the 19 sites not fully compliant in this category, two (2) sites were not free of barriers preventing individuals' entrance/exit from certain areas of the setting, five (5) sites did not afford a variety of meaningful activities that are responsive to the wants/needs of the individuals and/or the physical environment did not support a variety of individuals goals and needs, two (2) sites did not afford the individuals the opportunity to choose with whom to do activities and/or individuals were assigned to only be with a certain group, four (4) sites did not allow for individuals to have meals/snacks at the time of their choosing and/or the diners were not treated age appropriately, six (6) sites did not provide or post individual rights, and three sites did not support individuals engaging in age-appropriate activities such as voting or other civil activities. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.
5. *Choice of services and supports.* 121 of 124 sites were compliant with all topics in this category. For the three (3) sites not fully compliant in this category, two (2) sites did not afford individuals the opportunity to participate in meaningful activities in integrated community settings in a manner consistent with individual needs and preferences, and one (1) site did not provide information to individuals about how to make a request for additional services or changes to their current services. Remediation plans have been or will be submitted by all sites and all indicated they would be in compliance by March 2023.

*f. Remediation*

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

Following the completion of validation activities, MLTC and DDD clarified areas of improvement with providers, for which providers were required to submit provider-level transition plans. By June 2022, MLTC and DDD will provide instructions to providers regarding actions needed to be in compliance with Final Rule requirements (if they have not yet achieved full compliance). MLTC and DDD will review and provide feedback on plans no later than July 2022. During this time, providers will continue to make progress toward compliance. From 2017 through March 17, 2023, MLTC and DDD will monitor ongoing progress.

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

CMS technical assistance resource links will be made available on the Nebraska Medicaid State Transition Plan website and links will be updated as needed during the transition period.

*g. Process to Address Heightened Scrutiny*

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

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

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

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

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

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

MLTC and DDD will review information gathered as a result of additional assessment activities and will also identify settings subject to heightened scrutiny by March 2022. The public comment period for the identified settings will begin by April 2022 and heightened scrutiny packets will be submitted to CMS as requested.

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

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

Once the public input process for heightened scrutiny is concluded, MLTC and DDD will send to CMS the names of the settings subject to heightened scrutiny and evidence packages as requested by CMS. According to the March 22, 2019, heightened scrutiny guidance, CMS will review the information and request evidence packages for a sample of the submitted settings. Evidence packages will be reviewed by CMS to ensure that all individuals in the setting are afforded the degree of community integration required by the final rule and desired by the individual. The evidence must be sufficient to overcome the presumption that the site is institutional or isolating. If the setting withstands this "heightened scrutiny," it will be deemed home and community-based.

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

*h. Process to Address Relocation*

Providers must be in full compliance with the final rule by September 17, 2022. The timeframe between September 17, 2022, and March 17, 2023, assures that MLTC and DDD will have adequate time to provide notification of the requirement to relocate. This will give individuals ample time and opportunities to learn about the variety of compliant settings, disability and non-disability specific, that are available. Person-centered planning processes will be used to identify the individual's goals and preferences. Assistance will be given to individuals in transition to discuss options, alternate settings, and other individual-chosen services and supports.

Medicaid agreements for providers who are not willing or able to come into compliance with the final rule will be terminated no later than March 17, 2023.

Both MLTC and DDD have determined that there are no active settings that are unable or unwilling to comply by March 17, 2023, thus no participants in services will need assistance in relocation. Should this change at any point,

MLTC and DDD will assure participants and legal representatives have adequate notice and support as outlined above.

## **8. Continuous Improvement and Ongoing Monitoring for HCBS Waivers**

### *a. Overview*

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

*Individual.* Monitoring efforts at the individual level include review of person-centered service plans. Relevant forms have been or will be updated to include indicators of compliance with the HCBS final rule. MLTC and DDD will ensure that service delivery system staff continue to receive training on person-centered planning philosophy and practice, including the empowerment of the individual to fully understand the range of options available to them and their rights in making individual choices. Training will emphasize an individual's right to select where they live and to receive services from the full array of available options, including services and supports in their own or family homes. The trainings will include curricula on supporting informed choice and identifying areas that providers must address. Guidance will be provided to service coordinators on how to educate individuals about person-centered philosophy and practice, which supports implementation of the State Transition Plan. It will also include rights, protections, person-centered thinking, and community membership.

*Provider.* Monitoring efforts at the provider level include ensuring current providers transition to compliance and maintain compliance. MLTC and DDD will use results of initial site assessments to identify those settings requiring further attention to come into compliance with the HCBS settings final rule. The assessment process will identify what modifications are needed and by when. Nebraska will assess providers' progress towards compliance through reports, interviews, and on-site inspections that include information from providers and individuals receiving services.

Licensing, certification, and/or service delivery system staff will be critical to ensuring compliance and assuring providers' progress on their provider-level transition plans. Ongoing monitoring and follow-up will ensure compliance is achieved. Once overall compliance is achieved, strategies to ensure ongoing compliance will include:

- Ongoing licensing inspections and certification reviews by appropriate staff; and
- Ongoing HCBS setting compliance monitoring to ensure that settings continue to comply with the HCBS regulations.

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

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

Continuous quality improvement is founded in good person-centered planning, and to that end MLTC will provide key performance indicators to be included in various tools (for example, individual needs assessments, surveys of participant experience). MLTC's quality improvement file reviews currently include reviews of the entire needs assessment to make sure it is filled out correctly and that all identified needs are covered in the Plans of Services and Supports (POSS). MLTC will update needs assessments to incorporate elements from the HCBS final rule. MLTC's file review summaries will facilitate tracking of progress in remediation efforts for HCBS setting-related issues identified on the needs assessment or plan of services and supports.

In addition to file reviews, MLTC staff (or designees) will conduct ongoing monitoring for all provider owned, operated, or controlled settings through setting assessments during the annual provider review process, to assure continuous monitoring and improvement. All provider owned, operated, or controlled settings are monitored for all parts of the HCBS Final Rule. This will include determining sample sizes to ensure providers are complying with HCBS regulations on an ongoing basis.

MLTC staff (or designees) actively monitor the provision of services and supports identified in the participant service plan at a frequency and intensity which ensures needs are met and that any necessary revisions to the service plan are completed. This includes monitoring of individual private homes, non-licensed settings, and anywhere services are received.

- c. Continuous Improvement and Ongoing Monitoring for DD Waivers*  
On December 14, 2015, the licensing staff was re-assigned from DDD to DPH in order to create an independent survey team. These DPH staff perform on-

site reviews prior to initial certification and prior to the expiration of the most recent provider certification. Forms and processes for the survey team have been reviewed and revised as a result of this change. The revised forms added language to address the HCBS regulations in regard to rights, access, and freedom from isolation.

On-site visits may be conducted for follow up to complaints against providers regarding potential violation of Nebraska Administrative Code 404 rules. Follow-up may be conducted through additional on-site visits, document reviews, telephone, and/or email (note – abuse/neglect allegations are investigated by the Division of Children and Family Services and/or law enforcement as appropriate, in addition to any required complaint investigation).

DDD service coordination staff and the DDD quality team actively monitor the provision of services and supports identified in the service plan at a frequency and intensity which ensures habilitative needs are met and that any necessary revisions to the service plan are completed. This includes monitoring of individual private homes, non-licensed settings, and individualize day/supported employment settings. Monitoring assures that the services and supports in the service plan are occurring as developed by the Individual's Support Planning team. Monitoring also focuses on safety, environmental factors, personal well-being, and issues related to community integration. Monitoring can take the form of face-to-face meetings or telephone calls with the individual, guardian, involved family members, advocates, and other contacts on behalf of the individual, or reviews of paperwork, such as financial records, medication records, etc. Full and ongoing reviews are documented on required forms. The forms include HCBS final rule language and philosophies. The individual served, the guardian, involved family members, provider staff, advocates, and others as appropriate may participate in the review process. All settings receive ongoing monitoring by DDD service coordination staff at least annually.

DDD will conduct ongoing monitoring activities on all setting types assuring that settings remain compliant in all areas of the final rule. Annually, settings will be selected for monitoring using a combination of a random, stratified sampling strategy as well as targeted assessment when necessary. Settings may be selected for targeted assessment for any number of reasons including previous settings assessment results, consumer or public concern regarding compliance with the final rule, or other issues.

*d. Building Capacity of Non-Disability Specific Settings in Nebraska*

Nebraska is committed to ensuring that citizens with disabilities have the opportunities to live as fully integrated members of their communities. With legislative support, Nebraska's Olmstead Plan was created with seven overarching goals that will lead to the development of additional non-disability



specific settings in Nebraska. The [Olmstead Plan](#) and additional information can be found on Nebraska's Olmstead webpage at: <http://dhhs.ne.gov/Pages/Olmstead.aspx>

Nebraska has structured this plan around the following over-arching goals:

- Increasing access to community-based long-term services and supports;
- Expanding access to affordable, accessible housing with supports;
- Diverting avoidable admission to, reducing lengths of stay in, and facilitating transitions from segregated settings;
- Promoting community-integrated education and employment of people with disabilities;
- Investing in accessible transportation for individuals with disabilities;
- Using data to inform decisions and to promote quality improvement; and
- Investing in human resources.

## **9. Conclusion**

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

## 10. Attachments

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

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

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

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Implement revised waivers	DDD	May 2017	DDD staff	Waivers are implemented.
TBI Waiver Renewal	TBI	March 2019	MLTC	Waiver to be implemented.
<b>Nebraska Administrative Code</b>				
Identify NAC changes necessary to ensure compliance	All	August 2014-December 2016	MLTC and DDD staff	Necessary changes are identified to address federal requirements for Title 404 and 480.
Draft and prepare NAC changes for promulgation	All	January 2017-February 2019	MLTC and DDD staff	Necessary changes are drafted and submitted through Nebraska's regulation promulgation process.
Promulgate updated regulations 480	AD & TBI	August 2021	MLTC staff	Regulations address HCBS requirements.
Promulgate updated regulations 403	DDD	July 2018	DDD staff	Regulations address HCBS requirements.
Promulgate updated regulations 404	DDD	August 2022	DDD Staff	Regulations address HCBS requirements
<b>Policies</b>				
Identify DDD Division internal policy and guideline changes needed	DDD	April 2016	DDD staff	DDD Division policies and guidelines needing changes are identified.
Draft DDD Division internal policy and guideline changes and establish implementation plan	DDD	September 2016	DDD staff	DDD Division policies and guidelines align with federal requirements and implementation plan is established.
Begin review and revision of service coordination hiring tools, orientation, and training curriculum to ensure focus on person-centered practices, recognition of and advocacy for individual rights, and ensuring all individuals are supported in the most integrated setting possible.	DDD	September 2016	DDD staff	Service coordinators have skills and tools required for implementing State Transition Plan and goals of the HCBS regulations.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Creation of Policy Manual for internal and external clarification on DDD policies and included HCBS Final Rule language	DDD	January 2018-August 2020	DDD Staff	Completed August 2020. Internal and External partners will have a clearer idea of DDD policies and how the HCBS requirements are implemented
Update provider handbooks	All	December 2018	MLTC	Handbooks updated to reflect changes to reflect federal final settings rule criteria.

**Attachment 2 - Systemic Assessment Summary – A&D Waiver**

<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<p><b>(4)(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b></p>	<p><a href="#">Title 175 Chapter 4</a>                      Compliant:  <b>4-006.04</b>  <i>Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Be treated with dignity and provided care by competent staff;</i></li> <li>2. <i>Be an equal partner in the development of the resident service agreement while retaining final decision making authority;</i></li> <li>3. <i>Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;</i></li> <li>4. <i>Be informed in writing of the pricing structure and/or rates of all facility services;</i></li> <li>5. <i>Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></li> <li>6. <i>Choose a personal attending physician;</i></li> <li>7. <i>Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;</i></li> <li>8. <i>Examine the results of the most recent survey of the facility conducted by representatives of the Department;</i></li> <li>9. <i>Refuse to perform services for the facility;</i></li> <li>10. <i>Refuse to participate in activities;</i></li> <li>11. <i>Privacy in written communication including sending and receiving mail;</i></li> <li>12. <i>Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</i></li> <li>13. <i>Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;</i></li> <li>14. <i>Have the right to have a telephone in his/her room at the resident's expense;</i></li> </ol>	<p><b>Title 480</b>                      Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	<p><b>July 2019:</b> Legal sends regulations to Governor's Policy Research Office.  <b>October 2019:</b> Governor's Policy Research Office completes review. Publish Public Notice for formal public hearing in December.  <b>December 2019:</b> Public Hearing. Review and Incorporate Public Comments  <b>September 2020:</b> Publish Public Notice for second formal public hearing.  <b>November 2020:</b> Public Hearing. Review and Incorporate Public Comments.  <b>December 2020:</b> Regulations sent to the Attorney</p>

Title 480 Chapter 5 has been updated and some items may have changed. Changes are noted with an asterisk.

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>4-006.04A Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:</i></p> <ol style="list-style-type: none"> <li><i>1. A procedure on submission of grievances available to residents, employees and others;</i></li> <li><i>2. Documentation of efforts to address grievances received from residents, employees and others; and</i></li> <li><i>3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.</i></li> </ol> <p><b>4-006.08</b>  <i>Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.</i></p> <p><a href="#">Title 175 Chapter 5</a>            Silent</p> <p><a href="#">Title 480 Chapter 5</a>            Silent</p> <p><b>**Title 480 Chapter 2**</b>            2-004.01            INTEGRATION AND ACCESS. The setting must be integrated in and support full access of individuals receiving Medicaid Home and Community-Based Services (HCBS) to the greater community, including opportunities to seek employment and work in competitive integrated settings based on services offered or available under each Waiver, engage in community life, control personal resources, and receive</p>		<p>General's Office for Approval  <b>March 2021:</b>            Regulations sent to Governor's Policy Research Office for final approval.  <b>September 2021:</b>            Regulations approved by the Governor, to take effect October 2021.</p>

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	services in the community, to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services (HCBS).		
(4)(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and 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.	<p><a href="#">Title 175 Chapter 4</a> Silent</p> <p><a href="#">Title 175 Chapter 5</a> Silent</p> <p><a href="#">Title 391</a> Silent</p> <p><a href="#">Title 480 Chapter 5</a> Compliant: <b>5-003.A.4(a)</b> <i>The services coordinator shall -</i> <i>a. Together with the potential client, develop a plan of services and supports based upon assessment results. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF assessment categories: activities of daily living; high risk factors, joint motion; locomotion; nursing observations; orientation; and medical and nursing needs.</i> <i>The plan of services and supports must ensure the potential client's health and welfare, including the consideration of acceptable risk. If, despite consideration of the full range and scope of services, the client's health or welfare is in jeopardy, waiver services may not be provided.</i> <i>The potential client has freedom of choice in selecting providers of waiver services. The client's choice of providers is documented in the client's case narrative.</i> <i>Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the client/guardian.</i></p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.



<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><b>5-001D(1)(h)</b>  <i>D. IMPLEMENTATION</i>  1. <i>Services coordination activities h. Arranging for support and services identified in the plan of services and supports, while maintaining the client's freedom of choice in providers;</i></p> <p><b>5-003.B.(4)(a)</b>  4. <i>PLANNING FOR SERVICES</i>  <i>PURPOSE: To identify specific individual services to be provided in a coordinated and organized manner.</i>  <i>The services coordinator shall -</i>  a. <i>Together with the child and family, further develop the plan of services and supports. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF domains: activities of daily living; cognition; environment; medical/nursing status; support network; and transition.</i>  <i>The plan of services and supports must ensure the child's health and welfare, including consideration of acceptable risk. If, despite consideration of the full range and scope of services, the child's health or welfare is in jeopardy, waiver services may not be provided.</i>  <i>The child's guardian has freedom of choice in selecting providers of waiver services. The guardian's choice of providers is documented in the child's case narrative.</i>  <i>Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the child's guardian. Note: If a child under the age of three receives services coordination through an Early Intervention Program, the Individualized Family Service Plan (IFSP) developed for that program meets the plan of services and supports requirement for this waiver. The IFSP document must specify needed service(s) to be authorized through this waiver, with a copy maintained in the waiver case record.</i></p>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><b>** Title 480 Chapter 2**</b>  2-004.02  Participant Choice: The setting must be selected by the participant from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The settings options must be identified and documented in the personcentered service plan and be based on the individual's needs, preferences and, for residential settings, resources available for room and board.</p> <p>2-002.24  PERSON-CENTERED PLAN (PCP). An individualized, written plan for each participant documenting the provision of services and supports that takes into consideration each participant's strengths, needs, priorities, and resources. This plan describes the full range of services to be furnished (regardless of funding source), their frequency, and the type of provider – formal or informal - who will furnish each.</p> <p>5- 003.02 (B)(i)  Service Componetns Providers must offer and make available each of the services listed below, which are required to meet the needs identified inthe person-centered plan (PCP).</p>		
<b>(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</b>	<p><a href="#">Title 175 Chapter 4</a>  Compliant:  <b>4-006.02 (8) and (9)</b>  <i>Administration: Each assisted-living facility must have an administrator who is responsible for the overall operation of the facility. The administrator is responsible for planning, organizing, and directing the day to day operation of the assisted-living facility. The administrator must report all matters related to the maintenance, operation, and management of the assisted-living facility and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator must:</i></p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>8. <i>Develop and implement procedures that require the reporting of any evidence of abuse, neglect, or exploitation of any resident residing in the assisted-living facility in accordance with Neb. Rev. Stat. §§ 28-372 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. § 28-711;</i></p> <p>9. <i>Complete an investigation on suspected abuse, neglect, or misappropriation of money or property and take action to prevent reoccurrence until the investigation is completed;</i></p> <p><b>4-006.04</b>  <i>Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Be treated with dignity and provided care by competent staff;</i></li> <li>2. <i>Be an equal partner in the development of the resident service agreement while retaining final decision making authority;</i></li> <li>3. <i>Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;</i></li> <li>4. <i>Be informed in writing of the pricing structure and/or rates of all facility services;</i></li> <li>5. <i>Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></li> <li>6. <i>Choose a personal attending physician;</i></li> <li>7. <i>Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;</i></li> <li>8. <i>Examine the results of the most recent survey of the facility conducted by representatives of the Department;</i></li> <li>9. <i>Refuse to perform services for the facility;</i></li> <li>10. <i>Refuse to participate in activities;</i></li> <li>11. <i>Privacy in written communication including sending and receiving mail;</i></li> <li>12. <i>Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</i></li> </ol>		

<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;</p> <p>14. Have the right to have a telephone in his/her room at the resident's expense;</p> <p>15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;</p> <p>16. Share a room with a person of his or her choice upon consent of that person;</p> <p>17. Self-administer medications if it is safe to do so;</p> <p>18. Be free of chemical and physical restraints;</p> <p>19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;</p> <p>20. Form and participate in an organized resident group that functions to address facility issues;</p> <p>21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12; 22. Be free from abuse, neglect, and misappropriation of their money and personal property; and</p> <p>23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.</p> <p><b>4-006.11</b>  <i>Resident Care: Each assisted-living facility must provide residents care and services in accordance with their established resident service agreements which maximize the residents' dignity, autonomy, privacy and independence.</i></p> <p>4-006.11A Evidence that the facility is meeting each resident's needs for personal care, assistance with activities of daily living and health maintenance include the following outcomes for residents:</p> <p>4-06.11A1 Physical well-being of the resident:</p>		

<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>1. Clean and groomed hair, skin, teeth and nails;</p> <p>2. Nourished and hydrated;</p> <p>3. Free of pressure sores, skin breaks, chaps and chafing;</p> <p>4. Appropriately dressed for the season in clean clothes;</p> <p>5. Protected from accident, injury and infection; and</p> <p>6. Receives prompt emergency care for the following but not limited to: illnesses, injuries, and life threatening situations.</p> <p>4-006.11A2 Behavioral/emotional well-being of the resident:</p> <p>1. Opportunity to participate in age appropriate activities that are meaningful to the resident, if desired;</p> <p>2. Sense of security and safety;</p> <p>3. Reasonable degree of contentment; and</p> <p>4. Feeling of stable and predictable environment.</p> <p>4-006.11A3 In agreement that the resident:</p> <p>1. Is free to go to bed at the time desired;</p> <p>2. Is free to get up in the morning at the time desired;</p> <p>3. Is free to have visitors;</p> <p>4. Has privacy;</p> <p>5. Is free to self direct his/her own care and treatment and change their plan at any time;</p> <p>6. Is assisted to maintain a level of self-care and independence;</p> <p>7. Is assisted as needed to have good oral hygiene;</p> <p>8. Has been made as comfortable as possible by the facility;</p> <p>9. Is free to make choices and assumes the risk of those choices;</p> <p>10. Is fully informed of the services he/she can expect to be provided by the facility;</p> <p>11. Is free of abuse, neglect and exploitation;</p> <p>12. Is treated with dignity; and</p> <p>13. Has the opportunity to participate in activities, if desired.</p> <p>4-006.11B Health Maintenance Activities: All health maintenance activities must be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.</p>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>4-006.11C Other Supportive Services: A assisted-living facility may provide other supportive services to assist residents. These services could include, but are not limited to: transportation, laundry, housekeeping, financial assistance/management, behavioral management, case management, shopping, beauty/barber and spiritual services.</i></p> <p><i>4-006.11D Special Populations Services: Each assisted-living facility that provides services to special populations such as, but not limited to, those individuals with disabilities, mental impairments, dementia, or other disorders must:</i></p> <ol style="list-style-type: none"> <li><i>1. Evaluate each resident to identify the abilities and special needs;</i></li> <li><i>2. Ensure the administrator and staff assigned to provide care are trained to meet the special needs of those residents. Such training must be done by a person(s) qualified by experience and knowledge in the area of special services being provided;</i></li> <li><i>3. Prepare and implement each resident service agreement to address the special needs; and</i></li> <li><i>4. Provide a physical environment that maintains the safety and dignity of residents and accommodates residents' special needs, such as physical limitations, and visual and cognitive impairments.</i></li> </ol> <p><b>4-006.11E</b></p> <p><i>Requirements for Facilities or Special Care Units for Persons with Alzheimer's Disease, Dementia or a Related Disorder: Each assisted-living facility or special care unit that specializes in providing care for persons who have Alzheimer's disease, dementia or a related disorder must meet the following requirements:</i></p> <ol style="list-style-type: none"> <li><i>1. Care and services must be provided in accordance with the resident service agreement and the stated mission and philosophy of the facility.</i></li> <li><i>2. Prior to admission, the facility must inform the resident or authorized representative in writing of the facility's criteria for admission, discharge, transfer, resident conduct and responsibilities.</i></li> <li><i>3. The facility or unit must maintain a sufficient number of direct care staff with the required training and skills necessary to meet the resident</i></li> </ol>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other supportive services. Such staff must remain awake, fully dressed and be available in the facility or unit at all times to provide supervision and care to the residents.</i></p> <p><i>4. The administrator and direct care staff must be trained in: a. The facility or unit's philosophy and approaches to providing care and supervision for persons with Alzheimer's disease; b. The Alzheimer's disease process; and c. The skills necessary to care for, and intervene and direct residents who are unable to perform activities of daily living, personal care, or health maintenance and who may exemplify behavior problems or wandering tendencies.</i></p> <p><i>5. The facility must not admit or retain residents if any one of the following conditions exists, unless the criteria in 4-006.07B are met: a. The resident poses a danger to self or to others; or b. The resident requires complex nursing interventions.</i></p> <p><a href="#">Title 175 Chapter 5</a> Compliant: <b>5-006.04B</b> <i>Client Rights</i> <i>At a minimum, client rights include the right to:</i></p> <ol style="list-style-type: none"> <li><i>1. Receive respectful and safe care from competent personnel;</i></li> <li><i>2. Be free from abuse, neglect, exploitation, and treated with dignity;</i></li> <li><i>3. Receive ADS without discrimination based upon race, color, religion, gender, national origin, or payer;</i></li> <li><i>4. Voice complaints and grievances without discrimination or reprisal and have those complaints and grievances addressed;</i></li> <li><i>5. Have all records, communications and personal information kept confidential;</i></li> <li><i>6. Self-administer medications if it is safe to do so;</i></li> <li><i>7. Be free of chemical and physical restraints;</i></li> </ol>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>8. <i>Be informed of changes in agency policies, procedures, and charges for service or have his/her designee receive this information.</i></p> <p><u><a href="#">Title 391</a></u> Compliant: <b>1-006.13A</b> <i>Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:</i></p> <ol style="list-style-type: none"> <li>1. <i>Spanking;</i></li> <li>2. <i>Slapping;</i></li> <li>3. <i>Punching;</i></li> <li>4. <i>Pinching;</i></li> <li>5. <i>Shaking;</i></li> <li>6. <i>Striking with any object;</i></li> <li>7. <i>Use of soap, hot sauce or other unpleasant food or non-food items;</i></li> <li>8. <i>Isolating a child in a locked or closed room or closet;</i></li> <li>9. <i>Handling roughly;</i></li> <li>10. <i>Biting;</i></li> <li>11. <i>Denial of food;</i></li> <li>12. <i>Forced napping;</i></li> <li>13. <i>Subjecting a child to derogatory remarks about the child or the child's family;</i></li> <li>14. <i>Abusive or profane language directed at children;</i></li> <li>15. <i>Yelling or screaming at children;</i></li> <li>16. <i>Threats of physical punishment; or</i></li> <li>17. <i>Mechanical restraints.</i></li> </ol> <p><b>1-006.13E</b> <i>Use of Restraints: The use of restraints is prohibited except under the following conditions:</i></p> <ol style="list-style-type: none"> <li>1. <i>All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints.</i></li> <li>2. <i>The training curriculum must be accepted by the Department.</i></li> </ol>		



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	<p>3. <i>The training must be taught by a certified trainer.</i></p> <p>4. <i>Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:</i></p> <p>a. <i>Child's name;</i></p> <p>b. <i>Date of the incident;</i></p> <p>c. <i>Description of the incident; and</i></p> <p>d. <i>Names of the staff involved.</i></p> <p><b>2-006.13A</b>  <i>Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:</i></p> <p>1. <i>Spanking;</i></p> <p>2. <i>Slapping;</i></p> <p>3. <i>Punching;</i></p> <p>4. <i>Pinching;</i></p> <p>5. <i>Shaking;</i></p> <p>6. <i>Striking with any object;</i></p> <p>7. <i>Use of soap, hot sauce or other unpleasant food or non-food items;</i></p> <p>8. <i>Isolating a child in a locked or closed room or closet;</i></p> <p>9. <i>Handling roughly;</i></p> <p>10. <i>Biting;</i></p> <p>11. <i>Denial of food;</i></p> <p>12. <i>Forced napping;</i></p> <p>13. <i>Subjecting a child to derogatory remarks about the child or the child's family;</i></p> <p>14. <i>Abusive or profane language directed at children;</i></p> <p>15. <i>Yelling or screaming at children;</i></p> <p>16. <i>Threats of physical punishment; or</i></p> <p>17. <i>Mechanical restraints.</i></p> <p><b>2-006.13E</b></p>		

Standards Applicable to All HCBS Settings			
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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>Use of Restraints: The use of restraints is prohibited except under the following conditions:</i></p> <ol style="list-style-type: none"> <li>1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints.</li> <li>2. The training curriculum must be accepted by the Department.</li> <li>3. The training must be taught by a certified trainer.</li> <li>4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:               <ol style="list-style-type: none"> <li>a. Child's name;</li> <li>b. Date of the incident;</li> <li>c. Description of the incident; and</li> <li>d. Names of the staff involved.</li> </ol> </li> </ol> <p><b>3-006.20A</b></p> <p><i>Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:</i></p> <ol style="list-style-type: none"> <li>1. Spanking;</li> <li>2. Slapping;</li> <li>3. Pinching;</li> <li>4. Punching;</li> <li>5. Shaking;</li> <li>6. Striking with any object;</li> <li>7. Use of soap, hot sauce, or other unpleasant food and non-food items;</li> <li>8. Isolating a child in a locked or closed room or closet;</li> <li>9. Handling roughly;</li> <li>10. Biting;</li> <li>11. Denial of food;</li> <li>12. Forced napping;</li> <li>13. Subjecting children to derogatory remarks about the child or the child's family;</li> <li>14. Abusive or profane language directed at children;</li> <li>15. Yelling or screaming at children;</li> </ol>		

Standards Applicable to All HCBS Settings			
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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>16. Threats of physical punishment; or 17. Mechanical restraints.</p> <p><b>3-006.20E</b> <i>Use of Restraints: The use of restraints is prohibited except under the following conditions:</i></p> <ol style="list-style-type: none"> <li>1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;</li> <li>2. The training curriculum must be accepted by the Department;</li> <li>3. The training must be taught by a certified trainer; and</li> <li>4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:               <ol style="list-style-type: none"> <li>a. Child's name;</li> <li>b. Date of the incident;</li> <li>c. Description of the incident; and</li> <li>d. Names of the staff involved.</li> </ol> </li> </ol> <p><b>4-006.19A</b> <i>Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:</i></p> <ol style="list-style-type: none"> <li>1. Spanking;</li> <li>2. Slapping;</li> <li>3. Pinching;</li> <li>4. Punching;</li> <li>5. Shaking;</li> <li>6. Striking with any object;</li> <li>7. Use of soap, hot sauce, or other unpleasant food and non-food items;</li> <li>8. Isolating a child in a locked or closed room or closet;</li> <li>9. Handling roughly;</li> <li>10. Biting;</li> <li>11. Denial of food;</li> <li>12. Forced napping;</li> </ol>		

Standards Applicable to All HCBS Settings			
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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>13. Subjecting children to derogatory remarks about the child or the child's family;</p> <p>14. Abusive or profane language directed at children;</p> <p>15. Yelling or screaming at children;</p> <p>16. Threats of physical punishment; or</p> <p>17. Mechanical restraints.</p> <p><b>4-006.19E</b>  <i>Use of Restraints: The use of restraints is prohibited except under the following conditions:</i></p> <ol style="list-style-type: none"> <li>1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;</li> <li>2. The training curriculum must be accepted by the Department;</li> <li>3. The training must be taught by a certified trainer; and</li> <li>4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include: <ol style="list-style-type: none"> <li>a. Child's name;</li> <li>b. Date of the incident;</li> <li>c. Description of the incident; and</li> <li>d. Names of the staff involved.</li> </ol> </li> </ol> <p><b>5-006.19A</b>  <i>Unacceptable Forms of Discipline: The following actions are prohibited as a form of discipline:</i></p> <ol style="list-style-type: none"> <li>1. Spanking;</li> <li>2. Slapping;</li> <li>3. Pinching;</li> <li>4. Punching;</li> <li>5. Shaking;</li> <li>6. Striking with any object;</li> <li>7. Use of soap, hot sauce, or other unpleasant food and non-food items;</li> <li>8. Isolating a child in a locked or closed room or closet;</li> </ol>		

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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>9. Handling roughly;  10. Biting;  11. Denial of food;  12. Forced napping;  13. Subjecting children to derogatory remarks about the child or the child's family;  14. Abusive or profane language directed at children;  15. Yelling or screaming at children;  16. Threats of physical punishment; or  17. Mechanical restraints.</p> <p><b>5-006.19E</b>  <i>Use of Restraints: The use of restraints is prohibited except under the following conditions:</i>  1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;  2. The training curriculum must be accepted by the Department;  3. The training must be taught by a certified trainer; and  4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:  a. Child's name;  b. Date of the incident;  c. Description of the incident; and  d. Names of the staff involved.</p> <p><a href="#">Title 480 Chapter 5</a>  Silent</p> <p><b>**Title 480 Chapter 2**</b>  2-004.03 PARTICIPANT RIGHT TO PRIVACY. The setting must ensure a participant's rights of privacy, dignity, respect, and freedom from coercion and restraint. Participant Right to Privacy</p>		

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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>Title 480 Chapter 3            3-002.01 (A) (B) 002.01 PARTICIPANT RIGHTS. In addition to the rights afforded to all persons, a participant enrolled in the Department's Division of Medicaid and Long-Term Care (MLTC) program has the right to:</p> <p>(A) Be treated with dignity and respect;            (B) Be protected from abuse, neglect, exploitation and other threats to personal health, safety and well-being;</p>		
<p><b>(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, included, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><a href="#">Title 175 Chapter 4</a>            Compliant:  <b>4-006.04</b>  <i>Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Be treated with dignity and provided care by competent staff;</i></li> <li>2. <i>Be an equal partner in the development of the resident service agreement while retaining final decision making authority;</i></li> <li>3. <i>Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;</i></li> <li>4. <i>Be informed in writing of the pricing structure and/or rates of all facility services;</i></li> <li>5. <i>Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></li> <li>6. <i>Choose a personal attending physician;</i></li> <li>7. <i>Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;</i></li> <li>8. <i>Examine the results of the most recent survey of the facility conducted by representatives of the Department;</i></li> <li>9. <i>Refuse to perform services for the facility;</i></li> <li>10. <i>Refuse to participate in activities;</i></li> </ol>	<p><b>Title 480</b>            Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	<p>See above.</p>

<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>11. Privacy in written communication including sending and receiving mail;</p> <p>12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</p> <p>13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;</p> <p>14. Have the right to have a telephone in his/her room at the resident's expense;</p> <p>15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;</p> <p>16. Share a room with a person of his or her choice upon consent of that person;</p> <p>17. Self-administer medications if it is safe to do so;</p> <p>18. Be free of chemical and physical restraints;</p> <p>19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;</p> <p>20. Form and participate in an organized resident group that functions to address facility issues;</p> <p>21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12;</p> <p>22. Be free from abuse, neglect, and misappropriation of their money and personal property; and</p> <p>23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff. Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:</p> <p>1. A procedure on submission of grievances available to residents, employees and others;</p> <p>2. Documentation of efforts to address grievances received from residents, employees and others; and</p>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>3. <i>The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.</i></p> <p><b>4-006.08</b>  <i>Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.</i></p> <p><a href="#">Title 175 Chapter 5</a>  Compliant:</p> <p><b>5-006.04</b>  <i>Client Rights</i>  5-006.04A <i>The ADS must:</i></p> <ol style="list-style-type: none"> <li>1. <i>Inform clients of their rights in writing upon enrollment;</i></li> <li>2. <i>Ensure that clients are aware of their rights for the duration of their participation in the ADS;</i></li> <li>3. <i>Operate so as to afford the clients the opportunity to exercise their rights; and</i></li> <li>4. <i>Protect and promote client rights.</i></li> </ol> <p>5-006.04B <i>At a minimum, client rights include the right to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Receive respectful and safe care from competent personnel;</i></li> <li>2. <i>Be free from abuse, neglect, exploitation, and treated with dignity;</i></li> <li>3. <i>Receive ADS without discrimination based upon race, color, religion, gender, national origin, or payer;</i></li> <li>4. <i>Voice complaints and grievances without discrimination or reprisal and have those complaints and grievances addressed;</i></li> <li>5. <i>Have all records, communications and personal information kept confidential;</i></li> <li>6. <i>Self-administer medications if it is safe to do so;</i></li> <li>7. <i>Be free of chemical and physical restraints;</i></li> </ol>		



Standards Applicable to All HCBS Settings			
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	<p>8. Be informed of changes in agency policies, procedures, and charges for service or have his/her designee receive this information.            5-006.04C Designee Rights: At a minimum, designee rights include the right to:</p> <ol style="list-style-type: none"> <li>1. Be informed of agency's policies, procedures, and charges for service;</li> <li>2. Voice complaints and grievances without discrimination or reprisal against themselves or the client and have those complaints and grievances addressed;</li> <li>3. Formulate advance directives and have the ADS comply with the directives unless the facility notifies the caretaker of their inability to do so; and</li> <li>4. Be informed of client and designee rights during admission.</li> </ol> <p><b>5-006.09</b>            Activities: The ADS must:</p> <ol style="list-style-type: none"> <li>1. Plan and provide activities that:               <ol style="list-style-type: none"> <li>a. Meet the interests of clients;</li> <li>b. Promote the physical, mental, and psychosocial well-being of clients; and</li> <li>c. Are ongoing.</li> </ol> </li> <li>2. Inform clients of the opportunity to participate; and</li> <li>3. Post and otherwise make available to clients, information about ADS activities.</li> </ol> <p><a href="#">Title 391</a>            Silent</p> <p><a href="#">Title 480 Chapter 5</a>            Compliant:</p> <p><b>5-005.B.1</b>            B. ASSISTED LIVING SERVICE            1. Description</p>		

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	<p><i>Assisted living is an array of support services that promote client self-direction and participation in decisions which incorporate respect, independence, individuality, privacy, and dignity in a home environment. These services include assistance with or provision of personal care activities, activities of daily living, instrumental activities of daily living, and health maintenance.</i></p> <p><i>The need for this service must be reflected in one or more assessment areas of the client's plan of services and support.</i></p> <p><b>5-005.M</b>  <b>Home Again (HA) Service</b>  <b>1. Description:</b> HA Service is available to support and enable Medicaid-eligible nursing facility residents to move to a more independent living situation of their choice. Items and services covered include but are not limited to:  1. Furniture, furnishings, and household supplies;  2. Security deposits, utility installation fees or deposits; and  3. Moving expenses.  <b>2. Need for Service:</b> All items and services covered must be essential to:  1. Ensure that the person is able to transition from the current NF; and  2. Remove identified barriers or risks to the success of the transition to a more independent living situation.  <b>3. Persons Eligible:</b> To receive this service, a person aged 18 or older must be a current NF resident whose NF services have been paid by Medicaid for at least six months. Persons whose NF stay is rehabilitative are not eligible for this service.  <b>4. Items and Services Covered:</b> The Services Coordinator and client must jointly determine the need for specific Home Again Services. Services must be identified in one or more assessment areas and reflected in the client's Plan of Services and Supports. The Services Coordinator may authorize services in one or more of the following areas:  1. Essential furniture, appliances, furnishings, and household supplies;  2. Security deposits and utility installation fees and deposits;</p>		

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<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>3. <i>Moving expenses;</i></p> <p>4. <i>Assistance from a Home Again Sponsor; and</i></p> <p>5. <i>Expenses for other services or items related to the move which are essential to remove barriers to the transition or its success. Once purchased, all items become the property of the client. Any prior-authorized transition expenses incurred in good faith will be covered by the program even if the transition does not ultimately occur (for example, the client has a medical emergency).</i></p> <p>5. <i>Items and Services Not Covered: Medicaid funds may not be used to pay rent. In addition, the Services Coordinator must not authorize items and services which:</i></p> <ol style="list-style-type: none"> <li>1. <i>Are not essential to supporting the move or ensuring its success;</i></li> <li>2. <i>Are available through the Medicaid state plan or through another service of this Waiver program;</i></li> <li>3. <i>Are available at no cost from relatives, friends, or any other source; or</i></li> <li>4. <i>Relate to a move to an assisted living facility and are the responsibility of the AL facility or included in the client's public assistance budget. Examples are a rental deposit, monthly payment, utilities provided for all residents, or basic furniture.</i></li> </ol> <p>6. <i>Service Duration: HA services may be authorized only once during a twelve month period. The authorization period for HA Services may begin as soon as the client, Services Coordinator, and NF staff agree that a discharge plan indicates a move to a more independent setting. The Services Coordinator may authorize expenditures made up to 60 days in advance of the planned move date and for 30 days after the actual move date.</i></p> <p>7. <i>Home Again Sponsor: Each client eligible for Home Again Service must have a designated HA Sponsor. The role of the Sponsor includes but is not limited to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Assisting the client as necessary to locate and procure accessible, affordable housing;</i></li> <li>2. <i>Providing support in dealing with the changes related to the transition move; and</i></li> </ol>		

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<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>3. <i>Providing the up-front funding to obtain the essential items and services included in the Plan of Services and Supports.</i>  <i>If the client has no family or friend available to fill the Sponsor role at no cost, the Services Coordinator may authorize the payment to a paid Sponsor. A relative or friend assuming the role of Sponsor must also meet provider standards to receive reimbursement of actual transition expenditures made on behalf of the client.</i></p> <p>8. <i>HA Sponsor Standards: A HA Sponsor may be an individual, a business, an organization or an agency. In addition to the general standards for all waiver providers, a HA Sponsor must:</i></p> <ol style="list-style-type: none"> <li>1. <i>Be age 19 or older;</i></li> <li>2. <i>Recognize and support the client choice in selection of items and services provided through this service;</i></li> <li>3. <i>Have experience in carrying out activities related to locating housing and setting up a household;</i></li> <li>4. <i>Be free of communicable disease;</i></li> <li>5. <i>Be able to recognize distress and/or signs of illness in clients;</i></li> <li>6. <i>Observe and report all changes in client functioning to the services coordinator and/or to the NF staff; and</i></li> <li>7. <i>Assure that any vehicle and driver transporting a client to look for housing or other transition need meets applicable licensing and safety laws and regulations.</i></li> </ol> <p>9. <i>Home Again Rates: The Home Again rate consists of payment for the actual cost of items and services necessary for the client's move and any payment to the sponsor. The maximum amount allowed for the Home Again service is a one-time payment of \$1500, of which up to \$300 may be allowed for the payment to the sponsor. This amount may be subject to annual adjustment as allowed by the Legislature (see 480-000-209). Payment for the Home Again service is not counted in the client's monthly cost for waiver services.</i></p> <p>10. <i>Home Again Services Provider Billing: HA Sponsors must bill for services by:</i></p>		

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	<p>1. <i>Totaling and submitting dated receipts for purchases made on behalf of the client;</i></p> <p>2. <i>Totaling and submitting receipts or other written documentation of the financial obligation incurred by the Sponsor on behalf of the client for security deposits, utility installation, and/or fees;</i></p> <p>3. <i>Providing a detailed listing of the dates and activities performed if payment for the Sponsor's time is authorized; and</i></p> <p>4. <i>Submitting a billing request for the total amount of expenses incurred.</i></p> <p><b>**Title 480 Chapter 2**</b>  2-004.04 PARTICIPANT INDEPENDENCE. Each participant must have the opportunity to optimize individual initiative, autonomy, and independence. The setting must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and interactions with individuals of the participant's choice.</p> <p><b>**Title 480 Chapter 5**</b>  5-003.06(A)  SERVICE DESCRIPTION. Home Again service is available to support and enable Medicaid-eligible nursing facility residents to move to a more independent living situation of their choice. Items and services covered include but are not limited to:  (i) Furniture, furnishings, and household supplies;  (ii) Security deposits, utility installation fees or deposits; and  (iii) Moving expenses.</p>		
<b>(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b>	<p><a href="#">Title 175 Chapter 4</a>  Silent</p> <p><a href="#">Title 175 Chapter 5</a>  Silent</p> <p><a href="#">Title 391</a></p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all	See above.

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	<p>Silent  <a href="#">Title 480 Chapter 5</a>  Compliant:  <b>5-001.A</b>  GENERAL INTRODUCTION  Home and community-based waiver services offer eligible persons a choice between entering a Nursing Facility (NF) or receiving supportive services in their homes. Medicaid funding through the Nebraska Medical Assistance Program (NMAP) is used to fund either service option. The average cost of waiver services funded by Medicaid must not exceed the average cost to Medicaid for NF services.  To be eligible for support through this "Aged and Disabled Waiver," a potential client must meet the following general criteria:  1. Have care needs equal to those of Medicaid-funded residents in Nursing Facilities;  2. Be eligible for Medicaid; and  3. Work with the services coordinator to develop an outcome-based, cost effective service plan.</p> <p><b>5-001.B</b>  Waiver services build on client/family strengths and are intended to strengthen and support informal and formal services already in place to meet the needs of the client and are not intended to replace them. Waiver services utilize a self-directed services philosophy and vision that holds that each client has the right and responsibility to participate to the greatest extent possible in the development and implementation of his/her service plan.  The services coordinator and the client together shall identify appropriate levels of services coordination by considering risk factors or capacity to direct their own services. The services coordination levels include:  ! Self-Directed Services Coordination  ! Supportive Services Coordination  ! Comprehensive Services Coordination</p>	settings in which HCBS is provided.	

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A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>Elements in the following areas shall be considered to determine the level of services coordination both initially and as service levels change:</i></p> <ol style="list-style-type: none"> <li>1. <i>Determination of strengths, priorities, and resources.</i></li> <li>2. <i>Planning for services.</i></li> <li>3. <i>Connecting with needed services.</i></li> <li>4. <i>Advocacy.</i></li> <li>5. <i>Monitoring.</i></li> </ol> <p><b>5-003.A.4.A</b>  <i>Together with the potential client, develop a plan of services and supports based upon assessment results. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF assessment categories: activities of daily living; high risk factors, joint motion; locomotion; nursing observations; orientation; and medical and nursing needs.</i>  <i>The plan of services and supports must ensure the potential client's health and welfare, including the consideration of acceptable risk. If, despite consideration of the full range and scope of services, the client's health or welfare is in jeopardy, waiver services may not be provided.</i>  <i>The potential client has freedom of choice in selecting providers of waiver services. The client's choice of providers is documented in the client's case narrative.</i>  <i>Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the client/guardian.</i></p> <p><b>5-003.B.4.A</b>  <b>PLANNING FOR SERVICES</b>  <b>PURPOSE:</b> <i>To identify specific individual services to be provided in a coordinated and organized manner.</i>  <i>The services coordinator shall -</i>  <i>a. Together with the child and family, further develop the plan of services and supports. This is accomplished by identifying desired client outcomes.</i></p>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>Outcomes should occur in one or more of the following NF domains: activities of daily living; cognition; environment; medical/nursing status; support network; and transition.</i></p> <p><i>The plan of services and supports must ensure the child's health and welfare, including consideration of acceptable risk. If, despite consideration of the full range and scope of services, the child's health or welfare is in jeopardy, waiver services may not be provided.</i></p> <p><i>The child's guardian has freedom of choice in selecting providers of waiver services. The guardian's choice of providers is documented in the child's case narrative.</i></p> <p><i>Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the child's guardian.</i></p> <p><i>Note: If a child under the age of three receives services coordination through an Early Intervention Program, the Individualized Family Service Plan (IFSP) developed for that program meets the plan of services and supports requirement for this waiver. The IFSP document must specify needed service(s) to be authorized through this waiver, with a copy maintained in the waiver case record.</i></p> <p><b>** Title 480 Chapter 2**</b>  2- 004.05  FACILITATION OF CHOICE. The setting must facilitate individual choice regarding services and supports, and who provides them.</p> <p><b>**Title 480 Chapter 3**</b>  3- 002.01  PARTICIPANT RIGHTS. In addition to the rights afforded to all persons, a participant enrolled in the Department's Division of Medicaid and Long-Term Care (MLTC) program has the right to:  (A) Be treated with dignity and respect;  (B) Be protected from abuse, neglect, exploitation and other threats to personal health, safety and well-being;</p>		



<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>(C) Appoint an authorized representative to act on their behalf as a paid provider cannot sign their own claim on behalf of the participant; the signature of another competent representative of the participant, with the knowledge of the service delivery is required;</p> <p>(D) Participate with the services coordinator in the service plan development process, and receive services in a person-centered manner that is in accordance with the approved service plan. Lead the process of service plan development when possible; and, include a representative that the individual has freely chosen, as well as other individuals chosen by the participant to contribute to the process. Person-centered services are delivered in a manner that is attentive to the participant's needs and maximizes personal independence;</p> <p>(E) Have the services coordinator explain what services are available, how those services will assist the participant and what the participant's rights and responsibilities are;</p> <p>(F) Request assistance with finding appropriate providers;</p> <p>(G) Confirm that services were received in the manner authorized in the person-centered plan (PCP) according to Department procedures;</p> <p>(H) Openly communicate with the services coordinator and receive information in a manner that is easy to understand;</p> <p>(I) Meet privately with the services coordinator;</p> <p>(J) Receive ongoing assistance from the services coordinator;</p> <p>(K) Choose the participant's services coordinator among approved and willing services coordination options. Request changes of services coordination in accordance with availability in the service area;</p> <p>(L) Make informed choices regarding the services and supports outlined in the personcentered plan (PCP), and the provider from which the participant will receive the services and supports. Access files, records or other information related to enrollment in and delivery of services under the Medicaid Home and Community-Based Services (HCBS) Waiver Program;</p>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>(M) Be assured of confidentiality of personal and sensitive health care information pursuant to relevant confidentiality and information disclosure laws;</p> <p>(N) Request assistance with problems, concerns and issues, and suggest changes without fear of repercussion;</p> <p>(O) Be fully informed about how to contact the services coordinator with problems, concerns, issues or inquiries;</p> <p>(P) Be informed of the right to appeal decisions made by the Department about Waiver eligibility or services; and</p> <p>(Q) Be informed of the right to file a formal complaint with the Department.</p>		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
(4)(vi)(A) The unit or dwelling is a specific physical space that can be owned, rented, or occupied under a legally-enforceable agreement by the	<p><a href="#">§76-1401 et. Seq. (Uniform Residential Landlord Tenant Act)</a> Compliant</p> <p><a href="#">§71-406</a> (Assisted Living Facility, defined) Compliant</p> <p><a href="#">Title 175 Chapter 4</a> Compliant:</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p>individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS individual, and that that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p><b>4-006.04 (23)</b>  <i>23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.</i></p> <p><a href="#">Title 175 Chapter 5</a>  Compliant:  <b>5-006.08</b>  <i>Admission and Discharge of Clients: The ADS must ensure that its admission and discharge practices meet the client's identified needs and conform with the program description.</i>  <i>5-006.08A Admission Criteria: The ADS must have written criteria for admission that includes each level of care and the components of care and services provided.</i>  <i>5-006.08B Admission Decisions: The ADS must ensure that the decision to admit a client is based upon its admission criteria and its capability to meet the identified needs of the client.</i>  <i>5-006.08C Agreement of Participation: The ADS must negotiate an agreement of participation with the client or designee.</i>  <i>5-006.08D Discharge Criteria: The ADS must have written criteria for dismissal of clients.</i>  <i>5-006.08E Discharge Decisions: The ADS must ensure that the decision to discharge a client is based upon its discharge criteria.</i></p> <p><a href="#">Title 480 Chapter 5</a>  Silent</p> <p>**Title 480 Chapter 5  5-003.02 (B)(ii)  RESIDENT SERVICE AGREEMENT (RSA). The assisted living (AL) provider must have a Resident Service Agreement (RSA) for each participant, which must include, at a minimum:  (1) LEASE AGREEMENT. The assisted living (AL) provider and the</p>	<p>settings in which HCBS is provided.</p>	

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>participant must enter into an agreement which incorporates the following requirements:</p> <p>(a) The lease agreement must be consented to by both the individual and the assisted living provider;</p> <p>(b) The lease agreement must, at a minimum, comply with assisted living facility licensure requirements in 175 NAC 4-000, including eviction protections;</p> <p>(c) Unless otherwise specified in the individual service plan, a statement that the individual:</p> <p>(i) Has a right to select their roommate;</p> <p>(ii) Has a right to privacy and security including a means to access to their own living unit;</p> <p>(iii) Has a right to decorate their living unit;</p> <p>(iv) Has a right to have visitors of their choosing at any time;</p> <p>(v) Has the freedom and support to control their own schedule and activities; and</p> <p>(vi) Has a right to access food at any time.</p> <p>(d) Each provider owned and operated setting must be physically accessible to the individual</p>		
<b>(4)(vi)(B) Each individual has privacy in their sleeping or living unit:</b>	<p><a href="#">Title 175 Chapter 4</a> Silent</p> <p><b>**Title 480 Chapter 4**</b> 4-003.02(A)(vi) (vi) The assisted living (AL) provider must provide privacy in the unit including lockable doors, and access by the participant to the facility and to the individual apartment;</p> <p><b>**Title 480 Chapter 5**</b> 5-003.02(B)(ii)(c)(ii) Has a right to privacy and security including a means to access to their own living unit;</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<b>(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b>	<p><a href="#">Title 175 Chapter 5</a> Compliant: <b>5-007.02L</b> <i>Doors: The facility doors must be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize client injury.</i> <i>5-007.02L1 Toilet and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.</i> <i>5-007.02L2 In new construction, the door of a toilet and bathing room with less than 50 square feet of clear floor area and dedicated to client use, must not swing inward.</i></p> <p><a href="#">Title 480 Chapter 5</a> Silent</p> <p><b>**Title 480 Chapter 4**</b> 4-003.02(A)(vi) The assisted living (AL) provider must provide privacy in the unit including lockable doors, and access by the participant to the facility and to the individual apartment;</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
<b>(2) Individuals sharing units have a choice of roommates in that setting.</b>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04(16)</b> <i>Share a room with a person of his or her choice upon consent of that person;</i></p> <p><a href="#">Title 480 Chapter 5</a> Compliant: <b>5-005B4c</b> <i>The facility shall provide a private room with bath consisting of a toilet and sink for each client receiving waiver assisted living service. Any facility that receives</i></p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>funding through the Nebraska Health Care Trust Fund Act shall provide a private room with bath consisting of a toilet, sink, and tub or shower for each client receiving waiver assisted living service. Semi-private rooms shall be considered on an individual basis (e.g., couples), and require prior approval of the HHS System.</i></p> <p><b>**Title 480 Chapter 4**</b>  <b>4-003.02(A)(vi)</b>  The assisted living (AL) provider must provide privacy in the unit including lockable doors, and access by the participant to the facility and to the individual apartment;</p> <p><b>**Titel 480 Chapter 5**</b>  <b>5-003.02(B)(ii)(1)(c)(i)</b>  (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements:  (i) Has a right to select their roommate;</p>	HCBS is provided.	
<b>(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</b>	<p><a href="#">Title 175 Chapter 4</a>  Compliant:  <b>4-006.04(15)</b>  <i>15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;</i></p> <p><a href="#">Title 175 Chapter 5</a>  Silent</p> <p><a href="#">Title 480 Chapter 5</a>  Silent</p> <p><b>**Title 480 Chapter 5**</b></p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	5-003.02 (B) (ii)(1)(c)(iii) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (iii)Has a right to decorate their living unit;		
<b>(4)(vi)(C) Individuals have the freedom and support to control their own schedules and activities, and have a access to food at any time.</b>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04(5)</b> <i>5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></p> <p><b>4-006.04(10)</b> <i>10. Refuse to participate in activities;</i></p> <p><a href="#">Title 175 Chapter 5</a> Compliant: <b>5-006.09(2)</b> <i>Activities: The ADS must:</i> <i>1. Plan and provide activities that:</i> <i>a. Meet the interests of clients;</i> <i>b. Promote the physical, mental, and psychosocial well-being of clients; and</i> <i>c. Are ongoing.</i> <i>2. Inform clients of the opportunity to participate; and</i> <i>3. Post and otherwise make available to clients, information about ADS activities.</i></p> <p><a href="#">Title 391</a> Silent</p> <p><a href="#">Title 480 Chapter 5</a> Silent</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	Title 480 Chapter 5 5- 003.02(B)(ii)(1)(v) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (v)Has the freedom and support to control their own schedule and activities; and		
<b>(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b>	<a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04(12)</b> <i>12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</i>  <a href="#">Title 175 Chapter 5</a> Silent  <a href="#">Title 480 Chapter 5</a> Silent  Title 480 Chapter 5 5-003.02(B)(ii)(1)(iv) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (iv) Has a right to have visitors of their choosing at any time;	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
<b>(4)(vi)(E) The setting is physically accessible to the individual.</b>	<a href="#">Title 175 Chapter 4</a> Compliant: <b>4-007.03A1(6)</b> <i>New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:</i> <i>6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12</i>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which	See above.



Additional Standards Applicable to Provider-Owned or Controlled Settings			
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	<p><a href="#">Title 175 Chapter 5</a> Compliant: <b>5-007.02</b> <i>Construction Standards: ADS facilities must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and services to be provided. The standards for such facilities are set forth as follows.</i> <i>5-007.02A Codes and Guidelines</i> <i>5-007.02A 1 New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and services to be provided:</i> <i>1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;</i> <i>2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;</i> <i>3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;</i> <i>4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;</i> <i>5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;</i> <i>6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12; and</i> <i>7. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.</i> <i>5-007.02A2 All Facilities: All facilities must comply with the following applicable codes and standards to provide a safe environment.</i> <i>1. Fire Codes: Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1; and</i> <i>2. The Food Code, Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.</i> <i>5-007.02A3 Existing and New Facilities: Existing and new facilities must comply with the physical plant standards contained in 175 NAC 5-007. The facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one</i></p>	HCBS is provided.	

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose, or location.</i></p> <p><i>5-007.02B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with these regulations, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal prevails.</i></p> <p><i>5-007.02C Interpretations: All dimension, sizes, and quantities must be determined by rounding fractions to the nearest whole number.</i></p> <p><i>5-007.02D Floor Area: Floor area is the space with ceilings at least seven feet in height and excludes areas such as enclosed storage, toilets and bathing rooms, corridors and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width must not be included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height with areas less than five feet in height, not included in the required floor area.</i></p> <p><i>5-007.02E Dining areas must:</i></p> <ol style="list-style-type: none"> <li><i>1. Have adequate light and ventilation;</i></li> <li><i>2. Have tables and chairs that accommodate the clients' needs;</i></li> <li><i>3. Not be used for sleeping, offices, or corridors; and</i></li> <li><i>4. Be arranged so that all clients are able to eat meals at an appropriate time by having:</i> <ol style="list-style-type: none"> <li><i>a. All clients eat at the same time;</i></li> <li><i>b. Clients eat in different shifts; or</i></li> <li><i>c. Open times for client meals.</i></li> </ol> </li> </ol> <p><i>5-007.02F Activity Areas: A facility must have space for client socialization, resting, and leisure time activities. Activity areas must:</i></p> <ol style="list-style-type: none"> <li><i>1. Have furnishings to accommodate group and individual activities;</i></li> <li><i>2. Not be used for sleeping, offices, or as a corridor;</i></li> <li><i>3. Be available to all clients; and</i></li> <li><i>4. In new construction, have 60 square feet per person.</i> <p><i>5-007.02G Toilet Fixtures: The ADS must provide one toilet fixture for every ten clients. Handwashing sinks must be conveniently located near the toilet fixtures. In new construction a toilet room must be located no more than 40 feet from program and activity areas.</i></p> </li></ol>		

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
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<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>5007.02H Sleeping Areas: If clients are served overnight, the ADS must provide a sleeping area which affords privacy, provides access to furniture, and accommodates the care provided to the participants. Sleeping rooms:</i></p> <ol style="list-style-type: none"> <li><i>1. Must not be located in any garage, storage area, shed, or similar detached buildings; and</i></li> <li><i>2. Must not be accessed through a bathroom, food preparation area, laundry, or bedroom.</i></li> </ol> <p><i>5-007.02I Examination and Therapy Rooms: If provided, each examination and therapy room must have sufficient space. In new construction, each examination and therapy room must have a minimum floor area of 80 square feet and a minimum of 3 feet clear dimension around 3 sides of the examination table or chair. In new construction, each examination and therapy room must provide at least one handwashing sink equipped with towels and soap dispenser.</i></p> <p><i>5-007.02J Participant Storage: The facility must provide adequate storage for client belongings.</i></p> <p><i>5-007.02K Corridors: The facility corridors must be wide enough to allow passage and be equipped as needed by the participants with safety and assistive devices to minimize injury. All stairways and ramps must have handrails.</i></p> <p><i>5-007.02L Doors: The facility doors must be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize client injury.</i></p> <p><i>5-007.02L1 Toilet and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.</i></p> <p><i>5-007.02L2 In new construction, the door of a toilet and bathing room with less than 50 square feet of clear floor area and dedicated to client use, must not swing inward.</i></p> <p><i>5-007.02M Outdoor Areas: If the facility provides an outdoor area for client use, it must be equipped and situated to allow for client safety and abilities.</i></p> <p><i>5-007.02N Bathing Rooms: If the facility provides bathing services, the facility must have a bathing room with a tub and/or shower. Tubs and showers used by clients must be equipped with handgrips or other assistive devices as</i></p>		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
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	<p><i>needed by the clients. The bathing room must not directly open into a dining/kitchen area.</i></p> <p><a href="#">Title 391</a> Silent</p> <p><a href="#">Title 480</a> Compliant: <b>5-005.A4</b> <i>ADHC standards</i> <i>The Department of Health and Human Services annually contracts with providers of Adult Day Health Care to ensure that all applicable federal, state, and local laws and regulations are met.</i> <i>Provider Standards: Providers of ADHC shall obtain adequate information on the medical and personal needs of each client, if applicable; and observe and report all changes to the services coordinator.</i> <i>Facility Standards: Each Adult Day Health Care facility must meet all applicable federal, state, and local fire, health, and other standards prescribed in law or regulation. This includes the following standards:</i></p> <p><i>a. Atmosphere and design: This includes -</i></p> <ol style="list-style-type: none"> <li><i>(1) The facility must be architecturally designed to accommodate the needs of the clients being served;</i></li> <li><i>(2) Furniture and equipment used by clients must be adequate;</i></li> <li><i>(3) Toilets must be in working order and easily accessible from all program areas; and</i></li> <li><i>(4) A telephone must be available for client use.</i></li> </ol> <p><i>b. Location and space: The facility shall ensure that the facility has sufficient space to accommodate the full range of program activities and services. This includes -</i></p> <ol style="list-style-type: none"> <li><i>(1) Flexibility for large and small group and individual activities and services;</i></li> <li><i>(2) Storage space for program and operating supplies;</i></li> <li><i>(3) A rest area, adequate space for special therapies, and designated areas to permit privacy and isolate clients who become ill;</i></li> </ol>		

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>(4) Adequate table and seating space for dining;</p> <p>(5) Outside space available for outdoor activities and accessible to clients; and</p> <p>(6) Adequate space for outer garments and private possessions of the clients.</p> <p>c. Safety and sanitation: The facility shall ensure that</p> <p>(1) The facility is maintained in compliance with all applicable local, state, and federal health and safety regulations;</p> <p>(2) If food is prepared at the center, the food preparation area must comply with HHS regulations;</p> <p>(3) At least two well-identified exits are available;</p> <p>(4) Stairs, ramps, and interior floor have non-slip surfaces or carpet;</p> <p>(5) The facility is free of hazards (e.g., exposed electrical cords, improper storage of combustible material);</p> <p>(6) All stairs, ramps, and barrier-free bathrooms are equipped with usable handrails; and</p> <p>(7) A written plan for emergency care and transportation is documented in the client's file.</p> <p>Staffing: Each center must be staffed at all times by at least one full-time trained staff person.</p> <p>The center shall maintain a ratio of direct care staff member to clients sufficient to ensure that client needs are met. The center shall develop written job descriptions and qualifications for each professional, direct care, and non-direct care position.</p> <p>Provider Skills and Knowledge: Direct care staff members must –</p> <p>a. Have training or one or more years' experience in working with adults in a health care/social service setting;</p> <p>b. Have knowledge of CPR and first aid;</p> <p>c. Be able to recognize distress or signs of illness in clients;</p> <p>d. Have knowledge of available medical resources;</p> <p>e. Have access to information on each client's address, telephone number, and means of transportation; and</p> <p>f. Know reasonable safety precautions to exercise when dealing with clients and their property.</p>		

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>The provider must have a licensed nurse on staff, or contract with a licensed nurse, who will provide the health assessment/nursing service component of ADHC and supervise ADL/personal care and ADL training component. Counseling must be provided only by a certified social worker, a certified master social worker, or a certified professional counselor.</i></p> <p><b>**Title 480 Chapter 4**</b> 4-002.05 (D) PROVIDER OWNED AND OPERATED SETTINGS. If services are provided in a provider owned and operated setting, the provider must comply with the following requirements. Failure to meet these standards will be grounds for termination or denial of a Medicaid provider agreement. (D) Ensure that the home or facility is accessible to the participant, clean, in good repair, free from hazards, and free of rodents and insects;</p> <p><b>**Title 480 Chapter 5**</b> 5-003.02(B)(ii) (1)(d) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (d) Each provider owned and operated setting must be physically accessible to the individual.</p>		
<p><b>(vi)(F) Any modification of the additional conditions under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The</b></p>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.06</b> <i>Resident Service Agreements: The assisted-living facility must evaluate each resident and must have a written service agreement negotiated with the resident and authorized representative, if applicable, to delineate the services to be provided to meet the needs identified in the evaluation.</i> 4-006.06A <i>The agreement must contain the following basic components:</i> 1. <i>Services to be provided by the assisted-living facility and from other sources, how often and when the services are provided and by whom, to meet the needs of individuals including those for special populations as specified in 175</i></p>	<p><b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	<p>See above.</p>

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<p><b>following requirements must be documented in the person-centered service plan:</b></p> <p><b>(1) Identify a specific and individualized assessed need.</b></p> <p><b>(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</b></p> <p><b>(3) Document less intrusive methods for meeting the need that have been tried but did not work.</b></p> <p><b>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></p>	<p><i>NAC 4-006.11E. Such services must not exceed those which are defined in these regulations as shelter, food, activities of daily living, personal care, health maintenance, other supportive services or those which involve complex nursing interventions that are allowed by 175 NAC 4-006.07B;</i></p> <p><i>2. Rights and responsibilities of the facility and of the resident;</i></p> <p><i>3. Costs of services and terms of payment; and</i></p> <p><i>4. Terms and conditions of continued residency.</i></p> <p><i>4-006.06B The Resident Service Agreement must be reviewed and updated as the resident's needs change.</i></p> <p><a href="#">Title 175 Chapter 5</a></p> <p><b>Compliant:</b></p> <p><b>5-006.07</b></p> <p><i>Service Plan: The ADS must evaluate each client and must have a written service plan which identifies how particular services are to be provided to the client by the ADS. The plan must address the following basic needs of the client:</i></p> <p><i>1. Health;</i></p> <p><i>2. Psycho-social; and</i></p> <p><i>3. Functional.</i></p> <p><b>5-006.10</b></p> <p><i>Program Description: The ADS must have a written program description that is available to staff, clients and their designees, and members of the public that explains the range of care and services activities provided. The description must include the following:</i></p> <p><i>1. The mission statement, program philosophy or goals, and objectives;</i></p> <p><i>2. The client population served, including age groups and other relevant characteristics;</i></p> <p><i>3. The hours and days the ADS provides care and services;</i></p> <p><i>4. Staff composition and staffing qualification requirements to sufficiently provide care and/or services to meet facility goals and objectives;</i></p> <p><i>5. Staff job responsibilities for meeting care and services objectives;</i></p>		

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include informed consent of the individual. Include an assurance that interventions and supports will cause no harm to the individual.</p>	<p>6. System of referral for alternative services for those individuals who do not meet admission criteria;</p> <p>7. The admission and discharge process, including criteria;</p> <p>8. The client admission and ongoing assessment and evaluation procedures used by the program, including service plan process;</p> <p>9. Plan for providing emergency care and services, including use of facility approved interventions to be used by staff in an emergency situation;</p> <p>10. System governing the reporting, investigation, and resolution of allegations;</p> <p>11. Client and designee rights and the system for ensuring client rights will be protected and promoted; and</p> <p>12. The telephone number and address of the Department.</p> <p><b>5-006.12</b> Annual Review: The ADS must review all elements of the written program description as listed in 175 NAC 5-006.10 at least annually. The ADS must document the results of the annual review. The ADS must include in the review process relevant findings from its quality assurance/performance improvement program for the purpose of improving client services and resolving problems in client care and services. The licensee must revise the program description, as necessary, to reflect accurately care and services the ADS is providing.</p> <p><a href="#">Title 480 Chapter 5</a> Compliant: <b>5-003(3)</b> 3. DETERMINATION OF STRENGTHS, PRIORITIES, AND RESOURCES. PURPOSE: To identify the potential waiver eligible child's and family's strengths, needs, priorities, and resources so an appropriate plan of services and supports can be developed. The services coordinator shall - a. Meet in person with the child and his/her guardian to complete an assessment of the child's and family's strengths, needs, priorities, and resources. This meeting must be arranged and completed within 14 days of the</p>		



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<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>request date and be held on a date and time convenient to the family. In emergency situations, the assessment must be completed within 24 hours. During the assessment, the services coordinator, together with the child and family, shall begin to develop the plan of services and supports. The services coordinator may conduct an initial assessment of a child with a contracted nurse as appropriate, when the child's medical condition warrants interdisciplinary assessment. Written authorization for the assessment must be provided to the nurse.</i></p> <p><i>If the child has been assessed using the program's assessment instrument within the past year, the services coordinator may use the previous assessment or obtain a release from the guardian to request a copy of the completed form to determine whether further assessment is indicated.</i></p> <p><i>Early Intervention Exception: If an infant or toddler is receiving services coordination through Early Intervention, assessment provided through the Individualized Family Service Plan (IFSP) process substitutes for this and any other subsequent face-to-face assessments. The waiver services coordinator may be involved as a member of the IFSP team or may only offer technical assistance and program-specific support to the Early Intervention services coordinator/family. The Early Intervention services coordinator provides ongoing services coordination and arranges periodic interagency, interdisciplinary review. (See 480 NAC Chapter 10.)</i></p> <p><i>If, at any point during the eligibility process, the child's guardian chooses NF services instead of waiver services, the services coordinator shall work with appropriate HHS staff to make these arrangements.</i></p> <p><i>If at any point after the assessment, the parent/guardian voluntarily withdraws from receiving waiver services, the services coordinator shall provide written notice of ineligibility and also provide appropriate referrals.</i></p> <p><i>b. Gather functional information to determine a child's NF level of care eligibility that reflects the child's developmental level and includes information in the following NF domains:</i></p> <p><i>(1) Activities of daily living -</i></p>		

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<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>(a) Behavior: The ability to exhibit actions that are developmentally and socially appropriate in the areas of independence, maturation, learning, and social responsibility.</i></p> <p><i>(b) General hygiene, including:</i></p> <p><i>(1) Bathing: The ability to get to the bathing area and cleanse all parts of the body and the hair to maintain proper hygiene and prevent body odor, including tub, shower, and/or sponge bath.</i></p> <p><i>(2) Dressing: The ability to put on and remove clothing, as needed. This includes both upper and lower body.</i></p> <p><i>(3) Grooming: The ability to do routine daily personal hygiene (combing hair, brushing teeth, and washing face and hands).</i></p> <p><i>(c) Feeding/eating: The ability to take nourishment. This may include the act of getting food from the plate to the mouth or self-use of mechanical feeding devices.</i></p> <p><i>(d) Movement, including:</i></p> <p><i>(1) Mobility: The ability to move from place to place indoors or outside.</i></p> <p><i>(2) Transferring: The ability to move from one place to another, including bed to chair and back, and into and out of a vehicle. (Toilet transfer is not included.)</i></p> <p><i>(e) Sight: The ability to visualize or see, especially one's environment. This may include the use of glasses, contacts, prisms, or other adaptive devices.</i></p> <p><i>(f) Hearing: The ability to perceive sound, including by the use of equipment such as hearing aids, cochlear implants, etc.</i></p> <p><i>(g) Communication: The ability to make oneself understood through the use of words, sounds, signs, facial expressions, communication boards, or other adaptive devices.</i></p> <p><i>(h) Toileting, including bladder and bowel continence: The ability to get to and from the toilet, commode, bedpan, or urinal, including transfer to and from the toilet; management of clothing, and cleansing; and the ability to get to the toilet on time to empty the bladder and bowel, including changing incontinence pad/briefs, cleansing, and disposing of soiled articles.</i></p> <p><i>(2) Cognition -</i>  <i>The ability to remember, reason, understand, and use judgment.</i></p> <p><i>(3) Environment -</i></p>		

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>The ability to function in his/her living situation, including health, housing, and accessibility.</i></p> <p><i>(4) Medical/health status - Any medical or health condition that impacts the child's ability to function independently. The complexity of care and unstable medical conditions are also factors.</i></p> <p><i>(5) Support network - The ability and capacity of extended family, friends, and community resources to provide informal and formal supports. This may include in-home supports, school services, and therapies. In addition, this includes the family's and the support network's effectiveness in protecting the child from abuse and neglect.</i></p> <p><i>(6) Transition - The availability of a coordinated set of activities designed to promote independence and movement through services and developmental stages. This may include, but is not limited to, movement from early intervention services to preschool services, child to adult services, or from one type of living situation to another.</i></p> <p><i>c. Route functional information gathered during the in-person assessment and other documentation to HHS Central Office for a NF level of care determination.</i></p> <p><i>The services coordinator may require medical information and/or educational material (e.g., most recent Multi-Disciplinary Team (MDT) report, most recent psychological) as a method of gathering additional functional information upon which a NF level of care determination may be based.</i></p> <p><i>If the child does not meet the NF level of care criteria, the services coordinator shall provide written notice of this decision to the child's guardian. The services coordinator shall also provide appropriate information and referral.</i></p> <p><b>5-003(4)</b>  <b>4. PLANNING FOR SERVICES</b>  <b>PURPOSE:</b> To identify specific individual services to be provided in a coordinated and organized manner.  <i>The services coordinator shall -</i></p>		

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<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>a. Together with the child and family, further develop the plan of services and supports. This is accomplished by identifying desired client outcomes. Outcomes should occur in one or more of the following NF domains: activities of daily living; cognition; environment; medical/nursing status; support network; and transition.</i></p> <p><i>The plan of services and supports must ensure the child's health and welfare, including consideration of acceptable risk. If, despite consideration of the full range and scope of services, the child's health or welfare is in jeopardy, waiver services may not be provided.</i></p> <p><i>The child's guardian has freedom of choice in selecting providers of waiver services. The guardian's choice of providers is documented in the child's case narrative.</i></p> <p><i>Copies of the plan of services and supports are distributed to other persons and agencies at the directive, and with the consent of, the child's guardian.</i></p> <p><i>Note: If a child under the age of three receives services coordination through an Early Intervention Program, the Individualized Family Service Plan (IFSP) developed for that program meets the plan of services and supports requirement for this waiver. The IFSP document must specify needed service(s) to be authorized through this waiver, with a copy maintained in the waiver case record.</i></p> <p><i>b. Determine the cost of serving the child and determine that the estimated total monthly cost, excluding the costs of Assistive Technology and Supports (ATS) and Home Modification services, does not exceed the ongoing cap. The ongoing cap may change annually.</i></p> <p><i>Services included in calculating the cost of the plan of services and supports are the Medicaid non-waiver services of home health care, personal care aide, and medical transportation and all ongoing waiver services. ATS and home modifications are one-time or annually-only waiver services and are separately capitated. This separate cap may change annually.</i></p> <p><i>If the estimated monthly cost of the plan of services and supports exceeds the ongoing cap for children, the services coordinator shall contact Central Office to discuss possible approval to exceed the ongoing cap. Central Office</i></p>		

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<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>considers the following factors in making this decision and may approve or disapprove the request based upon them:</i></p> <p><i>(1) Child demographics (e.g., living situation, diagnosis, treatment plan, and prognosis);</i></p> <p><i>(2) Health and welfare concerns;</i></p> <p><i>(3) A description of the plan of services and supports;</i></p> <p><i>(4) The costs of the ongoing waiver services (i.e., plan totals aside from home health, personal care aide, ATS, home modifications, and medical transportation);</i></p> <p><i>(5) Available support systems; and</i></p> <p><i>(6) Possible funding shifts to other programs.</i></p> <p><i>If the cost of the child's plan of services and supports does exceed the ongoing cap and an exception is not approved, the services coordinator shall provide written notice of ineligibility to the child's guardian. The services coordinator shall also provide appropriate information and referral.</i></p> <p><i>c. Offer the child's guardian the option of accepting NF or waiver services as described in the plan of services and supports after the child has been determined to meet the NF level of care criteria, an assessment completed, and a plan of services and supports developed. If the guardian chooses to accept waiver services, the services coordinator shall obtain his/her signature on the waiver consent form. The consent form must be signed at initial determination only, and remains valid as long as the waiver case is open.</i></p> <p><i>Note: The waiver consent form is not valid and must not be signed until the child's eligibility for Medicaid has been determined or presumptive waiver eligibility has been established. The child's waiver eligibility period may begin no earlier than the date of the guardian's signature on the consent form.</i></p> <p><i>Presumptive Waiver Eligibility: Waiver eligibility may be presumed for any potential waiver eligible child from whose guardian a signed Medicaid application has been received by Medicaid eligibility staff and when the guardian is willing to cooperate with its completion (e.g., is willing to provide all requested financial records; is willing to pay a spend down/shared cost, if required). The services coordinator shall contact the Medicaid eligibility staff to determine if it is likely the child will become Medicaid eligible prior to obtaining</i></p>		

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>the guardian's signature on the consent form. Notation must be made on the consent form indicating presumptive waiver eligibility until a final Medicaid eligibility decision has been made.</i></p> <p><i>The services coordinator shall have ongoing contact with the Medicaid eligibility staff until a final Medicaid eligibility decision has been made. If the child is determined not to be Medicaid eligible, the services coordinator shall provide written notice, effective immediately, to the child's guardian and also provide appropriate information and referral. Ten-day notice is not allowed. Services which may be presumptively authorized are waiver services and medical transportation. Presumptive authorization for ATS and home modifications is not allowed. Any authorized services shall result in the payment of the provider.</i></p> <p><b>**Title 480 Chapter 5)</b>  <b>5-003.02(B)(iii)</b>  MODIFICATION OF CONDITIONS. Any modification of the lease agreement conditions, as outlined in this chapter, must be supported by a specific assessed need and justified in the person-centered plan (PCP). The following requirements must be documented in the person-centered plan (PCP):</p> <ol style="list-style-type: none"> <li>(1) Identify a specific and individualized assessed need;</li> <li>(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan;</li> <li>(3) Document less intrusive methods of meeting the need that have been tried but did not work;</li> <li>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need;</li> <li>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification;</li> <li>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated; and</li> <li>(7) Include the informed consent of the individual.</li> </ol>		

Title 480 Chapter 5 has been updated and some items may have changed. Changes are noted with an asterisk.

**Attachment 3 – Systemic Assessment Summary – TBI Waiver**

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p><b>(4)(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b></p>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04</b> <i>Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:</i></p> <ol style="list-style-type: none"> <li><i>1. Be treated with dignity and provided care by competent staff;</i></li> <li><i>2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;</i></li> <li><i>3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident’s well-being;</i></li> <li><i>4. Be informed in writing of the pricing structure and/or rates of all facility services;</i></li> <li><i>5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></li> <li><i>6. Choose a personal attending physician;</i></li> <li><i>7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;</i></li> <li><i>8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;</i></li> <li><i>9. Refuse to perform services for the facility;</i></li> <li><i>10. Refuse to participate in activities;</i></li> <li><i>11. Privacy in written communication including sending and receiving mail;</i></li> <li><i>12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</i></li> <li><i>13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;</i></li> </ol>	<p><b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	<p><b>July 2019:</b> Legal sends regulations to Governor’s Policy Research Office. <b>October 2019:</b> Governor’s Policy Research Office completes review. Publish Public Notice for formal public hearing in December. <b>December 2019:</b> Public Hearing. Review and Incorporate Public Comments <b>September 2020:</b> Publish Public Notice for second formal public hearing. <b>November 2020:</b> Public Hearing. Review and Incorporate Public Comments. <b>December 2020:</b> Regulations sent to the Attorney</p>



Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>14. <i>Have the right to have a telephone in his/her room at the resident's expense;</i></p> <p>4-006.04A <i>Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:</i></p> <ol style="list-style-type: none"> <li>1. <i>A procedure on submission of grievances available to residents, employees and others;</i></li> <li>2. <i>Documentation of efforts to address grievances received from residents, employees and others; and</i></li> <li>3. <i>The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.</i></li> </ol> <p><b>4-006.08</b></p> <p><i>Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.</i></p> <p><b>**Title 480 Chapter 5**</b></p> <p>5-004.01</p> <p>INTEGRATION AND ACCESS. The setting must be integrated in and support full access of individuals receiving Medicaid Home and Community-Based Services (HCBS) to the greater community, including opportunities to seek employment and work in competitive integrated settings based on services offered or available under each Waiver, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services (HCBS).</p>		<p>General's Office for Approval</p> <p><b>March 2021:</b> Regulations sent to Governor's Policy Research Office for final approval.</p> <p><b>May 2021:</b> Regulations approved by the Governor, to take effect July 2021.</p>

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
(4)(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and 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.	<p><a href="#">Title 175 Chapter 4</a> Silent</p> <p><b>**Title 480 Chapter 5**</b> 5-004.02 PARTICIPANT CHOICE. The setting must be selected by the participant from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The settings options must be identified and documented in the personcentered service plan and be based on the individual's needs, preferences and, for residential settings, resources available for room and board.</p>	<p><b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	See above.
(4)(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.02 (8) and (9)</b> <i>Administration: Each assisted-living facility must have an administrator who is responsible for the overall operation of the facility. The administrator is responsible for planning, organizing, and directing the day to day operation of the assisted-living facility. The administrator must report all matters related to the maintenance, operation, and management of the assisted-living facility and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator must:</i></p>	<p><b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	See above.

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>8. <i>Develop and implement procedures that require the reporting of any evidence of abuse, neglect, or exploitation of any resident residing in the assisted-living facility in accordance with Neb. Rev. Stat. §§ 28-372 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. § 28-711;</i></p> <p>9. <i>Complete an investigation on suspected abuse, neglect, or misappropriation of money or property and take action to prevent reoccurrence until the investigation is completed;</i></p> <p><b>4-006.04</b>  <i>Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:</i></p> <ol style="list-style-type: none"> <li><i>1. Be treated with dignity and provided care by competent staff;</i></li> <li><i>2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;</i></li> <li><i>3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;</i></li> <li><i>4. Be informed in writing of the pricing structure and/or rates of all facility services;</i></li> <li><i>5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></li> <li><i>6. Choose a personal attending physician;</i></li> <li><i>7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;</i></li> <li><i>8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;</i></li> <li><i>9. Refuse to perform services for the facility;</i></li> <li><i>10. Refuse to participate in activities;</i></li> <li><i>11. Privacy in written communication including sending and receiving mail;</i></li> </ol>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</p> <p>13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;</p> <p>14. Have the right to have a telephone in his/her room at the resident's expense;</p> <p>15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;</p> <p>16. Share a room with a person of his or her choice upon consent of that person;</p> <p>17. Self-administer medications if it is safe to do so;</p> <p>18. Be free of chemical and physical restraints;</p> <p>19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;</p> <p>20. Form and participate in an organized resident group that functions to address facility issues;</p> <p>21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12; 22. Be free from abuse, neglect, and misappropriation of their money and personal property; and</p> <p>23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.</p> <p><b>4-006.11</b>  <i>Resident Care: Each assisted-living facility must provide residents care and services in accordance with their established resident service agreements which maximize the residents' dignity, autonomy, privacy and independence.</i></p>		

<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p>4-006.11A <i>Evidence that the facility is meeting each resident's needs for personal care, assistance with activities of daily living and health maintenance include the following outcomes for residents:</i></p> <p>4-06.11A1 <i>Physical well-being of the resident:</i></p> <ol style="list-style-type: none"> <li>1. <i>Clean and groomed hair, skin, teeth and nails;</i></li> <li>2. <i>Nourished and hydrated;</i></li> <li>3. <i>Free of pressure sores, skin breaks, chaps and chafing;</i></li> <li>4. <i>Appropriately dressed for the season in clean clothes;</i></li> <li>5. <i>Protected from accident, injury and infection; and</i></li> <li>6. <i>Receives prompt emergency care for the following but not limited to: illnesses, injuries, and life threatening situations.</i></li> </ol> <p>4-006.11A2 <i>Behavioral/emotional well-being of the resident:</i></p> <ol style="list-style-type: none"> <li>1. <i>Opportunity to participate in age appropriate activities that are meaningful to the resident, if desired;</i></li> <li>2. <i>Sense of security and safety;</i></li> <li>3. <i>Reasonable degree of contentment; and</i></li> <li>4. <i>Feeling of stable and predictable environment.</i></li> </ol> <p>4-006.11A3 <i>In agreement that the resident:</i></p> <ol style="list-style-type: none"> <li>1. <i>Is free to go to bed at the time desired;</i></li> <li>2. <i>Is free to get up in the morning at the time desired;</i></li> <li>3. <i>Is free to have visitors;</i></li> <li>4. <i>Has privacy;</i></li> <li>5. <i>Is free to self direct his/her own care and treatment and change their plan at any time;</i></li> <li>6. <i>Is assisted to maintain a level of self-care and independence;</i></li> <li>7. <i>Is assisted as needed to have good oral hygiene;</i></li> <li>8. <i>Has been made as comfortable as possible by the facility;</i></li> <li>9. <i>Is free to make choices and assumes the risk of those choices;</i></li> <li>10. <i>Is fully informed of the services he/she can expect to be provided by the facility;</i></li> <li>11. <i>Is free of abuse, neglect and exploitation;</i></li> <li>12. <i>Is treated with dignity; and</i></li> </ol>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>13. <i>Has the opportunity to participate in activities, if desired.</i></p> <p>4-006.11B <i>Health Maintenance Activities: All health maintenance activities must be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.</i> 4-006.11C <i>Other Supportive Services: A assisted-living facility may provide other supportive services to assist residents. These services could include, but are not limited to: transportation, laundry, housekeeping, financial assistance/management, behavioral management, case management, shopping, beauty/barber and spiritual services.</i></p> <p>4-006.11D <i>Special Populations Services: Each assisted-living facility that provides services to special populations such as, but not limited to, those individuals with disabilities, mental impairments, dementia, or other disorders must:</i></p> <ol style="list-style-type: none"> <li>1. <i>Evaluate each resident to identify the abilities and special needs;</i></li> <li>2. <i>Ensure the administrator and staff assigned to provide care are trained to meet the special needs of those residents. Such training must be done by a person(s) qualified by experience and knowledge in the area of special services being provided;</i></li> <li>3. <i>Prepare and implement each resident service agreement to address the special needs; and</i></li> <li>4. <i>Provide a physical environment that maintains the safety and dignity of residents and accommodates residents' special needs, such as physical limitations, and visual and cognitive impairments.</i></li> </ol> <p><b>4-006.11E</b>  <i>Requirements for Facilities or Special Care Units for Persons with Alzheimer's Disease, Dementia or a Related Disorder: Each assisted-living facility or special care unit that specializes in providing care for persons who have Alzheimer's disease, dementia or a related disorder must meet the following requirements:</i></p> <ol style="list-style-type: none"> <li>1. <i>Care and services must be provided in accordance with the resident service agreement and the stated mission and philosophy of the facility.</i></li> </ol>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>2. Prior to admission, the facility must inform the resident or authorized representative in writing of the facility's criteria for admission, discharge, transfer, resident conduct and responsibilities.</p> <p>3. The facility or unit must maintain a sufficient number of direct care staff with the required training and skills necessary to meet the resident population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other supportive services. Such staff must remain awake, fully dressed and be available in the facility or unit at all times to provide supervision and care to the residents.</p> <p>4. The administrator and direct care staff must be trained in: a. The facility or unit's philosophy and approaches to providing care and supervision for persons with Alzheimer's disease; b. The Alzheimer's disease process; and c. The skills necessary to care for, and intervene and direct residents who are unable to perform activities of daily living, personal care, or health maintenance and who may exemplify behavior problems or wandering tendencies.</p> <p>5. The facility must not admit or retain residents if any one of the following conditions exists, unless the criteria in 4-006.07B are met: a. The resident poses a danger to self or to others; or b. The resident requires complex nursing interventions.</p> <p><b>**Title 480 Chapter 2**</b> 2-004.03 PARTICIPANT RIGHT TO PRIVACY. The setting must ensure a participant's rights of privacy, dignity, respect, and freedom from coercion and restraint.</p>		
(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04</b></p>	<b>Title 480</b> Implement new HCBS administration	See above.

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p><b>independence in making life choices, included, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><i>Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:</i></p> <ol style="list-style-type: none"> <li><i>1. Be treated with dignity and provided care by competent staff;</i></li> <li><i>2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;</i></li> <li><i>3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;</i></li> <li><i>4. Be informed in writing of the pricing structure and/or rates of all facility services;</i></li> <li><i>5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></li> <li><i>6. Choose a personal attending physician;</i></li> <li><i>7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;</i></li> <li><i>8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;</i></li> <li><i>9. Refuse to perform services for the facility;</i></li> <li><i>10. Refuse to participate in activities;</i></li> <li><i>11. Privacy in written communication including sending and receiving mail;</i></li> <li><i>12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</i></li> <li><i>13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;</i></li> <li><i>14. Have the right to have a telephone in his/her room at the resident's expense;</i></li> <li><i>15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;</i></li> </ol>	<p>rule that describes the characteristics required of all settings in which HCBS is provided.</p>	



Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p>16. Share a room with a person of his or her choice upon consent of that person;</p> <p>17. Self-administer medications if it is safe to do so;</p> <p>18. Be free of chemical and physical restraints;</p> <p>19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;</p> <p>20. Form and participate in an organized resident group that functions to address facility issues;</p> <p>21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12;</p> <p>22. Be free from abuse, neglect, and misappropriation of their money and personal property; and</p> <p>23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff. Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:</p> <ol style="list-style-type: none"> <li>1. A procedure on submission of grievances available to residents, employees and others;</li> <li>2. Documentation of efforts to address grievances received from residents, employees and others; and</li> <li>3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.</li> </ol> <p><b>4-006.08</b>  <i>Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.</i></p>		

Standards Applicable to All HCBS Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><b>**Title 480 Chapter 2**</b>            2-004.04            PARTICIPANT INDEPENDENCE. Each participant must have the opportunity to optimize individual initiative, autonomy, and independence. The setting must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and interactions with individuals of the participant's choice.</p>		
<p><b>(4)(v) Facilitates individual choice regarding services and supports, and who provides them.</b></p>	<p><a href="#">Title 175 Chapter 4</a>            Silent</p> <p>Title 480 Chapter 2            2-004.05            FACILITATION OF CHOICE. The setting must facilitate individual choice regarding services and supports, and who provides them.</p>	<p><b>Title 480</b>            Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.</p>	<p>See above.</p>

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p><b>(4)(vi)(A) The unit or dwelling is a specific physical space that can be owned, rented, or occupied under a legally-enforceable agreement by the</b></p>	<p><a href="#">§76-1401 et. Seq. (Uniform Residential Landlord Tenant Act)</a>            Compliant</p> <p><a href="#">§71-406</a> (Assisted Living Facility, defined)            Compliant</p>	<p><b>Title 480</b>            Implement new HCBS administration rule that describes the</p>	<p>See above.</p>

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p>individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS individual, and that that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04 (23)</b> <i>23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.</i></p> <p>**Title 480 Chapter 5 5-003.02 (B)(ii) RESIDENT SERVICE AGREEMENT (RSA). The assisted living (AL) provider must have a Resident Service Agreement (RSA) for each participant, which must include, at a minimum: (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (a) The lease agreement must be consented to by both the individual and the assisted living provider; (b) The lease agreement must, at a minimum, comply with assisted living facility licensure requirements in 175 NAC 4-000, including eviction protections; (c) Unless otherwise specified in the individual service plan, a statement that the individual: (i) Has a right to select their roommate; (ii) Has a right to privacy and security including a means to access to their own living unit; (iii) Has a right to decorate their living unit; (iv) Has a right to have visitors of their choosing at any time; (v) Has the freedom and support to control their own schedule and activities; and (vi) Has a right to access food at any time. (d) Each provider owned and operated setting must be physically</p>	<p>characteristics required of all settings in which HCBS is provided.</p>	

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	accessible to the individual		
<b>(4)(vi)(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</b>	<p><a href="#">Title 175 Chapter 4</a> Silent</p> <p><b>**Title 480 Chapter 4**</b> 4-003.02(A)(vi) (vi) The assisted living (AL) provider must provide privacy in the unit including lockable doors, and access by the participant to the facility and to the individual apartment;</p> <p><b>**Title 480 Chapter 5**</b> 5-003.02(B)(ii)(c)(ii) Has a right to privacy and security including a means to access to their own living unit;</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
<b>(2) Individuals sharing units have a choice of roommates in that setting.</b>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04(16)</b> <i>Share a room with a person of his or her choice upon consent of that person;</i></p> <p><b>**Title 480 Chapter 4**</b> 4-003.02(A)(vi) The assisted living (AL) provider must provide privacy in the unit including lockable doors, and access by the participant to the facility and to the individual apartment;</p> <p><b>**Title 480 Chapter 5**</b> 5-003.02(B)(ii)(1)(c)(i) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (i) Has a right to select their roommate;</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<b>(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</b>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04(15)</b> <i>15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;</i></p> <p><b>**Title 480 Chapter 5**</b> 5-003.02 (B) (ii)(1)(c)(iii) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (iii)Has a right to decorate their living unit;</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
<b>(4)(vi)(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</b>	<p><a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.04(5)</b> <i>5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;</i></p> <p><b>4-006.04(10)</b> <i>10. Refuse to participate in activities;</i></p> <p>Title 480 Chapter 5 5- 003.02(B)(ii)(1)(v) (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements: (v)Has the freedom and support to control their own schedule and activities; and</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.
<b>(4)(vi)(D) Individuals are able to have</b>	<p><a href="#">Title 175 Chapter 4</a> Compliant:</p>	<b>Title 480</b>	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<b>visitors of their choosing at any time.</b>	<p><b>4-006.04(12)</b>  <i>12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;</i></p> <p>Title 480 Chapter 5            5-003.02(B)(ii)(1)(iv)            (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following requirements:            (iv) Has a right to have visitors of their choosing at any time;</p>	Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	
<b>(4)(vi)(E) The setting is physically accessible to the individual.</b>	<p><a href="#">Title 175 Chapter 4</a>            Compliant:  <b>4-007.03A1(6)</b>  <i>New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:</i>  <i>6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12</i></p> <p>**Title 480 Chapter 4**            4-002.05 (D)            PROVIDER OWNED AND OPERATED SETTINGS. If services are provided in a provider owned and operated setting, the provider must comply with the following requirements. Failure to meet these standards will be grounds for termination or denial of a Medicaid provider agreement.            (D) Ensure that the home or facility is accessible to the participant, clean, in good repair, free from hazards, and free of rodents and insects;</p> <p>**Title 480 Chapter 5**            5-003.02(B)(ii)(1)(d)            (1) LEASE AGREEMENT. The assisted living (AL) provider and the participant must enter into an agreement which incorporates the following</p>	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	requirements: (d) Each provider owned and operated setting must be physically accessible to the individual.		
(vi)(F) Any modification of the additional conditions under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan. (3) Document less intrusive methods	<a href="#">Title 175 Chapter 4</a> Compliant: <b>4-006.06</b> <i>Resident Service Agreements: The assisted-living facility must evaluate each resident and must have a written service agreement negotiated with the resident and authorized representative, if applicable, to delineate the services to be provided to meet the needs identified in the evaluation.</i> <i>4-006.06A The agreement must contain the following basic components:</i> <i>1. Services to be provided by the assisted-living facility and from other sources, how often and when the services are provided and by whom, to meet the needs of individuals including those for special populations as specified in 175 NAC 4-006.11E. Such services must not exceed those which are defined in these regulations as shelter, food, activities of daily living, personal care, health maintenance, other supportive services or those which involve complex nursing interventions that are allowed by 175 NAC 4-006.07B;</i> <i>2. Rights and responsibilities of the facility and of the resident;</i> <i>3. Costs of services and terms of payment; and</i> <i>4. Terms and conditions of continued residency.</i> <i>4-006.06B The Resident Service Agreement must be reviewed and updated as the resident's needs change.</i>  <i>**Title 480 Chapter 5)</i> <i>5-003.02(B)(iii)</i> MODIFICATION OF CONDITIONS. Any modification of the lease agreement conditions, as outlined in this chapter, must be supported by a specific assessed need and justified in the person-centered plan (PCP). The following requirements must be documented in the person-centered plan (PCP): (1) Identify a specific and individualized assessed need;	<b>Title 480</b> Implement new HCBS administration rule that describes the characteristics required of all settings in which HCBS is provided.	See above.

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<p><b>for meeting the need that have been tried but did not work.</b></p> <p><b>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</b></p> <p><b>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</b></p> <p><b>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</b></p> <p><b>(7) Include informed consent of the individual.</b></p> <p><b>Include an assurance that interventions and supports will cause</b></p>	<p>(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan;</p> <p>(3) Document less intrusive methods of meeting the need that have been tried but did not work;</p> <p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need;</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification;</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated; and</p> <p>(7) Include the informed consent of the individual.</p>		



<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
<b>no harm to the individual.</b>			

**Attachment 4 – Systemic Assessment Summary – DD Waivers**

Standards Applicable to All HCBS Settings			
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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
<p><b>(4)(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</b></p>	<p><a href="#">Title 404 Chapter 4</a> Compliant</p> <p><b>4-005.01</b>  <i>Habilitation: Each individual receiving services must receive habilitation services to acquire, retain, and improve the skills necessary so the individual is able to function with as much independence as possible; enhance choice and self-management; and participate in the rights and responsibilities of community membership. Habilitation must be observable in daily practice and identifiable in the IPP and supporting documentation. Habilitation must be an ongoing planned process that includes: comprehensive assessments, an individualized plan, training and supports, service delivery, documentation of the service delivery, measuring progress of the plan; monitoring the service to determine if the services continue to meet the needs of the individual.</i>  <i>Habilitation requires that:</i>                      1. <i>The individual’s program plan is developed based on the individual’s preferences with input from the IPP team members, and strengths and needs that are accurately assessed.</i>                      2. <i>The IPP team must prioritize needs so that:</i>                      a. <i>The individual is challenged to overcome barriers that result in the need for specialized services; and</i>                      b. <i>The highest level of independence in all areas of community living is achieved.</i>                      3. <i>Strategies and supports must be developed that are:</i>                      a. <i>Based on prioritized needs;</i>                      b. <i>Relevant to the IPP;</i>                      c. <i>Functional;</i>                      d. <i>Tailored to individual needs, and respectful of individual choice; and</i>                      e. <i>Documented in the IPP.</i></p>	<p>Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.</p>	<p><b>Title 403:</b>  <b>January 31, 2017:</b>                      Finalize regulations for internal review  <b>February 1, 2017:</b>                      Post to website and send draft regulations to stakeholders for input for to public hearing  <b>February 15, 2017:</b>                      Incorporate and feedback and begin editing draft regulations with DHHS Legal staff.  <b>June 21, 2017:</b>                      Concluded meetings with Provider stakeholders to review draft regulations.  <b>June 30, 2017:</b>                      Sent draft regulations to DHHS Legal for final review.</p>

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

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	<p><i>and supports that temporarily transfers some of the control of handling the individual's financial resources to the provider.</i></p> <p><b>4-005.05B1</b>  <i>The transfer of control of an individual's financial resources:</i></p> <ol style="list-style-type: none"> <li><i>1. Must not be for a convenience of staff, or as a substitute for habilitation;</i></li> <li><i>2. Must be temporary;</i></li> <li><i>3. Must be based on the choice of the individual and the extent to which the individual can participate;</i></li> <li><i>4. Must not be transferred to another entity and the individual must not be charged for the service.</i></li> </ol> <p><b>4-005.05C</b>  <i>The individual's IPP team must determine and document in the IPP the following regarding the temporary transfer of control of an individual's finances to the provider:</i></p> <ol style="list-style-type: none"> <li><i>1. The extent in which the individual can participate in management of his/her financial resources;</i></li> <li><i>2. The individual's informed choice;</i></li> <li><i>3. The rationale for the transfer of control;</i></li> <li><i>4. The support plan that leads to returning control of the finances to the individual; and</i></li> <li><i>5. The frequency in which the IPP team will review the temporary transfer of control and support plan, but at least annually.</i></li> </ol> <p><b>4-005.05D</b>  <i>Provider Management of Individuals' Finances: When the provider is responsible for handling individuals' funds:</i></p> <ol style="list-style-type: none"> <li><i>1. The provider must maintain a financial record for each individual that includes:</i> <ol style="list-style-type: none"> <li><i>a. Documentation of all cash funds, savings, and checking accounts, deposits, and withdrawals; and</i></li> </ol> </li> </ol>		<p>required substantial changes, so a second public hearing was required</p> <p><b>April 6, 2018:</b>  Publish Public Notice for formal public hearing in May</p> <p><b>May 17, 2018:</b>  Public Hearing</p> <p><b>May 25, 2018:</b>  Final Incorporation of public comments</p> <p><b>May 25, 2018:</b>  Regulations sent to Attorney General's Office for approval</p> <p><b>June 8, 2018:</b>  Regulations sent to Governors Policy Research Office for final approval</p> <p><b>June 25, 2018:</b>  Regulations approved by Governor to be effective July 10, 2018.</p>

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

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

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	<p><a href="#">Title 404 Chapter 6</a> Compliant</p> <p><b>6-001.02</b> <i>Day and residential services in this chapter are provided at various integrated community settings that are operated or controlled by a certified provider or the provider's employee or subcontractor or any entity owned or controlled by the provider. This is regardless of who owns or leases the property.</i></p> <p><b>6-002</b> <i>Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:</i></p> <ol style="list-style-type: none"> <li>1. Individuals are free from abuse, neglect, mistreatment, and exploitation;</li> <li>2. Health, safety, and well-being of the individual is a priority;</li> <li>3. Individuals are treated with consideration, respect, and dignity;</li> <li>4. Individuals' preferences, interests, and goals are honored;</li> <li>5. Individuals have daily opportunities to make choices and participate in decision making;</li> <li>6. Activities are meaningful and functional for each individual;</li> <li>7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;</li> <li>8. Individuals live in a manner that is most inclusive;</li> <li>9. Individuals experience being part of the community; and</li> <li>10. Individuals are able to express their wishes, desires, and needs.</li> </ol> <p><b>6-003</b> <i>RESIDENTIAL AND DAY SERVICES: Residential and Day services offer habilitation, including services and supports and supervision as needed, designed to assist the individual in acquisition, improvement, and retention</i></p>		

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

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



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<p>private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p>	<p>1. <i>Individual's choice;</i>  2. <i>Individual's rights in accordance with state and federal laws;</i></p> <p><b>4-005</b>  <i>SPECIALIZED PROVIDER SERVICE STANDARDS: The provider must ensure that all individuals receive habilitation, supports, health care, and other services consistent with the needs and preferences of the individual.</i></p> <p><b>4-005.01</b>  <i>Habilitation: Each individual receiving services must receive habilitation services to acquire, retain, and improve the skills necessary so the individual is able to function with as much independence as possible; enhance choice and self-management; and participate in the rights and responsibilities of community membership. Habilitation must be observable in daily practice and identifiable in the IPP and supporting documentation. Habilitation must be an ongoing planned process that includes: comprehensive assessments, an individualized plan, training and supports, service delivery, documentation of the service delivery, measuring progress of the plan; monitoring the service to determine if the services continue to meet the needs of the individual.</i>  <i>Habilitation requires that:</i>  1. <i>The individual's program plan is developed based on the individual's preferences with input from the IPP team members, and strengths and needs that are accurately assessed.</i>  2. <i>The IPP team must prioritize needs so that:</i>  a. <i>The individual is challenged to overcome barriers that result in the need for specialized services; and</i>  b. <i>The highest level of independence in all areas of community living is achieved.</i>  3. <i>Strategies and supports must be developed that are:</i>  a. <i>Based on prioritized needs;</i>  b. <i>Relevant to the IPP;</i>  c. <i>Functional;</i></p>	<p>specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.</p>	

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

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

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	<p><i>positive approaches directed towards maximizing the growth and development of each individual. The provider must ensure the following behavior supports and emergency safety interventions for emergency safety situations are in place:</i></p> <ol style="list-style-type: none"> <li><i>1. The assessment must attempt to define the communicative function of the behavior for the individual;</i></li> <li><i>2. The assessment must focus on what purpose the identified behavior serves in the individual's life;</i></li> <li><i>3. A review of the individual's day supports, residential supports, and other relevant data must be incorporated in the assessment process;</i></li> <li><i>4. A plan for the individual must be developed that emphasizes positive meaningful activities and options that are inconsistent with the behavior targeted for change;</i></li> <li><i>5. There must be a combination of a planned meaningful day and individualized supports for the individual;</i></li> <li><i>6. The plan must include a description of potential stressors and triggers that may lead to the individual experiencing a crisis. Once identified, there must be a comprehensive safety plan developed and implemented; and</i></li> <li><i>7. There must be meaningful and individualized data collection and data analysis that track the progress of the individual. The data must be presented in a useful manner and collected through a range of methods that are valid and meaningful for planning and evaluation efforts.</i></li> </ol> <p><b>4-005.03A</b>  <i>The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.03 or any of its parts.</i></p> <p><b>5-002</b>  <u>PURPOSE:</u> <i>There are two major types of supports that fall under this Individual Support Options: Supported Living (SL) and Supported Day (SD).</i></p> <p><b>5-002.01</b>  <i>Individual Support Options means that services can be provided for as long as 24 hours a day and can include both continuous and intermittent</i></p>		

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	<p><i>supports. There must be flexibility of services that change, as the person's needs change, without the individual having to move elsewhere for services. These services must:</i></p> <ol style="list-style-type: none"> <li><i>1. Be person centered;</i></li> <li><i>2. Demonstrate that the individual is in charge of his/her services and supports;</i></li> <li><i>3. Promote the freedom for an individual to live a meaningful life and participate as a member of the community as any other citizen;</i></li> <li><i>4. Promote the individual's rights and autonomy;</i></li> <li><i>5. Promote the use of generic services, natural supports, and options;</i></li> <li><i>6. Assist the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in his/her residence and as a member of the larger community; and</i></li> <li><i>7. Promote well planned and proactive opportunities for the individual and his/her family to determine the type and amount of support desired with meaningful direction from the individual, the individual's family or guardian (where appropriate) and the proposed or current provider (as appropriate and desired).</i></li> </ol> <p><b>5-002.02</b> Individual Support Options includes the provision of the following:</p> <ol style="list-style-type: none"> <li><i>1. Habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual(s) receiving services;</i></li> <li><i>2. A combination of lifelong or extended duration support, training, and other services essential to daily living; and</i></li> <li><i>3. Protective oversight to do, to whatever degree necessary, what is required to ensure that basic health and safety are always provided and readily available.</i></li> </ol> <p><b>5-002.03</b> <u>Supported Living:</u> <i>Supported Living is defined as supports provided in the community for an individual eligible for developmental disability services, with no more than two other individuals with developmental disabilities in a</i></p>		

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

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

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



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

<b>Standards Applicable to All HCBS Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><b>6-002</b>  <i>Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:</i></p> <ol style="list-style-type: none"> <li><i>1. Individuals are free from abuse, neglect, mistreatment, and exploitation;</i></li> <li><i>2. Health, safety, and well-being of the individual is a priority;</i></li> <li><i>3. Individuals are treated with consideration, respect, and dignity;</i></li> <li><i>4. Individuals' preferences, interests, and goals are honored;</i></li> <li><i>5. Individuals have daily opportunities to make choices and participate in decision making;</i></li> <li><i>6. Activities are meaningful and functional for each individual</i></li> <li><i>7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;</i></li> <li><i>8. Individuals live in a manner that is most inclusive;</i></li> <li><i>9. Individuals experience being part of the community; and</i></li> <li><i>10. Individuals are able to express their wishes, desires, and needs.</i></li> </ol> <p><b>6-006</b>  <i>RESTRAINTS: The use of mechanical restraints is prohibited. If the provider agrees to serve an individual under 404 NAC 6 who has a physical restraint program in place at the time of the enactment of these regulations, then a program must be implemented within 180 days of enactment of these regulations which eliminates the use of such restraints. The use of physical restraints will be prohibited one year from the enactment of these regulations.</i></p> <p><i>An emergency safety intervention utilized pursuant to a safety plan is allowed to respond to an emergency safety situation. This is different than physical restraint because it is not used as a behavioral consequence. In instances where the individual must be kept from harm (i.e., running into traffic, leaving a moving car or other serious, unusual or life-threatening actions by the individual), the provider must use their reasonable and best judgment to intervene to keep the individual from injuring him/herself or</i></p>		

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	<p><i>others. This may include hands-on guidance to safely protect the individuals and others from immediate jeopardy or physical harm. These situations are not predictable, are unusual, and are usually not reoccurring. In any instances other than these, there must be a positive behavioral supports program in place to work with the individual on alternative positive displays of behavior that are incompatible with other negative behaviors.</i></p> <p><i>All such incidents must be documented and reviewed by the individual's IPP team and rights review committee to ensure that the emergency safety intervention was appropriate rather than an instance of mechanical or physical restraint.</i></p> <p><b>5-003.02D</b>  <i>Restraints are prohibited, but an emergency safety intervention can be used in a situation where the individual is in danger of immediate jeopardy or harm. If there are disruptive or challenging behaviors displayed by an individual, then a safety and support plan must be developed utilizing the principles of positive behavioral supports (see 404 NAC 4-005.03).</i></p>		
<p><b>(4)(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, included, but not limited to, daily activities, physical environment, and with whom to interact.</b></p>	<p><a href="#">Title 404 Chapter 5</a> Compliant</p> <p><b>5-002.01</b>  <i>Individual Support Options means that services can be provided for as long as 24 hours a day and can include both continuous and intermittent supports. There must be flexibility of services that change, as the person's needs change, without the individual having to move elsewhere for services. These services must:</i></p> <ol style="list-style-type: none"> <li><i>1. Be person centered;</i></li> <li><i>2. Demonstrate that the individual is in charge of his/her services and supports;</i></li> <li><i>3. Promote the freedom for an individual to live a meaningful life and</i></li> </ol>	<p>Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS</p>	<p>See above.</p>

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

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Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
and supports, and who provides them.	<p><b>4-004.04A</b>  <i>Initial Orientation Requirements: Initial orientation must be completed by all new employees prior to working alone with individuals. Employees must complete the following training requirements:</i></p> <ol style="list-style-type: none"> <li>1. Individual's choice;</li> <li>2. Individual's rights in accordance with state and federal laws;</li> <li>3. Confidentiality;</li> <li>4. Dignity and respectful interactions with individuals; and</li> <li>5. Abuse, neglect, and exploitation and state law reporting requirements and prevention.</li> </ol> <p><a href="#">Title 404 Chapter 6</a>  Compliant</p> <p><b>6-002</b>  <i>Inherent throughout all of the services and supports offered under this chapter, the provider must ensure:</i></p> <ol style="list-style-type: none"> <li>1. Individuals are free from abuse, neglect, mistreatment, and exploitation;</li> <li>2. Health, safety, and well-being of the individual is a priority;</li> <li>3. Individuals are treated with consideration, respect, and dignity;</li> <li>4. Individuals' preferences, interests, and goals are honored;</li> <li>5. Individuals have daily opportunities to make choices and participate in decision making;</li> <li>6. Activities are meaningful and functional for each individual;</li> <li>7. Services are directed towards maximizing the growth and development of each individual for maximum community participation and citizenship;</li> <li>8. Individuals live in a manner that is most inclusive;</li> <li>9. Individuals experience being part of the community; and</li> <li>10. Individuals are able to express their wishes, desires, and needs.</li> </ol>	language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	

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(4)(vi)(A) The unit or dwelling is a specific physical space that can be owned, rented, or occupied under a legally-enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS individual, and that the document provides protections that address eviction processes and	<p><a href="#">Title 404 Chapter 5</a> Compliant</p> <p><b>5-002.03</b> <i>Supported Living: Supported Living is defined as supports provided in the community for an individual eligible for developmental disability services, with no more than two other individuals with developmental disabilities in a residence that it is under the control and direction of the individual(s). The residence must be in a community integrated setting. Supported Living means that the individual(s) have control and choice over where and with whom they live. Providers may suggest potential roommates for individuals, but the recommendation must not be based on diagnosis alone but by the individuals' preferences and compatibility. The number of individuals with developmental disabilities alone does not define Supported Living. Supported Living is an option that can be considered by the individual receiving support and offered by providers as an option in their menu of services. If an individual chooses Supported Living, or if the provider chooses to offer Supported Living as a service option, the requirements of this chapter must be met for this option to be exercised. Supported Living options are for a maximum of three individuals with developmental disabilities (not including staff) who choose to live together in this type of arrangement. The provider of specialized DD services must be able to document that the individual(s) chose the supported living residence and that the lease or mortgage is under the control of the individual(s). The owner or lessee of the property must be unrelated, directly or indirectly, to the provider of specialized services.</i></p> <p><a href="#">Title 404 Chapter 5</a> Non-compliant</p> <p><b>5-002.03A</b></p>	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.

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

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	<p>Compliant</p> <p><b>§71-408</b>  <i>Center or group home for the developmentally disabled, defined.</i>  <i>Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.</i></p> <p><a href="#">Nebraska Revised Statute 76-1401</a>  Compliant</p> <p><b>§76-1401 et seq.</b>  <i>Sections <a href="#">76-1401</a> to <a href="#">76-1449</a> shall be known and may be cited as the Uniform Residential Landlord and Tenant Act</i></p> <p><a href="#">Nebraska revised Statute 76-1402</a>  Compliant</p> <p><b>§76-1402</b>  <i>Purposes; rules of construction.</i>  <i>(1) The Uniform Residential Landlord and Tenant Act shall be liberally construed and applied to promote its underlying purposes and policies.</i>  <i>(2) Underlying purposes and policies of the act are:</i>  <i>(a) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;</i>  <i>(b) To encourage landlord and tenant to maintain and improve the quality of housing; and</i>  <i>(c) To make uniform the law among those states which enact it.</i></p> <p><a href="#">Nebraska revised Statute 76-1408</a></p>		



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

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

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

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

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

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
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		Title 403 Regulations – HCBS Administration Section, once promulgated.	
<b>(4)(vi)(D) Individuals are able to have visitors of their choosing at any time.</b>	<a href="#">Title 404 (Complete)</a>  Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and Title 403 Regulations – HCBS Administration Section, once promulgated.	See Above.
<b>(4)(vi)(E) The setting is physically accessible to the individual.</b>	<a href="#">Title 404 (Complete)</a>  Silent	Although current regulatory language is technically compliant with the Final Rule, specific Final rule language will be included in Title 404 and	See Above.

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

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



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

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Regulation §441.301</b>	<b>Areas of Compliance, Non-Compliance or Silence</b>	<b>Remediation</b>	<b>Action Steps and Timeline</b>
	<p><i>The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.02 or any of its parts.</i></p> <p><b>4-005.03</b></p> <p><i>Positive Behavioral Supports: In addressing behaviors, the provider must develop and implement policies, procedures, and practices that emphasize positive approaches directed towards maximizing the growth and development of each individual. The provider must ensure the following behavior supports and emergency safety interventions for emergency safety situations are in place:</i></p> <ol style="list-style-type: none"> <li><i>1. The assessment must attempt to define the communicative function of the behavior for the individual;</i></li> <li><i>2. The assessment must focus on what purpose the identified behavior serves in the individual's life;</i></li> <li><i>3. A review of the individual's day supports, residential supports, and other relevant data must be incorporated in the assessment process;</i></li> <li><i>4. A plan for the individual must be developed that emphasizes positive meaningful activities and options that are inconsistent with the behavior targeted for change;</i></li> <li><i>5. There must be a combination of a planned meaningful day and individualized supports for the individual;</i></li> <li><i>6. The plan must include a description of potential stressors and triggers that may lead to the individual experiencing a crisis. Once identified, there must be a comprehensive safety plan developed and implemented; and</i></li> <li><i>7. There must be meaningful and individualized data collection and data analysis that track the progress of the individual. The data must be presented in a useful manner and collected through a range of methods that are valid and meaningful for planning and evaluation efforts.</i></li> </ol> <p><b>4-005.03A</b></p> <p><i>The Department will not authorize an alternative compliance procedure for 404 NAC 4-005.03 or any of its parts.</i></p> <p><a href="#">Title 404 Chapter 5</a></p>		

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

Additional Standards Applicable to Provider-Owned or Controlled Settings			
A	B	C	D
Regulation §441.301	Areas of Compliance, Non-Compliance or Silence	Remediation	Action Steps and Timeline
	<p><i>supports plan. There must be evidence that a less restrictive and more positive technique had been systematically tried and shown to be ineffective. No positive behavioral supports plan is required when an individual is prescribed a medication that has the effect of behavior modification, but is prescribed for other reasons, as documented by a physician. All psychotropic medications must be reviewed by the rights review committee as outlined in 404 NAC 4-011. There must be an annual review by the prescribing physician and a semi-annual review by the IPP team of all psychotropic medications utilized. There must be clear and convincing evidence that the individual has a person-centered plan demonstrated by data and outcome measures.</i></p> <p><a href="#">Title 404 Chapter 6</a> Compliant</p> <p><b>6-004.01</b> <i>Restrictive Measures: To the fullest extent possible, an individual's rights may not be suspended or restricted. In the event where a restrictive measure is considered:</i></p> <ol style="list-style-type: none"> <li><i>1. The restrictive measure determined necessary for one individual must not affect other individuals who receive services in that setting;</i></li> <li><i>2. The restrictive measure must not be used as punishment, for the convenience of staff, due to shortage of staff, as a substitute for habilitation, or as an element of a positive behavior support plan;</i></li> <li><i>3. The restrictive measure must be the least restrictive and intrusive possible;</i></li> <li><i>4. There must be a goal of reducing and eliminating the restrictive measure;</i></li> <li><i>5. Prior to proposing a restrictive measure, there must be documented evidence that other less restrictive methods had been regularly applied by trained staff and failed; and</i></li> <li><i>6. The individual or their legal representative, if applicable, must give consent to the restrictive measure;</i></li> <li><i>7. The restrictive measure must be safe for the individual; and</i></li> </ol>		

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

<b>Additional Standards Applicable to Provider-Owned or Controlled Settings</b>			
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	<p><b>6-006.01</b>  <i>Prohibited Methods: The provider must prohibit the use of mechanical or physical restraints (except as noted above), aversive stimuli, corporal punishment, seclusion, verbal abuse, physical abuse, emotional abuse, denial of basic needs, discipline, or implementation of an intervention of an individual in services by another individual in services, or other means of intervention with the behavior that result in, or is likely to result in injury to the individual.</i></p>		

**Attachment 5 - Work Plan for Settings Compliance**

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

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



Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Conduct self-assessments for DDD Group Homes and Extended Family Homes	DDD	February 2017-December 2017	DDD Staff	100% of Group Homes and Extended Family Homes completed self-assessments.
Developed MLTC non-residential self-assessment tool.	MLTC	January 2018	MLTC Staff	Assessment tool was developed based upon federal requirements.
Conduct on-site assessments of 100% of non-residential settings	DDD	February 2018-December 2018	DDD Staff	100% of non-residential settings were assessed on-site
Train assessors for additional non-residential settings identified	A&D	March 2018	MLTC	Resource Developers trained on HCB settings final rule process for enrolling a new provider.
Conduct on-site assessments of 100% of Group Homes and Centers for the Developmentally Disabled	DDD	May 2018-December 2018	DDD Staff	100% of Group Homes and Centers for the Developmentally disabled were assessed on-site.
Conduct on-site assessments for a sample of the Extended Family Homes	DDD	September 2018-December 2018	DDD Staff	252 Extended Family Homes were assessed on-site.
Conduct second round of non-residential settings and submit results to MLTC	A&D	January 2018 – March 2019	MLTC	Complete review and verification of non-residential settings
<b>Bringing Settings Into Compliance</b>				
Make available technical assistance for providers regarding settings requirements	All	September 2014-March 2023	MLTC and DDD staff	Forums and meetings scheduled; technical assistance resources and links posted on website
Provide instructions to providers regarding actions needed to be in compliance with Final Rule requirements.	All	June 2017	MLTC and DDD staff	Instructions developed and distributed to providers.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Provide guidance regarding lease requirements for waiver individuals living in provider-owned or controlled residential settings	DDD	December 2016	DDD staff	Guidance regarding lease agreements included on website.
Review initial provider-level remediation plans.	All	May 2019	Providers categorized as “not yet meeting HCBS characteristics but may be with modifications” to submit plans to MLTC or DDD	Provider-level remediation plans received from applicable providers and accepted by MLTC or DDD or a revised plan is requested.
Accept provider-level remediation plans	All	December 2019	MLTC and DDD staff	Provider-level remediation plans are accepted.
Continue progress with/monitor provider level remediation plans	All	July 2017-October 2022	Providers/MLTC and DDD staff	Providers make progress toward compliance in identified areas and MLTC and DDD monitor progress.
<b>Process for Heightened Scrutiny</b>				
Identify the state’s approach to heightened scrutiny and individuals to be involved in reviewing heightened scrutiny settings information.	All	October 2016	MLTC and DDD directors	Process and persons to be involved in reviewing heightened scrutiny settings information are identified.
Make available technical assistance for providers in the presumed institutional category regarding evidence packages	All	March 2017-March 2023	MLTC and DDD staff	Notice of technical assistance mailed and resources posted on website.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Initiate additional heightened scrutiny assessment activities per the determined approach.	All	March 2017-December 2019	MLTC and DDD staff or designee; Providers categorized as “presumed institutional” to submit evidence packages to MLTC and DDD	Heightened scrutiny activities are initiated.
Review information gathered as a result of additional assessment activities for settings requiring heightened scrutiny. Identify settings to be submitted to CMS and initiate public input process.	All	March 2017-March 2022	MLTC and DDD staff	Settings to be submitted for heightened scrutiny are identified and public input process for heightened scrutiny is initiated.
Conduct public input activities for settings requiring heightened scrutiny which will be submitted to CMS.	All	July 2021-May 2022	MLTC and DDD staff	Public provides input regarding settings and determination to submit settings for heightened scrutiny.
Submit heightened scrutiny settings to CMS.	All	June 2022	MLTC and DDD staff	MLTC and DDD provide names of settings to CMS.
Submit heightened scrutiny evidence packages to CMS as requested.	All	October 2021-July 2022	MLTC and DDD staff	MLTC and DDD provide evidence including public input.
<b>Monitoring and Verification</b>				
Identify performance metrics and data sources that demonstrate level of compliance with regulation requirements, for example, individual experience survey, quality improvement data	All	December 2015-December 2016	MLTC and DDD staff	Identify data sources in updated State Transition Plan.
Implement selected participant experience survey	DDD	May 2016	DDD staff	Staff trained and processes in place to implement survey.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Reassign quality assurance surveyors to the Division of Public Health	DDD	December 2015	DDD staff	Surveyors report to the Division of Public Health
Implement additional performance measures regarding health and safety restrictive measures	A&D	August 2016	MTLC staff	Additional performance measures are incorporated in monitoring processes
Evaluate viability of utilizing National Core Indicators (NCI) membership; or, research, develop and implement an alternative nationally-recognized, statistically valid participant experience survey	All	December 2016	MLTC and DDD staff	NCI, and NCI-AD are selected to inform of general trends.
Modify Division of Public Health certification survey tools and process to more rigorously review human and legal rights processes	DDD	December 2016	DDD staff	Certification survey tools incorporate setting requirements.
Implement NCI participant experience survey	DDD	June 2016	DDD Staff	DDD's Participation in the NCI survey begins.
Implement NCI-AD participant experience survey	MLTC	July 2017	MLTC staff	Staff trained and processes in place to implement survey.
Identify new needs assessment tool or modifications for existing tool	MLTC	February 2020	MLTC staff	Needs assessment tool or modifications will be identified.
Determine service coordination monitoring tools and policies to incorporate regulations	All	March 2023	MLTC and DDD staff	Specific changes to monitoring tools and policies will be determined with input from stakeholders.
Determine quality improvement monitoring tools and policies to incorporate regulations	All	March 2023	MLTC and DDD staff	Specific changes to monitoring tools and policies will be determined with input from stakeholders.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Modify service coordination monitoring tools and policies to incorporate setting regulations	All	March 2023	MLTC and DDD staff	Tools and policies updated and distributed.
Modify quality improvement monitoring tools and policies to incorporate settings requirements.	All	March 2023	MLTC and DDD staff	Tools and policies updated and distributed
Implement service coordination monitoring tools and policies	All	March 2023	MLTC and DDD staff	Staff trained and processes in place to implement tools and policies.
Implement quality monitoring tools and policies	All	March 2023	MLTC and DDD staff	Staff trained and processes in place to implement tools and policies.
<b>Stakeholder Outreach and Education</b>				
Obtain public comments regarding State Transition Plan settings assessment	All	March-May 2016	MLTC and DDD staff	Updated plan to incorporate comments as appropriate
Develop educational resource(s) for waiver individuals, guardians, and families regarding settings requirements.	All	December 2017	MLTC and DDD staff	Educational resource(s) are available in accessible formats.
Train service coordinators to educate waiver individuals, guardians, and families regarding settings requirements.	All	October 2018	MLTC and DDD staff	Service coordinators have knowledge and resources to provide education.
Service coordinators provide education to waiver individuals, guardians, and families as part of Individual Service Planning process. Education includes information about rights restrictions and protection of individual rights.	DD	April 2018-March 2023	Service coordinators	Waiver individuals, guardians and families understand and can access information about settings requirements, including rights restrictions and protection of individual rights.

Action Item	Applicable Waivers	Date Range or Completion Date	Responsible	Outcome
Obtain public input regarding heightened scrutiny settings	All	April 2022 – May 2022	MLTC and DDD staff	Public provides input regarding settings and determination to submit settings for heightened scrutiny
<b>Relocation</b>				
Evaluate options available for each specific setting's geographic region	All	March 2023	MLTC staff, DDD staff, MLTC-contracted agencies providing service coordination	List of options developed for each setting requiring relocation
Prepare information and supports necessary for individuals to make informed choice about alternate settings	All	June 2022	MLTC staff, DDD staff, MLTC-contracted agencies providing service coordination	Plan and materials to support informing each individual are in place
Notify individuals	All	September 2022	MLTC staff, DDD staff, MLTC-contracted agencies providing service coordination	Individuals informed of requirements and options are identified based upon person-centered planning process
Assure services and supports are in place at the time of relocation and facilitate relocation	All	September 2022 – February 2023	MLTC staff, DDD staff, MLTC-contracted agencies providing service coordination	Services and supports are incorporated in person-centered service plans and ongoing monitoring.
Terminate provider agreements for providers not in compliance	All	March 2023	MLTC and DDD staff	All settings with provider agreements are compliant with settings requirements.

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