



**State of Alaska • Department of Health and Social Services
Senior and Disabilities Services**

**CFR 42 §441.301(c)(6) Transition Plan for
Home and Community-Based Services Settings**

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

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INTRODUCTION

The Alaska Department of Health and Social Services, Senior and Disabilities Services (SDS) now submits for public review and comment the fourth version of its Transition Plan (“Plan”) in accordance with [CFR 42 §441.301\(c\)\(6\)](#). This describes what SDS and providers have been working on to ensure that Alaska’s HCBS settings achieve compliance with the elements of the final rule. The State has described how compliance has been assessed; what the outcomes are; what educational strategies have been used; how providers have achieved compliance through remediation strategies; and what collaborative strategies will be used to ensure ongoing compliance after the deadline of March 22, 2019.

This Plan reflects careful consideration and analysis of feedback from CMS since Alaska earned initial approval in December, 2016. In March, 2016, the State of Alaska submitted a draft of the Settings Transition Plan for a 30-day public comment period, summarized and responded to the public comments, and then submitted the draft to CMS. CMS reviewed the draft and provided additional feedback, requesting that the state make several technical corrections to the systemic assessment and remediation section. These changes did not necessitate another public comment period. The State completed the technical corrections and then resubmitted an updated version of the Plan to CMS on December 23, 2016.

On December 28, 2016, CMS granted Initial Approval to the State and listed remaining steps that would need to be completed and documented in the next version of the Plan in order to receive final approval. Those steps are addressed in this Plan.

Part 1

**EDUCATIONAL ACTIVITIES FOR PROVIDERS, RECIPIENTS,
AND OTHER STAKEHOLDERS**

The Division of Senior and Disabilities Services (SDS) found that the best approach to initially assessing the settings aspects of Alaska’s home and community-based services (HCBS) program was to work with the stakeholder community to gain an understanding of the potential impact of the new federal regulations on service delivery. As SDS began reviewing state regulations and policies, it implemented concurrently a process of sharing information about the new regulations and of gaining feedback from stakeholders through series of contacts that included on-line webinars, interactive community forums, and informative updates via SDS E-Alerts, the email network used to send notices and other information to providers. Later, Alaska’s HCBS Settings web page was developed more extensively, with multiple resources added.

The educational activities and learning opportunities offered to providers regarding home and community-based services settings are shown in the following table:

Table 1. Home and community-based services settings educational activities offered by SDS to providers, recipients, and other stakeholders

Date		Communication/Event	Purpose/Outcome
2014			
March	19	SDS E-Alert	Announced finalization of new CMS regulations and key areas of change
April	1	Webinar	First information-sharing webinar: Overview of new CMS regulations
	4	SDS E-Alert	April 1 webinar materials made available
June	10	Webinar	Second information-sharing webinar and announcement of community forums
	27	SDS E-Alert	Invitation to community forums in Fairbanks, Kenai, Anchorage, Juneau, and statewide by teleconference

August	Community forum		Interactive forum for information on new regulations, ideas from stakeholders, Q&A
	18	Fairbanks	
	19	Kenai	
	20	Anchorage	
	21	Juneau	
	22	Statewide teleconference	
September	15	SDS E-Alert	Updates/ clarifications of CMS regulations; evaluation using <i>Provider Self-Assessment of Settings Survey</i>
October	2	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> and FAQs released with October 31 due date
	15	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	16	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> due date extended to November 14
	21	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	27	SDS E-Alert	Additional FAQs on CMS regulations released
November	7	SDS E-Alert	<i>Provider Self-Assessment of Settings</i> reminder
	10	SDS E-Alert	Open letter from SDS Director
2015			
January	21	SDS E-Alert	Save the Date for public comment
	26	SDS E-Alert	<i>Transition Plan</i> available for public comment
	30	Webinar	Q&A on <i>Transition Plan</i>
September	15	SDS E-Alert	Revised <i>Transition Plan</i> available for public comment
	29	Webinar	Q&A on revised <i>Transition Plan</i>
2016			
February 10		SDS E-Alert, Online Public Notice, Tribal Consultation letters and emails, ads in three newspapers, and flyers distributed via advocacy	<i>Transition Plan Version 3</i> available for public comment until March 11, 2016

		organizations	
February 17		Webinar	Q&A on <i>Transition Plan Version 3</i>
March 10		Transition Plan Presentations to two advocacy groups (AgeNet and Alaska Association for Developmental Disabilities)	Q&A on <i>Transition Plan Version 3</i>
March 12-31		Submit <i>Transition Plan Version 3</i> to CMS	Public comment incorporated and plan submitted
April, 2016 – June, 2017		SDS performs initial review of Provider Settings Self-Assessment and 2 nd level Sample onsite reviews, and offers technical assistance	Individual providers receive technical assistance from Settings Compliance Team
2017			
March		SDS updated Settings website	Inform public more efficiently about CMS final settings rule and associated information
July to December		SDS provides technical assistance for settings in non-sample group	Individual providers receive technical assistance from Settings Compliance Team
October	10	E Alert sent about SDS webinar for ISW providers	Inform potential providers under the Individual Supports Waiver of webinar
October	11	Orientation for prospective providers in ALHs	Information is aligned between DHSS Divisions
October	12	SDS added information to Settings web page for ISW applicants	
October	17	SDS webinar for ISW waiver providers	ISW waiver providers are knowledgeable about settings rule and remediation
October	18	SDS added remediation resources to website	More information about remediation is available to public
2018			
February	22	Webinar about settings requirements at Alaska Association on Developmental Disabilities meeting	Settings information spread to large network of agencies serving those with disabilities
February	26	SDS settings training with DHCS Residential Licensing and Office of Long Term	Strengthen staff of other divisions that will be monitoring compliance in settings

		Care Ombudsman	
February	28	Breakout session on settings during annual conference	Education for advocates
April	8	SDS E-Alerts, Online Public Notice, Tribal Consultation letters and emails, ads in newspapers, Webinars, flyers distributed via advocacy organizations	Announcing upcoming Public Comment period for STP

Part 2

SYSTEMIC ANALYSIS OF STATE COMPLIANCE WITH NEW FEDERAL REGULATIONS

To evaluate compliance with federal requirements for home and community-based settings, SDS undertook a comprehensive review of its service philosophy and state regulations, before beginning the work of assessing all settings in Alaska.

Review of the SDS Mission, Vision, and Principles

In the 1970s, Alaska embraced the concepts of choice, inclusion, and independence embodied in the Social Security Act by joining the national movement toward deinstitutionalization by developing community alternatives. This philosophy is formalized in the SDS Mission, Vision and Service Principles. Periodically, as new materials such as the Americans with Disabilities Act and the *Olmstead* decision inform the home and community-based system of service, SDS reviews its philosophy and enriches statewide advocacy for recipients by incorporating the values advanced in those materials.

The assessment of state compliance with the new regulations began with a review of SDS philosophy embedded in its Mission, Vision and Service Principles. This philosophy guides the development of regulations and policies and, as a result, is incorporated in the practices of both the State and the service providers. Because Alaska providers share this philosophy, SDS and the providers are able to work in concert to maintain a well-balanced and responsive home and community-based system.

SDS concludes that its philosophy reflects the values promoted by the new requirements for home and community-based settings.



**State of Alaska • Department of Health and Social Services
Senior and Disabilities Services**

Mission, Vision, and Principles

***MISSION:** Senior and Disabilities Services promotes health, well-being and safety for individuals with disabilities, seniors and vulnerable adults by facilitating access to quality services and supports that foster independence, personal choice and dignity.*

***VISION:** Choice, safety, independence and dignity in home and community-based living*

***SERVICE PRINCIPLES:** Senior and Disabilities Services is person-centered and incorporates this value into the following service principles:*

- *We and our partners are responsible and accountable for the efficient and effective management of services.*
- *We and our partners foster an environment of fairness, equality, integrity and honesty.*
- *Individuals have a right to choice and self-determination and are treated with respect, dignity and compassion.*
- *Individuals have knowledge of and access to community services.*
- *Individuals are safe and served in the least restrictive manner.*
- *Quality services promote independence and incorporate each individual's culture and value system.*
- *Quality services are designed and delivered to build communities where all members are included, respected and valued.*
- *Quality services are delivered through collaboration and community partnerships.*
- *Quality services are provided by competent, trained caregivers who are chosen by individuals and their families.*

Systemic Review of State Statutes and Regulations

To gauge the extent to which current state regulations ensure compliance with federal setting requirements, SDS reviewed the state statutes and regulations governing Medicaid waiver services, assisted living home licensing, foster care licensing, and the home and community-based services provider standards in the SDS *Conditions of Participation*. After submitting a revised review of the statutes, regulations and Conditions of Participation and a robust plan for achieving compliance, Alaska received Initial Approval from CMS in December, 2016.

SDS has now amended state regulations and policies applicable to waiver services so that they are more consistent with the new federal regulations, supporting integrated settings, full access to the community, and recipient initiative, autonomy, and independence. Amendments to SDS regulations and *Conditions of Participation* are outlined in Part 3, the State Plan for Achieving Compliance section. These amendments to regulations and COPs became effective November 5, 2017.

The Department of Health and Social Services established a stakeholder group called the Interagency Settings Compliance Committee (ISCC), whose mission is to ensure that the State is not only in compliance with the CMS settings rule but also that the rule is ingrained in the practice of HCBS providers. The STP coordinator at the Division of Senior and Disabilities Services is staffing this committee and monitoring the timeline for the plan and overseeing milestones needed to achieve compliance in the state's systemic assessment and remediation part of the plan. This includes acting as the liaison between the ISCC and SDS leadership as needed.

The purpose of this committee is to:

- Evaluate State Statute and Regulations to ensure compliance with CMS Rule
- Develop interagency policies that increase oversight and compliance to rule and improve outcomes for consumers
- Engage stakeholder community on regulation changes and department updates

Membership in the ISCC includes:

- Division of Senior and Disabilities Services (SDS)
- Division of Health Care Services (DHCS)
- Office of Children's Services (OCS)
- Office of the Long Term Care Ombudsman (LTCO)
- Division of Pioneer Homes
- Department of Law (DoL)

The systemic review of State statutes and regulations relevant to settings is attached as [Appendix A](#).

Overview and Internal Review of Waiver Programs

Alaska currently operates four home and community based services waiver programs: Intellectual and Developmental Disabilities (IDD), serving those who experience only intellectual or developmental disabilities and who meet the level of care for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID); Alaskans Living Independently (ALI), serving those 21+ who experience only physical disabilities and meet the nursing facility level of care (NFLOC); Adults with Physical and Developmental Disabilities (APDD), for those 21+ who have both physical and developmental disabilities and meet NFLOC; and Children with Complex Medical Conditions (CCMC), serving those up to age 21 who meet NFLOC.

Alaska recently submitted an application to CMS for a new waiver, the Individual Supports Waiver, and acknowledges that approval is contingent upon all settings for this waiver being compliant, so the new waiver is not addressed in this Plan.

In addition to the systemic regulatory review for CMS, SDS conducted an internal review of its certification and compliance activities to determine which services and settings in each of its four waivers (IDD, ALI, APDD, and CCMC) would need to be evaluated for compliance with the federal settings requirements. Through this internal review, SDS determined that because the following services are provided in private homes, these homes can be presumed compliant but will be monitored, with remedial actions taken if service providers are found to have a stake in home ownership (such as individually owned homes providing foster care):

- Care coordination (all waivers)
- Respite (in home) (all waivers)
- Chore (all waivers)
- Environmental Modifications (all waivers)
- Intensive Active Treatment (IDD, APDD, CCMC)
- Nursing Oversight and Care Management (IDD, CCMC)
- Specialized Medical Equipment (all waivers)
- Meals (home-delivered) (all waivers)
- Specialized Private Duty Nursing (IDD, APDD)

Privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the HCBS settings requirements if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside. Settings where individuals reside in the home of an unrelated paid professional staff will not be considered an individual's private home, and will be assessed and validated for compliance with the federal HCBS rule like other provider-owned or controlled settings. Settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual), are considered provider owned or controlled settings and will be evaluated as such.

Additionally, SDS found that the following services are provided in settings that will need to comply with the CMS settings regulations:

Table 2. Additional Settings that Need to Comply with CMS Settings Regulations

<i>Setting type</i>	<i>Setting</i>	<i>Service Category</i>	<i>Waiver Population</i>
<i>Residential</i>	Licensed assisted living home	Residential habilitation- Group home	IDD, APDD
	Licensed foster home	Residential habilitation,- Family home habilitation (child) Family home habilitation (adult)	IDD, CCMC, APDD
	Licensed assisted living home	Residential supported living	ALI, APDD
	Provider-owned, leased or operated housing	Supported living	IDD, APDD
<i>Non-residential</i>	Facility-based	Day habilitation	IDD, APDD, CCMC
	Facility-based	Adult day	ALI, APDD
	Employment site	Supported employment *	IDD, APDD
	Facility-based	Meal, congregate	All four waivers

* The Supported Employment service has two billing codes and rates, Group and Individual, but the service is the same. The settings analysis will focus on provider-owned, leased, or operated supported employment sites, rather than supported employment in community-based settings or group versus individual supported employment.

SDS also conducted an internal review to gather information on possible institutional settings, services provided on the grounds of or adjacent to a public institution, and settings that might be perceived as isolating recipients from the greater community.

Historical Context

Prior to 1961, there were no intermediate care facilities for Alaskans with intellectual and developmental disabilities, and residents needing services were relocated outside of Alaska. Thereafter, the opening of Harborview Developmental Center, a state-owned and operated residential facility in Valdez Alaska, made it possible for 175 Alaskan residents to receive services in-state. Following amendment of the Social Security Act in 1981, the State developed a home and community-based services program that included the certification of provider-owned or -controlled intermediate care facilities. As more families found community supports, the number of Harborview residents dropped to 80 individuals making the cost of maintaining the facility

unsustainable. The State was able to transition the remaining residents into their communities because the necessary home and community-based services infrastructure was in place. Harborview Developmental Center was closed in 1997; at the same time, the state decertified all provider-owned or -controlled intermediate care facilities for individuals with intellectual and developmental disabilities, making Alaska free of IDD institutional facilities.

After reviewing Alaska's historical context and provider certification policies, and comparing the physical addresses where waiver services are provided to the physical addresses of Alaska's public institutions, SDS finds that there are no waiver services provided in institutions. One home, on a campus with a tribal hospital, was originally identified for possible heightened scrutiny, but was subsequently determined to not need heightened scrutiny because the tribal organization is not a publicly owned institution. For the few services authorized to be provided out of state (when there are no providers for certain services within Alaska), SDS will require proof of settings compliance from those other states' Medicaid entities. This will be accomplished with an Out of State Agency HCBS attestation form to be completed by the approved program administrator and required for certification of the out-of-state provider agency.

Voluntary Provider Self-Assessment of Settings

In 2014, DHSS Division of Senior and Disabilities Services conducted a survey of providers of waiver services to gauge current operational alignment with the Settings Final Rule (CFR 42 §441.301(c)(6) [Home and Community-Based Services Settings](#)) and the potential for alignment by CMS' March 2019 deadline. The survey also allowed SDS to share information about the new regulations and obtain feedback from stakeholders through information sharing events and contacts.

Prior to making the voluntary survey available, SDS conducted two statewide webinars to train providers on how to complete the survey. The online survey was then made available on the SDS website, and was open for participation in late 2014.

Only a small percentage of providers participated in the voluntary survey, but SDS was able to use the results to gain insight into current status and develop a review process that would govern determination reviews for all providers. As a result of the voluntary activities, SDS recognized that many settings would likely be categorized as partially compliant, and more work would be needed to help providers understand the settings requirements and become fully compliant.

Part 3

ACTIVITIES TO ACHIEVE SETTINGS COMPLIANCE

Mandatory Provider Self-Assessment of Settings

In late 2015, all waiver services providers were required to identify to SDS (by completing and submitting a Settings Declaration form) the physical addresses of settings where waiver services were provided. SDS then used the results of completed Settings Declaration forms to inform all program administrators about SDS' upcoming mandatory [Provider Self-Assessment of Settings](#).

In 2016, SDS offered real-time webinars and self-paced trainings that addressed settings requirements and use of the setting assessment tool. Providers had to complete the training and pass a final exam by a deadline, or SDS would begin the provider decertification process. Program Administrators responsible for the service categories shown in the table below were required to attend the training. All (100%) of the providers attended the training.

Following the training and passing of an exam on the settings concepts, Program Administrators were given a “key” to access the self-assessment tool. The tool was based on the CMS Toolkit example, but it also incorporated formatting changes based on suggestions for clarity and flow that were made by providers who participated in the voluntary self-assessment.

For tracking purposes and to ensure 100% completion of the self-assessment, SDS cross-referenced open “keys” with the addresses of all residential and non-residential settings to be evaluated. SDS required that providers with multiple service locations complete a separate self-assessment for each address to capture the degree of compliance in each. Through the SDS electronic e-Alert system, SDS sent bi-weekly reminders to complete the settings self-assessment by the deadline. SDS contacted and offered technical assistance to providers that did not submit settings self-assessments 30 days before the deadline. Providers that did not complete settings self-assessments by the deadline would have been subject to decertification. However, 100 percent of the providers completed the self-assessment and were reviewed and analyzed for compliance with settings requirements.

The tool included questions regarding settings compliance and space to provide information about how and when a provider will become compliant with the requirement. The responses to the remediation sections were considered the first remediation plan by providers.

The self-assessment tool was constructed so that each element of the settings characteristics was emphasized by presenting it as a question for provider evaluation. Thus, the self-assessment served not only as a tool to evaluate the extent to which the provider met the new settings requirements, but as a tool for providers to learn more in more detail about the new federal regulations.

A copy of the *Provider Self-Assessment of Settings* is available in Appendix C and on the [Alaska HCBS Settings](#) web page, as are links to a variety of home and community-based settings training materials, including a *Settings Checklist and Exploratory Questions*, *Frequently Asked Questions*, a PDF version of the self-assessment tool itself, copies of the PowerPoint presentation used for the training webinar, and a spreadsheet showing compliance levels of the providers.

Self-Assessment Results

Between April, 2016 and May, 2017, SDS conducted an initial desk review of self-assessments for all 760 settings and assigned each setting to one of four compliance categories. As of May 31, 2017, all the 654 active settings were assigned to a compliance category as follows:

- *Fully Compliant: 5 (1%)*. The setting has the characteristics required for home and community-based services, and is integrated in and supports full access by recipients to the greater community.
- *Emerging Compliant: 633 (83%)*. The setting does not meet all requirements, but is partially integrated and provides some supports for access by recipients to the greater community; the provider will be able to bring the settings into compliance through remediation.
- *Insufficient Compliant (Presumed Institutional): 5 (1%)*. The setting has institutional qualities but SDS believes that the provider does provide services in a home and community based setting. SDS will submit evidence for heightened scrutiny to CMS for a determination of whether home and community based services can be provided in the setting.
- *Non-Compliant: 7 (1%)*. Nursing facilities, ICF/IIDS, hospitals, or located on the grounds of or adjacent to a public institution, as well as those settings that fail to submit a survey, insufficient evidence to make a compliance determination, or indicate they do not intend to comply with settings requirements

The following table captures SDS' initial categorization of all identified service settings:

Note: SDS identified 106 of the total 760 settings that were voided due to setting decertification, change of

Table 3. Initial Compliance Status by Setting Type, Alaska, 5/31/17						
Setting Type	Fully Compliant	Emerging Compliant	Insufficient Compliant	Non-Compliant	Voided	Total
Adult Day (AD)		7		1		8
Adult Day/Meals		5				5
Day Habilitation (DH)		19			3	22
Day Habilitation/Adult Day		4				4
DH/RSL/AD/ME/GH				1		1
Day Habilitation/Supported Employment		3				3
Family Habilitation	2	104			38	144
Family Hab/Residential Supported Living		1				1
Group Home (GH)	2	201	1	1	26	231
Group Home/Supported Living		2			2	4
Meals (ME)		18		1	2	21
Residential Supported Living (RSL)	1	203	3	3	21	231
Residential Supported Living/Group Home		8	1		1	10
Supported Employment		24			4	28
Supported Living (SL)		34			9	43
Unassigned Keys						4*
TOTAL	5	633	5	7	106	760
Percentages	1%	83%	1%	1%	14%	
<i>Data pulled 2/15/18</i>						

address, change or end of affiliation, duplication, erroneous setting declaration (setting did not need to be declared), and other factors, including closures of any kind. 106 of 760 or 14% were voided; 4 were not issued a survey key due

to errors.*

Validation of Self-Assessment Results and Settings Verification: Sample Group

Concurrently with the initial desk review of all settings self-assessments, SDS selected a random sample of responses in order to validate the findings of the self-assessments. This sample was of sufficient size to ensure statistical validity of the information provided in self-assessments at a 95% confidence level with a +/- 5% margin of error and 50% response distribution. The exact percentage of sites included in the validation and on-site review samples was determined once the analysis of which compliance category each setting fell into was completed. The Research and Analysis Unit used software at <http://www.raosoft.com/samplesize.html> to identify the sample sizes for each.

After the initial desk review, it was determined that some settings in the sample group needed a focused desk review and some needed an onsite visit. SDS notified select providers of settings status and whether the setting would be part of the sample. Of 254 total settings in the sample, 42 received focused desk reviews and 212 received on-site visits.

Focused desk review: SDS identified some settings in the sample group for focused review, and forwarded information obtained from the provider certification process or the self-assessments to Residential Licensing in the Division of Health Care Services. Residential Licensing evaluated the information to determine whether they agreed with SDS' compliance determination for the setting, or if further review, including an onsite review was required.

Onsite review: Onsite reviews confirmed initial compliance designations and also sometimes led to designation adjustments, depending on what was observed and discussions with staff and recipients. Most of the adjustments were to a higher level of compliance than what the setting originally described in their self-assessment.

During the process of conducting second level reviews, SDS may have adjusted a setting's compliance category based on additional evidence, photographs, observations, and/or documentation obtained during the focused or onsite review.

Analysis of Non-Sampled Self-Assessments

SDS applied a weighted criteria grid to the non-sampled self-assessment reviews. The content review was the same as it was for the sample group. In this process, a threshold requirement was applied to each service. If a provider did not meet the service setting requirement (i.e., the provider's responses lacked any evidence and/or depth) that setting was triaged for onsite review. Settings that did not meet the requirement were triaged to second-level focused review. Few settings have been triaged for onsite review. The vast majority of settings was found to be "emerging compliant."

SDS' process of determining a non-sample setting's compliance category was supported by the validation of the self-assessment tool with the sample settings, of which 148 (78%) received site visits.

For HCB waiver services that are provided out of state, the other state's Medicaid oversight authorities will verify and validate through attestations that each setting is in compliance with that state's settings requirements. Out of state providers who are not Medicaid providers in their own state are subject to Alaska settings compliance and validation.

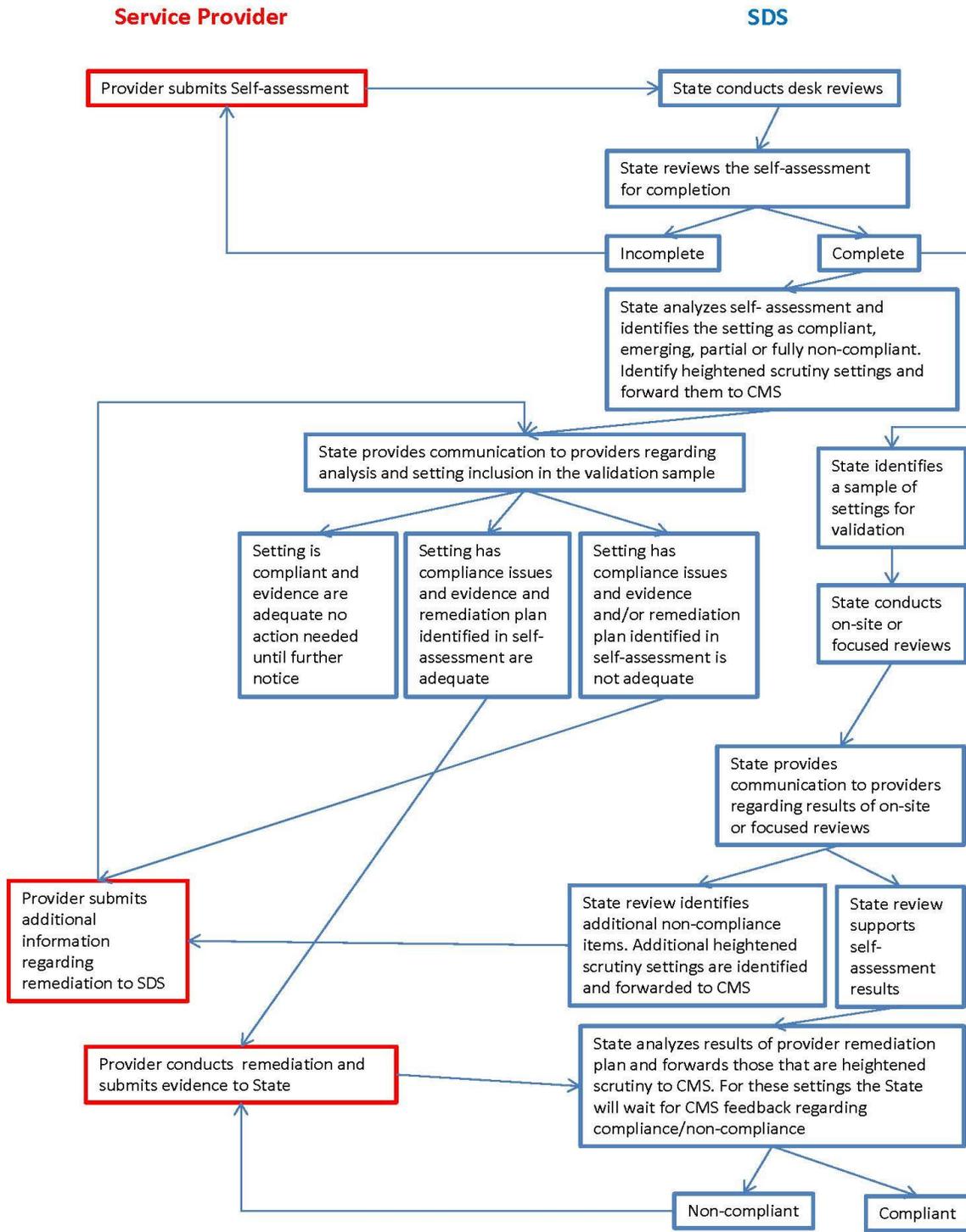
For graphics showing Alaska's settings transition process, please see "Figure A: Flow of Self-Assessment Results."

[Note: Alaska is preparing to submit a new waiver for approval by CMS, to become operational in May, 2018. Per the CMS Final Rule on settings, all waiver applications submitted to CMS after March, 2014 must guarantee waiver services will be provided in compliant settings (i.e., there is no transition period for new waivers). In October, 2017, SDS held a webinar training for all settings desiring to provide services under Alaska's new Individual Supports Waiver, and then issued a Notice of Review Status to each of these settings. The notice of review outlined the results of the focused or onsite review of the specific setting and listed actions required for the provider to achieve compliance. All (100%) of providers are settings compliant.]

While CMS has extended the deadline for settings compliance to March, 2022, SDS feels comfortable that all settings can be evaluated and remediated by the original deadline of March, 2019.

The flow of self-assessment survey results from submission through review to remediation is presented in Exhibit A on the next page.

Figure A. Flow of Self-Assessment Results



Remediation Plans

Some of the self-assessments submitted by providers included an initial remediation plan to address areas not yet compliant with settings requirements. SDS completed initial desk review for all self-assessments and validated the sample, and has begun issuing a Notice of Review Status to each setting. The Notice of Review Status outlines SDS' findings resulting from the focused or onsite review of the specific setting and actions required for the provider to achieve compliance. Also included is a timeline for SDS review and provider remediation to ensure compliance. For details about the sequence of SDS actions, see the "Summary of Validation and Remediation Process" below and the "Table 5. Alaska Settings Transition Plan Updated Timeline."

Once notified of status, settings will be given 30 to 90 days to submit a remediation plan and proof of remediation, depending on the extent of compliance actions needed. Some compliance actions are limited in scope and can be corrected in a short time frame while others may involve a larger organizational or systemic change requiring more time to complete, i.e., a provider who needs to install locks in a single setting requires substantially less time to accomplish than a provider who is required to develop/implement a new policy or change in business practice and train staff to implement.

To assist providers, SDS has posted several resources on Alaska's HCBS settings website, including remediation tools and contact information for providers to query the SDS Settings Compliance Team. The SDS team has begun providing guidance and technical assistance for those who have contacted them with questions about their findings and remediation plans.

As of January 17, 2018, a total of 50 settings in the sample group and the ISW group had accepted the State's offer to provide guidance and technical assistance in developing their remediation plans. This is approximately 20 percent of the settings in those groups. As of February 23, 2018, all providers of the Individualized Supports Waiver (ISW) services had received a final certificate of Full Compliance from the State.

The goal for settings compliance of all providers (not just ISW) is June 30, 2018, so that ample time remains to transition any recipients who receive services in settings not compliant by the deadline. Those who are found fully compliant will be officially notified and moved into the standard cycle of ongoing review (ongoing monitoring including SDS certification and recertification, compliance with licensing regulations and Conditions of Participation) by March 1, 2019. Those who are not found compliant by the deadline will begin transitioning into the decertification process and referral of recipients, starting in July, 2018. SDS anticipates that very few settings will be noncompliant, but if they are, the recipients living in those settings will receive a 30-day notice of the need to transition to compliant settings, outlining the process and including information on other service options. (for details, see page 32.)

Providers failing to participate or cooperate in a timely manner with any of the mandated requirements for continued compliance with certification will be subject to the decertification and sanction processes, up to and including disenrollment from the Medicaid program per 7 AAC 130.220.

Figure B. Settings Remediation Process Flow Chart for Providers

SDS issues Remediation Notice(s) to providers. Each unique setting as identified by a site key will receive a notice. Notices to be issued on **March 28, 2018** for Non-Residential and Family Habilitation Services and **April 11, 2018** for all Residential Services

Providers review notice(s) and submit Remediation Plan(s) for each Non-residential or Family Habilitation setting identified to SDS by **April 25, 2018**; and for each Residential setting identified by SDS by **May 10, 2018**.

SDS reviews plan(s), issues decision(s), and notifies the Non-Residential and Family Habilitation providers by **May 9, 2018** and Residential providers by **May 22, 2018**.

Remediation Plan Approved
All providers submit proof of remediation completion to SDS on or before **June 29, 2018** with required evidence stated in approved plan.

Remediation Plan Denied
Providers review comments and **submit revised plan(s)** for approval. Due date of revised plan(s) will be no longer than **10 days from date of notice**.

SDS approves proof of remediation and issues to provider **Notice of Finding of Compliance** for each unique setting, on or before **July 13, 2018**.

SDS reviews proof of remediation and finds it inadequate. Provider receives Notice of Non-Compliance on **July 13, 2018**. Provider will submit required proof **no later than July 27, 2018, or begin decertification**.

SDS reviews revised plan(s) and issues decision within 10 days of receipt of completed plan(s).

Revised Plan Approved
Provider submits proof of remediation completion to SDS no later than **June 29, 2018** with required evidence stated in approved plan(s).

Revised Plan Denied
If revised plan(s) is denied by SDS, provider will meet with SDS to determine resolution. Provider may reach compliance by submitting proof of remediation completion to SDS on or before **June 29, 2018** with required evidence.

SDS issues to provider "Notice of Finding of Compliance" for each unique setting on or before **July 13, 2018**

Summary of Validation and Remediation Process

The following bullets summarize the steps that Alaska has taken to ensure settings compliance:

- Program Administrator completes mandatory training on the CMS final rule and how to complete the HCBS Settings Self-Assessment Survey; passes a test related to the training; and declares all service settings by address
- SDS reviews/confirms declared service settings and issues a survey key for each identified setting
- Administrator completes and submits the Self-Assessment tool for each setting
- SDS conducts an initial desk review of each self-assessment for completion
- SDS analyzes each compliance element in the self-assessment for consistency and accuracy and conducts internal review to note any “red flags” related to quality assurance, etc.
- Based on analysis, SDS identifies setting as compliant, emerging compliant, partial or fully non-compliant, or heightened scrutiny. If self-assessment is incomplete, it is sent back to the provider
- SDS creates an Excel workbook to track all research about the setting
- Summary of initial desk review is added into Excel workbook noting date the self-assessment was received and who reviewed it
- If setting is in the sample, it gets an on-site review or focused review (this step is mandated for settings in the sample in order to validate the self-assessment tool)
- If setting is not in the sample, its compliance results come from the initial desk review (including research of internal data systems), or on-site review if there are “red flags”
- SDS sends a Status Determination Notice or a Remediation Notice to providers with compliance status and findings for each unique setting/survey key, indicating whether remediation plans will be required and what compliance elements need to be remedied. Copies entered into Excel workbook
- SDS sends Notice of Review Status for each setting, outlining SDS’ findings resulting from the focused or onsite review of the specific setting and actions required for the provider to achieve compliance. Included is a timeline for SDS review and for provider remediation
- Provider reviews notice(s) and submits Remediation Plan(s) if needed, or attestation, for each setting identified to SDS by a specific date
- SDS sends Notice of Review Status for each setting, outlining SDS’ findings resulting from the focused or onsite review of the specific setting and actions required for the provider to achieve compliance. Included is a timeline for SDS review and for provider remediation
- Once notified of status, settings are given 30 to 90 days to submit a remediation plan and proof of remediation.
- SDS tracks dates of sending remediation notice, receiving remediation notice with evidence, review date, and reviewer name. All evidence submitted is pasted into Excel workbook
- SDS reviews plan(s), issues decision(s), and notifies the provider by a certain specified date.

- If remediation plan is approved, provider submits required evidence. If plan is not approved, provider submits revised plan.
- SDS reviews and approves or denies evidence using a Remediation Plan Review Key and the SDS Evidence Grading System Key for Determining Final Settings Rule Provider Compliance
- Evidence reviewed with a quality rating system to assess type of evidence, quality of evidence, and probability that it would lead to compliance. For some settings needing remediation, SDS conducts respondent interview using a standard “HCBS Settings: Interview Form” during on-site visit and enters results into Excel workbook.

Heightened Scrutiny

CMS regulations identify the following settings that are presumed to have institutional qualities and do not meet the requirements for Medicaid home and community-based settings: (1) settings in a publicly or privately operated facility that provides inpatient institutional treatment; (2) settings in a building on the grounds of, or adjacent to, a public institution; and (3) settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

(1) Publicly or privately operated facility that provides inpatient institutional treatment

Inpatient institutional treatment in Alaska is provided in several nursing homes and in one Institution for Mental Disease (IMD). None of these is a waiver services provider required to complete and submit a Settings Declaration form.

(2) On the grounds of, or adjacent to, a public institution

SDS compared the physical addresses where waiver services are provided to the physical addresses of Alaska’s public institutions, and found no waiver services provided in institutions or on the grounds of, or immediately adjacent to, a public institution in Alaska. One assisted living home, adjacent to a tribal hospital was originally identified for possible heightened scrutiny. During a subsequent phone consultation with CMS, however, it was determined that since the setting is part of a tribal organization, it does not meet the definition of a public institution. State of Alaska regulations exclude Alaska Pioneer Homes from the definition of “public institutions” so they do not fall within this category.¹

¹ [7 AAC 47.553. Institutional residency](#) (a) To be eligible for assistance, an applicant may not be a resident of (1) a public institution, unless the same eligibility requirements as those in [7 AAC 40.385](#) for purposes of adult public assistance are satisfied; (2) a nursing home, unless the same eligibility requirements as those in [7 AAC 40.385](#) for purposes of adult public assistance are satisfied; (3) a correctional facility; (4) an Alaska Pioneers' Home or Alaska Veterans' Home, unless the same eligibility requirements as those in [7 AAC 40.385](#) for purposes of adult public assistance are satisfied; or (5) a public or private institution for mental disease, unless the same eligibility requirements as those in [7 AAC 40.385](#) for purposes of adult public assistance are satisfied.
[7 AAC 47.599. Definitions](#). (4) "public institution" means a governmentally owned establishment that furnishes food, shelter, and some additional treatment or services to 16 or more persons; "public institution" does not include the Alaska Pioneers' Home or Alaska Veterans' Home

(3) Having the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

Using the expertise of staff in SDS and DHCS Residential Licensing, as well as the physical addresses of waiver services, SDS identified three areas where waiver services could be viewed as being provided in possibly isolating settings. These areas are farmstead-model programs, day habilitation centers, and supported employment sites. SDS conducted several initial site visits using a checklist based on the materials provided in the CMS Toolkit. The checklist is attached as Appendix B.

A farmstead community offers programs and employment opportunities for individuals with special needs. SDS scrutinized the two farmsteads in Alaska to make sure that they did not have the effect of isolating recipients.

For one of these farmstead communities, SDS was concerned about the provision of multiple services onsite. In working through the compliance pathway with this provider, SDS determined that both group home and supported employment services are occurring on the same property but the setting spaces are separate with separate staff. Individuals who are not receiving group home services may choose to receive supported employment services working on or off the same property. To access the greater community, recipients are assisted by the provider, natural supports, public transit, or community based day habilitation providers. Individuals living there have a choice of other supported employment settings. Recipients report satisfaction with services. This setting has been moved to Emerging Compliant.

Alaska's second setting with a farmstead model is located in a rural, recreational, farming community on the road system but without ease of access to many amenities normally enjoyed in urban areas. The setting is designed for individuals seeking to live a rural, recreational, farm lifestyle as is the community norm in the local town. Concerns arose over issues of access to the broader community and recipient satisfaction with making the setting their home. SDS interviewed all recipients and found them to be aware of their options for other living arrangements; each had his own reason for choosing the setting. The provider has a clear process in place to assist recipients with decision making and understanding other options before recipients agree to make the setting their home. The current recipients all reported a high level of satisfaction with living at the setting and in the larger community. The farmstead also provides choice of transportation, supporting integration into the larger community. This setting has been moved to Emerging Compliant.

Supported employment sites may appear at first to be isolating, though all were found to not have the effect of isolating. Settings may appear restrictive (i.e. maintenance crew for agency-owned properties) so integration becomes their task for remediation. One provider that was operating such a crew disbanded the crew and integrated the recipients into the competitive, integrated workplace of the larger maintenance crew.

Rural Alaska has a low population density and challenges in accessing services (often several miles away) is the norm. Some challenges of service delivery need creative problem-solving. Recently, one provider with a service setting in "emerging compliance" received a gift vehicle (4WD SUV) from Subaru in honor of their service.

Before taking possession of this vehicle, staff had been driving down a road as far as a car would take them and then handing off the meal delivery to other staff who delivered it to the setting in an open all-terrain vehicle.

SDS initially thought that approximately 15 settings might trigger Heightened Scrutiny, but by using standardized evaluation tools during on-site visits and focused desk reviews, SDS determined that each was highly likely to meet HCBS requirements so designated them “emerging compliant.” Although these settings hold potential to be isolating, SDS anticipates that they will meet compliance requirements by the deadline of June 29, 2018.

Once all existing settings in Alaska have been determined to be compliant, SDS will move into the ongoing monitoring phase of settings compliance.

Ongoing Monitoring

SDS is required by Statute AS 47.05.010 and 7 AAC 160.140 to regularly monitor providers certified for personal care services or home and community-based waiver services. All settings will be reviewed for settings compliance every two years at a minimum. Reviews will verify that providers continue to meet all of the settings criteria under 441.301(c)(4)(i)-(v). The State will ensure ongoing compliance by using a coordinated approach that includes SDS Provider Certification and Compliance, DHCS Residential Licensing, advocacy groups, and care coordinators.

SDS’ Provider Certification and Compliance Unit will conduct desk reviews and on-site reviews in response to any complaints or concerns. In addition, a monthly sample of providers will be randomly selected for review. Each of the three SDS reviewers is assigned a minimum of 10 reviews per month. The compliance team will return to regular monitoring of compliance with certification and regulatory requirements in September of 2018 and setting reviews will be incorporated into the ongoing site reviews and compliance work.

SDS has partnered with DHCS Residential Licensing and developed a Residential Licensing Settings Compliance Tool implemented May 2018, which is designed to supplement the work of Residential Licensing (RL) staff and ensure critical settings compliance indicators are observed and documented while their staff conducts onsite inspections and investigations. Once an investigation/inspection is complete, RL forwards their residential settings compliance tool to SDS Provider Certification and Compliance (PCC) Unit for further review. SDS retains the documentation in the provider record.

SDS Provider Certification and Compliance Unit and SDS partners are working to ensure compliance with the Settings Final rule by incorporating a settings compliance review component into existing monitoring processes as follows:

- All settings must have program administrators and all program administrators must be trained in settings to ensure compliance

- Onsite reviews that are necessitated for reasons other than settings compliance will include concomitant review of settings compliance.
- Both certification reviewers and compliance reviewers will participate in pre-certification reviews.
- To broaden capacity for ongoing monitoring, the SDS IDD Unit will commence site reviews as needed.
- SDS will mobilize other groups to conduct settings compliance monitoring activities as needed, including SDS grant managers who visit congregate meals sites as part of grant oversight duties, and care coordinators, who are required to visit every recipient in every setting contained in the recipient's support plan at least once a year.
- SDS will request and encourage advocacy groups such as the Governor's Council on Disabilities and Special Education, the Office of the Long Term Care Ombudsman, and the Alaska Commission on Aging to volunteer for training to evaluate settings compliance. Members of these groups often have reason to be present in HCBW services settings in the regular course of their duties. Those that volunteer will be trained to evaluate settings compliance and report issues of non-compliance through Central Intake for possible investigation or remediation with providers.
- SDS will continue collaborating with advocacy groups, providers, and other stakeholders to assure that recipients fully understand their opportunities to participate in the community, and continue to know their other freedoms and protections (knowledge also supported by [SDS Alaska HCBS website](#))
- SDS will continue to update trainings and monitoring tools to assure a consistent and current knowledge base
- Compliance of settings is required by new Alaska regulations and policies
- A person-centered satisfaction survey is submitted with every Support plan; it is signed by recipients or their legal guardians.
- Any new providers of waiver services will need to be certified to provide waiver services; the certification process includes proof of settings compliance.

The recipient's support plan provides another avenue for ongoing monitoring. Support plans are reviewed annually by SDS staff. Under Alaska regulation 7 AAC 130.218, the recipient leads the planning process that results in the support plan and its revisions, and the plan must identify the individuals responsible for monitoring it. Typically a care coordinator or case manager facilitates this process unless otherwise directed by the recipient.

The support plan should describe what the year looked like for the recipient, including any change in services/service providers, choice of friends/activities/hobbies, employment opportunities, integration into the community, and restrictions/limitations and interventions tried.

The care coordinator is responsible for making two contacts with the recipient monthly, one of which must be face-to-face. These contacts are intended to monitor recipient experiences with their services and discuss modifications when needed. If any part of the support plan is altered to decrease the recipient's rights under the Final Rule, the care coordinator must submit a modification plan about the specific condition the recipient experiences that creates a need for restriction, plan for ending restriction, and statement of no harm signed by the recipient and their legal representative.

Alaska presumes private homes, not provider owned or controlled, to be the least restrictive setting available and to be chosen by the individual. Alaska does not intend to review each individual private residence for settings compliance, however may encounter issues in these settings through case monitoring or complaint management processes that would be addressed through established investigative teams such as Adult Protective Services, Provider Certification and Compliance, or Quality Assurance. Much of the case monitoring is completed by care coordinators.

Care coordinators will be trained on settings compliance and will work with individuals and their families on strategies for identifying and mitigating risks, restrictions in settings, and documenting goals through the person centered plan. Issues with settings would require submission of a report to central intake.

Individuals who seek certification to provide care coordination services and those seeking to renew certification are required to complete care coordination training. Care coordinators play a key role in monitoring the well-being of Medicaid recipients and the settings in which they live. Alaska regulations require ongoing care coordination services to include routine monitoring and support and monitoring quality of care. ([7 AAC 130.240\(c\). Care coordination services](#)).

Program staff also review and approve planned services annually, or through the amendment process, and may work with care coordinators when inconsistencies or suspected setting issues arise. Program staff also are trained to report through central intake. If there is a critical incident involving a recipient, all providers are required to report it not later than one business day after observing or learning of it. ([7 AAC.224 \(a\)](#)).

SDS' new database called Harmony serves as an additional method to ensure ongoing compliance. Used by the State, care coordinators, and providers, it will include data on whether or not each setting is fully compliant. Care coordinators can use this information when developing a support plan with a participant, to ensure that only settings-compliant services will be included. Settings compliance staff will share updates on providers and settings internally. Additional reviews of settings-compliance will occur during SDS staff review of all (100%) HCBS support plans, which include all services and settings, as well as when individual services are prior authorized. These methods will ensure that all settings where individuals receive services will continue to meet HCB settings compliance.

Providers failing to participate or cooperate in a timely manner with any of the mandated requirements for continued compliance with certification will be subject to the decertification and sanction processes, up to and including disenrollment from the Medicaid program per 7 AAC 130.220.

Communication with Recipients about Options When a Provider Will Not Be Compliant

During the transition period, if a provider receives training and remediation on settings and seeks recertification as a provider of home and community based waiver services but SDS determines the provider is noncompliant with the settings requirement, SDS will work to relocate recipients. SDS will also relocate recipients in any settings that are likely to be non-compliant after July, 2018, the deadline when the recertification period has concluded.

SDS currently has no indication that any providers will not become compliant. If in fact a provider is found to be non-compliant, SDS will take the following steps during the transition period of July 2018 to January 2019:

- provide advance notice of settings noncompliance to affected recipients, their care coordinators, and all other interested parties;
- provide information on the other service options available to help them make an informed decision;
- identify the entities that will need to be involved in the transfer to other providers; and
- assure that critical services are in place in advance of the transition.

SDS has the knowledge and experience to initiate and complete transitions at least 60 days before the March 2019 deadline for the few recipients that may be affected by non-settings-compliant providers, using relocation procedures used when SDS takes closure action against a provider. Appropriate SDS program management staff, to include Intellectual and Developmental Disabilities (IDD) Unit staff, will work on these transitions on a case by case basis. The Division's Adult Protective Service unit staff will be involved with the transition of vulnerable adults at any point that SDS determines the setting to be a health and safety risk.

Building Statewide Capacity

Workforce development and training

Besides offering technical assistance to providers during the remediation process, SDS continually builds workforce capacity and competency through the activities listed below. These coordinated, ongoing efforts support settings compliance of all HCBS settings and build access to non-disability-specific options across home and community-based services.

- Offers trainings for those wishing to become certified to open an assisted living home
- Continues to provide technical assistance to providers about the HCBS process and requirements, individually tailored.
- Provides a HCBS webinar-on-demand and quiz
- Provides a care coordination guide, a self-paced care coordination exam monthly, and care coordination training to become a certified care coordinator for the Alaska Medicaid long term home and community based service options
- Trains across DHSS divisions (e.g. collaborates with Division of Health Care Services to offer training and resources for staff who conduct site visits)
- Collaborates with the University of Alaska training center to educate care coordinators and other direct service workers
- Leverages the fieldwork of other divisions so that when they make site visits, they will review HCBS criteria and help to educate providers
- Educates boards and families through email, E Alerts, teleconferences, and webinars
- Supports a dedicated Rural Outreach position to increase services availability in rural areas
- Participates in the Alaska Inclusive Community Choices Council which has been working with an outside contractor quarterly to identify and agree upon system-level reforms needed to strengthen person-centered goals, clarify roles throughout the system, and make the system more efficient and understandable to recipients. This equips providers and stakeholders to identify changes that will help them improve.
- Remains flexible to make adjustments based on learning (continuous QI)
- Collaborates with the Alaska Mental Health Trust Workforce focus area on developing a stable, capable and culturally competent workforce
- Requires at least minimum wage payments for employees with disabilities, further supporting integration of the workforce into the community (Alaska is one of three states to do this through statute)

Housing

A top priority for the Alaska Department of Health and Social Services is to “increase the number of older Alaskans and Alaskans with disabilities who are living safely in the least restrictive environment.” SDS is amending regulations to adjust certification requirements in order to increase the number of smaller homes providing residential services. Agencies statewide continue to work together to increase availability of housing options best suited for seniors and those living with disabilities.

As more Alaskans age, Alaska is implementing its core value of supporting individuals to age in place in the setting of their choice. Participants may choose from an array of settings which deliver services; one of these settings is their own home, which is a non-disability specific setting. The [Senior Access Program](#) is an example of a program that funds accessibility modifications to existing housing across the state. For settings outside one's home, the following are some of the other ways that Alaska is building capacity.

The Alaska Housing Finance Corporation's [Assistance Provider Loan Program](#) increases the availability of housing that is occupied by a live-in care provider who provides assistance in activities of daily living for individuals with either a physical or mental disability. The home can provide services for seniors, mental health individuals or foster children with special needs.

In the **Senior Housing Loan**, borrowers apply directly to Alaska Housing Finance Corporation for funds to purchase, construct or renovate senior housing. Facilities must meet both the present and future geriatric needs of senior citizens and may include conventional housing, housing for the frail elderly, group homes, congregate housing or assisted living facilities. Borrowers may be individuals, partnerships, joint ventures, for-profit or nonprofit corporations, regional housing authorities or local governments.

Another example of capacity-building is a program called [Tribal Housing for Elders to Age in Place](#). Five tribal councils in a remote region partnered to obtain funding to build housing services for elders so that they could age in place. This has also created employment opportunities and strengthened cultural connections.

Alaska Housing Finance Corporation provides rental housing to both low-income Alaskans over the age of 62 years and Alaskans with disabilities. Some locations offer an on-site service coordinator that enables residents to remain independent in their homes as long as possible.

Supported by incentives from the Alaska Housing Finance Corporation, the number of licensed assisted living facilities in Alaska grew from 520 to 632 between 2007 and 2017 (22 percent increase). It is anticipated that this will continue in the future. Alaska continues to assess various options to encourage more integration, autonomy, and choice of non-disability specific settings for individuals.

Transportation

Alaska has [Community Coordinated Transportation Plans](#) in 27 communities. These are locally developed, coordinated public transit-human services transportation plans that identify the transportation needs of individuals with disabilities, seniors, and people with low incomes, provide strategies for meeting those local needs, and prioritize transportation services and projects for funding and implementation. SDS recently forwarded an e-Alert notifying stakeholders that the Municipality of Anchorage (where 40% of Alaskans live) is initiating an annual update to their Coordinated Human Services Transportation Plan. Through Project Kickoff open houses, they are currently seeking input to identify gaps and plan for future needs. Other recommendations for ensuring capacity-building in transportation come from the Alaska Community and Public Transportation Advisory Board.

Amendments to Regulations and Conditions of Participation

Through its internal review of regulations and provider self-assessments, SDS determined that amendments to regulations and standards would bring Alaska into full compliance with federal regulations. SDS also worked with the Divisions of Health Care Services, Alaska Pioneer Homes, and the Office of Children’s Services as part of the Interagency Settings Compliance Committee, to ensure the assisted living homes and foster homes, for which they have administrative responsibility, have regulations that support the qualities required of home and community-based settings.

For several months SDS prepared amendments to regulations and each service’s *Conditions of Participation* to achieve settings compliance, in collaboration with the DHSS Office of the Commissioner and the Alaska Department of Law. This work focused on amendments where the state was “silent” or “partially compliant” with federal settings requirements. The process included internal and required external review. Outreach to stakeholders included E-Alerts and webinars to solicit public comment. The process ended with new and amended regulations that became effective November 5, 2017.

Following are some examples of changes made to regulations (see also Appendix A, Review of Statute and Regulations):

- Develop requirements regarding settings for provider certification section of regulations
- Emphasize that the recipient of home and community based waiver services shall lead the planning process that results in the support plan
- Ensure the rights of the recipient to privacy, dignity and respect and freedom from coercion and restraint
- Optimize the recipients initiative, autonomy and independence in making life choices including those for daily activities, physical environment, and interactions with others
- Require a provider to provide privacy, access to food at all times and visitors if the recipient’s choosing at any time
- Specify that any discussion of residential options must include consideration of the recipient resources for room and board, and whether those resources would cover the cost of a private unit
- Specify that any modifications in a recipient’s living conditions in a provider-owned or -controlled residential setting must be supported by a specific assessed need and justified in the Support plan

Table 4. Detailed Timeline for Amendments to Regulations and COPs

July, 2016	SDS holds internal meetings to begin process to amend regulations, Conditions of Participation, and statutes, including establishing the Interagency Settings Compliance Committee (ISCC) and stakeholder involvement
August, 2016 – March, 2017	SDS drafts regulations, amendments and policies to support HCBS settings requirements. ISCC subcommittees meet to shape regulatory and policy changes needed to increase settings compliance
January, 2017	Met with Office of Children’s Services and other ISCC members as needed, to confirm that Foster Home regulation 7 AAC 50.430(g) does not conflict with 7 AAC 130.220(n)(7) (personal resources)
January, 2017	ISCC meets to discuss issues that need remediation per CMS’ 12/19/16 feedback
February, 2017	SDS consults with Alaska Department of Law about house visitor rules statutes (AS 47.33.060, AS 47.33.300(a)(4)(C))
March, 2017	Division of SDS completes final review of draft HCBS regulations and policies and forwards to DHSS Office of the Commissioner
April, 2017	Meet with OCS to confirm that 7 AAC 50.430 (g) does not conflict with 7 AAC 130.220(n).
April, 2017	Meet with OCS deputy director to confirm that 7 AAC 50.435 (h) does not relate to foster care licensing.
April, 2017	DHSS Office of the Commissioner prepares regulations and policies for public comment
April – June, 2017	Proposed amended HCBS regulations out for public comment
June, 2017	Public comments are considered and regulations and policies finalized
July, 2017	Department of Law reviews regulations and policies and sends to Lieutenant Governor for enrollment/signature
July , 2017	Regulations and policies are enacted
July, 2017	SDS consults with AK Dept. of Law about whether AS 34.03.20 (rental agreement) can be remediated through a regulation revision rather than statute change. If regulation amendment is needed, develop draft. If statute is needed, go through statutory process (see p. 28 for statutory process). Regulation was recommended but not yet implemented.
July 5, 2017	Proposed amended HCBS regulations adopted by DHSS and transmitted to AK Department of Law

October 5, 2017	Amended HCBS regulations signed by AK Lt. Governor
November 5, 2017	Amended HCBS regulations and Conditions of Participation are effective
November, 2017	Confirm that 7 AAC 50.430 (g) (limitations are in the child's best interest) does not conflict with 7 AAC 130.220(n) (personal resources)
November, 2017	Meet with DHCS (residential care licensing) about compliance of 7 AAC 50.435(h). Ensure that when restraints are allowed all of the requirements in 7 AAC 130.220(p) are met*

** Since CMS doesn't have the express authority to disallow states from using restraints, it has been determined that restraints can be allowed in 1915(c), (i) or (k), if the modification to the HCBS regulation is expressly documented in the person-centered service plan following the criteria in 42 CFR 441.301(c)(viii)(A) through (H) also found in the corresponding 1915(i) or 1915(k) authorities.*

Amendments to Statutes and Regulations – House Visitor Rules

Language in Alaska Statutes AS 47.33.060 and AS 47.33.300, regarding visitors in assisted living homes, appears to be inconsistent with federal settings requirements:

Alaska Statute 47.33.060. House Rules

- (a) An assisted living home may establish house rules, subject to the limitations provided for under this chapter.
- (b) An assisted living home shall give a copy of the house rules to a prospective resident or the prospective resident's representative before the prospective resident enters into a residential services contract with the home, and shall post the house rules in a conspicuous place in the home.
- (c) House rules may address various issues, including
 - (1) times and frequency of use of the telephone;
 - (2) hours for viewing and volume for listening to television, radio, and other electronic equipment that could disturb other residents;
 - (3) visitors;
 - (4) movement of residents in and out of the home;
 - (5) use of personal property;
 - (6) use of tobacco and alcohol; and
 - (7) physical, verbal, or other abuse of other residents or staff.

Alaska Statute 47.33.300 Residents' Rights

- (a) Subject to (c) of this section, a resident of an assisted living home has the right to...
 - (4) engage in private communications, including...
 - (C) visiting with persons of the resident's choice, subject to visiting hours established by the home;

SDS sought the advice of the Alaska Department of Law and submitted a legislative proposal to amend AS 47.33.300 (a)(4)(C) on resident rights, so that the words “subject to visiting hours established by the home” would be deleted. Ongoing communications between SDS and the Department of Health and Social Services Office of the Commissioner indicate that the Alaska Department of Law is planning to submit proposed amendments to both AS 47.33.300 and AS 47.33.060 as part of a legislative package proposed by the Governor.

Whether or not the proposed statutory amendments make it through the legislative process, it is the opinion of the Alaska Department of Law that there is sufficient authority in Statute and Regulation to implement the requirements of the Settings Rule. SDS can enforce implementation of settings requirements at assisted living homes using existing Alaska statutes, which indicate that an assisted living home may not adopt a house rule that restricts the rights of residents under any other law:

Alaska Statute 47.33.060 House Rules (d) An assisted living home 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 law in regulations).

To further support SDS enforcement actions, Alaska Regulation 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). Alaska Regulation 7 AAC 105.210 (2) and (3) requires the provider to meet all Federal laws. Failure to comply with Federal law bars a provider from becoming enrolled as a Medicaid provider; without enrollment, a provider cannot be certified to become a home and community based services waiver provider.

SDS Conditions of Participation (COPS) for residential services prevents an assisted living home from imposing rules that do not comply with the CMS final rule. Conditions of Participation are adopted in the regulations by reference (individual COPs are listed service-by-service). COPs were recently updated to include settings compliance and additional person-centered language; these became effective November 5, 2017.

Thus, compliance with the Settings Final Rule is supported by AS 47.33.060(d) as well as new Alaska regulations and Conditions of Participation.

All Divisions of DHSS that oversee residential services have stated consistently that providers’ practices align with the Final Rule, despite conflicting statutes. SDS will continue to ensure alignment with the Final Rule, through presentations and meetings and statutory and regulatory amendments.

The Department is committed to changing the statutes and will continue to track progress.

Planned Timeline for Amendments related to House Visitors Rules

The timeline below describes the amendment to the house visitor rules statutes being introduced in the 2018 session of the Alaska legislature, as well as alternatives that achieve compliance. Due to a focus on Medicaid reform and other competing priorities, the 2017 session was not able to accommodate this statutory amendment.

Month	Activity
January, 2017	Meet with Pioneer Homes and other ISCC members about house visitor rules statutes and policy (AS 47.33.060, AS 47.33.300(a)(4)(C)), and AKPH P&P No. 01.05. As needed, begin developing alternatives to achieve compliance while proceeding to add statutory amendment to 2018 legislative session
March, 2017	Develop 2018 Department Legislative Proposal Form which includes focus area, priority level, intent, benefits, consequences, costs
April, 2017	Internal review of legislative proposal by Division of SDS
May, 2017	Send to State Dept. of Law to draft legislation
August, 2017	DHSS Office of the Commissioner receives legislative proposals
October, 2017	Final Legislative Proposal is submitted to Governor
January, 2018	Governor introduces legislation to change statute
July, 2018	Amendment to statute is enacted

Table 5. Alaska Transition Plan Revised Timeline

Time	Activity	Outcome
January 6 – 23, 2015	SDS internal review and revision of the Transition Plan	Internal comment incorporated
January 26 - February 28, 2015	Public comment period for the Transition Plan	Stakeholder input gathered, documented and incorporated into Transition Plan
January 30, 2015	Stakeholder workshop on Transition Plan and regulation changes	Stakeholder input gathered/documented; incorporated in Transition Plan
March 1 - 15, 2015	Transition Plan finalized; submitted to CMS for approval	State in full compliance with CMS Transition Plan requirements
July - September, 2015	SDS amends Transition Plan in response to CMS review	SDS develops revised process for verifying HCB characteristics of all service settings
September 15 – October 15, 2015	Public comment period for Transition Plan Version 2	Stakeholder input gathered, documented and incorporated into Transition Plan Version 2
September 28, 2015	Stakeholder workshop on Transition Plan Version 2 and regulation changes	Stakeholder input gathered/documented; incorporated in Transition Plan Version 2
October 15 - 17, 2015	Transition Plan Version 2 finalized; submitted to CMS for approval	State in full compliance with CMS transition plan requirements
January, 2016	SDS receives weekly technical assistance from CMS on settings assessment and verification process	Improved Transition Plan, Version 3 is developed

February, 2016	SDS develops Program Administrator training curriculum regarding HCBS settings regulations	State is prepared to train program administrators
Mid-February 2016	30-day Public Comment period and Tribal Consultation for Transition Plan Version 3 begins	Stakeholder input gathered/documented; incorporated in Transition Plan Version 3
February 2016	Mandatory settings survey training completed by Program Administrators	Program Administrators are fully informed regarding settings requirements
March 15-30, 2016	Incorporate public comment into Transition Plan Version 3	Stakeholder input gathered/documented; incorporated in Transition Plan Version 3
March 31, 2016	Transition Plan Version 3 submitted to CMS	Transition Plan Version 3 approved by CMS
April 30, 2016	Mandatory Self-Assessment of Settings completed by Program Administrators	Settings self-assessment process is furthered
April, 2016 – June, 2017	Initial review of Provider Settings Self-Assessment and 2 nd level Sample onsite reviews offering Technical Assistance	Individual providers receive technical assistance from Settings Compliance Team
Sept 30, 2016	SDS analyzes results of Mandatory Settings Self-Assessment with initial remediation plan, organizes into categories of compliance, and notifies providers of findings	Settings self-assessment process is completed
July, 2016	SDS begins process to amend regulations (including where regulations are currently silent), Conditions of Participation, and statutes, including establishing the Interagency Settings Compliance Committee (ISCC)	
Aug– Dec, 2016, Jan - Dec 2017	ISCC subcommittees meet to shape regulatory and policy changes needed to increase settings compliance	

August 31, 2017	SDS completes validation of survey results for survey sample and identifies the number of providers that will need to submit remediation plans.	Results validated
May – September, 2017	Sample group: SDS Compliance Team conducts site visits of settings in sample	
July to December, 2017	Continued 2 nd level focused/onsite reviews of Sample; conducted initial provider self-assessment review of non-sample.	Individual providers receive technical assistance from Settings Compliance Team
October, 2017	Non-sample group: Assessment of non-sample settings is complete	
October, 2017 to January, 2018	ISW Group (comprised of sample/non-sample): Launch remediation process Included: site based day habilitation; site-based supported employment, and provider controlled supported living.	
November 5, 2017	All regulations and Conditions of Participation are fully compliant with settings requirements	Compliance of regulations and COPs
November 17, 2017	ISW: Remediation plans due from those wishing to provide services under ISW Waiver (89 settings)	
November 30, 2017	ISW: SDS notifies potential ISW providers if their remediation notices are approved or not	
December 10-20, 2017	ISW: All providers in ISW actively remediating or taken out of ISW work group and moved to another group due to remediation exceeding time remaining	
October, 2017 – June, 2018	SDS issues a certificate of Full Compliance to settings that successfully complete the process of assessment, remediation, and attestation	
January 5, 2018	Sample group: Remediation Notices sent to Sample service types that were not included in ISW group	
January 15, 2018	ISW: Compliance date for ISW group with returned Attestation	
January 31 – February 12, 2018	Sample group: SDS responds to Remediation Plans for sample group	
March - April,	Transition Plan Version 4, including categorization	Public input received,

2018	results of settings survey and remediation plan, receives public comment and final revisions	plan revised
February 28, 2018	Sample settings will submit any outstanding remediation evidence to SDS. Example of outstanding remediation items: corrections, modifications, evidence, and/or attestation.	
March 1, 2018	ISW: Conclude remediation work for all ISW settings. SDS issues certificate of full compliance. Certification of ISW group that complies with Final Rule	All ISW settings were successfully remediated, including the receipt of signed Attestations.
March 28, 2018	Non-Residential and Family Habilitation (NR/FH) settings within the non-sample group will receive remediation notices. Responses to initial notices due to SDS for review by April 25.	
March 31, 2018	Conclude remediation work for all sample settings. SDS issues certificate of full compliance.	
March- April, 2018	Non-sample group: Conduct 2 nd level review of all non-sample settings, including onsite reviews (per weighted criteria); generate remediation notices	
April, 2018	SDS submits Version 4 of Transition Plan for public comment and tribal consultation, including evidence for Heightened Scrutiny determinations if necessary	Plan submitted
April 11, 2018	RSL/GH settings within the non-sample group will receive remediation notices. Responses to initial notices due to SDS for review by May 10.	
May, 2018	SDS submits STP to CMS for approval after incorporating public/tribal comment	
May 9, 2018	SDS responds to NR/FH remediation notices.	
May 10, 2018	RSL/GH providers due to submit remediation response to SDS	
May 11-21, 2018	SDS reviews RSL/GH remediation plans/evidence and makes determinations	
May 22, 2018	Non-sample group: SDS sends out notices of approval or non-approval of remediation plans for RSL/GH	
May 23, 2018	NR/FH settings will submit any outstanding	

	remediation evidence to SDS.	
June 5, 2018	RSL/GH settings will submit any outstanding remediation evidence to SDS.	
June 5 - 29, 2018	Conclude remediation work for all Non-sample settings (NR/FH; RSL/GH). SDS issues certificate of full compliance.	
June 29, 2018	Full Compliance for all settings.	Final determinations complete
July to December, 2018	Recipients in noncompliant settings receive 30-day notice of the need to transition to compliant settings, outlining the process and including information on other service options available, to help them make informed decisions.	Non-compliant settings notified
March 1, 2019	Recipients have been relocated to compliant settings.	Transitions complete
Ongoing	All settings subject to monitoring of ongoing compliance with HCBS criteria	

Part 4

PUBLIC COMMENT AND RESPONSE

(to be completed)