

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

GUIDANCE DOCUMENT

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

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



PROVIDER BULLETIN

No. 22-02

DATE: September 27, 2022

TO: Medicaid HCBS AD and TBI Waiver Service Providers

FROM: Tony Green, Director Division of Developmental Disabilities Community Based Services

BY: Ashley Knudtson, Quality Assurance Coordinator

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

Effective March 2014, all settings subject to the Medicaid HCBS Final Settings Rule (42 Code of Federal Regulations [CFR] Parts 430, 431, 435, 436, 440, 441, and 447) are subject to immediate compliance. Therefore, all new sites must be assessed prior to providing services. This applies to locations where HCBS Waivers are received outside of the home including Residential Settings (Assisted Living Facilities) and Non-Residential Settings (Adult Day Services Centers, Extra Care for Children with Disabilities settings and Respite settings). The final rule requires states to ensure people receiving Medicaid home and community-based services have the benefits of community living. The HCBS Final Settings Rule emphasizes person-centered planning; conflict-free case management; and provider-owned, controlled, and operated settings where home and community-based services are provided.

On August 2, 2022, the Centers for Medicare & Medicaid Services (CMS) granted Nebraska final approval of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found in 42 CFR Section 441.301(c)(4) and (5). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on March 31, 2017, the state worked diligently in making a series of technical changes requested by CMS to achieve final approval. Any settings that have been or will be submitted by the state under heightened scrutiny will be reviewed and a determination made separate and distinct from final STP approval.

IMPACTED NEBRASKA HCBS WAIVERS

Medicaid 1915(c) Waivers

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

IMPACTED NEBRASKA HCBS SETTINGS

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

NON-IMPACTED SETTINGS

The following settings are not considered home and community-based services and are excluded from the Final Settings Rule:

- Nursing Facilities;
- Institutions for Medical Disease;
- Intermediate care facilities for individuals with intellectual or developmental disabilities; and
- Hospitals

FINAL SETTINGS RULE COMPLIANCE

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

- Access to community living and participation;
- Choice, dignity, and privacy;
- Legally enforceable rental agreement;
- Lockable doors and freedom to decorate unit;
- Choice of roommate;
- Control of schedule, including access to food; and
- Maximized opportunities for individuals (for example: employment, community engagement, and control of personal resources).

AD ASSESSMENT PROCESS

- AD and TBI providers will have an assessment completed by their assigned Resource Development worker when they enroll as a new provider and during their annual review.
- Assessment includes an interview, a walk-through of the setting, and a review of policies and procedures.
- AD and TBI providers complete the heightened scrutiny packet requested by DDD when the setting has the qualities of an institution as defined by CMS.

HEIGHTENED SCRUTINY

For settings presumed to have institutional qualities, CMS requires an assessment process called “heightened scrutiny.” Identified settings are required to undergo additional review by state staff and may be included in a sample reviewed by CMS. Settings subject to heightened scrutiny include settings in a publicly or privately-operated facility providing inpatient institutional treatment; settings on the grounds of, or adjacent to, a public institution; or settings with the effect of isolating people receiving Medicaid home and community-based services from the broader community of people not receiving services. Heightened scrutiny documentation will be sent to CMS when requested. CMS makes the final determination if identified settings meet HCBS criteria.

DDD IS COMMITTED TO CONTINUE:

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

RECENT CMS GUIDANCE



Time is of the
essence.pdf

<https://youtu.be/OYFarI7aVVY>

RESOURCES

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

All settings must be deemed compliant by March 2023.