Learning objectives

• To learn what the HCBS settings rule means, what the new standards are and Minnesota’s approach to compliance.

• To understand what the provider attestation process is and why providers need to complete it.

• To learn how to use the attestation guidebooks to complete the attestation form.

• To understand attestation launch timelines and how DHS has and will continue to communicate with providers.
What does HCBS settings rule mean?

• People receiving waiver services must receive those supports in the most integrated setting and have full access to the benefits of community living.

• People make choices and pursue opportunities, contribute to their community, and are treated with dignity and respect.

• The rule raises expectations around what is possible for older adults and people with disabilities—and it requires changing the way some services are provided.
Minnesota’s statewide transition plan

- Statewide transition plan
  - What is it?
  - What is the status?
  - What are MN’s assessment and validation strategies?
Service standards

HCBS standards that apply to all HCBS settings

- Setting supports opportunity to seek employment and work in competitive integrated settings
- Setting supports engagement in community life
- Setting supports control personal resources
- Setting supports receiving services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
- The person chooses setting from available setting options
- Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint
- Optimize individual initiative, autonomy and independence in making life choices including daily schedule and with whom to interact
- Facilitate individual choice regarding services and supports and who provides them.

Additional Standards that apply to provider-owned or controlled residential settings

- The person has a lease or other legally enforceable agreement
- Privacy in their bedroom or living unit including lockable doors
- Choice of roommates if shared unit
- Freedom to furnish and decorate unit
- Freedom and support to control schedule and activities including access to food at any time
- Able to have visitors at any time
- Physically accessible

Modifications of the additional requirements must be:
- Supported by specific assessed need
- Justified and documented in the person-centered service plan

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Who needs to complete an attestation?

Provider settings/sites that provide the following waiver paid services:

• Customized living
• Foster care / supported living services
• Adult day
• Day training and habilitation, prevocational services and structured day
Outreach to providers

- Direct mailings to settings
- Email
- MNITs mailbox
- Provider news
- Associations
What is the attestation?

• Online form

• Completed by providers, currently providing services to people paid for by a waiver

• For EACH provider site/setting

• 12-20 questions

• Supporting documentation needed
• To demonstrate that provider settings meet the new requirements or indicate more help or time is needed.

• Form will allow providers to indicate in each of the areas how they currently meet new requirements or how they plan to meet them.

• Use the guidebooks to complete the online form.

• Responses due by end of April or May depending on service type.
Attestation Form Instructions

• Logging in
• Navigation
• Starting, saving and submitting
Providers will indicate compliance for each standard separately.

- Comply with this requirement (with supporting documentation)
- Do not yet comply, but has a plan to become compliant by September 1, 2017
• If a provider meets or needs additional time to make changes to transition to meet the requirements.

• If additional time is needed, then providers need to sign back in and update the attestation form indicating compliance by September 1, 2017

• Responses will help DHS to focus assistance and information specific to the areas needed.
Toolkits were mailed in April including:

• Guidebooks specific to service type
• Frequently asked questions
• Fact sheets
• Where to find additional information
Using the guidebook as a resource- Attestation question #1

Attestation form

1. Each person at the setting has a written lease or residency agreement in place providing protections to address eviction processes and appeals.

☐ Comply

☐ Foster care / SLS provider: I attest that each person at the setting has a residency agreement utilizing the sample DHS 71765 form.

☐ Foster care / SLS provider: I attest that each person at the setting has a lease or residency agreement with the required elements of the sample DHS form. Submit a blank copy of your agency’s residential agreement.

☐ Foster care (serving EW participants only): I attest that each person has a signed Individual Resident Placement Agreement. I understand there is pending legislation that will outline a process to follow when terminating services for an EW participant, and it will give EW participants the right to appeal a termination of foster care services. I attest that I will create a policy and notify EW participants of this right when approved by the legislature.

☐ Customized living providers: I attest that in accordance with housing with services registration requirements, each person in the setting has a lease agreement with the required protections.

☐ Do not yet comply - Compliance is needed in this area and the following steps will occur within the next 90 days.

☐ Create or revise lease or residency agreements

☐ Implement practice - issue residency agreements or leases

☐ Additional time needed to comply in this area due to hardship and I will request an extension.

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Attestation Guide

1. Lease agreement

Federal requirement
Each person at the setting has a written lease or residency agreement in place providing protections to address eviction processes and appeals.

What do you need to do?
- You must have a residency agreement with each person that provides protections to address eviction processes and appeals
- You must have a residency agreement with each person that does not restrict a person’s rights as outlined in Minn. Statute 245D
- You must inform people of their rights and responsibilities once per year.

Select the bullet (and submit documentation, if appropriate):

- Foster care / SLS provider: I attest that each person at the setting has a residency agreement using the sample DHS form
- Foster care / SLS provider: I attest that each person at the setting has a residency agreement with the required elements of the sample DHS form. Submit a blank copy of your agency’s residential agreement.
- Foster care (serving EW participants only): I attest that each person has a signed Individual Resident Placement Agreement. I understand there is pending legislation that will outline a new process to follow when terminating services for an EW participant, and it will give EW participants the right to appeal a termination of foster care services. I attest that I will create a policy and notify EW participants of this right when approved by the legislature.
- Customized living providers: I attest that in accordance with housing with services registration requirements, each person in the setting has a lease agreement with the required protections.
Using the guidebooks as a resource—Attestation Question #5

Attestation form

5. The setting provides people with the freedom and support to control their daily schedules including access to food any time.*

☐ Comply – Submit the following document(s) and indicate the page number which the information can be located.

- One of the following: Blank copy of staff orientation/annual training record or policy/procedure
- One of the following: Blank copy of recipient rights form or informational documents to inform people of rights or service expectations
- Other:

☐ Do not yet comply – Compliance is needed in this area and the following steps will occur by September 1, 2017.

☐ Create or revise staff training, rights form, policies/procedures or other documents

☐ Implement practice or staff training

☐ Additional time needed to comply in this area due to hardship and I will request an extension.

Attestation Guide

5. Daily schedule

Federal requirement

The setting provides people with the freedom and support to control their daily schedule including access to food at any time.

What do you need to do?

- You must support people’s freedom to control their own schedule and activities
- You must allow access to food (meals and snacks), at any time, and provide a place to store snacks
- You must allow people to choose their daily schedule, including but not limited to, waking, bathing, exercising, activities, etc.
- You must schedule support activities in a flexible manner that works around the person’s personal schedules (e.g., alternatives to planned entrées, save meal and reheat); there is no one “set schedule” (e.g., mealtimes or assigned seats) for all people living in the setting
- You must ensure people have choices of when, where, and with whom they would like to eat (if a person misses a meal due to an activity, they do not have to wait for the next meal to eat)
- You must ensure people have access to such things as a radio and television, and can participate in their choice of leisure activities, if desired, and have the right to refuse to participate in activities the rest of the people living in the setting want to experience.

What do you need to submit?

You need to upload the following documents to show you meet the requirement:

☐ Blank copy of staff orientation or annual training record showing there is training on person-centered practices and the person’s Community Services and Supports Plan or Community Services and Supports Plan addendum. (Page number:__)

☐ Blank copy of a supporting plan form that informs people on how opportunities and supports will be provided to ensure they are fully included in their community. (Page number:__)

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Using the guidebooks as a resource - Attestation Question #8

### 8. Employment

**Federal requirement**
The setting provides opportunities for people to seek employment and work in competitive integrated settings.

**What do you need to do?**
- You must support people who would like to work
- You must provide access to day services and activities during times that compliment a person’s work schedule.

**What do you need to submit?**

You need to upload the following documents to show you meet the requirement.

- Blank copy of staff orientation or annual training record related to the coordinated service and support plan or coordinated services and support plan addendum to achieve and demonstrate an understanding of how to support people to work. (Page number:__)
- Blank copy of a support planning form that informs people on how opportunities and supports will be provided to support people to work. (Page number:__)

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8. The setting provides opportunities for people to seek employment and work in competitive integrated settings.

- Comply - Submit the following document(s) and indicate the page number which the information can be located.
  - One of the following: Blank copy of staff orientation/annual training record or policy/procedure
  - One of the following: Blank copy of recipient rights form or informational documents to inform people of rights or service expectations

- Do not yet comply - Compliance is needed in this area and the following steps will occur by September 1, 2017.
  - Create or revise staff training, rights form, policies/procedures or other documents
  - Implement practice or staff training

- Additional time needed to comply in this area due to hardship and I will request an extension.
# Attestation form

9. The setting provides people opportunities to access and engage in community life.*

- Comply – Submit the following document(s) and indicate the page number which the information can be located.

  - One of the following: Blank copy of staff orientation/annual training record or policy/procedure
    - Page #
  
  AND

  - One of the following: Blank copy of recipient rights form or informational documents to inform people of rights or service expectations
    - Page #

- Other:
  - Page #

## 9. Community life

**Federal requirement**
The setting provides people opportunities to access and engage in community life.

**What do you need to do?**
- You must engage with people using person-centered thinking
- You must provide opportunities and support for people to be fully included in their greater community, individually and in groups, as desired
- You must allow people to choose their friends and spend time with them
- You must provide information on transportation for community activities (if documented in support plan and assigned to this provider, you must also provide support and/or transportation coordination)
- You must ensure people have services, resources, and supports to help explore and maintain meaningful activities
- You must ask people about their interests and activities they want to participate in
- You must allow people to come and go from the setting at any time
- You must not offer separate options, such as certain activities, living space or opportunities, based on a person’s status as a Medicaid HCBS recipient
- You support people’s interaction with members of the community through religious services, shopping, appointments, etc., to build community relationships.

**What do you need to submit?**

- Blank copy of staff orientation or annual training record related to the coordinated service and support plan or coordinated services and support plan addendum to achieve and demonstrate an understanding of how to support people to engage in activities.
  - [Page number:__]

- Blank copy of a support planning form that informs people on how opportunities and supports will be provided to support people to engage in activities. (Page number:__)

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The guidebooks will also give examples of best practices and tips.

In the guidebook for the community living standard in the foster care / supported living services, paid for through a disability waiver, the guidebook it shows:

**Example practices**

- Providing information about community activities may be things like: an up-to-date binder, a calendar or bulletin board with current and upcoming events.

- Transportation support may include bus training and coordination of transportation may be things like: making bus schedules available, volunteer drivers and arranging for Metro Mobility

**Tip**

- Typically, providers will submit a blank copy of their Staff Orientation or Annual Training Record and 45-day Meeting Summary (new people) or the Progress Review Meeting Summary (existing people).
In the guidebook for adult foster care paid through the Elderly Waiver the example practices look the same, but the tips differ:

**Example practices**

- Providing information about community activities may be things like: an up-to-date binder, a calendar or bulletin board with current and upcoming events.
- Transportation support may include bus training and coordination of transportation may be things like: making bus schedules available, volunteer drivers and arranging for Metro Mobility.

**Tips**

- An Adult Foster Care Program Plan that documents how this setting will ensure people of their right to access and engage in community life is an acceptable example of a policy/procedure that meets this requirement.
- A copy of the “Resident’s Rights” form is an acceptable example that you inform people of their rights.
11. Privacy

Federal Requirement:
The setting ensures people’s right to privacy.

What do you need to do?
- You must inform people of and ensure their right to privacy.
- You must ensure that people’s information is kept private, including personal, financial, service, health and medical information. Information is not posted in common areas.
- You must provide personal care in private.
- You must provide privacy for people to make phone calls, send texts, email, or other personal communications.
- You must ensure staff do not discuss a person in the open or within earshot of those who do not have a need to hear the discussion.

What do you need to submit?
You need to upload the following documents to show you meet the requirement:
- □ Blank copy of staff orientation or annual training record that shows staff are trained on people’s right to privacy. (Page #:___)
- □ Blank copy of recipient rights form that includes information about people’s right to privacy. (Page #:___)

ATTESTATION GUIDEBOOK for RESIDENTIAL SETTINGS – 245D Foster Care and SLS
Settings that need further assessment

• Settings in a publicly or privately owned facility or on the grounds of or adjacent to a public facility
  • Nursing facility
  • Hospital
  • Intermediate Care Facility for people with developmental disability (ICF-DD)
  • Institution for Mental Disease (IMD)

• Farmsteads or disability-specific farm communities

• Residential schools

• Gated or secured communities for people with disabilities
Attestation Form

15. The setting is located in a Hospital, Nursing facility, Intermediate Care Facility (ICF-DD) or Institution for Mental Disease (IMD).
   - Hospital
   - Nursing Facility
   - Intermediate Care Facility for people with Developmental Disabilities (ICF-DD)
   - Institution for Mental Disease (IMD)
   - Not applicable to this setting

   NAME AND ADDRESS
   Select one

16. The setting is located adjacent to a public Hospital, Nursing facility, Intermediate Care Facility (ICF-DD) or Institution for Mental Disease (IMD).
   - Hospital
   - Nursing Facility
   - Intermediate Care Facility for people with Developmental Disabilities (ICF-DD)
   - Institution for Mental Disease (IMD)
   - Not applicable to this setting

   NAME AND ADDRESS
   Select one

17. The setting is:
   - A farmstead or disability-specific farm community
   - A residential school
   - In a gated or secured community for people with disabilities
   - None of the above
Settings that need further assessment

• Multiple types of services and activities to people on-site, including any two of the following: 1) residential, 2) day services and 3) medical

• A residential setting where the provider also owns/operates multiple homes on the same street or adjacent property.

• A setting (with a capacity of six or more people) that 25% or more of the total setting capacity serves people with disabilities under the age of 55.
## Attestation Form

18. Is the setting a residential (home) setting that the provider also owns/operates multiple homes located on the same street or adjoining property? *

- [ ] Yes
- [ ] No

18a. Do the homes share programming or activities?

- [ ] Yes, provide supporting documentation as described in the guidebook.
- [ ] No

## Attestation Guide

18. Multiple homes located on same street/adjacent property

Is the setting a residential (home) setting on the same street or adjoining to other homes that the provider owns and/or operates?

Select the bullet

- [ ] Yes
- [ ] No

18a. If yes to 18, do the homes share program or activities?

- [ ] Yes
- [ ] No

If yes, provide a 1-2 page document answering the following questions and include examples:

- Describe how often (on a weekly or daily basis?) and what type of programming or activities are shared. For example, do people that live in different homes or buildings dine or share meals, transportation, social recreation activities and outings together on a weekly or daily basis?
- Describe how opportunities are presented and available for people to interact with the broader community individually and in groups, as they desired? How often are people asked about their interest in activities in the community? How are people participating, as desired?
- Describe how people can individually choose activities to participate in? For example, not everyone has the same activities or schedule. How are people informed of available activities?
Using the guidebooks as a resource- Attestation Question #19

Attestation Form

19. Is the setting designed to provide people with disabilities or older adults multiple types of services and activities onsite, including any two of the following: 1) residential, or 2) day services and 3) medical.*

☐ Yes
☐ No

19a. Can people choose to use community service providers instead of receiving the above multiple services onsite?

☐ Yes, provide supporting documentation pertaining to how people are informed of their option to choose community providers.
☐ No

Attestation Guide

19. Settings that provide multiple activities onsite

Is the setting designed to provide multiple types of services and activities onsite, including any two of the following:

1) Residential
2) Day services
3) Medical.

Definitions
Select "Yes," if the customized living, a residential setting, also provides one of the following onsite:

- Day Services, including Adult Day, Day Training and Habilitation, Prevocational, and Structured Day
- Medical services by people with a professional specialty onsite. People would typically go to an office to receive these services.

Select the bullet

Select one:
☐ Yes
☐ No

19a.

If yes to 19, can people choose to use a community service provider instead of receiving the above services onsite?

☐ Yes. Provide supporting documentation on how people are informed of their option to choose community providers.
☐ No
Using the guidebooks as a resource- Attestation Question #20

Attestation Form

20. Are the people in the setting primarily or exclusively people with disabilities or 25% or more of the total setting capacity are people with disabilities under the age of 55 years old? This question is applicable for settings that serve 6 or more people on the EI, CADI, CAC or DD waivers.

☐ Yes
☐ No or not applicable

20a. Do people in this setting have limited, if any, interaction with the broader community or daily activities that are typically designed to take place on-site?

☐ Yes – you will be contacted with tools and information to make any needed changes to comply with requirements.
☐ No – provide supporting documentation as described in the guidebook.

Attestation Guide

20. Settings that may be isolating: Disability waivers only

Are the people in the setting primarily or exclusively people with disabilities or 25 percent or more of the total setting capacity are people with disabilities under 55 years old.

NOTE: The following question is applicable for settings that serve 6 or more people on the EI, CADI, CAC or DD waivers.

Definitions
If the setting only serves EW or AC waiver funded services, select “No or not applicable”
Select “Yes” if the setting serves more than 6 people on EI, CADI, CAC or DD waivers, and meets at least one of the following:

- The setting is primarily or exclusively people with disabilities or
- 25 percent or more of the setting capacity are people with disabilities (under the age of 55 years old).

If none of the bullets above describe the setting, select “No or not applicable.”

Select the bullet

Select one:
☐ Yes
☐ No or not applicable

20a.

If yes to 20, do people in the setting have limited, if any, interaction with the broader community or daily activities that are typically designed to take place on-site?

☐ Yes. You will be contacted with tools and information to make any needed changes to comply with requirements.
☐ No.

If no, provide a 1-2 page document answering the following questions and include examples:

- Describe how opportunities are present and available for people to interact with the broader community individually and in groups, as they desired. How often are people asked about their interest in activities in the community? How are people participating, as desired?
- Describe how people can individually choose activities to participate in? For example, not everyone has the same activities or schedule. How are people informed of available activities?
What if an individual modification is needed?

Remember, modifications can be made to certain standards, as long as the need for a modification has been determined and documented in the person-centered plan.

• Example 1: A person is able to have visitors at any time.
  • If the plan clearly states why it is unsafe for the person to have visitors at any time, a modification can be made to this standard. However, there are very specific documentation needs that must be followed.

These modifications may not be used for a whole setting if only one person needs it. For instance, if one person’s plan identifies that a locked door would be a safety risk for them, the owner of the setting must have lockable doors for the rest of the people living there.
What if I do all of these things but it isn’t written down as a policy/procedure or documented anywhere?

• Review your currently policy and procedures and determine if you can rewrite or modify them to meet the new standards.

• New staff orientation or ongoing training can be modified to ensure that your staff know the rights that a person has through the new rule.

• If your setting has a document that informs people of their rights, consider adding some of these standards to that document.

• Some of these standards are already being met by documents you are required to have for your licensing requirements. See the guidebooks for examples of this.

• These standards are going to be required of all HCBS providers and changes to licensing, statutes and registration requirements are pending. Providers are expected to make these changes before they are considered compliant. If this causes a hardship, please use the extension form.
When?

Round one –

• Adult day – family and centered based
• Customized living

Launched April 3rd, initial submission due April 30th, if needed updates due by Sept. 1st

Round two –

• Adult and child foster care
• Supported living services
• Day training and habilitation, prevocational services and structured day

Launched April 17th, initial submission due May 31st, if needed updates due by Sept. 1st

4/19/17
Transition plan for home and community-based settings

The Department of Health and Human Services’ Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register, effective March 17, 2014, which, among other things, changed the definition of HCBS settings for the 1915(c) and 1915(i) Medicaid HCBS waivers. The new definition considers a person’s experience and outcomes in addition to a setting’s location, geography or physical characteristics.

Watch the DHS Home and Community-Based Services Rule Overview video to find out more.

CMS has issued guidelines that provide questions for states to consider when deciding whether settings are home and community-based. CMS has determined certain settings are “presumed not to be home and community-based.” CMS has issued specific guidelines for residential settings and non-residential settings.

You can find more information about the CMS rule and requirements on the CMS website. After clicking on the link, you will find the guidelines in the "Settings Requirements Compliance Toolkit" tab of the webpage.

- Provider attestation
- What’s new?
- What is Minnesota’s transition plan for HCBS settings?
- What have we accomplished so far?
Questions?

Email: hcbs.settings@state.mn.us