



Re: State Transition Plan for Home and Community-Based Services Settings

The Governor's Council on Disabilities and Special Education (the "Council") fills a variety of federal and state roles, including serving as the State Council on Developmental Disabilities (SCDD) under the Developmental Disabilities Assistance and Bill of Rights Act. As the state DD Council, we work with Senior and Disabilities Services and other state agencies to ensure that people with intellectual and developmental disabilities and their families receive the services and supports that they need, as well as participate in the planning and design of those services. One of the duties of the state DD Council is providing comments on proposed recommendations that may have an impact of individuals with intellectual and/or developmental disabilities and their families.

The Council wishes to express both our commendations and suggestions regarding the State Transition Plan for Home and Community-Based Service Settings. Although Alaska does not have institutional settings, your office has accomplished a lot of work assessing provider compliance, reviewing regulations, and planning for the transition to integrated settings. Although SDS plans to provide training, certification, and remediation services to providers, page 11 of the transition plan document does not mention any public education or outreach activities planned. The Council wishes for SDS to include several efforts to educate waiver recipients about this final rule, the transition plan, and how it will affect the lives of people with disabilities. The Council also strongly encourages your office to solicit comment directly from waiver recipients as you begin the work on regulation changes, and we stand ready to offer assistance to SDS in this area, as appropriate.

The Council noticed several discrepancies and omissions in the transition plan:

1. The document lacks a plan to assess those 349 providers that did *not* voluntarily take the provider assessment survey (pg. 9). It seems that with a 21% response rate, SDS will need to make concerted efforts to contact and assess those providers that have not responded, and the transition plan should reflect those activities and timelines.
2. There is reference to possibly isolating settings in supported employment and day habilitation services (pgs. 7-8), however, these were two widespread omissions in the activities chart (attachment B), where only assisted living homes and foster homes were assessed and addressed. The Council requests that the next iteration of the transition plan include much more consideration to day habilitation, supported employment, and supported living settings. For example, the new rule requires independence in daily

activities, which is reflected in several state regulations for assisted living facilities and foster homes (pg. 38), but we would also like to see these regulations be applied to day habilitation, supported employment, and supported living services.

3. The transition plan timeline (pg. 12) is missing mention of a timeframe for remediation while providers are brought into compliance. Similar to the timelines provided in other states' transition plans, the Council suggests that SDS set a timeframe of 6 months to work with providers on bringing them into to compliance with this final rule on settings.
4. The Council suggests that this transition timeline (pg. 12) include an item to reassess compliance of settings one year following the adoption of new regulations. The current transition plan timeline also lacks a date for when statewide, full compliance is expected (i.e. January 2018).
5. The state should include activities in the timeline (pg. 12) to create definitions and standards for what it means to have "the same degree of access as individuals not receiving Medicaid HCBS" for each item, similar to Idaho's transition plan timeline activities: <http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/IdahoTransitionPlan.pdf>
6. We recommend that the state include reference to the Employment First Act (SCS CSHB 211) wherever appropriate, such as in the supported employment regulations and COPs. This includes creating the distinction between SDS supported employment and pre-employment services versus DVR employment services, as well as allowing the provision of PCA services for an individual's employment related to activities of daily living.
7. The Council suggests changes to the Plan of Care (POC) to make the form more accessible for individuals and allow them a greater role in the creation of their own person-centered POC. The POC should also include information about legal representatives and guardianship; access to personal resources, food, and the broader community; the individual's rental agreement; and documentation of rights to privacy, visitors, choice of roommates, and unit decorations.
8. The Council requires that your office create privacy regulations for assisted living facilities addressing *lockable unit entrance doors* where *only appropriate staff have keys*. These are two aspects of the final rule where the state has no current regulations or COPs and also did not suggest any changes (pg. 42). As required by federal law, these two provisions need to be added to the regulations. If restrictions need to be placed on an individual's privacy or rights, we recommend these be documented in the POC.
9. The Council is especially concerned with current state regulations allowing assisted living facilities to have house rules restricting such personal freedoms as telephone usage, hours and volume of television and radio usage, food access, as well as the movement in and out of the home for the individual and their visitors. The intent of the final rule is to treat HCBS recipients as integrated community members; the same as people who do not receive HCB services. Therefore we wish that allowances for such house rules and pre-set visiting hours

be removed from the regulations, as they allow assisted living facilities to unreasonably restrict resident's rights.

10. We also request that SDS institute a system for monitoring and quality assurance to ensure continuing compliance on all of these measures in HCBS settings.

11. Lastly, the Council has provided further, specific recommendations on regulations, COPs, and other changes in the following 12-page attachment.

In conclusion, the Council requests further clarification on a number of items and timelines in the transition plan. We look forward to working with your office on these efforts and commend you for your hard work on creating this statewide transition plan. This is no small feat, and the Council remains ready to assist in any way that we can.

Sincerely,



Ric Nelson
Council Chair
Medicaid ad-hoc Chair



Art Delaune
Developmental Disabilities Committee Chair

The Council has specific feedback regarding the suggested changes in attachment B (pg. 33-46) of the transition plan, as follows in red:

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
42 CFR 441.301 (c)(4)(i) Settings must be integrated in and support full access by recipients [to the greater community to the same degree of access as individuals not receiving HCB services], including			<i>6/20/14 CMS clarified that this is a values statement, the purpose of which is to ensure equal treatment for recipient as member of the community.</i>
opportunities to seek employment and work in competitive integrated settings	<p>7 AAC 130.270 Supported Employment (b)(2) Services available to provide support at worksite where individuals without disabilities are employed</p> <p>Supported employment COP: “Supported employment services may be offered in a variety of settings, but, because independence and community integration are significant goals for these services, they may not be provided in sheltered workshops or similar specialized vocational facilities.”</p>	<p>7 AAC 130.270 should have the following wording inserted, (underlined): <u>“Supported Employment (b)(2) Services available to provide support at worksite where individuals without disabilities are employed and where work is competitive, consistent with the Employment First Act SCS CSHB 211(L&C).”</u></p> <p>Supported Employment COP should have the following wording inserted (underlined): <u>“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. These services should be integrated and competitive, consistent with the Employment First Act SCS CSHB 211(L&C).”</u></p> <p>SDS should amend the PCA regulation to state that PCA</p>	<p>The Supported Employment COP (as noted in our 6/30/14 recommendation letter to SDS) should have a distinction in the COPs between <i>supported employment</i> and <i>pre-employment services</i> so that each are clear, as is the general sequence of when I/DD waiver vs DVR services are applicable. We request that SDS integrate the concepts of the Alaska Integrated Employment Initiative’s (AIEI) Employment Services Options Matrix document in the COPs.</p>

Federal regulations	State regulations/COPs	<u>Additions/changes needed</u>	Comment/Further Changes
		<p>services are allowable for employment. The Council and Alaska Integrated Employment Initiative Advisory Board recommended to SDS (letter dated 1/27/15) the following language (underlined) be added into the PCA Regulations Purpose and Scope: 7 AAC 125.010:</p> <p>“Purpose and scope of personal care services; coverage limitations (a)The purpose of personal care services is to provide to a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient, as determined through a functional assessment of self-performance and physical supports. <u>Personal care services can be utilized for an individual’s employment related to activities of daily living (ADL) to prevent job loss.</u>”</p>	
engage in community life	<p>SDS Service Principles: Services are designed and delivered to build communities where all members are included, respected, and valued.</p> <p><u>ALH AS 47.33.230 ALH Plan</u></p>	<p>Amend or create regulations that require community integration for day habilitation services, i.e. to plan activities in settings with people who do not experience disabilities.</p>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
	<p>(a) [Resident’s plan must] (1) promote participation in the community</p> <p>FH (Foster home) 7 AAC 56.310 Rights and responsibilities (a)(7) [Child receiving services has the following right] opportunity to participate in community functions and recreational activities and to have the child’s social needs met</p>		
control personal resources	<p>No reference in SDS regulations /COPs to personal resources</p> <p>ALH AS 47.33.300 Res Rights (a)(7) [Res has right to] manage the resident’s own money</p> <p>FH 7 AAC 50.430 Program in FH (f) [Money earned/received by child is personal property] No member of FH may borrow or spend money acquired by foster child (g) [FH may limit amount of money child may possess or have unencumbered access if in child’s best interest]</p>	<p>Revise Provider COP III.C. Recipient rights. [Provider must] support recipient control of personal resources [to the extent recommended by the planning team?]</p> <p>Revise CC COP IV.B 2. POC Development to address control of personal resources as an action to be considered by planning team. Provide further clarification of this process.</p>	<p>We suggest amending the POC form Section I ~ Information, after the portion about legal representative, to have a YES/NO check box as to whether the recipient has access to their own personal resources. If no, a box to provide justification of the exception is necessary.</p> <p>The state should require that a guardianship report be attached to the POC.</p>
receive services in the community	<p>SDS Service Principles: Individuals have knowledge of and access to community services</p> <p>ALH AS 47.33.300 Res Rights (a) [Res has right to] (12) [access health care providers of resident’s choosing in community]</p>	<p>POC form Section VIII ~ Recipient Choice of Service and COPs need to include information on individual’s rights to access the broader community. Also include such provisions and language in day habilitation and supported employment regulations.</p>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
	<p>FH 7 AAC 56.310 Rights and responsibilities (a)(6) [Child receiving services has the following right] appropriate health care</p>	<p>Institute monitoring and quality assurance to ensure ongoing compliance.</p>	
<p>42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including</p>			
<p>options based on needs and preferences</p>	<p>7 AAC 130.213 Assessment (a)(2) [The dept. will assess] physical, emotional, and cognitive functioning to determine LOC</p> <p>7 AAC 130.217 POC develop (a)(3)(F) [services must be consistent with assessment/LOC]</p> <p>CC COP IV. B. 2. b. [Planning team provides opportunity for recipient/family] i. to express outcomes they wish to achieve; ii. to request services that meet identified need.</p> <p>CC COP IV. B. 3. a. the planning team must incorporate [assessment findings] in POC</p> <p>POC Section III. “The individualized service-planning process offers the recipient the opportunity to identify personal goal(s).”</p>	<p>Find ways to include the person in documenting their needs and preferences in their own POC, i.e. using person-centered planning worksheets or other tools to involve the participant. This may include making alterations to the POC form to allow it to be more accessible to the participant. Participants should also be given a copy of the Recipient’s Rights form of the POC, for their own records.</p>	
<p>42 CFR 441.301 (c)(4)(iii) Settings must optimize recipient initiative, autonomy, and independence in making life choices, including</p>			
<p>daily activities</p>	<p>ALH AS 47.33.230 ALH Plan</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
	<p>(a) [Resident’s plan must]</p> <p>(1) promote participation in the community and increased independence through training and support ...</p> <p>(2) [recognize the right of the resident to evaluate and choose ... when making decisions re abilities, preferences, and service needs]</p> <p>(b) [Resident’s plan must describe]</p> <p>(3) resident’s preferences in ... recreational activities, religious affiliation</p> <p>(4) – (5) [ADLs needing assistance and how assistance will be provided]</p> <p>FH 7 AAC 50.430 Program in FH (c) [FH to provide structure and daily activities designed to promote development and health of child]</p> <p>7 AAC 56.310 (a)(4) [Child receiving services has the following right: placement and supervision] in the least restrictive setting capable of meeting the child’s needs ...]</p>	<p>Also apply these regulations to:</p> <p>day habilitation supported employment supported living</p>	
physical environment	<p>ALH AS 47.33.300 Res Rights (a)(10) [Res has right to reasonable opportunity to exercise and to go outdoors, when weather permits]</p>	<p>Also apply this regulation to:</p> <p>supported living</p>	<p><i>6/5/14 CMS clarified that this means the physical settings must meet recipient needs by being accessible for that recipient and not regimented (e.g., recipient may make choices re furnishings and décor).</i></p>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
	<p>7 AAC 260 General Environmental Requirements (a)(1) [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p>FH 7 AAC 50.530 Space (a) [FH must have indoor and outdoor space to accommodate physical/developmental needs of child]</p> <p>7 AAC 50.540 Equip/supplies (a) [FH] must select equipment and supplies so that amount, variety, arrangement and use are appropriate</p>	<p>Also apply these regulations to:</p> <p>supported living</p> <p>day habilitation</p>	
<p>42 CFR 441.301 (c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied</p>			
<p>under a legally enforceable agreement similar to landlord/tenant law of jurisdiction</p>	<p>ALH AS 47.33.210 Residential Services Contract (a) [required for residency]</p> <p>FH 7 AAC 50.300 Admission (f) [A facility must have an agreement signed by the parties that includes or attaches the following: (17 item list)]</p> <p>7 AAC 56.500 Placement agreement [For FH placements, agency shall develop a placement agreement; can combine agreement with FH agreement required by 7 AAC 50.300 (f)]</p>	<p>Individual rental agreements to be provided to recipients and included as an accompanying document to the POC so that state agencies can document that these agreements exist.</p>	<p>AS 34.03.010 – 34.03.260 Landlord/Tenant Act applicable to rental of a residence.</p>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
agreement must address recipient responsibilities	<p>ALH AS 47.33.210 Residential Services Contract (b)(3) [must specify rights, duties, and obligations of resident]</p> <p>FH 7 AAC 56.300 Rights and responsibilities (a) [Agency shall provide] a written statement or pamphlet indicating client and agency rights and responsibilities</p> <p>7 AAC 56.500 Placement agreement (b)(4) [Agreement must include delineation of the respective roles and responsibilities of all parties ...]</p>	<p>Do not allow verbal rental agreements. These individual rental agreements need to be written, signed by all parties, and included in the POC. Agreements should be accessible to the participant.</p>	<p>AS 43.03.20 Rental agreement may be written or verbal; may include conditions not prohibited by L/T Act or by law.</p> <p>43.03.120 Tenant obligations.</p>
agreement must address recipient protections from eviction	<p>ALH AS 47.33.210 Residential Services Contract (b)(4) [must set out policies/procedures for termination of contract]</p> <p>AS 47.33.360 Involuntary Termination of Contract [No termination except for stated reasons; notice required; resident right to contest termination]</p> <p>FH 7 AAC 56.300 Rights and responsibilities (b) [Agency written statement or pamphlet must have a written appeal process for clients]</p>	<p>Because housing is much more restricted and difficult to find and access for people with disabilities, require 45 days notice of termination of contract.</p>	<p>L/T Act uses “termination of tenancy” (eviction refers to court order when tenant refuses to move)</p> <p>AS 34.03.220 [Landlord remedies] Noncompliance with rental agreement</p> <p>AS 34.03.290 [Termination requires notice to tenant]</p> <p>AS 34.03.310 Retaliatory conduct prohibited</p>
42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where HCB services are provided			
privacy in unit	<p>ALH AS 47.33.300 Res Rights (a) [Res has right to]</p> <p>(2)(B) [privacy in the resident’s room or portion of a room]</p>	<p>Document these privacy rights in the POC (Section V ~ Out-of-Home Residential Services) and the rental agreement which is submitted to accompany the</p>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
	<p>(2)(D) the maintenance of personal possessions and the right to keep at least one cabinet or drawer locked</p> <p>(5) close the door of the resident’s room at any time</p> <p>AS 47.33.330 Prohibitions</p> <p>(a)(2) [Staff may not enter resident’s room without first obtaining permission except for health or safety reasons]</p> <p>FH No reference</p>	<p>POC.</p> <p>If privacy is to be limited in any way, justify restrictions in the POC.</p> <p>To ensure current regulations are followed, create a process to ensure monitoring and quality assurance for continued compliance.</p>	
<p>unit entrance doors lockable by the recipient</p>	<p>ALH No reference</p> <p>FH No reference</p>	<p>Must include this language from the final rule in the ALH regulations: <u>“unit entrance doors lockable by the recipient.”</u></p> <p>Require these rights be documented in the rental agreement.</p> <p>If restrictions must be placed on an individual for their own safety, this must be documented in the POC (Section V ~ Out-of-Home Residential Services).</p>	<p>Create a process to ensure monitoring and quality assurance for continued compliance.</p>
<p>only appropriate staff having keys to the unit entrance doors</p>	<p>ALH No reference</p> <p>FH No reference</p>	<p>Must include this language from the final rule in the regulations: <u>“only appropriate staff having keys to the unit entrance doors.”</u></p> <p>Require these rights be documented in the rental agreement document which accompanies the POC.</p>	<p>Create a process to ensure monitoring and quality assurance for continued compliance.</p>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
		If restrictions must be placed on an individual for their own safety, this must be documented in the POC (Section V ~ Out-of-Home Residential Services).	
choice of roommates	ALH AS 47.33.230 ALH Plan (b)(3) [Resident’s plan must describe] preference in roommates FH No reference	Strike “preference” and replace with “choice” as follows: [Resident’s plan must describe] <u>choice</u> in roommates.	Create a process to ensure monitoring and quality assurance for continued compliance.
freedom to furnish and decorate units within the lease/agreement	ALH 7 AAC 260 General Environmental Requirements (a)(1) [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident FH No reference to decorating 7 AAC 50.430 Program in FH (h) [FH must allow child] to bring and acquire personal belongings	Current regulations do not address decorations. Amend regulations to include specific rights to furnish and decorate their unit. Require these rights be documented in the rental agreement document which accompanies the POC.	6/5/14 CMS clarified that this means the provider must have a reasonable standard re décor, i.e., allow personal décor to the same extent allowed for those not receiving HCB services.
42 CFR 441.301 (c)(4)(vi)(C) Recipients must have			
freedom/ support to control own schedules and activities	[ALH] AS 47.33.060 House Rules (c) [House rules may address telephone use, hours/volume for TV/radio, visitors, movement in and out of home]	Remove AS 47.33.060 House Rules provision “c” entirely and replace with: “House rules may not restrict the <u>freedom/support for a recipient to control their own schedules and activities</u> ” as required in the final rule. Exceptions need to be documented in the POC (Section V ~ Out-of-Home Residential Services).	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
	<p>(d) [ALH may not adopt a house rule that unreasonably restricts a right of a resident</p> <p>FH 7 AAC 50.430 Program in FH (d) [Foster child to be treated equitably with foster parent’s own children]</p> <p>7 AAC 50.440 Supervision</p> <p>(a) [Child must receive responsible supervision appropriate to age and developmental needs]</p>	<p>Amend AS 47.33.060 House Rules provision “d” to define unreasonable restrictions of resident’s rights.</p> <p>Apply these two amended provisions from AS 47.33.060 House Rules C and D to supported living services regulations.</p> <p>Create a process to ensure monitoring and quality assurance for continued compliance.</p>	
<p>access to food at all times</p>	<p>ALH 7 AAC.265 Food Service</p> <p>(a) [ALH must offer three meals and at least one snack daily]</p> <p>FH 7 AAC 50.460 Nutrition</p> <p>(a) [FH] shall ensure that all snacks and meals meet child care food program requirements of 7 CFR 226.20 [Minimum meal requirements]</p> <p>(g) [FH] may not deny a meal or snack to a child</p>	<p>Include this language from CMS in the regulations: <u>“Recipients must have access to safe storage and heating of food, e.g., microwave and refrigerator, either in the sleeping area or a common area accessible by recipients. Recipients must have access to snacks at any time.”</u></p> <p>If exceptions are medically necessary to restrict an individual’s food access or intake, this must be documented in the POC (Section V ~ Out-of-Home Residential Services).</p> <p>Require these rights be documented in the rental agreement document which accompanies the POC.</p>	<p><i>CMS clarified that if a recipient misses a regularly scheduled meal, the nutritional equivalent must be made available at a time convenient to the recipient. Recipients must have access to safe storage and heating of food, e.g., microwave and refrigerator, either in the sleeping area or a common area accessible by recipients. Recipients must have access to snacks at any time.</i></p>
<p>42 CFR 441.301 (c)(4)(vi)(D) Recipients must be able to have</p>			

Federal regulations	State regulations/COPs	Additions/changes needed	Comment/Further Changes
visitors of their own choosing	<p>ALH AS 47.33.300 Res Rights (a)(4)(C) [Res has right to visit] with persons of the resident’s choice, subject to visiting hours established by the home</p> <p>FH 7 AAC 56.310 Rights and responsibilities (a)(b) [Child must have opportunity for sibling visits and contact, and visits with extended family]</p>	<p>To be in compliance with the final rule, the language “subject to visiting hours established by the home” must be stricken and replaced with <u>“at any time.”</u></p> <p>If exceptions necessary due to safety this must be documented in the POC (Section V ~ Out-of-Home Residential Services).</p> <p>Require these rights be documented in the rental agreement document which accompanies the POC.</p>	
visitors at any time	<p>ALH AS 47.33.300 Res Rights (a)(4)(C) [ALH may establish visiting hours]</p>	<p>To be in compliance with the final rule, this provision about visiting hours must be removed entirely.</p>	
42 CFR 441.301 (c)(4)(vi)(E) The settings where HCB services are provided must be			
physically accessible for the recipient	<p>to] meet the recipient needs for accessibility identified in POC</p> <p>Adult Day COP IV.A.5. requires adaptive equipment and toilet/sink in location accessible to recipient with limited mobility</p> <p>Day Habilitation COP III.A.2. requires adaptive equipment and accessible toilet facilities</p>	<p>Revise CC COP IV.C. POC Implementation. CC must</p> <ol style="list-style-type: none"> 1. arrange services ... 2. confirm that settings where services are to be provided are physically accessible for the recipient 3. coordinate delivery of services 4. support independence... 5. teach how to evaluate ... 	<p>Re-write provision 2 to read:</p> <p><u>“2. make recipient aware if their chosen community setting is not accessible.”</u></p> <p>Care Coordinators must still allow the recipient to choose whatever settings they wish within the community, so that they are not limiting the recipient’s choice of where services are provided.</p>

Federal regulations	Additions/changes needed	Comment/Further Changes	
<p>42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions [(c)(4)(vi)(A) – (D) pertaining to only provider owned or controlled residential settings] must be supported by a specific assessed need and justified in the service plan that documents</p>			
<p>~specific and individualized assessed need</p> <p>~positive interventions and supports used prior to any modification</p> <p>~less intrusive methods of meeting the need tried, but did not work</p> <p>~condition that lead to the specific assessed need</p> <p>~regular collection/ review of data to measure the ongoing effectiveness</p> <p>~times for review of data to determine continuation/termination of modification</p> <p>~informed consent of the recipient</p> <p>~assurance of no harm to recipient resulting from modifications</p>	<p>Develop regulations, or add settings requirements to Provider COP.</p> <p>Revise CC COP IV.B. POC; add:</p> <p><u>4. Residential Setting</u></p> <p>~POC must identify place of residence chosen by recipient and that recipient has legally enforceable agreement</p> <p>~Setting meets requirements</p> <p>~POC includes justification for any modification</p> <p>Revise POC form, Section V Residential Service, to include residence choice by recipient, and requirements for modification</p>	<p>The Council wishes to see more clarification of these regulation, COP, and POC changes. We look forward to working with SDS as these items are developed in the coming months.</p>	
<p>42 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of HCB settings</p>			
<p>~location in a building that is a publicly or privately operated facility that provides inpatient institutional treatment</p> <p>~location in a building on the grounds of, or immediately adjacent to a public institution</p> <p>~location that isolates recipients from the broader community of individuals who do not receive HCB services</p>	<p>7 AAC 130.250 Adult Day (b)(2) [Services considered to be adult day if] provided in a non-institutional community setting</p>	<p>Revise 7 AAC 130.220 Provider Cert to specify services may not be provided in these locations unless approved by SDS.</p> <p>Clarify that these non-institutional settings must be fully integrated into the community.</p> <p>Create a process to ensure monitoring and quality assurance for continued compliance.</p>	



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

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

Introduction

The Alaska Department of Health and Social Services, Division of Senior and Disabilities Services (SDS) submits this transition plan in accordance with CFR 42 §441.301(c)(6). The state process leading to development of the plan included analysis of all settings where home and community-based services are provided under the Alaska's 1915(c) home and community-based waiver programs.

This plan describes the three components of SDS settings evaluation activities:

Part 1) the efforts made by SDS to inform and educate providers and other stakeholders about the changes to federal regulations, and to gain insight into how the changes will impact service delivery;

Part 2) the process used to determine the extent to which existing state regulations and practices encompass the requirements for home and community-based settings, and the actions taken to assess the home and community-based characteristics of the locations where services are delivered currently; and

Part 3) the state plan to achieve compliance with federal regulations.

Part 1

STATE EDUCATIONAL ACTIVITIES FOR PROVIDERS

SDS decided that working with the stakeholder community to understand the scope of the new federal regulations and their potential impact on service delivery, was the best approach to assessing the Alaska home and community-based services program. As SDS began a review of its regulations and policies, it implemented concurrently a process of sharing information about the new regulations and of gaining feedback from shareholders 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.

To educate providers regarding the new regulations, and to encourage providers to review the locations where they provide services, SDS created the *Provider Self-Assessment of Settings* survey for provider use in conducting self-assessments. The survey was posted online for the purpose of gaining feedback on providers' perceptions of their own compliance with settings requirements and of discovering the settings issues that could benefit from technical assistance.

A copy of the *Provider Self-Assessment of Settings* survey is included as Attachment A.

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

Home and community-based services settings
Educational activities offered by SDS to providers

Date		Communication/Event	Purpose/Outcome
March	19	SDS E-Alert	Announced finalization of new CMS regulations and key areas of change
April	1	Webinar	First Information-Sharing Webinar: Overview of new CMS regulations
	4	SDS E-Alert	April 1 Webinar materials made available
June	10	Webinar	Second Information-Sharing Webinar and announcement of community forums
	27	SDS E-Alert	Invitation to community forums in Fairbanks, Kenai, Anchorage, Juneau, and statewide by teleconference
August	Community forum		Interactive forum for information on new regulations, ideas from stakeholders, Q&A
	18	Fairbanks	
	19	Kenai	
	20	Anchorage	
	21	Juneau	
	22	Statewide teleconference	
September	15	SDS E-Alert	Updates/ clarifications of CMS regulations; evaluation using <i>Provider Self-Assessment of Settings Survey</i>
October	2	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> and FAQs released with October 31 due date
	15	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	16	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> due date extended to November 14
	21	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	27	SDS E-Alert	Additional FAQs on CMS regulations released

Part 2

EVALUATION 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, and a project to assess the characteristics of settings in Alaska. The project sought to identify non-compliant settings through an internal review of certified providers and a review performed by the providers themselves. SDS made in-person site visits to review providers with possibly isolating settings and to review supported employment workplaces.

Review of the SDS Mission, Vision, and Principles

The State has long embraced the concepts of choice, inclusion, and independence embodied in the Social Security Act, and joined the national movement toward deinstitutionalization by developing community alternatives to institutionalization. Based on these concepts, SDS formalized its philosophy 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 service system, 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.*

Review of State Regulations

To gauge the extent to which current state regulations ensure compliance with federal setting requirements, SDS reviewed 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*](#).

Because SDS refined its philosophy and practices, including updated its regulations and policies, as new directives were issued, SDS concludes that the state regulations and policies applicable to waiver services are consistent with the new federal regulations, and support integrated settings, full access to the community, and recipient initiative, autonomy, and independence; nonetheless, SDS finds that the requirements regarding settings can be clarified through additional language in SDS regulations and [*Conditions of Participation*](#), as outlined in the State Plan for Achieving Compliance section that follows.

The full review of State statutes and regulations relevant to settings is attached as Attachment B.

Assessment of Home and Community-Based Service Settings in Alaska

SDS implemented a two-part approach to assessing the home and community-based characteristics of the locations where services are delivered currently: 1) an internal review of SDS certification and compliance activities and 2) a provider review using the *Provider Self-Assessment of Settings* survey developed for use by providers to evaluate their compliance with settings requirements.

SDS conducted an internal review of its certification and compliance activities to determine which providers might not meet federal settings requirements. Through this review, SDS identified some locations that required additional scrutiny regarding their settings, and made in-person site visits to those locations. In addition, providers indicated through the review of their own settings that they did not meet the settings requirements.

SDS concluded that, although a number of settings have the appearance of isolating recipients from the broader community, some of these settings require only minimal changes to bring them into compliance; other settings have home and community-based characteristics despite seemingly isolating locations, but offer experiences chosen by the recipients in preference to other setting.

1. SDS Internal Review: Identification of Non-Compliant Settings and Site Visits

Review of institutional settings

Because there were no intermediate care facilities for Alaskans with intellectual and developmental disabilities, residents needing services were relocated outside of Alaska prior to 1961. 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 institutional facilities.

On the basis of a review of this history and certification policies, SDS finds that there are no institutional settings, and no service settings located in a building on the grounds of, or immediately adjacent to, a public institution in Alaska.

Review of possibly isolating settings

The SDS Provider Certification and Compliance unit identified a small number of home and community-based service settings that, according to CMS guidance, might have the effect of isolating recipients from the broader community. These settings included locations that fit the description of a residential rural “farmstead” model; day habilitation service sites that might tend to isolate recipients from the community; and supported-employment sites that did not appear to qualify as competitive integrated workplaces. Applying the concept of “heightened scrutiny,” SDS conducted on-site reviews of two rural farmsteads, three day habilitation sites, and two supported employment sites, using a checklist, based on materials provided in the *CMS Toolkit*, as a guide for reviewing provider policy and practice in light of the new regulations. The checklist is included as Attachment C.

SDS discussed, with farmstead administrative personnel, whether there are opportunities for recipient inclusion in the very small communities where the settings are located. The discussions focused on concerns regarding the availability of transportation and employment in competitive settings, as well as protection of recipient rights to privacy, dignity and respect.

SDS found that both rural sites afforded as much access to the community as the recipients wanted by providing regular opportunities to participate in meaningful community activities and transportation upon request, in addition to scheduled transportation. The recipients appear to have community access similar to that of peers who do not receive home and community-based services and who live in rural settings throughout Alaska.

SDS concludes that the farmstead settings have the required home and community-based characteristics despite their location, and suit a range of individuals seeking the slower pace of rural life.

SDS discussed with the day habilitation administrative personnel its concerns that, because these sites serve only people with disabilities, they appear to isolate recipients from others in the community. SDS found that both day habilitation service sites offer scheduled activities, such as art classes for recipients or community dinners that recipients can attend accompanied by their families.

SDS concludes that the day habilitation sites do not fully exhibit the expected characteristics of home and community-based settings. SDS explained the requirements of the federal regulations, and discussed possible strategies to promote greater participation by the community such as active outreach and development of a policy and procedure for welcoming members of the community who do not receive waiver services.

Review of supported employment settings

SDS recognizes that supported employment site issues are a system-wide concern in Alaska. Currently, the State, supported-employment providers, and other stakeholders are involved in coordinated systems-change efforts to improve employment outcomes for recipients.

During visits to the supported employment sites identified as needing additional scrutiny, SDS advised administrative personnel that, because only recipients of waiver services work in non-administrative positions sites that do not have the characteristics of home and community-based settings. SDS and the administrators discussed modifications that would ensure recipients are employed in integrated community settings.

2) Provider review: Provider Self-Assessment of Settings

SDS created the *Provider Self-Assessment of Settings* survey for providers for two purposes: 1) to serve as a teaching tool to inform providers of the new federal regulations, and 2) to be used as a tool to evaluate the extent to which the provider meets the new settings requirements. The survey could be printed for the provider's self-assessment, or alternatively, providers could participate in an online survey. SDS conducted two statewide webinars to train providers on how to complete the survey. The online survey was made available on the SDS website, and was open for participation October 1 through November 14, 2014.

The online survey was structured so that a provider of services need only fill out the survey once, while taking into consideration every setting where home and community-based services were provided when formulating a response. The survey consisted of two parts: the first set of questions pertained to all home and community-based settings; the second set of questions were applicable only to provider-owned or controlled residential settings. All questions used a Yes/No format, followed by a text box for the respondent to provide additional information in narrative form.

All providers, except for those providing care coordination services only, were strongly encouraged to participate in the survey. The survey responses came from providers that represent locations statewide and offer services in all types of settings.

Ninety (21%) of the 439 certified home and community-based services providers responded. Of these 90 responses, 11 (12%) were considered to be incomplete because the provider did not answer all the questions. The remaining 88% responses were split evenly between two categories: those that were deemed complete and needing no further action (44%), and those that were complete but, based on the responses, need follow-up.

SDS concludes from its assessment of settings that day habilitation providers, supported-employment providers, and others identified through the provider self-assessment are not fully in compliance with settings requirements. SDS will work with these providers to bring them into compliance.

A copy of the *Provider Self-Assessment of Settings* survey is available at the [SDS website](#), 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 survey itself, and copies of the training webinar PowerPoint presentation.

Part 3

STATE PLAN FOR ACHIEVING COMPLIANCE WITH FEDERAL REGULATIONS

Amendment of state regulations and *Conditions of Participation*

Through its internal review of regulations and evaluation of home and community-based service settings, SDS has determined that amendments to regulations governing the waiver program and to provider standards in the SDS *Conditions of Participation* will bring the state into full compliance with federal regulations. In addition, SDS will require providers to implement remedial strategies for full compliance. SDS plans for the amendments to regulations and *Conditions of Participation*, as well as provider implementation of remedial strategies, to be complete by July 1, 2016, the date of reauthorization for Alaska's four waiver programs.

Beginning in January, 2015, in collaboration with the Alaska Department of Law and with input from stakeholders, SDS will initiate a project to amend regulations and the *Conditions of Participation* governing the waiver programs.

Regulation changes: Additional requirements regarding development of the Plan of Care (POC)

- Clarify that the care coordinator must document service and settings options presented to the recipient, as well as specific providers considered for those services, during development of the POC
- Renew emphasis on non-disability specific settings among service options discussed and offered
- 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 POC

Conditions of Participation: Revisions to provider standards

- Specify that residential services providers must support recipient control of personal resources
- Clarify that the settings where services are to be provided must be physically accessible for the individual recipient

Activities to Achieve Provider Compliance

Provider training

SDS offers in-depth information regarding the home and community-based services program, certification requirements, and state regulations and policies. SDS will revise its Provider Certification Information webpage to emphasize the required characteristics of home and community-based settings. In addition, SDS will develop a provider orientation class that will include settings requirements as a topic, and will make it a requirement for certification.

SDS requires individuals who seek certification to provide care coordination services to enroll in a basic training course, and demonstrate comprehension of course content through examination. SDS will enhance this training to emphasize the characteristics of home and community-based settings so that care coordinators will be better able to evaluate the quality of care provided to recipients.

Provider certification process

SDS will broaden the scope of its certification activities by including a review of home and community-based settings characteristics. Questions similar to those suggested in the *CMS Toolkit* will be added to the certification checklist that is used to evaluate a provider's capacity to offer services to recipients.

Provider remediation

Although a number of Alaska provider agencies that do not appear to be in full compliance were identified through settings assessment activities, SDS found that the majority of services locations in Alaska have the required qualities of home and community-based settings. SDS will provide technical assistance to bring those agencies lacking the full range of settings qualities to ensure services are provided to recipients in settings with the required home and community-based characteristics.

As part of the State on-going certification cycle, SDS will follow-up the technical assistance process with on-site visits to providers as needed. If providers are found during on-site visits to lack settings qualities, SDS will act in accordance with 7 AAC 130.220, which authorizes a formal remediation process and a decertification path for providers unable or unwilling to comply with regulations.

While the State's assessment found that the majority of waiver service settings have the qualities of home and community-based settings, a small number of provider agencies will need to implement remedial strategies to become fully compliant. SDS will follow-up its informal technical assistance site visits with formal remediation plans.

Transition Plan Timeline

Home and community-based services settings		
Alaska transition plan		
Time	Activity	Outcome
2015	SDS internal review and revision of the transition plan	Internal comment incorporated
January 6 - 23		
January 26 - February 28	Public comment period for the transition plan	Stakeholder input gathered, documented and incorporated into transition plan
January 30	Stakeholder workshop on transition plan and regulation changes	Stakeholder input gathered/documented; incorporated in transition plan
March 1 - 15	Transition plan finalized; submitted to CMS for approval	State in full compliance with CMS transition plan requirements
June - July	Public comment period for proposed regulation amendments	Stakeholder input gathered/ incorporated in proposed regulations
August - September	SDS internal review of revised regulations	SDS input incorporated in revised regulations
October - November	Revised regulations forwarded to Department of Law	Review and revisions by Regulation Attorney
December	Revised regulations forwarded to Office of the Lieutenant Governor	Review by final authority
2016	Lieutenant Governor certifies regulations	State regulations in full compliance with federal regulations
January		

[Provider comment section here after public comment period]

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

1. Provider agency name:

Provider number:

Individual completing survey

Telephone number of individual completing survey

Email address of individual completing survey

Background

The Centers for Medicare and Medicaid (CMS) has amended Medicaid regulations to include home and community-based setting requirements, 42 CFR 441.300 – 441.304. The purpose of these regulations is to ensure recipients receive services in integrated community settings that are appropriate to their needs and that provide full access to the benefits of community living. CMS has directed the states that receive Medicaid funding to verify that services are provided in settings that have the qualities required for home and community-based services.

To meet the requirements of the mandatory setting verification process, Senior and Disabilities Services (SDS) has developed this self-assessment survey for SDS-certified home and community-based services providers

- to guide provider agencies through the new federal regulations with clarification of what is, and is not, a home and community-based setting
- to provide an opportunity for provider agencies to analyze the qualities of their service settings
- to alert provider agencies of the need to identify and make any improvements to policies, procedures, or the physical environment that would make the setting consistent with the CMS-defined qualities of a home and community-based setting.

Survey information

Your agency should submit only one online survey, whether home and community-based services are provided in one setting or in multiple settings. Please evaluate each setting in which home and community-based services are provided as a separate entity when considering the survey questions. If all settings have the quality under consideration, indicate this on the survey. If, however, even one of multiple settings does not have the quality, indicate the name and address of the setting, and what the agency will do to make the setting consistent with the regulation.

The survey has two parts: Part One is applicable to all settings, including provider-owned or controlled residential settings; Part Two is applicable only to residential settings.

- Review all non-residential settings using the questions in Part One only.
- Review all provider-owned or controlled residential settings using Part One and Part Two

Thank you for your cooperation and assistance in this endeavor as together we work to enhance the quality of Medicaid home and community-based services.

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PART ONE

Home and community-based services settings

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

Instructions

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

For each setting where waiver services are provided to recipients

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

Setting quality: NON-INSTITUTIONAL CHARACTERISTICS

Federal regulation

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

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

Program impact

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

Self-assessment questions

- 2. Is any setting in which the agency provides waiver services located in a building that is**
- **a publicly or privately operated facility that provides inpatient institutional treatment, or**
 - **on the grounds of, or immediately adjacent to a public institution?**

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

No

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

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

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

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

- Farmstead or disability-specific farm/ranch community

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

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

No

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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.

DRAFT

**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.

DRAFT

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.

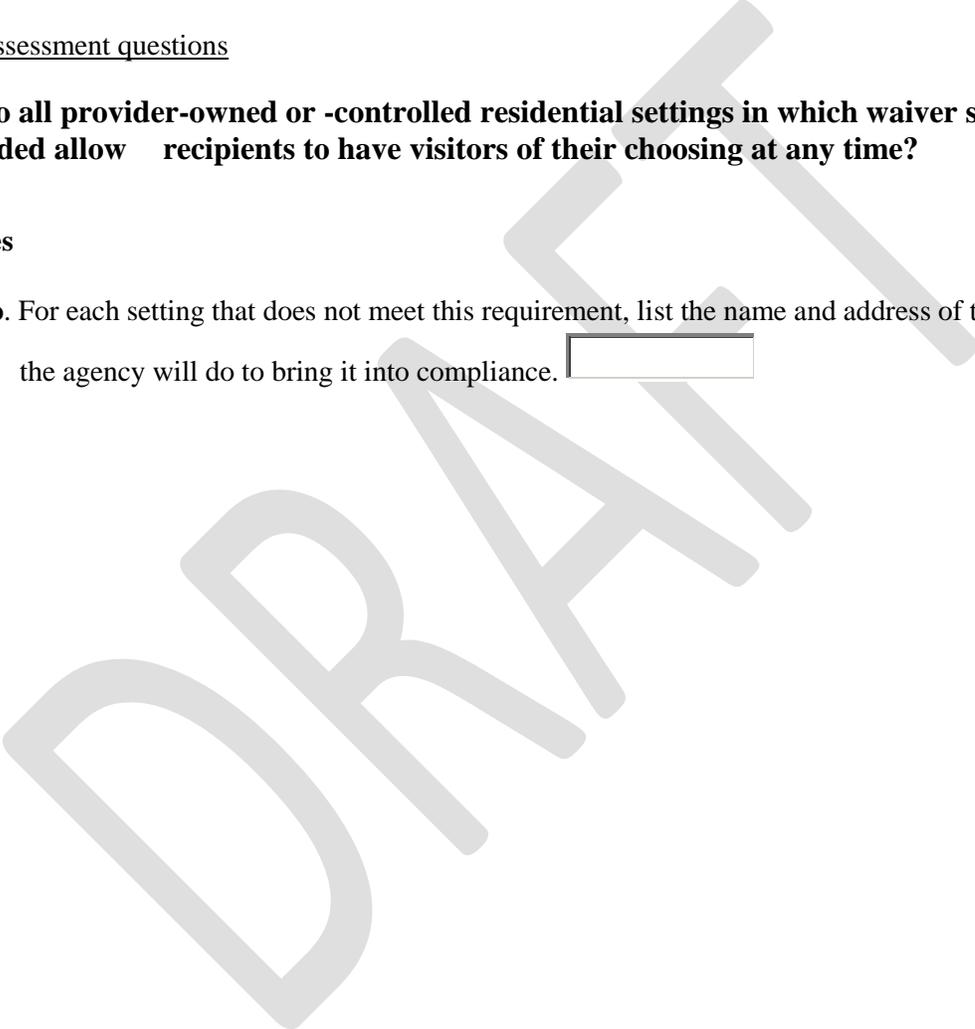
Program impact

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.

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
42 CFR 441.301 (c)(4)(i) Settings must be integrated in and support full access by recipients [to the greater community to the same degree of access as individuals not receiving HCB services], including			<i>6/20/14 CMS clarified that this is a values statement, the purpose of which is to ensure equal treatment for recipient as member of the community.</i>
opportunities to seek employment and work in competitive integrated settings	<p>7 AAC 130.270 Supported Employment (b)(2) Services available to provide support at worksite where individuals without disabilities are employed</p> <p>Supported employment COP:</p> <p>“Supported employment services may be offered in a variety of settings, but, because independence and community integration are significant goals for these services, they may not be provided in sheltered workshops or similar specialized vocational facilities.”</p>		<i>6/20/14 CMS clarified that the aim of this regulation is to support the efforts of recipients who wish to work; recipients must have freedom to, and support from providers to, seek employment in the community, even though not receiving supported employment services.</i>
engage in community life	<p>SDS Service Principles:</p> <p>Services are designed and delivered to build communities where all members are included, respected, and valued.</p> <p><u>ALH AS 47.33.230 ALH Plan</u></p> <p>(a) [Resident’s plan must]</p> <p>(1) promote participation in the community</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p><u>FH</u> (Foster home) 7 AAC 56.310 Rights and responsibilities (a)(7) [Child receiving services has the following right] opportunity to participate in community functions and recreational activities and to have the child’s social needs met</p>		
control personal resources	<p>No reference in SDS regulations /COPs to personal resources</p> <p><u>ALH AS 47.33.300 Res Rights (a)(7)</u> [Res has right to] manage the resident’s own money</p> <p><u>FH 7 AAC 50.430 Program in FH (f)</u> [Money earned/received by child is personal property] No member of FH may borrow or spend money acquired by foster child</p> <p>(g) [FH may limit amount of money child may possess or have unencumbered access if in child’s best interest]</p>	<p>Revise Provider COP III.C. Recipient rights. [Provider must] support recipient control of personal resources [to the extent recommended by the planning team?]</p> <p>Revise CC COP IV.B 2. POC Development to address control of personal resources as an action to be considered by planning team.</p>	
receive services in the community	<p>SDS Service Principles:</p> <p>Individuals have knowledge of and access to community services</p> <p><u>ALH AS 47.33.300 Res Rights (a)</u> [Res has right to]</p> <p>(12) [access health care providers of</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	resident’s choosing in community] FH 7 AAC 56.310 Rights and responsibilities (a)(6) [Child receiving services has the following right] appropriate health care		
42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including			
non-disability specific settings	7 AAC 130.217 POC develop. (a)(3)(C) [Written POC] identifies family and community supports available to recipient CC COP IV.B.1.b. [CC must] provide information about service options for medical, social, educational, and other services	Revise CC COP IV.B.1.b. to read, provide information about options, <u>including those available in non-disability specific settings,</u> i. for medical, social, educational, and other services; and ii. <u>for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient’s resources for room and board, and whether those resources would cover the cost of a private unit in the recipient’s chosen residential setting.</u>	
option for a private unit in a residential setting		Revise CC COP IV.B.1.b. to read, “provide information about options, <u>including those available in non-disability specific settings,</u> i. for medical, social, educational, and other services”; and	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		<p><u>ii. for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient's resources for room and board, and whether those resources would cover the cost of a private unit in the recipient's chosen residential setting.</u></p>	
options documented in service plan	<p>7 AAC 130.217 POC develop.</p> <p>(a)(3) [Written POC]</p> <p>(B) identifies providers available to render services</p> <p>(E)(1) identifies for each service, the provider that has agreed to provide the service</p>	<p>Revise 7 AAC 130.217 (a)(3)(B) to read, "identifies the providers ... that <u>were considered and the providers that were selected</u>, to render services to the recipient".</p> <p>Revise POC form to include section re settings:</p> <p>~confirm residence choice by recipient</p> <p>~identify any modifications; justify as required by regulations</p>	<p><i>6/5/14 CMS clarified that all settings considered, and why they were not chosen, must be documented in POC.</i></p>
options based on needs and preferences	<p>7 AAC 130.213 Assessment</p> <p>(a)(2) [The dept. will assess] physical, emotional, and cognitive functioning to determine LOC</p> <p>7 AAC 130.217 POC develop</p> <p>(a)(3)(F) [services must be consistent</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>with assessment/LOC]</p> <p>CC COP IV. B. 2. b. [Planning team provides opportunity for recipient/family] i. to express outcomes they wish to achieve; ii. to request services that meet identified need.</p> <p>CC COP IV. B. 3. a. the planning team must incorporate [assessment findings] in POC</p> <p>POC Section III. “The individualized service-planning process offers the recipient the opportunity to identify personal goal(s).”</p>		
<p>residential setting options based on resources for room and board</p>		<p>Revise CC COP IV.B.1.b. to read, “provide information about options, <u>including those available in non-disability specific settings,</u></p> <p>i. for medical, social, educational, and other services”; and</p> <p>ii. <u>for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient’s resources for room and board, and whether those resources would cover the cost of a private unit in the recipient’s chosen</u></p>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		<u>residential setting.</u>	
42 CFR 441.301 (c)(4)(iii) Settings must optimize recipient initiative, autonomy, and independence in making life choices, including			
daily activities	<p><u>ALH AS 47.33.230 ALH Plan</u></p> <p>(a) [Resident’s plan must]</p> <p>(1) promote participation in the community and increased independence through training and support ...</p> <p>(2) [recognize the right of the resident to evaluate and choose ... when making decisions re abilities, preferences, and service needs]</p> <p>(b) [Resident’s plan must describe] (3) resident’s preferences in ... recreational activities, religious affiliation</p> <p>(4) – (5) [ADLs needing assistance and how assistance will be provided]</p> <p><u>FH 7 AAC 50.430 Program in FH (c)</u> [FH to provide structure and daily activities designed to promote development and health of child]</p> <p>7 AAC 56.310 (a)(4) [Child receiving services has the following right: placement and supervision] in the least</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	restrictive setting capable of meeting the child's needs ...]		
physical environment	<p><u>ALH AS 47.33.300 Res Rights</u> (a)(10) [Res has right to reasonable opportunity to exercise and to go outdoors, when weather permits]</p> <p>7 AAC 260 General Environmental Requirements</p> <p>(a)(1) [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p><u>FH 7 AAC 50.530 Space</u> (a) [FH must have indoor and outdoor space to accommodate physical/developmental needs of child]</p> <p>7 AAC 50.540 Equip/supplies (a) [FH] must select equipment and supplies so that amount, variety, arrangement and use are appropriate for developmental needs of child</p>		<p><i>6/5/14 CMS clarified that this means the physical settings must meet recipient needs by being accessible for that recipient and not regimented (e.g., recipient may make choices re furnishings and décor).</i></p>
with whom to interact	<p><u>ALH AS 47.33.230 ALH Plan</u> (b)(3) [Resident's plan must describe] resident's preferences in ... relationships and visitation with friends, family members, and others</p> <p><u>FH 7 AAC 56.310 Rights and</u></p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>responsibilities (a))(4) [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) [Child must have opportunity for sibling visits and contact, and visits with extended family]</p>		
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 similar to landlord/tenant law of jurisdiction	<p>ALH AS 47.33.210 Residential Services Contract (a) [required for residency]</p> <p>FH 7 AAC 50.300 Admission</p> <p>(f) [A facility must have an agreement signed by the parties that includes or attaches the following: (17 item list)]</p> <p>7 AAC 56.500 Placement agreement [For FH placements, agency shall develop a placement agreement; can combine agreement with FH agreement required by</p> <p>7 AAC 50.300 (f)]</p>		AS 34.03.010 – 34.03.260 Landlord/Tenant Act applicable to rental of a residence.
agreement must address recipient responsibilities	<p>ALH AS 47.33.210 Residential Services Contract (b)(3) [must specify rights, duties, and obligations</p>		AS 43.03.20 Rental agreement may be written or verbal; may include conditions not prohibited by L/T Act

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>of resident]</p> <p>FH 7 AAC 56.300 Rights and responsibilities (a) [Agency shall provide] a written statement or pamphlet indicating client and agency rights and responsibilities</p> <p>7 AAC 56.500 Placement agreement (b)(4) [Agreement must include delineation of the respective roles and responsibilities of all parties ...]</p>		<p>or by law.</p> <p>43.03.120 Tenant obligations</p>
<p>agreement must address recipient protections from eviction</p>	<p>ALH AS 47.33.210 Residential Services Contract (b)(4) [must set out policies/procedures for termination of contract]</p> <p>AS 47.33.360 Involuntary Termination of Contract [No termination except for stated reasons; notice required; resident right to contest termination]</p> <p>FH 7 AAC 56.300 Rights and responsibilities (b) [Agency written statement or pamphlet must have a written appeal process for clients]</p>		<p>L/T Act uses “termination of tenancy” (eviction refers to court order when tenant refuses to move)</p> <p>AS 34.03.220 [Landlord remedies] Noncompliance with rental agreement</p> <p>AS 34.03.290 [Termination requires notice to tenant]</p> <p>AS 34.03.310 Retaliatory conduct prohibited</p>
<p>42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where HCB services are provided.</p>			
<p>privacy in unit</p>	<p>ALH AS 47.33.300 Res Rights (a)</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>[Res has right to]</p> <p>(2)(B) [privacy in the resident’s room or portion of a room]</p> <p>(2)(D) the maintenance of personal possessions and the right to keep at least one cabinet or drawer locked</p> <p>(5) close the door of the resident’s room at any time</p> <p>AS 47.33.330 Prohibitions</p> <p>(a)(2) [Staff may not enter resident’s room without first obtaining permission except for health or safety reasons]</p> <p><u>FH</u> No reference</p>		
unit entrance doors lockable by the recipient	<p><u>ALH</u> No reference</p> <p><u>FH</u> No reference</p>		
only appropriate staff having keys to the unit entrance doors	<p><u>ALH</u> No reference</p> <p><u>FH</u> No reference</p>		
choice of roommates	<p><u>ALH</u> AS 47.33.230 ALH Plan (b)(3) [Resident’s plan must describe] preference in roommates</p> <p><u>FH</u> No reference</p>		
freedom to furnish and decorate units	<p><u>ALH</u> 7 AAC 260 General</p>		<p><i>6/5/14 CMS clarified that this means the provider must have a reasonable</i></p>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
within the lease/agreement	<p>Environmental Requirements</p> <p>(a)(1) [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p><u>FH</u> No reference to decorating</p> <p>7 AAC 50.430 Program in FH (h) [FH must allow child] to bring and acquire personal belongings</p>		<p><i>standard re décor, i.e., allow personal décor to the same extent allowed for those not receiving HCB services.</i></p>
42 CFR 441.301 (c)(4)(vi)(C) Recipients must have			
freedom/ support to control own schedules and activities	<p>[ALH] AS 47.33.060 House Rules</p> <p>(c) [House rules may address telephone use, hours/volume for TV/radio, visitors, movement in and out of home]</p> <p>(d) [ALH may not adopt a house rule that unreasonably restricts a right of a resident]</p> <p><u>FH</u> 7 AAC 50.430 Program in FH</p> <p>(d) [Foster child to be treated equitably with foster parent's own children]</p> <p>7 AAC 50.440 Supervision</p> <p>(a) [Child must receive responsible supervision appropriate to age and</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	developmental needs]		
access to food at all times	<p><u>ALH 7 AAC.265 Food Service</u></p> <p>(a) [ALH must offer three meals and at least one snack daily]</p> <p><u>FH 7 AAC 50.460 Nutrition</u></p> <p>(a) [FH] shall ensure that all snacks and meals meet child care food program requirements of 7</p> <p>CFR 226.20 [Minimum meal requirements]</p> <p>(g) [FH] may not deny a meal or snack to a child</p>		<p><i>CMS clarified that if a recipient misses a regularly scheduled meal, the nutritional equivalent must be made available at a time convenient to the recipient. Recipients must have access to safe storage and heating of food, e.g., microwave and refrigerator, either in the sleeping area or a common area accessible by recipients. Recipients must have access to snacks at any time.</i></p>
42 CFR 441.301 (c)(4)(vi)(D) Recipients must be able to have			
visitors of their own choosing	<p><u>ALH AS 47.33.300 Res Rights</u></p> <p>(a)(4)(C) [Res has right to visit] with persons of the resident's choice, subject to visiting hours established by the home</p> <p><u>FH 7 AAC 56.310 Rights and responsibilities</u> (a)(b) [Child must have opportunity for sibling visits and contact, and visits with extended family]</p>		
visitors at any time	<p><u>ALH AS 47.33.300 Res Rights</u></p> <p>(a)(4)(C) [ALH may establish visiting</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	hours]		
42 CFR 441.301 (c)(4)(vi)(E) The settings where HCB services are provided must be			
physically accessible for the recipient	<p>7 AAC 130.300 Environmental modification services (b)(2)(A) [Dept. will pay for Emod necessary to] meet the recipient needs for accessibility identified in POC</p> <p>Adult Day COP IV.A.5. requires adaptive equipment and toilet/sink in location accessible to recipient with limited mobility</p> <p>Day Habilitation COP III.A.2. requires adaptive equipment and accessible toilet facilities</p>	<p>Revise CC COP IV.C. POC Implementation. CC must</p> <ol style="list-style-type: none"> 1. arrange services ... 2. confirm that settings where services are to be provided are physically accessible for the recipient 3. coordinate delivery of services 4. support independence... 5. teach how to evaluate ... 	
42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions [(c)(4)(vi)(A) – (D) pertaining to only provider owned or controlled residential settings] must be supported by a specific assessed need and justified in the service plan that documents			
<p>~specific and individualized assessed need</p> <p>~positive interventions and supports used prior to any modification</p> <p>~less intrusive methods of meeting the need tried, but did not work</p> <p>~condition that lead to the specific assessed need</p> <p>~regular collection/ review of data to measure the ongoing effectiveness</p> <p>~times for review of data to determine continuation/termination of modification</p> <p>~informed consent of the recipient</p>		<p>Develop regulations, or add settings requirements to Provider COP.</p> <p>Revise CC COP IV.B. POC; add:</p> <p><u>4. Residential Setting</u></p> <p>~POC must identify place of residence chosen by recipient and that recipient has legally enforceable agreement</p>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
~assurance of no harm to recipient resulting from modifications		~Setting meets requirements ~POC includes justification for any modification Revise POC form, Section V Residential Service, to include residence choice by recipient, and requirements for modification	
42 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of HCB settings			
~location in a building that is a publicly or privately operated facility that provides inpatient institutional treatment ~location in a building on the grounds of, or immediately adjacent to a public institution ~location that isolates recipients from the broader community of individuals who do not receive HCB services	7 AAC 130.250 Adult Day (b)(2) [Services considered to be adult day if] provided in a non-institutional community setting	Revise 7 AAC 130.220 Provider Cert to specify services may not be provided in these locations unless approved by SDS.	

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:	
Qualities required for all home and community-based services setting	
<input type="checkbox"/> Not located in building/on grounds with institutional characteristics	
<ul style="list-style-type: none"> • Is the setting in a publicly or privately operated facility that provides inpatient institutional treatment? • Is the setting located in a building on the grounds of, or adjacent to, a public institution? 	
<input type="checkbox"/> Does not isolate recipients from broader community of individuals not receiving HCBS?	
<ul style="list-style-type: none"> • Does the setting provide multiple types of services/activities on-site with consequent decrease in opportunities for recipient participation in broader community? • Does the setting isolate recipients because of its nature, e.g., disability-specific farm community, gated/secured community for people with disabilities, residential school? • Is the setting located in the community among private residences rather than in a business area? • Does the setting operate in a manner that congregates recipients so that they live/receive services in an area separate from non-recipients? • 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? 	
<input type="checkbox"/> Provides opportunities and support for employment in competitive, integrated settings	
<ul style="list-style-type: none"> • Do any recipients work in integrated community settings? • Does the setting offer, to recipients who would like to work, information and support to ensure they are able to pursue that option? • 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? 	

Provides opportunities to participate in and receive services in community

- 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