



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>	

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	<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>	

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	<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>		

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	<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>

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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>	

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	<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).	

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	<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> <ul style="list-style-type: none"> ~specific and individualized assessed need ~positive interventions and supports used prior to any modification ~less intrusive methods of meeting the need tried, but did not work ~condition that lead to the specific assessed need ~regular collection/ review of data to measure the ongoing effectiveness ~times for review of data to determine continuation/termination of modification ~informed consent of the recipient ~assurance of no harm to recipient resulting from modifications 	<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>			
<ul style="list-style-type: none"> ~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 	<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>	