

Developmental Disabilities Waiver Transition Plan for New Mexico's Compliance with New Federal Rule

Purpose:

HSD and the Department of Health (DOH) are seeking public comment on its transition plan to meet Final Rule (2249-F/2296-F)'s requirements. HSD will use guidance from CMS, the data collected during its assessments, and public comments to influence the activities to ensure full compliance with Final Rule (2249-F/2296-F).

Public Input Process:

HSD will provide CMS with its Transition Plan for preliminary review. HSD will release its Transition Plan for public comment for no less than 30 calendar days using at least two methods of distribution. Public comments will be reviewed by HSD and it will modify the plan as necessary. HSD will provide a summary of comments received during the public input period and provide feedback as to why comments were not adopted and include modifications to its Transition Plan based upon comments. HSD will analyze any additional guidance from CMS and provide feedback or modify the plan as determined necessary. HSD will submit the DDW Amendment in January 2015 with a proposed April 2015 effective date.

Residential & Non-Residential Settings

CMS GUIDANCE ON RESIDENTIAL SETTINGS REQUIREMENTS AS DESCRIBED IN §441.301:

“(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- (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.
- (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.
- (iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- (iv) 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.
- (v) Facilitates individual choice regarding services and supports, and who provides them.
- (vi) In a provider-owned or controlled residential setting, in addition to the qualities at §441.301 (c)(4)(i) through (v), the following additional conditions must be met:
 - (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which

landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

(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.

(2) Individuals sharing units have a choice of roommates in that setting.

(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.

(E) The setting is physically accessible to the individual.”

CMS GUIDANCE ON NON-RESIDENTIAL SETTING REQUIREMENTS AS DESCRIBED IN Fact Sheet: Summary of Key Provisions of the Home and Community-Based Services (HCBS) Settings Final Rule (CMS 2249-F/2296-F):

“Application of home and community-based settings requirements to non-residential setting: CMS has clarified that the rule applies to all settings where HCBS are delivered, not just to residential settings. CMS will be providing additional information about how states should apply the standards to non-residential settings, such as day program and pre-vocational training settings.

The Final Rule requires that all home and community-based settings meet certain qualifications. These include:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.”

Assessment Process

HSD:

Residential Settings:

HSD through the Medical Assistance Division (MAD), along with DOH, completed an initial assessment of the extent to which its standards, rules, and other requirements complied with HCBS residential setting requirements and Final Rule (2249-F/2296-F). DDW Service Standards and the New Mexico Administrative Code (NMAC) rules were analyzed against Final Rule (2249-F/2296-F) setting requirements. Based on the attached assessment (Attachment #1-CMS Final Rule

Crosswalk), HSD determined its standards, rules, and other requirements comply with the Final Rule (2249-F/2296-F), with the exception of three areas.

1. The eligible recipient has a lease or other legally enforceable agreement providing similar protections. Each eligible recipient has privacy in their sleeping or living unit. Units have lockable entrance doors, with him or her and appropriate staff having keys to doors as needed.
2. The eligible recipient has access to food at any time. Modifications to the DDW Standards will include information necessary for Human Rights Committee review when food has the potential to be a danger to the eligible recipient.
3. An eligible recipient may have visitors at any time.

Non-Residential Settings:

HSD will conduct a similar type of provider self-assessment once CMS provides additional guidance.

Provider:

Currently there are 77 Living providers (Family, Intensive Medical and Supported), 79 Customized Community Supports providers, and 43 Community Integrated Employment providers statewide that provide DDW residential, day, and employment services. DOH, in collaboration with the HSD, will send a self-assessment survey to all residential, day, and employment (non-residential) provider agencies in order for HSD to determine if a provider is:

1. Fully aligned with the Final Rule (2249-F/2296-F); or
2. Non-compliant with the Final Rule (2249-F/2296-F) and as such will require modifications to its operations.

The provider self-assessment survey will be developed by 5/1/2015 and sent to residential, day and employment providers by 5/1/2015 via email. This survey will also be made available to providers, eligible recipients receiving DDW services, and representatives of consumer advocacy entities through the ACT New Mexico website <http://actnewmexico.org/> or by calling DOH at 505-476-8973 or toll free at 1-877-696-1472.

Remediation

HSD:

1. DDW Service Standards will incorporate these three areas and all requirements as outlined in Final Rule (2249-F/2296-F). HSD anticipates the revised DDW Standards will be completed by DOH by 7/1/2015. Once finalized, all DDW providers must comply with these standards.
2. After the provider self-assessment is completed, DOH will conduct training for its providers onto the revised DDW Standards. The training documents will be disseminated to DDW providers by 2/1/2016. The training of providers will begin on 3/1/2016 and will be completed by 7/1/2016.
3. DOH regional offices will then perform a validity check on a statistically valid sample of provider self-assessment survey responses. This validity check will begin on 7/1/2016 and end on 12/1/2016.
4. HSD, in collaboration with DOH Division of Health Improvement (DHI), will develop a tool incorporating requirements from the revised DDW Service Standards. This tool will be created by 12/1/2016 and DHI will implement it during its routine provider surveys beginning in 2017 to

ensure compliance by the start of 2018. DHI will conduct surveys of providers once every three years or sooner, as determined necessary.

Provider:

HSD, through DOH, will analyze data collected from the provider self-assessment surveys. Based on individual provider findings, DOH will develop corrective action plans with timelines to ensure compliance with DDW Standards (which include CMS final rule requirements). DOH will conduct follow up surveys to ensure on-going compliance and will continuously monitor systemic compliance through our Developmental Disabilities Services Quality Improvement (DDS/QI) Steering Committee and CMS Waiver Assurances; and through DOH on-going quality activities.

If a provider is unable to comply with the DDW Standards, HSD through DOH will relocate that provider's eligible recipient residents to a provider that is compliant. When relocation is necessary, HSD will make available to the eligible recipient reasonable notice of his or her due process rights. The process will ensure an eligible recipient, through the person-centered planning process, is given the opportunity, the information, and the support to make an informed choice of an alternate setting that aligns with the DDW Standards and that critical services and supports are in place in advance of his or her transition. DOH will ensure that appropriate planning takes place to facilitate a smooth transition of an eligible individual to an alternative environment. The every possible consideration will be given to eligible recipient's choices. Unless precluded by circumstances posing a danger to the health, safety or welfare of the eligible recipient or others prior to relocation, the Interdisciplinary Team will convene at least 30 calendar days prior to the proposed relocation action. This will allow adequate time to the development of the eligible recipient's relocation transition plan and to properly execute the plan. A provider will not be allowed to discharge an eligible recipient until all requirements are followed and all avenues are pursued to keep the person in a setting that meets his or her choice and needs for DDW services. In no instance may an eligible recipient be discharged from a provider until alternative arrangements are made to meet the eligible recipient's immediate needs.

Time Frame and Milestones:

HSD will adhere to the timelines outlined in Attachment #2.