

## **Appendix A**

### **Review of Statute and Regulations**

# HCB Final Rule setting requirements/Alaska regulations evaluation

## Review of Statute and Regulations

### Purpose

The purpose of this evaluation was to

- review the extent to which state materials address the concepts regarding settings that are specified in the new federal requirements
- determine whether amending state materials would be sufficient or whether new state regulations would need to be enacted

### Review

SDS reviewed state statutes, regulations, and policies pertinent to home and community-based waiver services; assisted living home and foster home statutes, regulations, and policies; and the SDS *Conditions of Participation*. In view of state ownership and administration of the Alaska Pioneer Homes (APH) that are licensed as assisted living homes, SDS reviewed APH policies and other written materials that address settings requirements.

Residential habilitation services (group home) and residential supported living services are provided in licensed assisted living homes; residential habilitation services (family habilitation) are provided in either licensed assisted living homes or licensed foster homes. Providers of those services must comply with licensed assisted living home regulations and licensed foster home regulations. Day habilitation services, adult day services, and meal services (congregate) are facility-based while supported employment services are provided at an employment site. Those sites and facilities must comply with SDS regulations and *Conditions of Participation*.

### Conclusion

SDS found that the best approach to achieving provider compliance was new settings regulations to supplement the current home and community-based services (HCBS) provider certification requirements. SDS developed a regulations package to bring all related HCBS regulations and Waiver Conditions of Participation into compliance; these [regulations](#) and [COPs](#) became effective on November 5, 2017. They will become part of the Home and Community-Based Waiver Services regulations (7 AAC 130.200 to 7 AAC 130.319).

Because SDS does not have administrative responsibilities for assisted living homes or foster homes, SDS continues to work with the Division of Health Care Services, the Alaska Pioneer Homes, and the Office of Children's Services that do have responsibility to ensure those settings have the qualities required of home and community-based settings.

## HCB Final Rule setting requirements/Alaska regulations evaluation

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<b>42 CFR 441.301 (c)(4)(i) Settings must be integrated in and support full access by recipients [to the greater community to the same degree of access as individuals not receiving HCB services], including...</b>			
<p><b>opportunities to seek employment and work in competitive integrated settings</b></p>	<p><a href="#">7 AAC 130.270 Supported Employment (b)(2)</a> Services available to provide support at worksite where individuals without disabilities are employed</p> <p><a href="#">Supported employment COP:</a> “Supported employment services may be offered in a variety of settings, but, because independence and community integration are significant goals for these services, they may not be provided in sheltered workshops or similar specialized vocational facilities.”</p> <p><a href="#">OCS FH Handbook</a>, p. 70. Employment may be appropriate if recipient (teen) wants to work; must be paid at same rate as other employees performing same duties if employed by business owned or operated by FH adults.</p>	<p>Regulations, COPs, and policies are silent, except as noted in Column 2</p> <p>Partially compliant</p> <p>New regulation adds recipients’ opportunity to seek employment. Amendments to all COPs adopted by reference in regulations package.</p>	<p>Alaska has <a href="#">amended regulations</a> to align with the CMS final rule. <a href="#">SDS’s amended Waiver Conditions of Participation</a> align with Alaska’s amended regulations.</p> <hr style="width: 20%; margin-left: auto; margin-right: auto;"/> <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that] (5) assists a recipient that chooses to (A) seek employment and work in competitive, integrated settings</p>

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Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<p><b>engage in community life</b></p>	<p><a href="#">SDS Service Principles</a>: Individuals have knowledge of and access to community services. Services are designed and delivered to build communities where all members are included, respected, and valued. <a href="#">7 AAC 130.217 (a)(3)(C)</a> [Written POC] identifies family and community supports available to recipient.</p> <p><a href="#">CC COP IV.A.</a> [CC services must] enable the recipient to remain in the most appropriate environment in the home or community, and build and strengthen family and community supports.</p> <p><a href="#">ALH AS 47.33.230 (a)</a> [Resident’s plan must]</p>	<p>Compliant</p> <p>Partially compliant.</p> <p>New regulation is more directive about encouraging and facilitating engagement</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a</p>

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	<p>(1) promote participation in the community</p> <p><a href="#">AKPH brochure “A Matter of Rights”</a>. [Resident has right to] participate in and benefit from community services and activities to achieve the highest level of independence, autonomy, and interaction in the community.</p> <p><u>FH</u> (Foster home) <a href="#">7 AAC 56.310 (a)(7)</a> [Child receiving services has the following right] opportunity to participate in community functions and recreational activities and to have the child’s social needs met.</p> <p><a href="#">OCS FH Handbook</a>, p. 66. Important for recipient to participate in recreational, school, religious, and community activities; FH should encourage recipient to participate in activities that are appropriate and safe</p>	<p>Compliant</p> <p>Compliant</p> <p>Compliant</p> <p>Compliant</p>	<p>setting that] (6) encourages and facilitates the recipient’s engagement in community life.</p>
<b>control personal resources</b>	<u>ALH</u> <a href="#">AS 47.33.300 (a)(7)</a> [Res has right to] manage the resident’s own money.	Compliant	<b>New HCBS waiver regulation</b> 7 AAC 130.220 (n) [The provider shall render services in a setting that]

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	<p><a href="#">AKPH P&amp;P No. 01.04</a> [Res has right] to manage the resident’s own money and finances.</p> <p><a href="#">FH 7 AAC 50.430 (f)</a> [Money earned/received by child is personal property] No member of FH may borrow or spend money acquired by foster child; (g) A foster parent may place limitations on the amount of money a child may possess or to which the child may have unencumbered access if the limitations are in the child’s best interest.</p> <p><a href="#">OCS FH Handbook</a>, p. 70. “A savings account is an appropriate way for a youth to gain skill in both banking and money management. Money earned by a child in care (including gifts and allowances) is a child’s personal property. If a child has over \$200, help the child establish a personal bank account. The account belongs to the child; however, if a child’s spending habits need to be limited, consider a savings account that requires both the child’s and the resource family parent’s signature for withdrawal. No member of a resource family may borrow or spend money acquired by the child in care. You may need to restrict the amount of</p>	<p>New regulation and policy revisions more clearly require settings to support recipients’ control of personal resources.</p> <p>ISCC members reviewed <a href="#">7 AAC 50.430</a> (g) to confirm that it does not conflict with 7 AAC 130.220(n). Rather the intent is that foster parents provide monitoring on how the foster child would spend their funds. If further exploration indicates that there is a conflict, the regulation will be amended</p> <p>Compliant</p>	<p>(7) provides the opportunity for the recipient to control the recipient’s personal resources</p> <p><b>Revise <a href="#">Provider COP III.C</a>.</b> Recipient rights - control of personal resources (see 7 AAC 130.220(n)(7))</p> <p><b>Revise <a href="#">CC COP IV.B 2</a>.</b> control of personal resources (see 7 AAC 130.220(n)(7))</p>

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	<p>spending money a child has access to if in the child’s best interest.”</p>		
<p><b>receive services in the community</b></p>	<p><u><a href="#">SDS Service Principles:</a></u> Individuals have knowledge of and access to community services</p> <p><u><a href="#">7 AAC 130.217 (a)(3)(C)</a></u> [Written POC] identifies family and community supports available to recipient.</p> <p><u><a href="#">ALH AS 47.33.300 (a)</a></u> [Res has right to] (12) [access health care providers of resident’s choosing in community] <u><a href="#">AKPH brochure “A Matter of Rights”</a></u> [Resident has right to] participate in and benefit from community services . . . [including] access to adequate and appropriate health care and health care providers of the resident’s own choosing . .</p> <p><u><a href="#">FH 7 AAC 56.310 (a)(6)</a></u> [Child receiving services has the following right] appropriate health care</p>	<p>Compliant</p> <p>Partially compliant</p> <p>New regulation not only states recipients’ rights but requires setting to assist recipient</p>	<p><b>Revised <u><a href="#">7 AAC 130.200</a></u>.</b> It is the mission of the department to offer home and community-based waiver services that, when implemented through a person-centered support plan, will provide opportunities for eligible individuals to receive services in the community and to maximize engagement in community life.</p> <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that] (5) assists a recipient that chooses to (B) receive services in the community.</p>

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<b>42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including...</b>			
<b>non-disability specific settings</b>	<p><a href="#">7 AAC 130.217 (a)(3)(C)</a> [Written POC] identifies family and community supports available to recipient.</p> <p><a href="#">CC COP IV.B.1.b.</a> [CC must] provide information about service options for medical, social, educational, and other services</p>	Compliant. New regulation includes non-disability specific settings.	<p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that] (1) was selected by the recipient from among settings options that include non-disability specific settings.</p> <p><b>Revise <a href="#">CC COP IV.B.1.b.</a></b> (see 7 AAC 130.220(m))</p>
<b>option for a private unit in a residential setting</b>	Regulations, COPs, policies.	Compliant. New regulation adds add options for a private unit	<b>New HCBS waiver regulation 7 AAC 130.220 (o)(1)(B)</b> [The provider shall provide for the recipient (B) the option of a private unit, if available in the setting and appropriate for the recipient’s needs, preferences, and resources for payment of room and board.

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<b>options documented in service plan</b>	<p><a href="#">7 AAC 130.217 (a)(3)</a> [Written POC] (B) identifies providers that are available to render services (E)(1) identifies for each service, the provider that has agreed to provide the service.</p>	Compliant. Repealed and re-adopted regulation adds patient-centered language	<p><b>HCBS waiver regulation 7 AAC 130.217(a) repealed and re-adopted.</b> Expands members of the planning team and the requirements regarding support plan to protect recipient's choices</p> <p><b>7 AAC130.218(c).</b> addresses support plan</p>
<b>options based on needs and preferences</b>	<p><a href="#">7 AAC 130.213 (a)(2)</a> [The dept. will assess] physical, emotional, and cognitive functioning to determine LOC</p> <p><a href="#">7 AAC 130.217 (a)(3)(F)</a> [services must be consistent with assessment/LOC]</p> <p><a href="#">CC COP IV. B. 2. b.</a> [Planning team provides opportunity for recipient/family] i. to express outcomes they wish to achieve; ii. to request services that meet identified need; iii. to explain how they would prefer that the services be delivered.</p> <p><a href="#">CC COP IV. B. 3. a.</a> the planning team must incorporate [assessment findings] in POC</p>	Compliant. New regulation requires provider to offer options based on needs, preferences, and resources	<p><b>New HCBS waiver regulation 7 AAC 130.220(o)(1)(B)</b> The provider shall provide for the recipient the option of a private unit, if available in the setting and appropriate for the recipient's needs, preferences, and resources for payment of room and board.</p>

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	<a href="#">POC Section III</a> . “The individualized service-planning process offers the recipient the opportunity to identify personal goal(s).”		
<b>residential setting options based on resources for room and board</b>		Compliant. New regulation adds residential setting options based on resources for room and board.	<b>New HCBS waiver regulation 7 AAC 130.220 (o)(1)(B)</b> The provider ...shall provide for the recipient the option of a private unit, if available in the setting and appropriate for the recipient’s needs, preferences, and resources for payment of room and board.
<b>42 CFR 441.301 (c)(4)(iii) Settings must ensure an individual’s rights to privacy, dignity, and respect, and freedom from coercion and restraint</b>			
<b>privacy</b>	<p><a href="#">ALH AS 47.33.300 (a)(2)</a> [ALH resident] has the right to . . . privacy in [health-related circumstances, resident’s room, bathing and toileting, personal possessions].</p> <p><a href="#">AKPH P&amp;P No. 01.04</a> [Restates <a href="#">AS 47.33.300 (a)(2)</a>].</p> <p><a href="#">7 AAC 75.260 (a)(5)</a> [ALH shall ensure resident has] reasonable privacy when sharing a room.</p>	<p>Regulations, COPs and policies are compliant (also see below regarding statutory coverage of right to dignity, respect and freedom from coercion and restraint)</p> <p>New regulation provides more specific language</p>	<b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render services... in a setting that] (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint

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	<p><a href="#">FH 7 AAC 50.530(d)</a> [Requirements for space in bedrooms.]</p> <p><a href="#">OCS FH Handbook</a>, p. 80 [FH] must provide sleeping space appropriate for age of child, and similar to that of other household members</p>	to ensure right to privacy	
<b>dignity and respect</b>	<p><a href="#">ALH AS 47.33.300 (a)(2)</a> [ALH resident] has the right to (2) be treated with consideration and respect for personal dignity, individuality, and the need for privacy...</p> <p><a href="#">SDS Mission</a>: [SDS facilitates access to services/supports] that foster independence, personal choice, and dignity.</p> <p><a href="#">SDS Service Principles</a>: Individuals . . . are treated with respect, dignity, and compassion.</p> <p><a href="#">CC COP IV. A. 4.</a> The provider must operate its CC services program for the following purposes: To treat the recipients with dignity and respect in the provisions of services.</p> <p><a href="#">Provider COP III. C. 1.</a> The provider must treat all recipients respectfully.</p> <p><a href="#">Persons with disabilities</a></p>	<p>Regulations, COPs, policies are compliant overall</p> <p>New regulation provides stronger language to ensure dignity and respect.</p>	<b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render.. services in a setting that] (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint

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	<p><a href="#">AS 47.80.110 (2)</a> . . . service providers shall ensure each[person with disabilities] has right to confidentiality and treatment with dignity</p> <p><a href="#">ALH AS 47.33.300 (2)</a> [ALH resident] has the right to be treated with consideration and respect for personal dignity, individuality, and the need for privacy . . .</p> <p><a href="#">AKPH P&amp;P No. 01.04</a> [Restates AS 47.33.300 (a)(2)].</p> <p><a href="#">FH 7 AAC 50.430 (b)</a> A foster parent shall recognize, encourage, and support the religious beliefs, ethnic and cultural heritage, and language of a child’s birth parents, and shall respect the expressed religious preference of the birth parents of their child. However, the foster parent shall respect the preference of a foster child nine years of age or older.</p> <p><b>(d)</b> A foster parent shall treat foster children equitably with the foster parent’s own children.</p>		
<p><b>freedom from coercion/restraint</b></p>	<p><a href="#">SDS service principles</a> and 7 AAC 130.229 apply to all settings, including adult day, day habilitation, assisted living homes, foster homes, and supported employment.</p>	<p>See new regulations and amendment</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render . . .services in a setting that] (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint</p>

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	<p><a href="#">SDS Service Principles</a>: Individuals a right to choice and self-determination . . . Individuals are safe and served in the least restrictive manner.</p> <p><a href="#">AS 47.80.110 (6)</a> . . . service providers shall provide services in the least restrictive setting .</p> <p><a href="#">7 AAC 130.229</a>. [Specifies limited circumstances for use of restrictive intervention.]</p> <p><a href="#">7 AAC 130.255 (d)</a> A provider of residential supported living services under this section may not compel a recipient to be absent from an assisted living home for the convenience of the provider.</p> <p><a href="#">7 AAC 130.265 (j)</a> A provider of residential habilitation services under this section may not compel a recipient to be absent from an assisted living home, foster home, or group home for the convenience of the provider.</p> <p><a href="#">ALH 7 AAC 75.220 (a)</a> [ALH shall provide safeguards to ensure that no person abuses, neglects, or exploits a resident.]</p>		<p><b>Amendment</b> to 7 AAC 130.229 (a) A home and community-based waiver services provider may use restrictive intervention only <u>if justified for safe management of the recipient’s behavior that requires intervention as described in the support plan developed in accordance with 7 AAC 130.217.</u></p> <p>The state will ensure that when restraints are allowed all of the requirements in 7 AAC 130.220(p) are met.</p>

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	<p><a href="#">7 AAC 75.295 (a)</a> [ALH] must have a written procedure regarding the use of physical restraint [approved by the department].  <a href="#">AKPH P&amp;P No. 04.09</a> [limits the use of restraints]; <a href="#">P&amp;P No. 06.01</a> [addresses resident abuse]</p> <p><a href="#">FH 7 AAC 50.435 (b)</a> [To guide behavior, FH] shall provide positive enforcement, redirection, and the setting of realistic expectations and clear and consistent limits.  <b>(c)</b> [FH] may not use discipline or a behavior management technique that is cruel, humiliating, or otherwise damaging to the child.  <b>(d) - (j)</b> [List of prohibited practices, including restraint and isolation (except under limited circumstances)]  <a href="#">OCS FH Handbook</a>. p. 74 [FH] barred from specific types of discipline, including corporal punishment, isolation, physical restraints, and verbal abuse</p>	<p>7AAC 50.435 (g) through (j) are applicable only to residential childcare facilities. They do not apply to foster homes. 7AAC 50.435(h) is questionable because it allows isolation but only in limited circumstances with documentation that aligns with 7 AAC 130.220(p).</p> <p>OCS Foster Care handbook prohibits isolation.</p>	

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<b>42 CFR 441.301 (c)(4)(iv) Settings must optimize recipient initiative, autonomy, and independence in making life choices, including</b>			
<b>daily activities</b>	<p><a href="#">SDS Service Principles</a>: Individuals have a right to choice and self-determination . . .</p> <p><a href="#">Adult Day COP III.D.1</a>. The provider must offer services and activities that  b. are varied . . .to meet the interests of the recipients;  d. are planned jointly by staff and recipients.</p> <p><a href="#">Day habilitation COP II.1</a>. The provider must offer services and activities that  b. are varied . . .to meet the interests of the recipients;  e. are planned jointly by staff and recipients.</p> <p><a href="#">Residential supported-living COP. II.C</a>. The provider must accord to recipients a full range of activities ordinarily available in a home . . .</p>	Compliant. See new regulation.	<p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render . . .services in a setting that] (3)  optimizes the recipient’s initiative, autonomy, and independence in making life choices, including those for daily activities, physical environment, and interactions with others.</p> <p><b>Revise Residential <a href="#">Habilitation COP</a></b>. (see 7 AAC 130.220(n))</p> <p><b>Revise <a href="#">Residential Supported-Living COP II.C</a></b>: (See 7 AAC 130.220(n))</p>

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	<p><a href="#">FH 7 AAC 50.430 (c)</a> [FH to provide structure and daily activities designed to promote development and health of child]</p> <p><a href="#">7 AAC 56.310 (a)(4)</a> [Child receiving services has the following right: placement and supervision in the least restrictive setting capable of meeting the child’s needs ...]</p> <p><a href="#">OCS FH Handbook</a>; pp. 65-67. [FH] must ensure recipient attends school; should foster participation in social activities; may assign chores similar to those expected of family members of the same age.</p> <p><a href="#">ALH AS 47.33.230 (a)</a> [Resident’s plan must]</p> <p>(1) promote participation in the community and increased independence through training and support ...</p> <p>(2) [recognize the right of the resident to evaluate and choose ... when making decisions re abilities, preferences, and service needs]</p> <p>(b) [Resident’s plan must describe] (3) resident’s preferences in ... recreational activities, religious affiliation</p> <p>(4) – (5) [ADLs needing assistance and how assistance will be provided]</p>	<p>Potential adjustments to FH policy to be addressed by ISCC</p> <p>Compliant</p>	

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<p><b>physical environment</b></p>	<p><a href="#">Adult Day COP IV</a> Site requirements.</p> <p><a href="#">Day habilitation COP III</a>. Site requirements.</p> <p><a href="#">ALH AS 47.33.300 (a)(10)</a> [Res has right to reasonable opportunity to exercise and to go outdoors, when weather permits.]</p> <p><a href="#">AKPH P&amp;P 01.04</a> restates right.</p> <p><a href="#">7 AAC 75.260 (a)(1)</a> [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p><a href="#">FH 7 AAC 50.530 (a)</a> [FH must have indoor and outdoor space to accommodate physical/developmental needs of child]</p> <p><a href="#">7 AAC 50.540 (a)</a> [FH] must select equipment and supplies so that amount, variety, arrangement and use are appropriate for developmental needs of child</p>	<p>Overall, regulations, COPs, and policies are partially compliant.</p> <p>New regulation requires services to be rendered in a setting that optimizes recipients' autonomy and initiative, including those for physical environment.</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render each service... in a setting that] (3)</p> <p>optimizes the recipient's initiative, autonomy, and independence in making life choices, including those for daily activities, physical environment, and interactions with others</p>

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<p><b>with whom to interact</b></p>	<p><a href="#">SDS Service Principles</a>: Individuals a right to choice and self-determination . . .</p> <p><a href="#">Adult Day COP III.D.1</a>. The provider must offer services and activities that  b. are varied . . .to meet the interests of the recipients and to promote participation in both individual and group activities;  d. are planned jointly by staff and recipients.</p> <p><a href="#">Day habilitation COP II.1</a>. The provider must offer services and activities that  b. are varied . . .to meet the interests of the recipients and to promote participation in both individual and group activities;  e. are planned jointly by staff and recipients.</p> <p><a href="#">ALH AS 47.33.230 (b)(3)</a> [Resident’s plan must describe] resident’s preferences in ... relationships and visitation with friends, family members, and others</p> <p><a href="#">FH 7 AAC 56.310 (a)(4)</a> [Child receiving services has the following right: placement and supervision] in the least restrictive setting ... considering siblings, extended family, and other relationships  <b>(b)</b> [Child must have opportunity for sibling visits and contact, and visits with extended family]</p>	<p>New regulation requires services to be rendered in a setting that optimizes recipients’ autonomy and initiative, including interactions with others.</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220</b> (n) [A provider shall render each service... in a setting that] (3) optimizes the recipient’s initiative, autonomy, and independence in making life choices, including those for daily activities, physical environment, and interactions with others</p>

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	<p><a href="#">OCS FH Handbook</a>, p. 69. [FH] dating is normal part of adolescence; FH may guide re safe dating practices, and set rules and boundaries for dating.</p>		
<b>42 CFR 441.301 (c)(4)(v) The setting facilitates individual choice regarding</b>			
<p><b>services and supports</b></p>	<p><a href="#">SDS Vision</a>: Choice, safety, independence, and dignity in home and community-based living.</p> <p><a href="#">SDS Service Principles</a>: Individuals a right to choice and self-determination . . . Individuals have knowledge of and access to community services.</p> <p><a href="#">Provider COP III.C.3</a>. The provider must cooperate with recipients who elect to change service providers.</p> <p><a href="#">CC COP IV. B. 1. c.</a> [The CC must] affirm the recipient’s right to choose to receive services from any qualified provider . . .</p> <p><a href="#">CC COP IV. B. 2. b.</a> [The CC must provide an opportunity for the recipient and family] to request services that meet identified needs, and to explain how they would prefer that the services be delivered.</p>	<p>Overall the regulations, COPs and policies align with the federal rule.</p> <p>New regulation and COP policy revision add stronger language to ensure that recipients’ choices regarding services and supports are implemented.</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220</b> (n) [A provider shall render each service... in a setting that] (4) implements the recipient’s choices regarding services and supports, and the individuals that will provide them</p> <p>“Individuals that will provide them” refers to the people (chosen by the recipient) who are direct care workers employed by providers or who are natural supports</p> <p><b>Amended <a href="#">Provider COP III.C.3</a></b>. The provider must cooperate with recipients who elect to change <u>service providers</u></p>

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	<p><a href="#">ALH AS 47.33.300 (6)</a> [ALH resident] has the right to . . . participate in and benefit from community services and activities</p>		
<p><b>who provides services/supports</b></p>	<p><a href="#">SDS Service Principles</a>: Quality services are provided by competent trained caregivers who are chosen by individuals and their families.</p> <p><a href="#">Provider COP III. C. 3</a>. The provider must cooperate with recipients who elect to change service providers.</p> <p><a href="#">CC COP IV. B. 1. C</a>. The CC must affirm the recipient’s right to choose to receive services from any qualified provider.</p> <p><a href="#">ALH AS 47.33.300 (12)</a> [ALH resident] has the right to . . .have access to adequate and appropriate health care and health care providers of the resident’s own choosing . . .</p> <p><a href="#">AKPH P&amp;P No. 01.04</a> restates right.</p>	<p>Partially compliant.</p> <p>See new proposed regulation and revision to COP.</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render each service... in a setting that] (4) implements the recipient’s choices regarding services and supports, and the individuals that will provide them</p> <p><a href="#">Amended Provider COP III.C.3</a>. The provider must cooperate with recipients who elect to change <u>service providers</u></p>
<p><b>42 CFR 441.301 (c)(4)(vi) [Applies to provider-owned or -controlled settings]</b></p>			
	<p><i>Note: HCBS regulations require that residential services (residential habilitation services and residential supported living services) be provided in settings that are licensed as assisted living homes or foster homes. The assisted living home regulations and foster home regulations cited apply to these settings.</i></p>		

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
	<p><a href="#">7 AAC 130.255 (a)(5)</a> The department will pay for residential supported-living services that are provided in an assisted living home licensed under AS 47.32.</p> <p><a href="#">7 AAC 130.265 (b)(1)(A)</a> The department will consider residential habilitation services to be family home habilitation services if the family home habilitation services site is a residence licensed as an assisted living home or a foster home under AS 47.32.</p> <p><a href="#">7 AAC 130.265 (f)</a> The department will consider residential habilitation services to be group home habilitation services if those services are provided ... in a residence licensed as an assisted living home ... under AS 47.32.</p>		
<b>42 CFR 441.301 (c)(4)(vi) (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied</b>			
<b>under a legally enforceable agreement similar to landlord/tenant law of jurisdiction</b>	<p><u>ALH AS 47.33.210 (a)</u> [Residential services contract required for residency]</p> <p><u>AKPH No. 03.03</u> Services are . . . defined in the assisted living contract; signed by the recipient or recipient resident;</p> <p><u>FH 7 AAC 50.300 (f)</u> [A facility must have an agreement signed by the parties that includes or attaches the following: (17 item list)]</p> <p><u>7 AAC 56.500</u> [For FH placements, agency shall develop a placement agreement; can combine agreement with FH agreement required by <u>7 AAC 50.300 (f)</u>]</p>	Compliant -see new regulation 7 AAC 130.220(o)	<p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting</p> <p>(1) shall provide for the recipient: (A) a legally-enforceable, written agreement that complies with the requirements of <u>AS 34.03.010</u> – 34.03.380</p> <p>(B) the option of a private unit, if available in the setting and appropriate for the recipient’s needs, preferences, and resources for payment of room and board; and (C) a setting that is physically accessible for the recipient; and (2) except as provided under (p) of this section, shall provide for the recipient</p> <p>(A) privacy in the recipient's living or sleeping unit;</p> <p>(B) the freedom and support needed for a recipient to control the recipient's schedule and activities;</p> <p>(C) access to food at all times; and</p>
<b>agreement must address recipient responsibilities</b>	<p><u>ALH AS 47.33.210 (b)(3)</u> [must specify rights, duties, and obligations of resident]</p> <p><u>AKPH No. 03.03</u> Services are . . . defined in the assisted living contract; includes</p>		

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
	<p>description of the rights, duties, and obligations of the resident.</p> <p><a href="#">FH 7 AAC 56.300 (a)</a> [Agency shall provide a written statement or pamphlet indicating client and agency rights and responsibilities]</p> <p><a href="#">7 AAC 56.500 (b)(4)</a> [Agreement must include delineation of the respective roles and responsibilities of all parties ...]</p>		(D) visitors of the recipient's choosing at any time.
<p><b>agreement must address recipient protections from eviction</b></p>	<p><a href="#">HCBS 7 AAC 130.233</a>[30 days before action taken], a provider shall send written notice of service termination to the department, the recipient, and the recipient's care coordinator.</p> <p><a href="#">ALH AS 47.33.210 (b)(4)</a> [Residential services contract must set out policies/procedures for termination of contract]</p> <p><a href="#">AS 47.33.360</a> [No termination except for stated reasons; notice required; resident right to contest termination]</p> <p><a href="#">AKPH No. 03.03</a> Services are . . . defined in the assisted living contract; includes policy for termination of the contract.</p> <p><a href="#">FH 7 AAC 56.300 (b)</a> [Agency written statement or pamphlet must have a written appeal process for clients]</p>	<p>Compliant - see new regulation 7 AAC 130.220(o)</p>	

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<b>42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where HCB services are provided.</b>			
<b>Privacy in unit</b>	<p><u>ALH AS 47.33.300 (a)</u> [Res has right to] <b>(2)(B)</b> [privacy in the resident’s room or portion of a room]; <b>(2)(D)</b> the maintenance of personal possessions and the right to keep at least one cabinet or drawer locked <b>(5)</b> close the door of the resident’s room at any time.</p> <p><u>AKPH P&amp;P No. 01.04</u> [Restates AS 47.33.300.]</p> <p><u>AS 47.33.330 (a)(2)</u> [Staff may not enter resident’s room without first obtaining permission except for health or safety reasons]</p>	Compliant - see new regulation 7 AAC 130.220(o)	<p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... provider that owns or controls a residential setting shall...</p> <p>(1)(C) setting that is physically accessible for the recipient...</p> <p>(2) ...shall provide for the recipient (A) privacy in the recipient's living or sleeping unit...</p> <p>7 AAC 130.220 (n)(3) [Provider shall render each service... in a setting that...] optimizes the recipient’s initiative, autonomy, and independence in... physical environment</p>
<b>Unit entrance doors lockable by the recipient</b>	<p><u>ALH</u> No reference</p> <p><u>AKPH P&amp;P No. 01.05</u>. Home entrance doors are locked for security reasons after visiting times. Special accommodations can be made to allow visitor access to the home after the doors are locked.</p> <p><u>FH</u> No reference</p>	Silent except for physical accessibility	

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<b>Only appropriate staff having keys to the unit entrance doors</b>	Regulations, COPs, policies.	Silent except for privacy, dignity and respect	
<b>Choice of roommates</b>	<p><a href="#">ALH AS 47.33.230 (b)(3)</a> [Resident’s plan must describe] preference in roommates</p> <p><a href="#">AKPH P&amp;P No. 03.03</a>. Assignment of residence rooms in the homes is based on the assessment of medical, physical, and behavioral issues, and gender of the resident. Private rooms are assigned by assessed need, not seniority. [Those] assigned to a private room are not assured that they will remain in a private room.</p> <p><u>FH</u> No reference</p>	<p>Compliant</p> <p>If needed, how to come into compliance will be addressed by ISCC.</p>	
<b>Freedom to furnish and decorate units within the lease/agreement</b>	<p><a href="#">ALH 7 AAC 75.260 (a)(1)</a> [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p><u>FH</u> No reference to decorating</p> <p><a href="#">7 AAC 50.430 (h)</a> [FH must allow child] to bring and acquire personal belongings</p>	Compliant	
<b>42 CFR 441.301 (c)(4)(vi)(C) Recipients must have...</b>			

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<p><b>Freedom/ support to control own schedules and activities</b></p>	<p>[ALH] <a href="#">AS 47.33.060 (c)</a> [House rules may address telephone use, hours/volume for TV/radio, visitors, movement in and out of home]            (d) [ALH may not adopt a house rule that unreasonably restricts a right of a resident. <a href="#">AKPH P&amp;P No. 01.01</a>. [Homes follow a] resident-centered care philosophy by honoring resident’s life experiences, choices, routines, and the spontaneity of daily life.</p> <p><a href="#">FH 7 AAC 50.430 (d)</a> [Foster child to be treated equitably with foster parent’s own children]  <a href="#">7 AAC 50.440 (a)</a> [Child must receive responsible supervision appropriate to age and developmental needs]</p>	<p>Partially compliant.</p> <p>See new proposed regulation which clarifies recipient’s freedom to control their own schedules and activities.</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220</b>            (o) In addition to ensuring a setting meets the requirements specified in (n) of this section, a provider that owns or controls a residential setting            (2).. shall provide for the recipient...(B) the freedom and support needed for a recipient to control the recipient's schedule and activities;            (C) access to food at all times</p>
<p><b>Access to food at all times</b></p>	<p><a href="#">ALH 7 AAC 75.265 (a)</a> [ALH must offer three meals and at least one snack daily]  <a href="#">AKPH Brochure “A Matter of Rights.”</a> [Residents may have microwave oven, pots for heating water, and small refrigerators in their rooms.]</p> <p><a href="#">FH 7 AAC 50.460 (a)</a> [FH] shall ensure that all snacks and meals meet child care food program requirements of 7</p>	<p>Partially compliant</p>	

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
	<p>CFR 226.20 [Minimum meal requirements] (g) [FH] may not deny a meal or snack to a child.</p> <p><a href="#">OCS FH Handbook, pp.64-65</a> [FH] must provide regular, balanced meals and snacks; may not deny meals or force/coerce child to eat.</p>		
<p><b>42 CFR 441.301 (c)(4)(vi)(D) Recipients must be able to have...</b></p>			
<p><b>...visitors at any time</b></p>	<p><a href="#">ALH AS 47.33.060 (c)</a> House rules may address various issues, including (3) visitors.</p> <p><a href="#">AS 47.33.060 (d)</a> An ALH may not adopt a house rule that unreasonably restricts a right of a resident provided for under this chapter or under any other provision of the law.</p> <p><a href="#">AS 47.33.300 (a)(4)(C)</a> [ALH may establish visiting hours]</p> <p><a href="#">AKPH P&amp;P No. 01.05</a> [Alaska Pioneer Homes have posted times when entrance doors are locked for security reasons; however, “in special circumstances”,</p>	<p>AS 47.33.060 (c)(3) and 47.33.300(a)(4)(C) are non-compliant</p> <p>7 AAC 130.220 (e) requires all providers certified to provide Home and Community Based Services to comply with the requirements to become enrolled Medicaid providers (7 AAC 105.200-7 AAC 105.280). 7 AAC 105.210 (2) and (3)</p>	<p>See <i>Amendments to Statutes and Regulations – House Visitors Rule</i> (p.___) for proposed steps and timeline for changing the house rules statute AS 47.33.060.</p>

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
	accommodations may be made to allow access after doors are locked.]	requires the provider to meet all Federal laws. Failure to comply with Federal law bars a provider from becoming enrolled as a Medicaid provider and therefore they cannot be certified to become a home and community base services provider. The State intends to amend the Statute to align with Federal law. Also the ISCC will determine how to reconcile the differences between house rules in licensing and in other divisions.	
<b>42 CFR 441.301 (c)(4)(vi)(E) The settings where HCB services are provided must be</b>			
<b>...physically accessible for the recipient</b>	<a href="#">7 AAC 130.300 (b)(2)(A)</a> [Dept. will pay for environmental modifications necessary to]		

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
	<p>meet the recipient needs for accessibility identified in POC.</p> <p><a href="#">Adult Day COP IV.A.5.</a> requires adaptive equipment and toilet/sink in location accessible to recipient with limited mobility</p> <p><a href="#">Day Habilitation COP III.A.2.</a> requires adaptive equipment and accessible toilet facilities</p>		
<p><b>42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions [(c)(4)(vi)(A) – (D) pertaining to only provider owned or controlled residential settings] must be supported by a specific assessed need and justified in the service plan that documents</b></p>			
<p>~specific and individualized assessed need</p> <p>~positive interventions and supports used prior to any modification</p> <p>~less intrusive methods of meeting the need tried, but did not work</p> <p>~condition that lead to the specific assessed need</p> <p>~regular collection/ review of data to measure the ongoing effectiveness</p>	<p>Care Coordination Services Conditions of Participation (<a href="#">CC COP IV.B. POC</a>);</p> <p><a href="#">SDS Universal Program Forms (Uni-02 Support plan all Waivers POC)</a></p>	<p>See new regulation</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220</b></p> <p>(p) A provider that owns or controls a residential setting may modify the setting requirements in (o)(2) of this section for a specific, assessed need of a recipient, only after the provider attempts positive interventions and other less intrusive methods of meeting the need, and those attempts prove unworkable. The modification must be approved in the support plan developed in accordance with <a href="#">7 AAC 130.217</a> 7 AAC 130.218, , and must be supported by a written record that includes (1) identification of an assessed need requiring modification;</p>

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<p>~times for review of data to determine continuation/termination of modification</p> <p>~informed consent of the recipient</p> <p>~assurance of no harm to recipient resulting from modifications</p>			<p>(2) documentation, before any modification of the setting requirements, of positive interventions and other less intrusive methods that were used to address that need and that did not work;</p> <p>(3) less intrusive methods of meeting that need that were tried, but did not work;</p> <p>(3) an explanation of the modification used; the modification must be directly proportional to the specific assessed need;</p> <p>(4) an explanation of the method for collecting and reviewing data to measure the ongoing effectiveness of the modification;</p> <p>5) time limits for periodic reviews to determine if the modification continues to be necessary or should be terminated;</p> <p>(6) documentation of the informed consent of the recipient for the modification; and</p> <p>(7) a documented analysis concluding the modification will not cause harm to the recipient.</p> <p><b>For proposed revision to <a href="#">CC COP IV.B. POC</a> (Residential Setting), see 7 AAC 130.220 (o)(1)(A)</b></p> <p>For modifications, see AAC 130.220(m)</p> <p><b><a href="#">Revise POC</a></b> to indicate residence choice by recipient, and requirements for modification(see7 AAC 130. 130.220(p)</p>

Column 1	Column 2	Column 3	Column 4
Federal regulations	Applicable Alaska Standards	Compliance Notes	Additions/changes made (effective 11/5/17)
<b>42 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of HCB settings</b>			
<p>~location in a building that is a publicly or privately operated facility that provides inpatient institutional treatment</p> <p>~location in a building on the grounds of, or immediately adjacent to a public institution</p> <p>~location that isolates recipients from the broader community of individuals who do not receive HCB services</p>	<p><a href="#">7 AAC 130.250</a> <b>Adult Day</b>  <b>(b)(2)</b> [Services considered to be adult day if] provided in a non-institutional community setting.</p>	<p>Compliant</p> <p>See new regulation.</p>	<p><b>New HCBS waiver regulation 7 AAC 130.220</b>  (q) Unless otherwise approved by the department, a provider may not render home and community-based waiver services in a setting</p> <p>(1) in a building that is a publicly or privately operated facility that provides inpatient institutional treatment;</p> <p>(2) in a building on the grounds of, or immediately adjacent to a public institution; or</p> <p>(3) in a location that isolates recipients from the broader community.</p>

## **Appendix B**

### **Settings Qualities Checklist and Exploratory Questions for Home and Community-Based Services Settings**

**Senior and Disabilities Services  
Setting Qualities Checklist and Exploratory Questions for  
Home and Community-Based Services Settings**

Setting name	
Setting address	
Services provided at setting	
Reviewer	Date
Notes:	
<b>Qualities required for all home and community-based services setting</b>	
<input type="checkbox"/> <b>Not located in building/on grounds with institutional characteristics</b>	
<ul style="list-style-type: none"> <li>• Is the setting in a publicly or privately operated facility that provides inpatient institutional treatment?</li> <li>• Is the setting located in a building on the grounds of, or adjacent to, a public institution?</li> </ul>	
<input type="checkbox"/> <b>Does not isolate recipients from broader community of individuals not receiving HCBS?</b>	
<ul style="list-style-type: none"> <li>• Does the setting provide multiple types of services/activities on-site with consequent decrease in opportunities for recipient participation in broader community?</li> <li>• Does the setting isolate recipients because of its nature, e.g., disability-specific farm community, gated/secured community for people with disabilities, residential school?</li> <li>• Is the setting located in the community among private residences rather than in a business area?</li> <li>• Does the setting operate in a manner that congregates recipients so that they live/receive services in an area separate from non-recipients?</li> <li>• Does the setting use interventions/restrictions like those that might be used in institutional settings, or are deemed unacceptable in HCBS settings, e.g., seclusion, chemical restraints, locked doors?</li> </ul>	
<input type="checkbox"/> <b>Provides opportunities and support for employment in competitive, integrated settings</b>	
<ul style="list-style-type: none"> <li>• Do any recipients work in integrated community settings?</li> <li>• Does the setting offer, to recipients who would like to work, information and support to ensure they are able to pursue that option?</li> <li>• Does the setting support recipients that do work, e.g., planning services around the work schedule, prompting recipients when it is time to go to work, assuring transportation is available?</li> </ul>	
<input type="checkbox"/> <b>Provides opportunities to participate in and receive services in community</b>	

- Does the setting provide, or assist recipients to obtain, information on activities/services in the community?
- Are recipients able to come and go at any time, e.g., for appointments, shopping, church, entertainment, dining out?
- Is the setting located near a bus stop?
- Are bus schedules posted in a convenient location?
- Are taxis or accessible vans available to transport recipients?
- Are transportation services schedules/telephone numbers posted/available?
- Does the setting facilitate/train recipients in the use of public transportation?
- Are recipients able to talk about activities occurring outside the setting, how they accessed those activities, and who assisted in facilitating that access?

**Provides opportunities for control of personal resources**

- Do recipients have bank accounts or other means to control their money?
- Does the setting facilitate/support recipients to access accounts/funds as they choose?
- If recipients work, is it clear to them that they are not required to sign over paychecks to the provider?

**Needs/preferences considered when settings options offered**

- Does the setting reflect the needs and preferences of each recipient?
- Do recipients express satisfaction regarding the setting?

**Offers choice of receiving services in non-disability specific settings**

- If recipients choose to change providers, are they given the option of receiving services in non-disability specific settings?

**Process for protecting recipients' rights to privacy, dignity, and respect**

- Is health information kept private, e.g., schedules/information regarding meds, diet, PT/OT are not posted in open area for all to view?
- Do staff refrain from discussing recipient health information within hearing distance of others who do not have a need to know?
- Do recipients have/have access to telephones or other electronic devices to use for personal communication in private and at any time?
- Are communal telephones/computers located so that privacy in communication is ensured?
- Do staff/recipients knock and receive permission to enter prior to entering a sleeping/living unit or bathroom?
- Does the setting provide assistance with grooming/hygiene as needed?
- Are recipients dressed in clothes that fit, are clean, are to their liking, and are appropriate for the time of day/season/weather?
- Do staff converse with recipients while providing assistance and during the course of daily activities?
- Do staff address recipients as individuals in the manner in which they would like to be addressed as opposed to addressing them with generic terms such as "hon" or "sweetie"?
- Do staff talk about a recipient in his/her presence as though the recipient was not present or within hearing distance?
- Are there cameras monitoring the setting?

<input type="checkbox"/> <b>Process for protecting recipients from coercion and restraint</b>
<ul style="list-style-type: none"> <li>• Are recipients compelled to be absent from a setting for the convenience of the provider?</li> <li>• Are recipients required, against their wishes, to be present in a setting in order to benefit the provider financially?</li> <li>• Do recipients feel they can discuss concerns without fearing consequences?</li> <li>• Are recipients informed regarding how to file a complaint?</li> <li>• Is complaint filing information posted and understandable by recipients?</li> <li>• Can complaint filing be done anonymously?</li> <li>• Are staff trained in the use of restrictive interventions?</li> </ul>
<input type="checkbox"/> <b>Provides opportunities/support for recipient initiative, autonomy, and independence</b>
<ul style="list-style-type: none"> <li>• Do recipients have opportunities to participate regularly in meaningful non-work activities in community settings of their choice and for the period of time preferred?</li> <li>• Does the setting make clear to recipients that they are not required to adhere to a set schedule?</li> <li>• Do staff ask recipients about their needs and preferences?</li> <li>• Are recipients assisted in a manner that leaves them feeling empowered to make choices and decisions?</li> <li>• Are the choices and decisions supported/accommodated rather than ignored or denied?</li> </ul>
<input type="checkbox"/> <b>Optimizes opportunities for recipients to make choices regarding daily activities</b>
<ul style="list-style-type: none"> <li>• Does the setting support recipients in choosing their daily activities and in setting and controlling their own schedules?</li> <li>• Do recipients' schedules vary from others in the same setting?</li> <li>• Does the setting provide television/radio, access to the internet, movies, and other leisure activities that are of interest to recipients and that can be used at their convenience?</li> </ul>
<input type="checkbox"/> <b>Optimizes opportunities for recipients to make choices regarding the physical environment</b>
<ul style="list-style-type: none"> <li>• Are there barriers to movement preventing entrance to or exit from certain areas in the setting?</li> <li>• Are recipients limited to a specific area for activities or able to move about to various areas?</li> <li>• Are recipients able to move inside and outside the setting as they choose as opposed to being "parked" in one spot for the convenience of the provider?</li> <li>• Are there requirements or a curfew regarding return to the setting if a recipient leaves?</li> <li>• Are recipients assisted to access amenities (e.g., pool or gym) that are used by non-recipients?</li> <li>• Are recipients restricted to meeting visitors in an area designated for that purpose?</li> </ul>
<input type="checkbox"/> <b>Optimizes opportunities for recipients to choose with whom to interact</b>
<ul style="list-style-type: none"> <li>• Does the setting require recipients to occupy assigned seating for activities or meals?</li> <li>• Does the setting limit conversations/interactions among recipients?</li> <li>• Does the setting provide an area for recipients who wish, on occasion, to not participate in activities or to be alone?</li> </ul>
<input type="checkbox"/> <b>Facilitates choice regarding services/supports and agency staff who provide them</b>

- Do recipients know how and to whom to make a request for services?
- Are recipients aware of the fact that they can choose to receive services from other providers/staff?
- Are recipients able to identify other providers who could provide the same services?
- Does the setting assist recipients to change providers or to obtain other requested services?
- Do recipients express satisfaction with the services received?
- If a recipient is dissatisfied with/would prefer not to interact with an individual staff member, is he/she supported in the choice to receive services from a different staff person?

**Additional qualities required for provider-owned or controlled residential settings**

**Offers choice of non-disability specific setting and private unit**

- Is the setting limited to use by people with disabilities?
- Was the setting chosen from among options that included non-disability specific settings?
- Are recipients offered the choice of a private room/unit where they are available for non-recipients?

**Residential options based on recipient resources for room and board**

- Were the residential services offered realistic in view of the recipient resources for payment of room and board?
- If residential services were limited because of resources, was the matter discussed with the recipient?

**Legally enforceable agreement specifying responsibilities and protections from eviction**

- Does the agreement specify the responsibilities of the recipient and the provider with respect to the setting?
- Does the agreement specify the circumstances under which it can be terminated?
- Does the agreement address the steps a recipient can follow to request a review/appeal a termination of services?
- Does the recipient understand the terms of the agreement?

**Sleeping or living unit doors lockable by recipient**

- Can the doors to the unit be locked?
- Can bathroom doors be locked?
- Do recipients have keys to their doors?

**Sleeping or living unit key availability limited to appropriate staff**

<ul style="list-style-type: none"> <li>• Is there a master key or are there copies of unit keys available for use if needed?</li> <li>• Is use of the master key/unit keys limited to appropriate staff?</li> <li>• Are the master key/unit keys used to enter units only in limited circumstances agreed upon with the recipient?</li> <li>• Is there a policy regarding the circumstances when the master key/unit keys may be used by staff and which staff may use those keys?</li> </ul>
<input type="checkbox"/> <b>Choice of roommates if sleeping or living units shared</b>
<ul style="list-style-type: none"> <li>• Are recipients given a choice regarding roommates?</li> <li>• Do recipients speak about their roommates in a positive manner?</li> <li>• Do recipients express a wish to remain in a room/unit with their roommates?</li> <li>• Are couples able to choose whether to share a room?</li> <li>• Do recipients know that they can (and how to) request a change in roommates?</li> </ul>
<input type="checkbox"/> <b>Lease/rental agreement addresses how recipients may furnish/decorate sleeping/living units</b>
<ul style="list-style-type: none"> <li>• Do recipients know that they may furnish and decorate their units as they please within the terms spelled out in the agreement?</li> <li>• Are recipients' personal items (e.g., pictures, books, memorabilia) evident and arranged as they wish?</li> <li>• Do furniture, linens, and other household items reflect personal choices?</li> <li>• Do recipients' units reflect varying interests and tastes rather than having a standardized appearance?</li> <li>• Is furniture arranged as recipients wish for comfort?</li> <li>• Are shared rooms configured so that privacy is protected when assistance is provided to recipients?</li> </ul>
<input type="checkbox"/> <b>Supports recipient freedom to control schedules and activities</b>
<ul style="list-style-type: none"> <li>• Does the setting make clear to recipients that they are not required to adhere to a set schedule for waking, bathing, eating, exercising, or activities?</li> <li>• Is there staff sufficient to allow for scheduling variations?</li> <li>• Do recipients' schedules vary from others in the same setting?</li> <li>• Does the setting allow for the recipient to be alone and not participate in activities?</li> <li>• Do recipients have access to typical home areas such as cooking and dining areas, laundry, and living and entertainment areas?</li> <li>• Are meals served according to a set menu at scheduled times in a specified location?</li> <li>• Can recipients request alternatives to a meal?</li> <li>• Can recipients request meals at times other than when scheduled?</li> <li>• Can recipients eat meals in locations other than the dining area, e.g., in an entertainment area or in private in a sleeping/living unit?</li> </ul>
<input type="checkbox"/> <b>Food available to recipients at all times</b>
<ul style="list-style-type: none"> <li>• If a recipient misses a regularly scheduled meal, are provisions made for a nutritionally-equivalent meal to be available at a time convenient to the recipient?</li> <li>• Are there appliances for safe food storage and cooking/heating in recipients' sleeping/living units or in a common area accessible by recipients?</li> <li>• Are snacks available anytime?</li> </ul>

**Allows visitors of recipient's choosing at any time**

- Are there limitations on visiting hours or the number of visitors allowed at one time?
- If visiting hours are addressed in the lease/rental agreement, is the recipient made aware of limitations before moving into the residential setting?
- Is furniture in living areas arranged to support small group conversations?

**Physically accessible for each recipient**

- Are there features that could limit mobility, e.g., raised doorways, narrow halls, shag carpets?
- Are there physical adaptations that counter any limiting features, e.g., ramps, stair lifts, or elevators?
- Are supports to facilitate mobility provided where likely to be needed, e.g., grab bars, shower seats, or hand rails?
- Are appliances accessible, e.g., microwave reachable without difficulty, front-loading washer/dryer useable for those with mobility devices?
- Are tables and chairs at convention height for recipients to access comfortably?
- Is furniture placed so as not to obstruct pathways for those with mobility devices?
- Are there gates, locked doors, or other barriers preventing access/exit from areas in the setting?

**Protocol for modification of residential setting conditions**

- Does the setting have a process/policy addressing modification of residential setting requirements when needed for recipients?
- Does the process/policy include the following?
  - Identification of a specific and individualize assessed need
  - Documentation of positive interventions and supports before modification
  - Documentation of less intrusive methods that did not work before modification
  - Description of the condition that resulted in the need for modification
  - Collection and review of data to measure effectiveness of the modification
  - Specification of timeframes for review of the modification to determine whether it is no longer needed or should be continued or terminated
  - Informed consent of the recipient
  - Assurance modification will not cause harm to the recipient

## **Appendix C**

### **Provider Self-Assessment of Settings in which Home and Community-Based Services are Provided**

## **PART ONE**

### **Home and community-based services settings**

The questions in Part One apply to all settings, including provider-owned or controlled residential settings.

#### Instructions

Consider each setting in which home and community-based services are provided as a separate entity when answering questions.

For each setting where waiver services are provided to recipients

- review the setting quality, the federal regulation, and statement program impact
- answer the questions related to the regulation
- for each setting that does not meet the CMS-defined quality addressed by the question, list the name and address of the setting and describe what the agency will do to make that setting consistent with the regulation

## Setting quality: NON-INSTITUTIONAL CHARACTERISTICS

### Federal regulation

42 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of a home and community based (HCB) setting, including the following:

- A setting that is located in a building that is a publicly or privately operated facility that provides inpatient institutional treatment
- A setting that is located in a building on the grounds of, or immediately adjacent to a public institution
- A setting that isolates recipients from the broader community of individuals who do not receive waiver services

### Program impact

Waiver services may be provided only in locations that have the qualities of a home and community-based setting. Some locations, defined in the regulation, are presumed to lack such qualities because they isolate recipients from the community.

### Self-assessment questions

**2. Is any setting in which the agency provides waiver services located in a building that is**

- **a publicly or privately operated facility that provides inpatient institutional treatment, or**
- **on the grounds of, or immediately adjacent to a public institution?**

**Yes.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**No**

**3. Does any setting in which the agency provides waiver services isolate recipients from the broader community of individuals who do not receive waiver services?**

CMS Guidance When assessing settings to answer these question, consider this list of characteristics that may indicate a setting that isolates:

- *The setting is designed specifically for people with disabilities*
- *The setting is designed to provide people with disabilities multiple types of services and activities on-site*
- *Individuals in the setting are primarily or exclusively people with disabilities*
- *Individuals in the setting have little, if any, interaction with other others in the broader community*

*In addition, consider whether any setting could be one of the following types of settings that have the effect of isolating recipients:*

- *Farmstead or disability-specific farm/ranch community*
- *Gated or secured community specifically for persons with disabilities*
- *Residential schools*
- *Multiple settings operationally related and near each other (for example, group homes in close proximity)*

**Yes.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**No**

**Setting quality: COMMUNITY INTEGRATION AND SUPPORT FOR RECIPIENT PARTICIPATION**

Federal regulation

*42 CFR 441.301 (c)(4)(i) Home and community-based settings must be integrated in and support full access by recipients 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 waiver services.*

Program impact

Waiver services may be provided only in settings that are integrated in the community and support recipients who choose to participate in community life in the same way non-recipients participate.

Self-assessment questions

**4. Do all settings in which the agency provides waiver services provide opportunities and support for recipients who wish to seek employment in competitive, integrated settings?**

*CMS guidance The purpose of this regulation is to ensure provider support for recipients who choose to work. When assessing settings to answer the following question, evaluate whether recipients (including those who do not receive supported employment services) have the freedom, and support from provider staff, to seek employment in the community.*

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**5. Do all settings in which the agency provides waiver services provide opportunities for recipients to participate in community life and to receive services in the community?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**6. Do all settings in which the agency provides waiver services provide opportunities for recipient control of personal resources?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

## Setting quality: SELECTION OF SETTING BY THE RECIPIENT

### Federal regulation

*42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered service plan and are based on the recipient's needs, preferences, and, for residential settings, resources for room and board.*

### Program impact

Waiver services may be provided only in settings that are selected by the recipient from among settings that are not designed for or limited to people with disabilities.

### Self-assessment questions

**7. Are the needs and preferences of recipients taken into consideration when they are offered options for settings in which the agency provides waiver services?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**8. Are any settings in which waiver services are provided designed for or used primarily by people with disabilities?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**9. Are recipients offered the choice of receiving waiver services in non-disability specific settings?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: SUPPORT OF RECIPIENT RIGHTS AND  
FREEDOM FROM COERCION AND RESTRAINT**

Federal regulation

*42 CFR 441.301 (c)(4)(iii) The setting ensures the recipient's rights of privacy, dignity, and respect, and freedom from coercion and restraint in settings where waiver services are provided.*

Program impact

Waiver services may be provided only in settings that ensure recipient rights of privacy, dignity, and respect, and freedom from coercion and restraint.

Self-assessment questions

**10. Do all settings in which the agency provides waiver services have a process for protecting the privacy, dignity, and respect of recipients?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**11. Do all settings in which the agency provides waiver services have a process for protecting recipients from coercion and restraint?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: PROMOTION OF RECIPIENT INITIATIVE, AUTONOMY, AND INDEPENDENCE**  
**IN MAKING LIFE CHOICES**

Federal regulation

*42 CFR 441.301 (c)(4)(iv) The setting optimizes, but does not regiment, recipient initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact in settings where HCB services are provided.*

Program impact

Waiver services may be provided only in settings that optimize recipient initiative, autonomy and independence in making life choices.

Self-assessment questions

**12. Do all settings in which the agency provides waiver services provide opportunities and support for recipients to use their initiative, autonomy, and independence in making life choices?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**13. Do all settings in which the agency provides waiver services optimize opportunities for recipients to make choices regarding daily activities?**

*CMS guidance Recipients must have choices regarding activities including whether to participate in a group activity or to engage in other activities that may or may not be pre-planned.*

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**14. Do all settings in which the agency provides waiver services optimize opportunities for recipients to make choices regarding the physical environment?**

*CMS guidance Physical settings must meet recipient needs by being accessible, and should not appear to be the same for everyone; for example, recipients must have choices regarding room décor and furnishings so that the setting does not appear to be institutional in nature.*

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**15. Do all settings in which the agency provides waiver services optimize opportunities for recipients to choose with whom to interact?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT CHOICE OF SERVICES AND SUPPORTS  
AND OF STAFF WHO RENDER THEM**

Federal regulation

*42 CFR 441.301 (c)(4)(v) The setting facilitates recipient choice regarding services and supports, and who provides them in settings where HCB services are provided.*

Program impact

Waiver services may be provided only in settings that facilitate recipient choice of services and supports and choice of agency staff that provide those services and supports.

Self-assessment questions

**16. Do all settings in which the agency provides waiver services facilitate recipient choice regarding**

- **services and supports, and**
- **agency staff that provide those services and supports?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**END OF PART ONE**

Complete Part Two if the agency owns or controls residential settings in which waiver services are provided.

## PART TWO

### **Provider-owned or -controlled residential settings: additional conditions**

The questions in Part Two apply to provider-owned or controlled residential settings only.

#### Instructions

Consider each setting in which home and community-based services are provided as a separate entity when answering questions.

For each setting where waiver services are provided to recipients

- review the setting quality, the federal regulation, and statement program impact
- answer the questions related to the regulation
- for each setting that does not meet the CMS-defined quality addressed by the question, list the name and address of the setting and describe what the agency will do to make that setting consistent with the regulation

## Setting quality: SELECTION OF SETTING BY THE RECIPIENT

### Federal regulation

*42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered service plan and are based on the recipient's needs, preferences, and, for residential settings, resources for room and board.*

### Program impact

Waiver services may be provided only in settings that are selected by the recipient from among settings that are not designed for or limited to people with disabilities. For residential services, the options must take into consideration recipient resources for room and board, and whether those resources would cover the cost of a private unit in the chosen residential setting.

### Self-assessment questions

**17. Does each provider-owned or controlled residential setting offer recipients the choice of a private unit?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**18. Are recipients offered residential setting options on the basis of their resources for room and board?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT LEGAL RIGHT TO A SPECIFIC PHYSICAL PLACE  
AND PROTECTION FROM EVICTION**

Federal regulation

*42 CFR 441.301 (c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the recipient, and the recipient 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.*

Program impact

Waiver services in provider-owned or -controlled residential settings must operate under the terms of a legally enforceable agreement that provides the same responsibilities and protections available to non-recipients in similar rental or ownership arrangements.

Self-assessment questions

**19. Do all provider-owned or -controlled residential settings in which waiver services are provided enter into legally enforceable agreements with recipients addressing responsibilities and protections from eviction that are the same as tenants have under the landlord/tenant law of the jurisdiction in which the residential setting is located?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT RIGHT TO PRIVACY, INCLUDING  
LOCKABLE DOORS AND CHOICE OF ROOMMATE**

Federal regulation

*42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where waiver services are provided.*

*(1) Units must have entrance doors lockable by the recipient with only appropriate staff having keys to the doors.*

*(2) Recipients sharing units must have a choice of roommates in the setting.*

*(3) Recipients must have freedom to furnish and decorate their units within the lease or other agreement.*

Program impact

Waiver services may be provided only in settings that make privacy in sleeping or living units available for recipients.

Self-assessment questions

**20. In all provider-owned or -controlled residential settings in which waiver services are provided, are the entrance doors to the sleeping or living units lockable by the recipients who reside in those units?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**21. Do all provider-owned or -controlled residential settings in which waiver services are provided limit key availability so that only appropriate staff can enter the sleeping or living units of recipients?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**22. Do all provider-owned or -controlled residential settings in which waiver services are provided ensure that recipients have a choice of roommates if sleeping or living units are shared?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**23. Do all provider-owned or -controlled residential settings in which waiver services are provided have a lease or other rental agreement that addresses how recipients may furnish and decorate their units?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT CONTROL OF SCHEDULES AND ACTIVITIES, AND ACCESS TO FOOD**

Federal regulation

*42 CFR 441.301 (c)(4)(vi)(C) Recipients must have the freedom and support to control their own schedules and activities, and to have access to food at all times in settings where waiver services are provided.*

Program impact

Waiver services may be provided only in settings that support recipient control of their own schedules and activities, and make food available to recipients at all times.

Self-assessment questions

**24. Do all provider-owned or -controlled residential settings in which waiver services are provided extend to recipients the freedom to control their own schedules and activities, and provide the support to enable them to do so?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

**25. Do all provider-owned or -controlled residential settings in which waiver services are provided make food available to recipients at all times?**

*CMS Guidance If a recipient misses a regularly scheduled meal, the nutritional equivalent must be made available at a time convenient to the recipient. Provision must be made for access to safe storage and heating of food, e.g., microwave and refrigerator, either in the recipient's sleeping area or a common area accessible to the recipient. The recipient must have access to snacks at any time the recipient chooses. Exceptions to this requirement may be made if justified in accordance with 42 CFR 441.301 (c)(4)(vi)(F).*

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT RIGHT TO HAVE VISITORS AT ANY TIME**

Federal regulation

*42 CFR 441.301 (c)(4)(vi)(D) Recipients must be able to have visitors of their choosing at any time in settings where waiver services are provided.*

Program impact

Waiver services may be provided only in settings that allow recipients to have visitors at any time.

Self-assessment questions

**26. Do all provider-owned or -controlled residential settings in which waiver services are provided allow recipients to have visitors of their choosing at any time?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: PHYSICAL ACCESSIBILITY FOR RECIPIENT**

Federal regulation

*42 CFR 441.301 (c)(4)(vi)(E) The settings where waiver services are provided must be physically accessible for the recipient.*

Program impact

Waiver services may be provided only in settings that physically accessible for the recipient.

Self-assessment questions

**27. Do all provider-owned or -controlled residential settings in which waiver services are provided ensure that the settings are physically accessible for the recipient?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: CHANGES TO REQUIREMENTS MADE ONLY WHEN JUSTIFIED  
TO MEET RECIPIENT NEED**

Federal regulation

*42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions, under 42 CFR 441.301 (c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. To justify a modification, the following must be documented: A specific and individualized assessed need*

- *The positive interventions and supports used prior to any modifications to the service plan*
- *The less intrusive methods of meeting the need that have been tried, but did not work*
- *A description of the condition that lead to the specific assessed need*
- *A plan for regular collection and review of data to measure the ongoing effectiveness of the modification*
- *Time periods for periodic review to determine if the modification continues to be necessary or can be terminated*
- *The informed consent of the recipient*
- *Assurances that the interventions and supports will cause no harm to the recipient*

Program impact

Waiver services may be provided only in settings where the additional conditions for provider-owned or controlled residential settings are not changed except to meet the specific, assessed needs of recipients, and all changes are justified and documented.

Self-assessment questions

**28. Do all provider-owned or -controlled residential settings in which waiver services are provided have a protocol for modification of the conditions applicable to those settings [specified in 42 CFR 441.301 (c)(4)(vi)(A) through (D)] that addresses all the requirements?**

**Yes**

**No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

## **Appendix D**

### **Evidence of Public Information and Opportunity for Public Comment**



October 17, 2017

## **SDS E-Alert: Home and Community-Based Waiver Services Regulations Signed**

On Friday, October 6, Lt. Governor Byron Mallott signed regulations amendments titled Medicaid coverage and payment, home and community-based waiver services, and person-centered services and settings. These amendments become effective November 5, 2017.

A link to the signed regulations and the 12 amended Conditions of Participation for waiver services has been posted on the SDS Regulations webpage here: <http://dhss.alaska.gov/dsds/Pages/regulations/codeTitle7/Person-centered.aspx>

Please note that once the Conditions of Participation are effective, they will replace the current set of Conditions of Participation that are posted here: <http://dhss.alaska.gov/dsds/Pages/regulationpackage.aspx>.

The signed regulations will remain available in PDF format until BASIS (online regulations) is updated, a few months after the regulations become effective.



July 17, 2017

### **SDS E-Alert: Updated Website for HCBS Settings Transition Plan**

SDS has updated its website to add webpages addressing the Home and Community-Based Services Settings Transition Plan. The webpages include current headlines, status of settings compliance for settings in the validation sample, information about remediation and heightened scrutiny, and links to helpful resources. As the website develops, additional resources and settings assessment results will be posted.

The main settings webpage can be found here:

<http://dhss.alaska.gov/dsds/Pages/transitionPlanHCBS/HCBStransition.aspx>



June 2, 2017

## SDS E-Alert: Questions and Responses Re: Proposed Changes to Home and Community Based Waiver Services Regulations

1. Regarding proposed change to HCBWS Provider Conditions of Participation:
  - I. Program operations
    - A. Certification requirements
      - 3.b.viii. verification that agency staff have attended and completed SDS training on critical incident reporting and **settings requirements**;  
What SDS training on settings requirements is this COP referring to?

*Response: The requirement for settings training in the Provider Conditions of Participation refers to the training on settings that program administrators of agencies with settings-based services need to complete and then pass a quiz to gain access to the self-assessment tool, which serves as a provider's self-reported review of compliance with the settings regulations. The training is accessible via YouTube here:*

*<https://www.youtube.com/watch?v=JQ5rQ9ALdd8&feature=youtu.be> . Once the training is completed, the quiz can be requested from the SDS website here (scroll down to the bottom of the Training Schedule): <http://dhss.alaska.gov/dsds/Pages/ops/senior-disabilities-servicetraining.aspx> .*

2. Will the new regulations be enforced? Are all affected disabled clients and families being granted access to this proposed information and given an opportunity to respond? Once the regulations are finalized, will affected families be able to access the final product?

*Response: The regulations will be enforced. Per the requirements on public noticing, the notice of proposed regulations changes was issued electronically via the Online Public Notice system (<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=185487>) and via the SDS E-Alert email messaging system, as well as non-electronically in Alaska's largest daily newspaper. Public comment must be submitted by 5:00 on Monday, June 5, to be considered. The final version of the proposed regulations, effective 30 days after being signed by the Lt. Governor, will be available electronically here: <http://www.legis.state.ak.us/basis/aac.asp>.*



January 3, 2017

SDS E-Alert: SDS Provider Training Schedule and Registration, January – June 2017

Registration is now available for Senior and Disabilities Services' provider training sessions offered during the first half of 2017. Access the schedule and register for classes here:

<http://dhss.alaska.gov/dsds/Pages/ops/senior-disabilities-servicetraining.aspx>

If you have questions about the schedule or about training please email [hss.dsdstraining@alaska.gov](mailto:hss.dsdstraining@alaska.gov)



May 12, 2016

## **SDS E-Alert – Settings Self-Assessment: UPDATE FOR PROVIDERS and HELPFUL HINTS**

SDS has the following updates to share on the status of the Settings Self-Assessment compliance process.

As of May 11, 2016:

- Statewide, at least 838 separate service site locations have been identified requiring providers to complete a settings self-assessment. This number continues to grow as additional sites are reported to SDS.
- 32% of the 838 site locations have not been issued a self-assessment key to date, due to the provider having outstanding requirements and/or certification remediation in progress with SDS Provider Certification and Compliance Unit.
- Of the remaining 68% of site locations that have been issued a self-assessment key to date, SDS has received 325 (or 57% of the total) completed self-assessments.
- SDS received over 95% of the required completed self-assessments that were due by April 30, 2016! **THANK YOU AND TERRIFIC JOB!!**

We have more work to do together in this journey of settings compliance. What's Next?

Completed self-assessments for all locations issued a key since April 2016 are due by May 31, 2016. A challenge: Let's see if we can beat the 95% completion rate from the April 30 deadline!

Our SDS team is evaluating the self-assessments received to date and will be contacting providers in the very near future about self-assessment responses that require additional information or remediation. In reviewing responses thus far, SDS has identified some trends in the self-assessments that we would like to address and offer as a "*Settings Self-Assessment Helpful Hints*" document (attached). We strongly encourage providers to review this

document, as it has great tips and information pertaining to completing the self-assessment as well as development of remediation plans.

As a reminder, completing the self-assessment and participating in the entire settings compliance process is **mandatory** for providers, as it is a condition of the agency's certification. Refer to previous e-alerts for guidance on settings assessment and compliance process: <http://list.state.ak.us/soalists/SDS-E-News/a/2016-01/00000925.htm>.

Please contact SDS Provider Certification and Compliance with any questions:  
[DSDSCertification@alaska.gov](mailto:DSDSCertification@alaska.gov)

### Attachment: Helpful Hints for Provider Settings Self-Assessment

1. The evidence provided should contain a detailed description that supports the provider's claim of compliance with the setting requirements. This description should clearly address your program and what you as an agency do to support choice and integration in the community.
2. Remedial Measures/Plan of Action is essentially a corrective action plan that must contain a completion date. This should clearly address the action(s) you will take to correct the setting deficiency in your program.
3. The Final Rule requires that all HCBS settings meet certain criteria which include:
  - The setting is integrated in and supports full access to the greater community
  - Is selected by the individual from among setting options
  - Ensures individuals right to privacy, dignity and respect, and freedom from coercion or restraint
  - Optimizing autonomy and independence in making life choices
  - Facilitates choice regarding services and who provides them

(Each of these core criteria are the "sections" of questions that can be found in your assessment)

4. Carefully read each question as "yes" does not always mean that you have met the requirement. Below the question, you will be prompted to either provide evidence to support compliance or submit a remedial measure (plan of action to correct the settings issue).

5. When answering these questions, it is important to focus on the individual's experience while receiving a service and the choices and supports that they are provided. None of the assessment questions have a "not applicable" option. When answering the questions, it is important to think about current and future scenarios and how you would meet the requirement, should it arise. Any exceptions to these requirements will be determined for each individual participating in your program through their Support plan. Those exceptions are specific to the person and do not exempt your setting as a whole from meeting the requirement. For example in question 23, the provider must demonstrate the individuals are working and participating in the community to the extent *they* want and that you are doing all you can to support that. If there are individuals in your program who are not making those

decisions in an informed and meaningful way, it should be documented in the individual's support plan, not in the self-assessment; the self-assessment should identify how you determine and meet the individual's desires

6. Please remember that the goal of settings is to move away from institutional behavior and everyone involved with service delivery has a role in ensuring individuals are addressed and treated with respect. Include individuals in conversations about their care. Please avoid labeling individuals by their disabilities or using institutional-like language as we move forward under the Final Rule. An example of outdated or institutional thought process and language is referring to a person as “bed bound;” therefore, they don’t participate in activities, choices and supports. The provider should be offering choices and supports to each person so that the choice is still theirs.

7. In addition to the general settings requirements, questions 68-79 address additional residential requirements. Those requirements are to ensure the setting provides a specific physical place (ex: unit) that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction that tenants have under -landlord/tenant laws. For settings in which landlord/tenant laws do not apply, the setting must show that a written agreement is or will be in place for each HCBS participant, and that the agreement provides protections that address eviction processes and appeals comparable to those provided under landlord/tenant law. In addition the setting should be physically accessible to the individual and offer privacy in sleeping or living unit, lockable doors, a choice of roommates, freedom to furnish and decorate with the lease or other agreement, freedom to control own schedules and activities, provide access to food at any time, and freedom to have visitors of their choosing at any time. Individuals should have the same choices others in the greater community have, including inviting visitors into their homes. Visitors at a home should follow the same social rules as those living in the home and obey the house rules supplied in the lease surrounding quiet after agreed upon times to allow roommates to rest, no aggressive or abusive behaviors, etc.

An example is question 70& 71. These questions are used to determine recipients are provided their right to privacy through having the ability to lock their bedroom and bathroom doors. They have the right to have a key to their room, and only necessary staff members should have a key to that room.



April 28, 2016

## **SDS E-Alert – Training Webinar on Settings Compliance for Program Administrators**

Join SDS staff for a training about the settings compliance rules, the settings self-assessment, and what program administrators need to know and do. All program administrators of the services listed below are required to take a training and pass a quiz before being issued a unique key that will allow each program administrator to take the self-assessment on settings compliance.

SDS will offer one final training opportunity, on Monday, May 02, 2016 at 10:00 a.m. Alaska Time. To register for this training, go to <https://attendee.gotowebinar.com/register/2875399202714706433>. After registering, you will receive a confirmation email containing information about joining the webinar.

**This training is for program administrators of the following services who have not yet completed the training on self-assessment or the settings quiz that follows the training:**

- Supported Employment
- Residential Habilitation: Group home
- Residential Habilitation: Family Home Habilitation
- Residential Habilitation: Supported Living
- Congregate Meals
- Adult Day Services
- Day Habilitation (community and site-based)
- Residential Supported Living

**Program administrators who have already completed the self-assessment do not need to attend this training. Program administrators of services not on the above list do not need to complete the training, quiz, or self-assessment.**

Background: SDS has been working with CMS and providers on a Transition Plan to bring Alaska into settings compliance since 2014. CMS requires all states to comply with new settings rules per 42 CFR 441.301(c)(4)-(5). The purpose of these changes is to make sure that states use

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Home and Community Based funding for programs that truly work to integrate Alaskans with disabilities and/or who are frail elders into the community at every opportunity.

## Alaska HCBS Settings Web Page

(<http://dhss.alaska.gov/dsds/Pages/transitionPlanHCBS/HCBStransition.aspx>)

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STATE OF ALASKA  
Department of Health and Social Services

# Senior and Disabilities Services

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## Mission and Purpose

The Centers for Medicare and Medicaid (CMS) issued a new regulation (42 CFR §441.301(c)(6)) that requires that all Medicaid-funded services be provided in settings that exhibit home and community-based characteristics and do not isolate recipients. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, have full access to benefits of community living, and opportunities to receive services in the community to the same degree as people who do not receive home and community based services.

The purpose of CMS' new federal rule, sometimes called the "final rule," is to make sure that states use home and community-based services waiver funding for programs that truly work to integrate people with disabilities and frail elders into the community at every opportunity. All states are required to develop transition plans outlining the process that the state and providers will undertake to comply with the settings requirements. The State of Alaska has been working with CMS and providers on a transition plan to bring Alaska into settings compliance since 2014 when the "final rule" was published.

## Headlines

10/17/17- **Home and Community-Based Waiver Service Regulations Signed**  
On October 6, Lt. Governor Byron Mallott signed regulations

- > **HCBS Transition Plan**
- > **For New Providers/Settings**
- > **Remediation**
- > **Heightened Scrutiny**
- > **CMS Guidance**
- > **Resources**
- > **Contact Settings Compliance Team**