



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

## **Alaska Transition Plan for Home and Community-Based Services Settings**

**In compliance with CFR 42 §441.301(c)(6)**

**Final Approved Plan  
August 22, 2018**

[Alaska HCBS Settings Website](#)

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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**

| Year | Date      | Communication/Event       | Purpose/Outcome                                                                                        |
|------|-----------|---------------------------|--------------------------------------------------------------------------------------------------------|
| 2014 | March 19  | SDS E-Alert               | Announced finalization of new CMS regulations and key areas of change                                  |
| 2014 | April 1   | Webinar                   | First information-sharing webinar: Overview of new CMS regulations                                     |
| 2014 | April 4   | SDS E-Alert               | April 1 webinar materials made available                                                               |
| 2014 | June 10   | Webinar                   | Second information-sharing webinar and announcement of community forums                                |
| 2014 | June 27   | SDS E-Alert               | Invitation to community forums in Fairbanks, Kenai, Anchorage, Juneau, and statewide by teleconference |
| 2014 | August 18 | Fairbanks community forum | Interactive forum for information on new regulations, ideas from stakeholders, Q&A                     |
| 2014 | August 19 | Kenai community forum     | Interactive forum for information on new regulations, ideas from stakeholders, Q&A                     |
| 2014 | August 20 | Anchorage community forum | Interactive forum for information on new regulations, ideas from stakeholders, Q&A                     |

| <b>Year</b> | <b>Date</b>  | <b>Communication/Event</b>                                                                                                                            | <b>Purpose/Outcome</b>                                                                                   |
|-------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| 2014        | August 21    | Juneau community forum                                                                                                                                | Interactive forum for information on new regulations, ideas from stakeholders, Q&A                       |
| 2014        | August 22    | Statewide teleconference                                                                                                                              | Interactive forum for information on new regulations, ideas from stakeholders, Q&A                       |
| 2014        | September 15 | SDS E-Alert                                                                                                                                           | Updates/ clarifications of CMS regulations; evaluation using Provider Self-Assessment of Settings Survey |
| 2014        | October 2    | SDS E-Alert                                                                                                                                           | Provider Self-Assessment of Settings Survey and FAQs released with October 31 due date                   |
| 2014        | October 15   | Webinar                                                                                                                                               | Q & A on Provider Self-Assessment of Settings Survey                                                     |
| 2014        | October 16   | SDS E-Alert                                                                                                                                           | Provider Self-Assessment of Settings Survey due date extended to November 14                             |
| 2014        | October 21   | Webinar                                                                                                                                               | Q & A on Provider Self-Assessment of Settings Survey                                                     |
| 2014        | October 27   | SDS E-Alert                                                                                                                                           | Additional FAQs on CMS regulations released                                                              |
| 2014        | November 7   | SDS E-Alert                                                                                                                                           | Provider Self-Assessment of Settings reminder                                                            |
| 2014        | November 10  | SDS E-Alert                                                                                                                                           | Open letter from SDS Director                                                                            |
| 2015        | January 21   | SDS E-Alert                                                                                                                                           | Save the Date for public comment                                                                         |
| 2015        | January 26   | SDS E-Alert                                                                                                                                           | Transition Plan available for public comment                                                             |
| 2015        | January 30   | Webinar                                                                                                                                               | Q&A on Transition Plan                                                                                   |
| 2015        | September 15 | Webinar                                                                                                                                               | Revised Transition Plan available for public comment                                                     |
| 2015        | September 29 | Webinar                                                                                                                                               | Q&A on revised Transition Plan                                                                           |
| 2016        | February 10  | SDS E-Alert, Online Public Notice, Tribal Consultation letters and emails, ads in three newspapers, and flyers distributed via advocacy organizations | Transition Plan Version 3 available for public comment until March 11, 2016                              |
| 2016        | February 17  | Webinar                                                                                                                                               | Q&A on revised Transition Plan Version 3                                                                 |

| <b>Year</b> | <b>Date</b>               | <b>Communication/Event</b>                                                                                                             | <b>Purpose/Outcome</b>                                                                   |
|-------------|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| 2016        | March 10                  | Transition Plan presentations to two advocacy groups (AgeNet and Alaska Association for Developmental Disabilities)                    |                                                                                          |
| 2016        | March 12                  | Submit Transition Plan Version 3 to CMS                                                                                                | Public comment incorporated and plan submitted                                           |
| 2016        | April, 2016 to June, 2017 | SDS performs initial review of Provider Settings Self- Assessment and 2nd level Sample onsite reviews, and offers technical assistance | Individual providers receive technical assistance from Settings Compliance Team          |
| 2017        | March 1                   | SDS updated Settings website                                                                                                           | Inform public more efficiently about CMS final settings rule and associated information  |
| 2017        | July to December          | SDS provides technical assistance for settings in non-sample group                                                                     | Individual providers receive technical assistance from Settings Compliance Team          |
| 2017        | October 10                | E Alert sent about SDS webinar for ISW providers                                                                                       | Inform potential providers under the Individual Supports Waiver of webinar               |
| 2017        | October 11                | Orientation for prospective providers in ALHs                                                                                          | Information is aligned between DHSS Divisions                                            |
| 2017        | October 12                | SDS added information to Settings web page for ISW applicants                                                                          |                                                                                          |
| 2017        | October 17                | SDS webinar for ISW waiver providers                                                                                                   | ISW waiver providers are knowledgeable about settings rule and remediation               |
| 2017        | 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 |
| 2018        | February 26               | SDS settings training with DHCS Residential Licensing and Office of Long Term Care Ombudsman                                           | Strengthen staff of other divisions that will be monitoring compliance in settings       |

| <b>Year</b> | <b>Date</b> | <b>Communication/Event</b>                                                                                                                           | <b>Purpose/Outcome</b>                            |
|-------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| 2018        | February 28 | Breakout session on settings during annual conference                                                                                                | Education for advocates                           |
| 2018        | April 8     | SDS E-Alerts, Online Public Notice, Tribal Consultation letters and emails, ads in newspapers, HCBS website, communication with advocacy groups orgs | 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-<br>Group home                                                            | IDD, APDD                |
| <i>Residential</i>     | Licensed foster home                       | Residential habilitation,-<br>Family home habilitation (child)<br>Family home habilitation (adult) | IDD, CCMC, APDD          |
| <i>Residential</i>     | Licensed assisted living home              | Residential supported living                                                                       | ALI, APDD                |
| <i>Residential</i>     | 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. All group supported employment settings are included in assessment and validation activities. All group and individual supported employment settings will be monitored.

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

Between April, 2016 and May, 2017, SDS conducted an initial desk review of self-assessments for 756 settings, to: 1) check for completeness and correctness of program administrator, address, and other elements; and 2) assess the provider's responses for potential alignment with the Final Rule. SDS then assigned each setting to one of four compliance categories. As of May 31, 2017, all the 650 active settings were assigned to a compliance category as follows:

- *Fully Compliant: 5 (1%).* The setting had the characteristics required for home and community-based services, and was integrated in and supported full access by recipients to the greater community.
- *Emerging Compliant: 633 (83%).* The setting did not meet all requirements, but was partially integrated and provided some supports for access by recipients to the greater community; the provider would be able to bring the settings into compliance through remediation.
- *Insufficient Compliant (Presumed Institutional): 5 (1%).* The setting had institutional qualities but SDS believed that the provider did provide services in a home and community based setting. SDS would 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 failed to submit a survey, submitted insufficient evidence to make a compliance determination, or indicated they did not intend to comply with settings requirements. Potential heightened scrutiny.
- *The following table captures SDS' initial categorization of all identified service settings, based on self-assessments and desk reviews:*

\*Note: As shown in Table 3, 106 (14%) of the total 756 settings were voided due to change of address, change or end of affiliation, duplication, erroneous setting declaration (setting did not need to be declared), setting decertification, or other factors, including closures of any kind.

**Table 3. Initial Compliance Status by Setting Type, Alaska, 5/31/17**

| Setting Type                            | Fully Compliant | Emerging Compliant | Insufficient Compliant/<br>Potential for HS | 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         |
| <b>TOTAL</b>                            | <b>5</b>        | <b>633</b>         | <b>5</b>                                    | <b>7</b>      | <b>106</b>  | <b>756</b> |
| <b>Percentages</b>                      | <b>1%</b>       | <b>83%</b>         | <b>1%</b>                                   | <b>1%</b>     | <b>14%*</b> | -          |

## **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 all 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 [Raosoft sample size calculator 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.

Every setting (100% of both sample or non-sample groups) received the initial desk review, a focused review and a secondary level review. Some settings received an on-site visit. For validation purposes, SDS conducted focused desk reviews and/or site visits for the sample group first and then later completed this process for all settings in the non-sample group.

**Focused desk review:** For settings identified for focused review, SDS 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

For the non-sampled self-assessment reviews, SDS applied weighted criteria with the same content used for the sample group. In this process, a response threshold requirement was applied to each service. If a provider did not meet the response threshold requirement, (e.g., provider failed to respond to questions, provider response was a restatement of the question, or provider responses lacked contextual depth and/or evidence), the setting was triaged for onsite review. Settings that met the response threshold requirement were triaged to second-level focused 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.

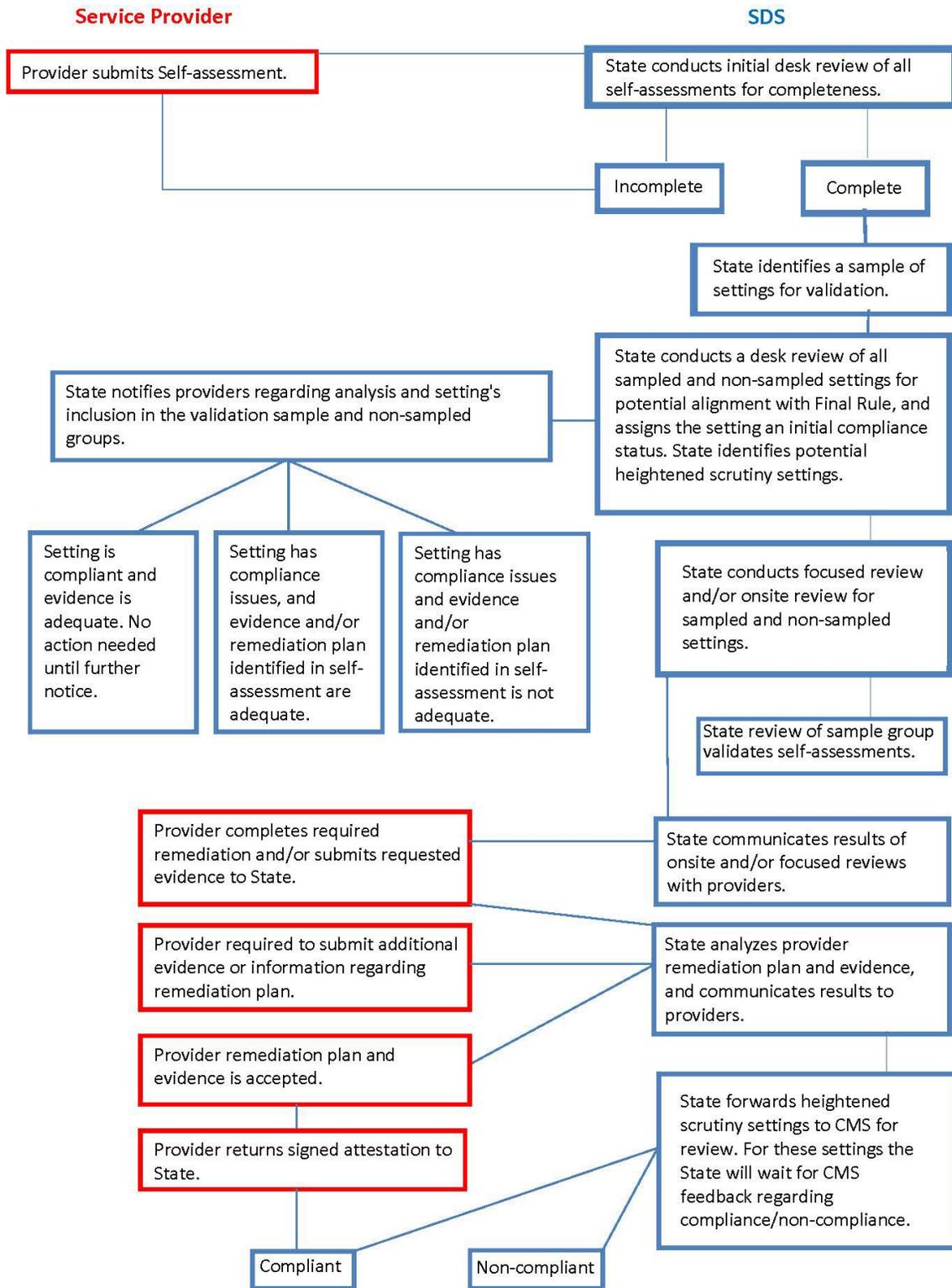
For HCB waiver services that are provided out of state, the other state’s Medicaid oversight authorities will verify and validate through attestations that each setting is in compliance with that state’s settings requirements. Out of state providers who are not Medicaid providers in their own state are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

[Note: Alaska submitted an application for a new waiver on January 8, 2018, and received CMS approval on June 18, 2018, for an effective date of July 1, 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. The new waiver is now awaiting regulatory approval at the state level before becoming operational.]

While CMS has extended the deadline for settings compliance to March, 2022, SDS clearly anticipates 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 Figure 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.

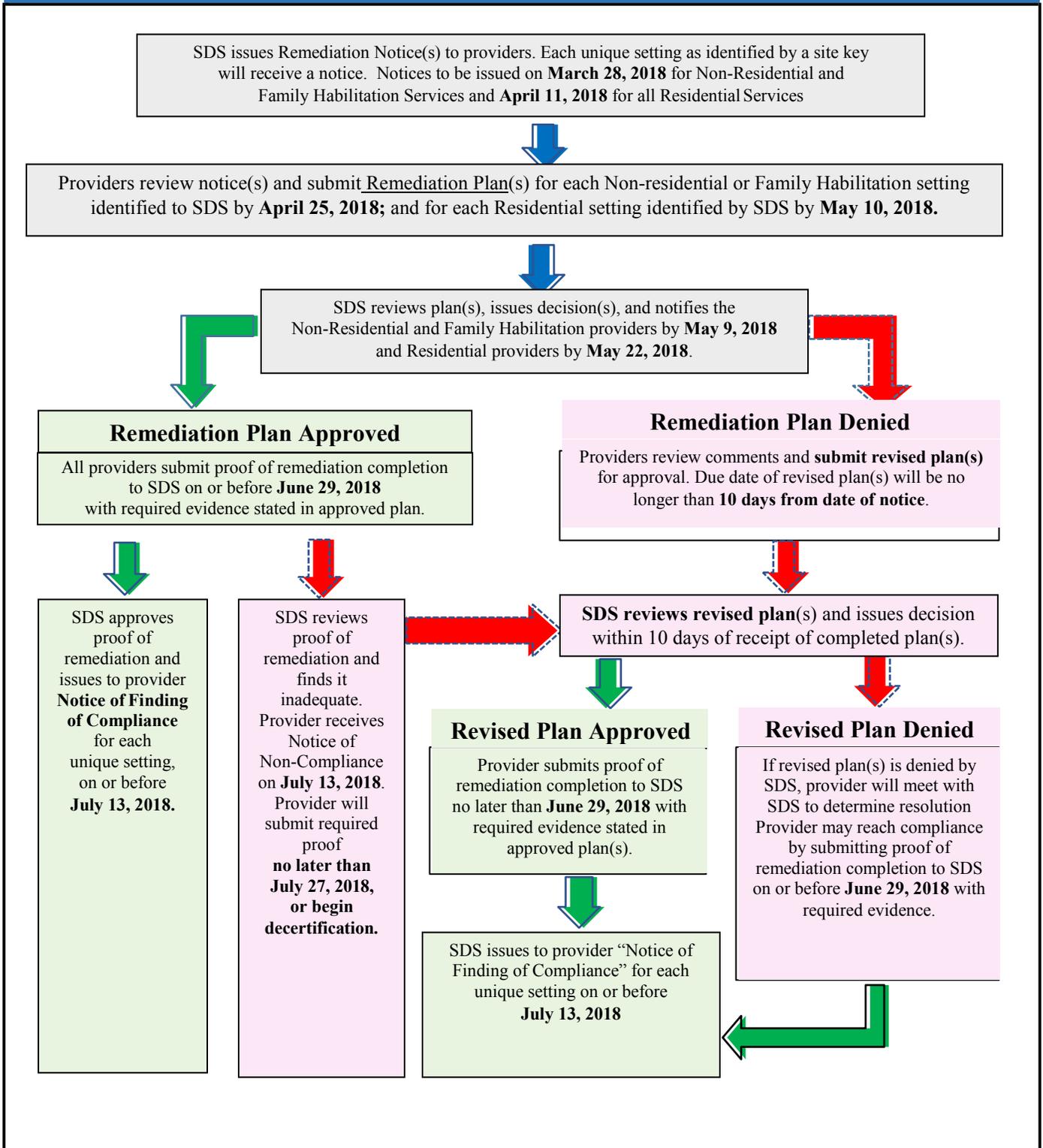
As of January 17, 2018, a total of 50 settings in the sample group and the ISW group had accepted the State's offer to provide guidance and technical assistance in developing their remediation plans. This is approximately 20 percent of the settings in those groups. As of February 23, 2018, all providers 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 33.)

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**



## 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
- All settings are subject to a focused desk review or on-site visit. If setting is in the sample, it is prioritized for an on-site review or focused review (this step was 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, located adjacent to a tribal hospital, was originally

identified for possible heightened scrutiny. The hospital is privately owned, therefore the setting does not meet the presumption of being institutional in nature.

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

Senior and Disabilities Services (SDS) was originally concerned that some settings might need heightened scrutiny due to the criterion of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. SDS placed these into the category of possibly needing Heightened Scrutiny (HS) after initial review of each setting's self-assessment. However, after SDS received additional guidance from CMS via webinar and technical assistance calls; reviewed provider governing documents; conducted focused desk reviews and onsite observation at the settings; and interviewed recipients, SDS determined that the identified settings had been incorrectly placed into this category. Each setting then continued through the standard review process.

As of July 18, 2018 the number of settings which require HS is zero. No settings actually met any of the three criteria that require a HS determination by CMS.

State Internal Review Process for Heightened Scrutiny

The Internal Review Process consists of the following steps performed by the individuals identified below:

- 1) For any setting with potential heightened scrutiny, the SDS Settings Compliance Team conducts desk reviews and site visits using a checklist based on the materials provided in the CMS Toolkit
- 2) The Settings Compliance Team documents evidence and findings
- 3) The Settings Compliance Team presents evidence and findings to Settings Transition Leadership Team
- 4) The Settings Transition Leadership Team confirms or denies findings
- 5) The Settings Transition Leadership Team consults CMS as needed

Settings Compliance Team is composed of the following positions:

- SDS Provider Certification and Compliance Unit Health Program Manager II (Team Lead)
- Two additional Provider Certification and Compliance Unit Health Program Managers
- Additionally, this Team relies on the expertise of the following SDS Units and Divisions as needed to make settings and potential HS determinations: Division of

Health Care Services Residential Licensing Unit, SDS Research and Analysis, SDS Intellectual and Developmental Disabilities Unit, and SDS Training Unit.

Settings Transition Leadership Team comprises these positions:

- SDS Deputy Director
- SDS Chief of Operations
- SDS Provider Certification and Compliance Unit Manager
- SDS Policy and Program Development Unit Manager

To overcome a presumption that a setting is isolating, the SDS internal review process will use evidence that supports the following qualities:

- The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.
- The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting.
- Services to the individual, and activities in which the individual participates, are engaged with the broader community.

## **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 Alaska DHSS Division of Health Care Services Residential Licensing and developed a Residential Licensing Settings Compliance Tool. This tool, implemented May 2018, is designed to supplement the work of Residential Licensing (RL) staff and ensure that 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. (See [SDS Training Resources web page](#)). 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**

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**

| Date                       | Activity                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 <a href="#">AS 34.03.20</a> (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. |

| Date             | Activity                                                                                                                                                                      |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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), but only 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. Also see amended regulation 7 AAC 130.229(a) and new regulation 7 AAC 130.220 (n)(2).*

### **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**

An assisted living home may establish house rules, subject to the limitations provided for under this chapter.

- (a) 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.
- (b) 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 hour 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 47.33.60 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**

| <b>Date</b>                     | <b>Activity</b>                                                                                   | <b>Outcome</b>                                                                         |
|---------------------------------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 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                                       |

| Date                     | Activity                                                                                                                                                                                                           | Outcome                                                                          |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| 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 <sup>nd</sup> 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) | -                                                                                |

| Date                           | Activity                                                                                                                                                                                    | Outcome                                                                         |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 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 <sup>nd</sup> 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<br>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                                                                                                                                | -                                                                               |

| Date                           | Activity                                                                                                                                                                               | Outcome                                                                                      |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| January 31 – February 12, 2018 | Sample group: SDS responds to Remediation Plans for sample group                                                                                                                       | -                                                                                            |
| March - April, 2018            | Transition Plan Version 4, including categorization results of settings survey and remediation plan, receives public comment and final revisions                                       | Public input received, 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 <sup>nd</sup> 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                                                                                                                             | -                                                                                            |

| Date                   | Activity                                                                                                                                                                                                                             | Outcome                         |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 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**

### **Alaska Settings Transition Plan version 4**

The State received comments regarding the state transition plan from two stakeholders, after extensive outreach that included public notice, E-Alerts, targeted webinars, and interaction between the SDS Certification and Compliance Unit during site visits and the remediation process. Those comments are listed in italics below with the SDS response beneath each one. SDS also received one comment which was forwarded to another division because it was about a different topic.

*Senior meal providers should not be considered part of the Settings Plan.*

Facility-based locations where congregate meals are provided will need to comply with the CMS settings final rule.

*The Alaska HCBS Settings web page and its resources are helpful to stakeholders.*

Comment noted. SDS will continue to build the web page.

*The ability for the general public, especially stakeholders, to fully understand the changes which have occurred from the third and fourth transition plan versions would have been enhanced by a webinar to walk through the changes and answer questions and a comprehensive crosswalk.*

A comprehensive crosswalk would have been useful but difficult to develop in the fourth version. SDS has offered the opportunity for comparison by posting prior versions of the STP on Alaska's Settings web page.

*A self-assessment specifically geared towards consumers is suggested to ensure those most impacted have an ability to share their experience about settings where waiver services are provided.*

SDS concurs that an effective and accessible consumer survey is beneficial. The Division intends to engage consumers and stakeholders in the development and implementation of a consumer survey that will capture consumer experience.

*The revised regulation around supported employment is beneficial but the STP would be further enhanced by describing what supported employment programs need improvement and how such improvement would take place.*

SDS appreciates the suggestion to revise supported employment regulations and will continue conversations with stakeholders on improvements to supported employment programs.

*Footnote on STP page 36 could be interpreted as approving restraint on an individual basis, including as a regular or routine permanent practice.*

SDS modified the footnote to clarify its intent and added the related new and amended regulations.

*See new amendment to 7 AAC 130.229(a), described on page 13 of the Transition Plan Part 2 (Appendices) and new regulation 7 AAC 130.220 (n)(2) described on page 10 of the Appendices.*

*The duration and type of restraint the state is allowing -- so long as it is noted in the plan of care -- should include specific guidance on requirements for its use, including notification to guardians, training, and reporting.*

Comment noted. See regulations 7 AAC 130.220(p) for guidance; 7 AAC 130.229 Use of restrictive intervention; 7 AAC 130.222 Recipient safeguards; and 7 AAC 130.224 Critical incident reporting.

*Providers should be prohibited from allowing house rules that restrict personal freedoms, e.g with visitors. Request that house rules be prohibited when licensing state and local assisted living homes. Ensure that individuals using HCBS in Alaska are not under unilateral house rules developed solely by an agency or staff person.*

Pages 36-38 describe SDS' process of submitting a proposal to change the House Rules statute so that it would align with freedoms supported by the Final Rule. Further actions are determined at the level of the Commissioner, the Governor, and the legislature. Also see new HCBS regulation 7 AAC 130.220 (o)(2)(D) which requires that providers allow the recipient visitors of the recipient's choosing at any time.

*Because the specific Alaska statutes on assisted living homes' resident's rights specifically refer to visitors being "subject to visiting hours established by the home," AS 47.33.300(a)(4)(C), the Council is skeptical that there is no real need to change this statute.*

SDS consulted with Alaska Department of Law about house visitor rules, developed a proposal to change House Rules statute (to delete the phrase "subject to visiting hours established by the home") and submitted it to the DHSS Office of the Commissioner (see pages 36-38 of the STP). Further actions are determined at the level of the Commissioner, the Governor, and the legislature.

*The commenter suggests finding more alignment with landlord/tenant rules and offering guidance to providers on establishing a process for a common understanding for co-habitants where everyone in the house is empowered to decide together.*

SDS required and reviewed copies of all residential settings' house rules and/or lease agreements, which had to mirror the Landlord/Tenant Act (including rights). SDS also provided guidance during site visits and remediation steps.

Each resident has their own lease agreement with rights.

Division of Health Care Services partnered with SDS to develop a HCBS settings checklist (including housing rights) to guide reviewer during visits to residential locations.

*The current wording of the STP does not go far enough to fully protect important personal freedoms for individuals with disabilities.*

The STP describes what the State is doing to protect personal freedoms through compliance with the Final Rule.

*A comment was received asking for more description of the change process through which the two farmsteads and the supported employment settings reached emerging compliance and might attain full compliance.*

SDS is working with providers in the “emerging compliant” category to assure that they complete steps necessary to reach full compliance.

The STP (pp. 26-28) lists the Heightened Scrutiny elements and then notes that farmstead communities might have the effect of isolating recipients; these settings were reviewed carefully with site visits being made. Farmsteads were subject to the same remediation process as all other settings, including the requirement for access to the greater community. As with other settings, farmsteads were notified about which compliance criteria required remediation and were given a timeline for review.

For more information see [updated Settings Final Rule Compliance Status](#).

*It is not clear from the narrative whether various supported employment activities were actually subject to heightened scrutiny but were then moved out of it, or are still subject to heightened scrutiny. Noting that one place changed its activities to better integrate people with disabilities into “the competitive, integrated workplace of the larger maintenance crew” does not establish that other places made similar changes.*

SDS Certification and Compliance team used a standardized tool to assess all settings, issue findings, and require remediation steps (See Appendix B for Settings Checklist). The settings in question were reviewed carefully and all were found to be “emerging compliant.” Specific steps needed to remedy shortcomings and reach compliance were unique to each setting.

*It is unclear whether the figure of “15” used in the heightened scrutiny section refers to farmsteads plus supported employment plus rural areas, or simply to supported employment; and it is not clear what about the activities in question, whatever they may be, allowed SDS to take them away from heightened scrutiny.*

While this plan discusses percentages of settings which have been deemed being under heightened scrutiny, emerging compliant, or compliant, the commenter would appreciate more description regarding what criteria was and will be used to determine reaching emerging compliance.

SDS initially thought that approximately 15 settings (not restricted to farmsteads) 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, and designated them “emerging compliant”.

The “compliance pathway” noted on page 27 means that the SDS Certification and Compliance team used a standardized tool that lists each criterion of the CMS Final Rule and compares the activities of the setting with each criterion. (For a list of settings criteria, see STP Appendix B). If the setting is not meeting the criteria, SDS sends the provider a notice outlining specific findings, with recommendations to remedy the shortcoming(s) and a timeline for SDS review and for provider remediation. Once notified, providers are given a timeline to submit evidence.

*Routine waiver service plan review is not enough to keep a strong pulse on settings compliance over time and could lead to a lack of follow up.*

Ongoing monitoring steps describe SDS' multi-pronged approach to compliance monitoring, including the addition of HCBS settings criteria to Division of Health Care Service's bi-annual reviews of assisted living homes. Lack of compliance means that the provider will not be able to receive Medicaid reimbursement. For more detail about ongoing monitoring, see STP pages 28- 31.

*Additional details regarding care coordinator training on page 30 would be useful since care coordinators will play such a pivotal role in ongoing monitoring.*

Added link to SDS Training Resources web page link to STP page 30. Also see bullets on page 31 under "Building Statewide Capacity: Workforce development and training."

*The commenter appreciates the general bullet points given on pages 28-29, and suggests adding a timeframe for each specific monitoring step listed. Explanation about how existing provider certification, case management, and quality assurance processes will be included in ongoing monitoring and compliance activities appear to still be needed in this plan to fulfil what CMS requested.*

SDS added these bullet points in version 4 in response to CMS' request for more details about ongoing monitoring.

*The commenter finds a need for delineation regarding how the state will build access to non-disability specific options, in both residential and non-residential settings to fulfil the request made by CMS.*

SDS added narrative about this topic (pages 33-36).

More detail about what criteria was and will be used to achieve a determination of compliant from previously being in the emerging compliant category. Greater description is needed regarding what is being done with those under the emerging compliant category to bring them to full compliance.

SDS developed a comprehensive, standardized process for monitoring and assisting settings that are taking steps to move from “emerging compliant” to “fully compliant.” Criteria are based on the CMS Final Rule. (See “Remediation Plans” on STP page 22. Also see Appendix B).

*14% of assessments were voided due to decertification, change of address, or end of affiliation and rarely voluntary closure. This seems to be a high percentage where more detail regarding their non-inclusion in the final results would be useful.*

Most “voids” were due to changing address or affiliation; SDS has now made a small revision to the STP to clarify this. Many voided settings later received new survey numbers and were counted after the point-in-time table on STP p. 18 (Table 3).

*While the plan discusses that some settings in the sample group were selected for a focused desk review and some needed an on-site visit, there is no specific criteria given for what constitutes a focused desk review or site visit. The Council suggests description be added to page 19 regarding how onsite reviews were picked.*

In response to this comment, SDS added more description about the criteria on page 20 of the Plan.

*Related to how SDS determines compliance levels, it was suggested that the Plan better describe what makes a setting “community-based.”*

Regarding what makes a setting “community-based,” SDS follows CMS guidance as well as Alaska regulation 7 AAC 130.220(m). Assessment questions related to this definition can be found in the first part of Appendix B, “Senior and Disabilities Services Setting Qualities Checklist and Exploratory Questions for Home and Community-Based Services Settings” (pp. 81-83).

*Referring to relocating consumers within 30 days suggests that the locations will be closed down, but again more detail would greatly enhance this section of the plan. The commenter believes that 30 days for relocation may be too short a timeframe.*

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. The relocation process is described on STP page 33. Provider certification and decertification requirements are written in Alaska regulation 7 AAC 130.220 and 7 AAC 105.440.

## **Appendix A: Review of Statutes and Regulations**

## Appendix A: Review of Statutes 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.

Effective November 5, 2017, Alaska has [amended regulations](#) to align with the CMS final rule. [SDS's amended Waiver Conditions of Participation](#) align with Alaska's amended regulations.

**42 CFR 441.301 (c)(4)(i)** The setting is integrated in and supports full access of individuals receiving **Medicaid** HCBS to the greater community, including **opportunities to seek employment and work in competitive integrated settings**, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving **Medicaid** HCBS.

| Federal regulations                                                                 | Applicable Alaska Standards                                                                                                                                                                                                                                                                                    | Compliance Notes                                                                                                                    | Additions/changes made (effective 11/5/17)                                                                                                                                                                             |
|-------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>opportunities to seek employment and work in competitive integrated settings</b> | <a href="#">7 AAC 130.270 Supported Employment (b)(2)</a> Services available to provide support at worksite where individuals without disabilities are employed                                                                                                                                                | Regulations, COPs, and policies are silent, except as noted in Column 2                                                             | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that]<br>(5) assists a recipient that chooses to (A) seek employment and work in competitive, integrated settings |
| <b>opportunities to seek employment and work in competitive integrated settings</b> | <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.” | Partially compliant Regulations, COPs, and policies are silent, except as noted in Column 2                                         | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that]<br>(5) assists a recipient that chooses to (A) seek employment and work in competitive, integrated settings |
| <b>opportunities to seek employment and work in competitive integrated settings</b> | <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.                                                                          | New regulation adds recipients’ opportunity to seek employment. Amendments to all COPs adopted by reference in regulations package. | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that]<br>(5) assists a recipient that chooses to (A) seek employment and work in competitive, integrated settings |

**42 CFR 441.301 (c)(4)(i)** The setting is integrated in and supports full access of individuals receiving **Medicaid** HCBS to the greater community,

including **opportunities to** seek employment and work in competitive integrated settings, **engage in community life**, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving **Medicaid** HCBS.

| Federal regulations      | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                       | Compliance Notes                                                                                     | Additions/changes made (effective 11/5/17)                                                                                                                                              |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| engage in community life | <p><a href="#">SDS Service Principles</a>:<br/>Individuals have knowledge of and access to community services.<br/>Services are designed and delivered to build communities where all members are included, respected, and valued.<br/><a href="#">7 AAC 130.217 (a)(3)(C)</a> [Written POC] identifies family and community supports available to recipient.</p> | Compliant                                                                                            | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that] (6) encourages and facilitates the recipient’s engagement in community life. |
| engage in community life | <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>                                                                                                                                                       | Partially compliant. New regulation is more directive about encouraging and facilitating engagement. | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that] (6) encourages and facilitates the recipient’s engagement in community life. |
| engage in community life | <p><a href="#">ALH AS 47.33.230 (a)</a> [Resident’s plan must] (1) promote participation in the community</p>                                                                                                                                                                                                                                                     | Compliant                                                                                            | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [The provider shall render services in a setting that] (6) encourages and facilitates the recipient’s engagement in community life. |

| Federal regulations      | Applicable Alaska Standards                                                                                                                                                                                                              | Compliance Notes                                                                             | Additions/changes made (effective 11/5/17)                                                                                                                                                   |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| engage in community life | <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.  | Compliant.<br>New regulation is more directive about encouraging and facilitating engagement | <b>New HCBS waiver regulation 7</b><br>AAC 130.220 (n) A provider shall render each service...in a setting that (6) encourages and facilitates the recipient’s engagement in community life. |
| engage in community life | <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. | Compliant. New regulation is more directive about encouraging and facilitating engagement    | <b>New HCBS waiver regulation 7</b><br>AAC 130.220 (n) A provider shall render each service...in a setting that (6) encourages and facilitates the recipient’s engagement in community life. |
| engage in community life | FH (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.          | Compliant<br>New regulation is more directive about encouraging and facilitating engagement  | <b>New HCBS waiver regulation 7</b><br>AAC 130.220 (n) A provider shall render each service...in a setting that (6) encourages and facilitates the recipient’s engagement in community life. |

**42 CFR 441.301 (c)(4)(i)** The setting is integrated in and supports full access of individuals receiving **Medicaid** HCBS to the greater community, including **opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community**, to the same degree of access as individuals not receiving **Medicaid** HCBS.

| Federal Regulations               | Applicable Alaska Standards                                                                    | Compliance Notes | Additions/Changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------|------------------------------------------------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>control personal resources</b> | <u>ALH AS 47.33.300 (a)(7)</u> [Res has right to] manage the resident’s own money.             | Compliant        | <p><b>New HCBS waiver regulation</b><br/>7 AAC 130.220 (n) A provider shall render each service...in a setting that (7) provides the opportunity for the recipient to control the recipient’s personal resources</p> <p><b>Revise <u>Provider COP III.C.</u></b><br/>Recipient rights - control of personal resources and <u>CC COP IV.B 2.</u> control of personal resources (see 7 AAC 130.220(n)(7))</p> |
| <b>control personal resources</b> | <u>AKPH P&amp;P No. 01.04</u> [Res has right] to manage the resident’s own money and finances. | Compliant        | <p><b>New HCBS waiver regulation</b><br/>7 AAC 130.220 (n) A provider shall render each service...in a setting that (7) provides the opportunity for the recipient to control the recipient’s personal resources</p>                                                                                                                                                                                        |

| Federal Regulations                      | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Compliance Notes                                                                                                                                                                                                                                                                                                                                                                                          | Additions/Changes made (effective 11/5/17)                                                                                                                                                                       |
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| <p><b>control personal resources</b></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;<br/>(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>New regulation more clearly requires settings to support recipients' control of personal resources. 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 monitor how the foster child would spend their funds. If further exploration indicates a conflict, the regulation will be amended.</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> A provider shall render each service...in a setting that (7) provides the opportunity for the recipient to control the recipient's personal resources</p> |
| <p><b>control personal resources</b></p> | <p><a href="#">OCS FH Handbook</a>, p. 70.“A savings account is an appropriate way for a youth to gain skill in .. banking and money management. Money earned by a child in care... 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 spending money a child has access to if in the child's best interest.”</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)(7)</b> more clearly requires settings to support recipients' control of personal resources.</p>                                                                                                                                                                                                                                                        | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> A provider shall render each service...in a setting that (7) provides the opportunity for the recipient to control the recipient's personal resources</p> |

| Federal regulations                             | Applicable Alaska Standards                                                                                                                                                                                                     | Compliance Notes | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p><b>receive services in the community</b></p> | <p>SDS Service Principles:<br/>Individuals have knowledge of and access to community services</p> <p><a href="#">7 AAC 130.217 (a)(3)(C)</a> [Written POC] identifies family and community supports available to recipient.</p> | <p>Compliant</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> A provider shall render each service...in a setting that (5) assists a recipient that chooses to (B) receive services in the community</p> <p><b>Revised <a href="#">7 AAC 130.200</a>.</b> The purpose of this chapter is to offer to individuals that meet the eligibility criteria in <a href="#">7 AAC 130.205</a> the opportunity to choose to receive home and community-based waiver services as an alternative to institutional care. Those services, when implemented through a person-centered plan of care, provide opportunities for eligible individuals to receive services in the community and to maximize engagement in community life.</p> |
| Federal regulations                             | Applicable Alaska Standards                                                                                                                                                                                                     | Compliance Notes | Additions/changes made (effective                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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| <p><b>receive services in the community</b></p> | <p><a href="#">AKPH brochure “A Matter of Rights”</a>.<br/>         [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>Partially compliant. New regulation not only states recipients’ rights but requires setting to assist recipient</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> A provider shall render each service...in a setting that (5) assists a recipient that chooses to (B) receive services in the community</p> <p><b>Revised 7 AAC 130.200.</b> The purpose of this chapter is to offer to individuals that meet the eligibility criteria in 7 AAC 130.205 the opportunity to choose to receive home and community-based waiver services as an alternative to institutional care. Those services, when implemented through a person-centered plan of care, provide opportunities for eligible individuals to receive services in the community and to maximize engagement in community life.</p> |

| Federal regulations                             | Applicable Alaska Standards                                                                                                                                                                                                                               | Compliance Notes                                                                                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p><b>receive services in the community</b></p> | <p><u>ALH AS 47.33.300 (a)</u> [Res has right to] (12) [access health care providers of resident’s choosing in community]</p> <p><u>FH 7 AAC 56.310 (a)(6)</u> [Child receiving services has the following right]: appropriate health care, education</p> | <p>Partially compliant. New regulation not only states recipients’ rights but requires setting to assist recipient</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> A provider shall render each service...in a setting that (5) assists a recipient that chooses to (B) receive services in the community</p> <p><b>Revised 7 AAC 130.200.</b> The purpose of this chapter is to offer to individuals that meet the eligibility criteria in <u>7 AAC 130.205</u> the opportunity to choose to receive home and community-based waiver services as an alternative to institutional care. Those services, when implemented through a person-centered plan of care, provide opportunities for eligible individuals to receive services in the community and to maximize engagement in community life.</p> |

**42 CFR 441.301 (c)(4)(ii)** The setting is selected by the individual from among setting options including **non-disability specific settings and an option for a private unit in a residential setting.**

| Federal regulations                                              | Applicable Alaska Standards                                                                                                                                                                                                                                                    | Compliance Notes                                                            | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                 |
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| <p><b>non-disability specific settings</b></p>                   | <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> | <p>Compliant. New regulation includes non-disability specific settings.</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service... 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>              |
| <p><b>option for a private unit in a residential setting</b></p> | <p>Regulations, COPs, policies.</p>                                                                                                                                                                                                                                            | <p>Compliant. New regulation adds option for a private unit</p>             | <p><b>New HCBS waiver regulation 7 AAC 130.220(o)</b> ...A provider that owns or controls a residential setting (1) 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.</p> |

**42 CFR 441.301 (c)(4)(ii)** ...The setting options are **identified** and **documented in the person-centered service plan** and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

| Federal regulations                           | Applicable Alaska Standards                                                                                                                                                                                                          | Compliance Notes                                                                                        | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                  |
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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<br/>(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> | 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> |

| Federal regulations                                                             | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Compliance Notes                                                                                               | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                          |
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| <p><b>options based on needs and preferences</b></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> <p><a href="#">POC Section III.</a> “The individualized service- planning process offers the recipient the opportunity to identify personal goal(s).”</p> | <p>Compliant. New regulation requires provider to offer options based on needs, preferences, and resources</p> | <p><b>New HCBS waiver regulation 7</b><br/>AAC 130.220(o)(1)(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>     |
| <p><b>residential setting options based on resources for room and board</b></p> | <p>-</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>Compliant. New regulation adds residential setting options based on resources for room and board.</p>       | <p><b>New HCBS waiver regulation 7</b><br/>AAC 130.220 (o)(1)(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> |

**42 CFR 441.301 (c)(4)(iii)** [The setting] ensures an individual’s rights to **privacy, dignity, and respect, and freedom from coercion and restraint**

| Federal regulations               | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                    | Compliance Notes                                                                                                                                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                   |
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| <p><b>privacy</b></p>             | <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><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service . . . in a setting that (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint</p>  |
| <p><b>privacy</b></p>             | <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>                                                                                                                                                                    | <p>Regulations, COPs and policies are compliant</p> <p>New regulation provides more specific language to ensure right to privacy</p>                                   | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service . . . in a setting that (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint</p>  |
| <p><b>dignity and respect</b></p> | <p>SDS Mission: [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>Compliant.</p> <p>New regulation provides more specific language to ensure right to privacy</p>                                                                     | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service . . . in a setting that (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint.</p> |

| Federal regulations        | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Compliance Notes                                                                                  | Additions/changes made (effective 11/5/17)                                                                                                                                                                                              |
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| <b>dignity and respect</b> | <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>Compliant.</p> <p>New regulation provides stronger language to ensure dignity and respect.</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint</p> |
| <b>dignity and respect</b> | <p><u>Persons with disabilities</u><br/> <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="#">AKPH P&amp;P No. 01.04</a> [Restates AS 47.33.300 (a)(2)].</p>                                                                                                                                                                                                           | <p>Compliant.</p> <p>New regulation provides stronger language to ensure dignity and respect.</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint</p> |
| <b>dignity and respect</b> | <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. (d) A foster parent shall treat foster children equitably with the foster parent’s own children.</p> | <p>Compliant.</p> <p>New regulation provides stronger language to ensure dignity and respect</p>  | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint</p> |

| Federal regulations                           | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                             | Compliance Notes                         | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <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><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>See new regulations and amendment</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to ... freedom from coercion and restraint</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 <a href="#">7 AAC 130.220(p)</a> are met.</p> |
| <p><b>freedom from coercion/restraint</b></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>See new regulations and amendment</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to ... freedom from coercion and restraint</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| Federal regulations                           | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Compliance Notes                         | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                                               | (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                          | <p><b>Amendment</b> to 7 AAC 130.229 (a)<br/> 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>                    |
| <p><b>freedom from coercion/restraint</b></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>See new regulations and amendment</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to... freedom from coercion and restraint</p> <p><b>Amendment</b> to 7 AAC 130.229 (a)<br/> A [hcb] 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</u></p> |

| Federal regulations                           | Applicable Alaska Standards                                                                                                                                                                                                                                                                         | Compliance Notes                         | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                                               |                                                                                                                                                                                                                                                                                                     |                                          | <p><u>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 <a href="#">7 AAC 130.220(p)</a> are met.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>freedom from coercion/restraint</b></p> | <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].</p> <p><a href="#">AKPH P&amp;P No. 04.09</a> [limits the use of restraints];</p> <p><a href="#">P&amp;P No. 06.01</a> [addresses resident abuse]</p> | <p>See new regulations and amendment</p> | <p><b>New HCBS waiver regulation <a href="#">7 AAC 130.220(n)</a></b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient ... to freedom from coercion and restraint</p> <p><b>Amendment</b> to 7 AAC 130.229 (a)<br/>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 <a href="#">7 AAC 130.217.</a></u></p> <p>The state will ensure that when restraints are allowed all of the requirements in <a href="#">7 AAC 130.220(p)</a> are met.</p> |

| Federal Regulations                           | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Compliance Notes                                                                                                                                                                                                                                                                                                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p><b>freedom from coercion/restraint</b></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.</p> <p><b>(c)</b> [FH] may not use discipline or a behavior management technique that is cruel, humiliating, or otherwise damaging to the child.</p> <p><b>(d) - (j)</b> [List of prohibited practices, including restraint and isolation (except under limited circumstances)]</p> <p><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> | <p><b>New HCBS waiver regulation 7 AAC 130.220(n)</b> A provider shall render each service...in a setting that (2) ensures the rights of the recipient to ... to freedom from coercion and restraint</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> |

42 CFR 441.301 (c)(4)(iv) Home and community-based settings must... optimize(s)... autonomy, and independence in making life choices, including but not limited to, **daily activities, physical environment, and with whom to interact.**

| Federal Regulations     | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Compliance Notes                                 | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <b>daily activities</b> | <a href="#">SDS Service Principles</a> : Individuals have a right to choice and self-determination                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Compliant. See new regulation 7 AAC 130.220 (n). | <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.                                                                                                                                                                                                     |
| <b>daily activities</b> | <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 7 AAC 130.220 (n). | <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> |

| Federal Regulations | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Compliance Notes                                           | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                         |
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| daily activities    | <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>                                      | Potential adjustments to FH policy to be addressed by ISCC | <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. |
| daily activities    | <p><b>ALH AS 47.33.230(a)</b> Resident's plan must] (1) promote the resident's participation in the community and increased independence through training and support, in order to provide the resident with an environment suited to the resident's needs and best interests; (2) recognize the right of the resident ...to evaluate and choose, [when making decisions re abilities, preferences, and service needs] (b) [Resident's plan must describe] (3) resident's preferences in... recreational activities, religious affiliation (4)-(5) [ADLs needing assistance and how assistance will be provided]</p> | Compliant                                                  | <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. |

| Federal Regulations  | Applicable Alaska Standards                                                                                                                                                                    | Compliance Notes                                                                                                                                                                                                                           | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                        |
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| physical environment | <a href="#">Adult Day COP IV</a> Site requirements.<br><a href="#">Day habilitation COP III</a> . Site requirements.                                                                           | <p>Overall, regulations, COPs, and policies are partially compliant. 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</b><br/> AAC 130.220 (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> |
| physical environment | ALH <a href="#">AS 47.33.300 (a)(10)</a> [Res has right to reasonable opportunity to exercise and to go outdoors, when weather permits.]<br><a href="#">AKPH P&amp;P 01.04</a> restates right. | <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</b><br/> AAC 130.220 (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> |

| Federal regulations         | Applicable Alaska Standards                                                                                                                                                                                                                                                                                | Compliance Notes                                                                                                                                                                                                                    | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                            |
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| <b>physical environment</b> | <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                                                                                                                        | Overall, regulations, COPs, and policies are partially compliant.<br><br>New regulation requires services to be rendered in a setting that optimizes recipients' autonomy and initiative, including those for physical environment. | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [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 |
| <b>physical environment</b> | <a href="#">FH 7 AAC 50.530 (a)</a> [FH must have indoor and outdoor space to accommodate physical/developmental needs of child]<br><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 | Overall, regulations, COPs, and policies are partially compliant.<br><br>New regulation requires services to be rendered in a setting that optimizes recipients' autonomy and initiative, including those for physical environment  | <b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [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 |

| Federal regulations                 | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Compliance Notes                                                                                                                                            | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                   |
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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<br/> b. are varied . . .to meet the interests of the recipients and to promote participation in both individual and group activities;<br/> 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<br/> 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>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</b> AAC 130.220 (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> |
| <p><b>with whom to interact</b></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>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</b> AAC 130.220 (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> |

| Federal regulations   | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Compliance Notes                                                                                                                                     | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                          |
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| with whom to interact | <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</p> <p><b>(b)</b> [Child must have opportunity for sibling visits and contact, and visits with extended family]</p> <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> | New regulation requires services to be rendered in a setting that optimizes recipients' autonomy and initiative, including interactions with others. | <p><b>New HCBS waiver regulation 7 AAC 130.220 (n)</b> [A provider shall render each service... in a setting that]</p> <p>(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> |

**42 CFR 441.301 (c)(4)(v) The setting ...facilitates individual choice regarding services and supports, and who provides them.**

| Federal regulations                 | Applicable Alaska Standards                                                                                                                                                                                                                                                                | Compliance Notes                                                                                                                                                                                                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                         |
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| <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>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</b> AAC 130.220 (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>services and supports</b></p> | <p><a href="#">Provider COP III.C.3</a>. The provider must cooperate with recipients who elect to change service providers.</p>                                                                                                                                                            | <p>Compliant</p>                                                                                                                                                                                                                       | <p><b>New HCBS waiver regulation 7</b> AAC 130.220 (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><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>                     |

| Federal regulations            | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                             | Compliance Notes                              | Additions/changes made (effective 11/5/17)                                                                                                                                                                                         |
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| services and supports          | <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> | Compliant                                     | <b>New HCBS waiver regulation 7</b> AAC 130.220 (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 |
| services and supports          | <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>                                                                                                                                                                                                                                     | Compliant. See new proposed regulation.       | <b>New HCBS waiver regulation 7</b> AAC 130.220 (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 |
| who provides services/supports | <p><a href="#">SDS Service Principles</a>: Quality services are provided by competent trained caregivers who are chosen by individuals and their families.</p>                                                                                                                                                                                                                          | Compliant<br><br>See new proposed regulation. | <b>New HCBS waiver regulation 7</b> AAC 130.220 (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 |

| Federal regulations                   | Applicable Alaska Standards                                                                                                                                                                                                                                                      | Compliance Notes                                                   | Additions/changes made (effective 11/5/17)                                                                                                                                                                                            |
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| <b>who provides services/supports</b> | <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> | Partially compliant<br>See new proposed regulation.                | <b>New HCBS waiver regulation 7</b><br>AAC 130.220 (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 |
| <b>who provides services/supports</b> | <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>               | Compliant.<br><br>See new proposed regulation and revision to COP. | <b>New HCBS waiver regulation 7</b><br>AAC 130.220 (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 |

*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.*

[7 AAC 130.255 \(a\)\(5\)](#) The department will pay for residential supported-living services that are provided in an assisted living home licensed under AS 47.32.

[7 AAC 130.265 \(b\)\(1\)\(A\)](#) 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.

[7 AAC 130.265 \(f\)](#) 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.

**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 individual receiving services, and the individual has...the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity..

| Federal regulations                                                                                | Applicable Alaska Standards                                                                                                                                                                                                     | Compliance Notes                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                |
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| <p><b>under a legally enforceable agreement similar to landlord/tenant law of jurisdiction</b></p> | <p><u>ALH AS 47.33.210 (a)</u> [Residential services contract required for residency]<br/> <u>AKPH No. 03.03</u> Services are . . . defined in the assisted living contract; signed by the recipient or recipient resident;</p> | <p>Compliant - see new regulation 7 AAC 130.220(o)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting (1) shall provide for the recipient (A) a legally-enforceable, written agreement that complies with the requirements of <a href="#">AS 34.03.010</a> – 34.03.380...</p> |

| Federal regulations                                                                                | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                            | Compliance Notes                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                |
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| <p><b>under a legally enforceable agreement similar to landlord/tenant law of jurisdiction</b></p> | <p><a href="#">FH 7 AAC 50.300 (f)</a> [A facility must have an agreement signed by the parties that includes or attaches the following: (17 item list)]</p> <p><a href="#">7 AAC 56.500</a> [For FH placements, agency shall develop a placement agreement; can combine agreement with FH agreement required by <a href="#">7 AAC 50.300 (f)</a>]</p> | <p>Compliant - see new regulation 7 AAC 130.220(o)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting (1) shall provide for the recipient (B) a legally-enforceable, written agreement that complies with the requirements of <a href="#">AS 34.03.010</a> – 34.03.380...</p> |
| <p><b>agreement must address recipient responsibilities</b></p>                                    | <p><a href="#">ALH AS 47.33.210 (b)(3)</a> [must specify rights, duties, and obligations of resident]</p> <p><a href="#">AKPH No. 03.03</a> Services are . . . defined in the assisted living contract; includes description of the rights, duties, and obligations of the resident.</p>                                                               | <p>Compliant - see new regulation 7 AAC 130.220(o)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting (1) shall provide for the recipient (C) a legally-enforceable, written agreement that complies with the requirements of <a href="#">AS 34.03.010</a> – 34.03.380...</p> |
| <p><b>agreement must address recipient responsibilities</b></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>                                            | <p>Compliant - see new regulation 7 AAC 130.220(o)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting (1) shall provide for the recipient (D) a legally-enforceable, written agreement that complies with the requirements of <a href="#">AS 34.03.010</a> – 34.03.380...</p> |

| Federal regulations                                                      | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                                         | Compliance Notes                                       | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                |
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| <p><b>agreement must address recipient protections from eviction</b></p> | <p><u>HCBS 7 AAC 130.233</u>[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><u>ALH AS 47.33.210 (b)(4)</u> [Residential services contract must set out policies/procedures for termination of contract]</p> <p><u>AS 47.33.360</u> [No termination except for stated reasons; notice required; resident right to contest termination]</p> | <p>Compliant - see new regulation 7 AAC 130.220(o)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting (1) shall provide for the recipient (E) a legally-enforceable, written agreement that complies with the requirements of <a href="#">AS 34.03.010</a> – 34.03.380...</p> |
| <p><b>agreement must address recipient protections from eviction</b></p> | <p><u>AKPH No. 03.03</u> Services are . . . defined in the assisted living contract; includes policy for termination of the contract. <u>FH 7 AAC 56.300 (b)</u> [Agency must have a written appeal process for clients]</p>                                                                                                                                                                                                                                        | <p>Compliant - see new regulation 7 AAC 130.220(o)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... a provider that owns or controls a residential setting (1) shall provide for the recipient (F) a legally-enforceable, written agreement that complies with the requirements of <a href="#">AS 34.03.010</a> – 34.03.380...</p> |

**42 CFR 441.301 (c)(4)(vi)(B)** Each individual has **privacy in their sleeping or living unit** (in settings where HCB services are provided).

| Federal regulations    | Applicable Alaska Standards                                                                                                                                                                                                                                                                                         | Compliance Notes                                | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                |
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| <b>Privacy in unit</b> | <p><a href="#">ALH AS 47.33.300 (a)</a> [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> | 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 provide for the recipient...<br/>                     (A) privacy in the recipient's living or sleeping unit...</p> |
| <b>Privacy in unit</b> | <p><a href="#">AKPH P&amp;P No. 01.04</a> [Restates AS 47.33.300.]</p> <p><a href="#">AS 47.33.330 (a)(2)</a> [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>7 AAC 130.220 (n)(3) [Provider shall render each service... in a setting that...]<br/>                     optimizes the recipient’s initiative, autonomy, and independence in... physical environment</p>                             |

**42 CFR 441.301 (c)(4)(vi)(B)(1)** Units have entrance **doors lockable** by the individual, with **only appropriate staff** having keys to doors. (2) Individuals sharing units have a **choice of roommates** in that setting; (3) Individuals have the **freedom to furnish and decorate** their sleeping or living units within the lease or other agreement.

| Federal regulations                                                         | Applicable Alaska Standards                                                                                                                                                                                                                                                       | Compliance Notes                                      | Additions/changes made (effective 11/5/17)                                                                                                                                                                                      |
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| <p><b>Unit entrance doors lockable by the recipient</b></p>                 | <p><u>ALH</u> No reference<br/> <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.<br/><br/> <u>FH</u> No reference.</p> | <p>Silent except for physical accessibility</p>       | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... provider that owns or controls a residential setting shall provide for the recipient...<br/>           (A) privacy in the recipient's living or sleeping unit...</p> |
| <p><b>Only appropriate staff having keys to the unit entrance doors</b></p> | <p>Regulations, COPs, policies.</p>                                                                                                                                                                                                                                               | <p>Silent except for privacy, dignity and respect</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> ... provider that owns or controls a residential setting shall provide for the recipient...<br/>           (A) privacy in the recipient's living or sleeping unit...</p> |

| Federal regulations                                                     | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                          | Compliance Notes                                                  | Additions/changes made (effective 11/5/17)                                                                                                                                    |
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| <b>Choice of roommates</b>                                              | <u>ALH AS 47.33.230 (b)(3)</u> [Resident’s plan must describe] preference in roommates                                                                                                                                                                                                                                                                               | Compliant                                                         | 7 AAC 130.220 (n)(3) [Provider shall render each service... in setting that...]optimizes the recipient’s initiative, autonomy, and independence in... physical environment.   |
| <b>Choice of roommates</b>                                              | <u>AKPH P&amp;P No. 03.03</u> . 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.<br><br><u>FH</u> No reference | If needed, how to come into compliance will be addressed by ISCC. | 7 AAC 130.220 (n)(3) [Provider shall render each service... in setting that...]optimizes the recipient’s initiative, autonomy, and independence in... physical environment.   |
| <b>Freedom to furnish and decorate units within the lease/agreement</b> | <u>ALH 7 AAC 75.260 (a)(1)</u> [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident<br><br><u>FH</u> No reference to decorating<br><u>7 AAC 50.430 (h)</u> [FH must allow child] to bring and acquire personal belongings                                                 | Compliant                                                         | 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. |

42 CFR 441.301 (c)(4)(vi)(C) Individuals have the **freedom and support to control their own schedules and activities**, and have **access to food at any time**.

| Federal regulations                                                    | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                                                         | Compliance Notes                                                                                                                                          | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                 |
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| <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]<br/>           [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>Partially compliant.<br/>           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 (o)</b> 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;<br/>           (C) access to food at all times</p> |
| <p><b>Freedom/ support to control own schedules and activities</b></p> | <p><a href="#">FH 7 AAC 50.430 (d)</a> [Foster child to be treated equitably with foster parent’s own children]<br/> <a href="#">7 AAC 50.440 (a)</a> [Child must receive responsible supervision appropriate to age and developmental needs]</p>                                                                                                                                                                                                   | <p>Partially compliant.<br/>           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 (o)</b> 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;<br/>           (C) access to food at all times</p> |

| Federal regulations                       | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                                      | Compliance Notes           | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                  |
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| <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]<br/> <a href="#">AKPH Brochure “A Matter of Rights.”</a><br/>           [Residents may have microwave oven, pots for heating water, and small refrigerators in their rooms.]</p>                                                                                                                               | <p>Partially compliant</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> 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;<br/>           (C) access to food at all times</p> |
| <p><b>Access to food at all times</b></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 CFR 226.20 [Minimum meal requirements]<br/>           [FH] may not deny a meal or snack to a child.<br/>           )<br/> <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>Partially compliant</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (o)</b> 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;<br/>           (C) access to food at all times</p> |

42 CFR 441.301 (c)(4)(vi) (D) Individuals are able to have **visitors** of their choosing at any time.

| Federal regulations                   | Applicable Alaska Standards                                                                                                                                                                                                                                                                                                                                                                       | Compliance Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                             |
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| <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>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) 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.</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> <p>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.</p> |

| Federal regulations     | Applicable Alaska Standards                                                                                                                                                                                                                  | Compliance Notes | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                             |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ...visitors at any time | <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”, accommodations may be made to allow access after doors are locked.] | -                | <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> <p>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.</p> |

**42 CFR 441.301 (c)(4)(vi)(E)** The settings where HCB services are provided must be **physically accessible** to the individual.

| Federal regulations                        | Applicable Alaska Standards                                                                                                                                         | Compliance Notes | Additions/changes made (effective 11/5/17) |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------------------|
| ...physically accessible for the recipient | <a href="#">7 AAC 130.300 (b)(2)(A)</a> [Dept. will pay for environmental modifications necessary to] meet the recipient needs for accessibility identified in POC. | -                | -                                          |

| Federal regulations                                      | Applicable Alaska Standards                                                                                                                                                                                                                                          | Compliance Notes | Additions/changes made (effective 11/5/17) |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------------------|
| <p><b>...physically accessible for the recipient</b></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> |                  |                                            |

**42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions ... must be supported by a specific assessed need and justified in the service plan that documents the following requirements:** (1) Identify a specific and individualized assessed need; (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan; (3) Document less intrusive methods of meeting the need that have been tried but did not work; (4) Include a clear description of the condition that is directly proportionate to the specific assessed need; (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification; (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated; (7) Include the informed consent of the individual; (8) Include an assurance that interventions and supports will cause no harm to the individual.

| Federal regulations                                                                                                                                                                                                                                                                                                                                                                                                                                              | Applicable Alaska Standards                                                                                                                                                                | Compliance Notes                                                                                                                                                                                                                                                                                                                                              | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>~specific and individualized assessed need<br/>           ~positive interventions and supports used prior to any modification<br/>           ~less intrusive methods of meeting the need tried, but did not work<br/>           ~condition that lead to the specific assessed need<br/>           ~regular collection/ review of data to measure the ongoing effectiveness<br/>           ~times for review of data to determine continuation/termination</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 7 AAC 130.220 (p)</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 7 AAC 130.220(m)</p> <p><b>Revise POC</b> to indicate residence choice by recipient, and requirements</p> <p>For modification (see 7 AAC 130. 130.220(p)</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (p)</b> 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</p> <p>(1) identification of an assessed need requiring modification;</p> |

| Federal regulations                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Applicable Alaska Standards | Compliance Notes | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>of modification</b><br/> ~informed consent of the recipient<br/> ~assurance of no harm to recipient resulting from modifications<br/> ~location in a building that is a publicly or privately operated facility that provides inpatient institutional treatment<br/> ~location in a building on the grounds of, or immediately adjacent to a public institution<br/> ~location that isolates recipients from the broader community of individuals who do not receive HCB services</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;<br/> (3) less intrusive methods of meeting that need that were tried, but did not work;<br/> (3) an explanation of the modification used; the modification must be directly proportional to the specific assessed need;<br/> (4) an explanation of the method for collecting and reviewing data to measure the ongoing effectiveness of the modification;<br/> 5) time limits for periodic reviews to determine if the modification continues to be necessary or should be terminated;<br/> (6) documentation of the informed consent of the recipient for the modification; and<br/> (7) a documented analysis concluding the modification will not cause harm to the recipient.</p> |

8042 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of HCB settings

| Federal regulations                 | Applicable Alaska Standards                                                                                                                              | Compliance Notes                         | Additions/changes made (effective 11/5/17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Institutional setting</b></p> | <p><a href="#">7 AAC 130.250</a> <b>Adult Day (b)(2)</b> [Services considered to be adult day if] provided in a non-institutional community setting.</p> | <p>Compliant<br/>See new regulation.</p> | <p><b>New HCBS waiver regulation 7 AAC 130.220 (q)</b> Unless otherwise approved by the department, a provider may not render home and community-based waiver services in a setting</p> <ul style="list-style-type: none"> <li>(1) in a building that is a publicly or privately operated facility that provides inpatient institutional treatment;</li> <li>(2) in a building on the grounds of, or immediately adjacent to a public institution; or</li> <li>(3) in a location that isolates recipients from the broader community.</li> </ul> |

## **Appendix B: Settings Checklist and Exploratory Questions**

**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?

**Process for protecting recipients from coercion and restraint**

- Are recipients compelled to be absent from a setting for the convenience of the provider?
- Are recipients required, against their wishes, to be present in a setting in order to benefit the provider financially?
- Do recipients feel they can discuss concerns without fearing consequences?
- Are recipients informed regarding how to file a complaint?
- Is complaint filing information posted and understandable by recipients?
- Can complaint filing be done anonymously?
- Are staff trained in the use of restrictive interventions?

**Provides opportunities/support for recipient initiative, autonomy, and independence**

- 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?
- Does the setting make clear to recipients that they are not required to adhere to a set schedule?
- Do staff ask recipients about their needs and preferences?
- Are recipients assisted in a manner that leaves them feeling empowered to make choices and decisions?
- Are the choices and decisions supported/accommodated rather than ignored or denied?

**Optimizes opportunities for recipients to make choices regarding daily activities**

- Does the setting support recipients in choosing their daily activities and in setting and controlling their own schedules?
- Do recipients' schedules vary from others in the same setting?
- 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?

**Optimizes opportunities for recipients to make choices regarding the physical environment**

- Are there barriers to movement preventing entrance to or exit from certain areas in the setting?
- Are recipients limited to a specific area for activities or able to move about to various areas?
- 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?
- Are there requirements or a curfew regarding return to the setting if a recipient leaves?
- Are recipients assisted to access amenities (e.g., pool or gym) that are used by non-recipients?
- Are recipients restricted to meeting visitors in an area designated for that purpose?

**Optimizes opportunities for recipients to choose with whom to interact**

- Does the setting require recipients to occupy assigned seating for activities or meals?
- Does the setting limit conversations/interactions among recipients?
- Does the setting provide an area for recipients who wish, on occasion, to not participate in activities or to be alone?

**Facilitates choice regarding services/supports and agency staff who provide them**

- 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**

- Is there a master key or are there copies of unit keys available for use if needed?
- Is use of the master key/unit keys limited to appropriate staff?
- Are the master key/unit keys used to enter units only in limited circumstances agreed upon with the recipient?
- 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?

**Choice of roommates if sleeping or living units shared**

- Are recipients given a choice regarding roommates?
- Do recipients speak about their roommates in a positive manner?
- Do recipients express a wish to remain in a room/unit with their roommates?
- Are couples able to choose whether to share a room?
- Do recipients know that they can (and how to) request a change in roommates?

**Lease/rental agreement addresses how recipients may furnish/decorate sleeping/living units**

- Do recipients know that they may furnish and decorate their units as they please within the terms spelled out in the agreement?
- Are recipients' personal items (e.g., pictures, books, memorabilia) evident and arranged as they wish?
- Do furniture, linens, and other household items reflect personal choices?
- Do recipients' units reflect varying interests and tastes rather than having a standardized appearance?
- Is furniture arranged as recipients wish for comfort?
- Are shared rooms configured so that privacy is protected when assistance is provided to recipients?

**Supports recipient freedom to control schedules and activities**

- 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?
- Is there staff sufficient to allow for scheduling variations?
- Do recipients' schedules vary from others in the same setting?
- Does the setting allow for the recipient to be alone and not participate in activities?
- Do recipients have access to typical home areas such as cooking and dining areas, laundry, and living and entertainment areas?
- Are meals served according to a set menu at scheduled times in a specified location?
- Can recipients request alternatives to a meal?
- Can recipients request meals at times other than when scheduled?
- 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?

**Food available to recipients at all times**

- 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?
- Are there appliances for safe food storage and cooking/heating in recipients' sleeping/living units or in a common area accessible by recipients?
- Are snacks available anytime?

**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 HCBS Settings**

## Part 1: 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**

## **Summary of State Strategies to Obtain Public Comment:**

Dates of public comment related to Alaska Settings Transition Plan version 4 were April 10 to May 11, 2018.

Several strategies were used on April 10<sup>th</sup> to announce that comments were being sought about the STP from recipients, waiver service providers, and other stakeholders.

On April 10<sup>th</sup> a Notice of Opportunity for Public Comment was published in the largest statewide newspaper (Anchorage Daily News) and the State of Alaska On-line Public Notice system.

An SDS E-Alert announced that comments were being sought.

The SDS website posted a copy of the plan and a notification that SDS was seeking comments from the public.

In addition, hard copies of the STP were made available at each SDS office and were sent to the statewide advocacy organizations for seniors and those with disabilities.

Each notification described the Plan and included a link to it and information about how to make comments. An email address and mailing address were given so that written comments could be submitted. A tribal consultation letter issued on April 10<sup>th</sup> included the phone number of the STP project manager as well as the mailing address and email address.



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 at

<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: [Settings Training](#). Once the training is completed, the quiz can be requested from the [SDS Settings Training Schedule](#).*

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

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>)

State of Alaska myAlaska My Government Resident Business in Alaska

STATE OF ALASKA  
Department of Health and Social Services  
Senior and Disabilities Services

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Health and Social Services > Senior and Disabilities Services > HCBS Transition Plan



### 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**