



**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**

Original March 17, 2015

Updated September 14, 2015

**October 16, 2015 revision incorporates comments
from second public comment period**

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 four components of settings evaluation activities undertaken by SDS.

Part 1

Description of 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

Description of 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

Part 3

The state plan to achieve compliance with federal regulations

Part 4

Public comment and response

Appendix A – Systemic Review of Statute and Regulation

Appendix B – Settings Qualities Checklist and Exploratory Questions for HBC Settings

Appendix C – Provider Self-Assessment of Settings Tool

Appendix D – Evidence of Public Information and Opportunity for Public Comment

Part 1

STATE EDUCATIONAL ACTIVITIES FOR PROVIDERS

SDS decided that the best approach to assessing the Alaska home and community-based services program would be to work with the stakeholder community to gain an understanding of the scope of the new federal regulations and their potential impact on service delivery. As SDS began a review of state 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 to use to evaluate their operations in light of the settings requirements. A variation of the survey was posted online for two purposes: 1) gaining feedback regarding providers' perceptions of their own compliance with those requirements, and 2) discovering the settings issues that could benefit from technical assistance.

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
2014			
March	19	SDS E-Alert	Announced finalization of new CMS regulations and key areas of change
April	1	Webinar	First Information-Sharing Webinar: Overview of new CMS regulations
	4	SDS E-Alert	April 1 Webinar materials made available
June	10	Webinar	Second Information-Sharing Webinar and announcement of community forums
	27	SDS E-Alert	Invitation to community forums in Fairbanks, Kenai, Anchorage, Juneau, and statewide by

			teleconference
August	Community forum		Interactive forum for information on new regulations, ideas from stakeholders, Q&A
	18	Fairbanks	
	19	Kenai	
	20	Anchorage	
	21	Juneau	
	22	Statewide teleconference	
September	15	SDS E-Alert	Updates/ clarifications of CMS regulations; evaluation using <i>Provider Self-Assessment of Settings Survey</i>
October	2	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> and FAQs released with October 31 due date
	15	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	16	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> due date extended to November 14
	21	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	27	SDS E-Alert	Additional FAQs on CMS regulations released
November	7	SDS E-Alert	<i>Provider Self-Assessment of Settings</i> reminder
	10	SDS E-Alert	Open Letter from SDS Director
2015			
January	21	SDS E-Alert	Save the Date for Public Comment
	26	SDS E-Alert	<i>Transition Plan</i> available for public comment
	30	Webinar	Q&A on <i>Transition Plan</i>
September	15	SDS E-Alert	Revised <i>Transition Plan</i> available for public comment
	29	Webinar	Q&A on Revised <i>Transition Plan</i>

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 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. Based on these concepts, SDS formalized its philosophy in the SDS Mission, Vision and Service Principles. From time to time, as new materials such as the Americans with Disabilities Act and the *Olmstead* decision inform the home and community-based system of service, SDS reviews its philosophy and enriches statewide advocacy for recipients by incorporating the values advanced in those materials.

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

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



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

Mission, Vision, and Principles

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

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

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

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

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 Part 3, the State Plan for Achieving Compliance section.

The full review of State statutes and regulations relevant to settings is attached as Appendix A.

Assessment of Home and Community-Based Service Settings in Alaska

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

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. Each of these reviews covered whether the services are provided in settings that are on or adjacent to a public institution or that have the effect of isolating individuals, settings that setting ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint, and setting that facilitate individual choice regarding services and supports, and who provides them.

SDS conducted an internal review of its regulations, certification and compliance activities to determine which services and settings in each of its four waivers (IDD, ALI, APDD, and CMCC) comply with CMS regulations, which will require modification, and which may need heightened scrutiny by CMS. The internal review comprised analyzing quality assurance, complaint, critical incident, and internal investigation reports and data, reviewing and discussing findings from

recent site visits to various providers by Certification & Licensing, Quality Assurance and subject matter expert staff within SDS, and including other entities (advocacy groups, grantees, and other state agencies charged with ensuring the health and safety of recipients) in identifying settings that potentially did not meet the CMS settings requirements.

Through this internal review, SDS determined that the following services are provided in settings that are compliant with CMS settings regulations, per CMS, as they are provided in a recipient's home:

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

Additionally, SDS found that the following services are provided in settings where some providers may need technical assistance and remediation to bring them into compliance with CMS settings regulations:

- Adult Day (ALI, APDD)
- Residential Supported Living (ALI, APDD)
- Residential Habilitation (IDD, APDD, CMCC)
- Transportation (all four waivers)
- Supported Employment (IDD, APDD)
- Day Habilitation (IDD, APDD, CMCC)

To prepare for possible heightened scrutiny by CMS, SDS identified some locations that required additional investigation regarding their settings, and made in-person site visits to those locations. In addition, providers indicated through the review of their own settings (see page 10) 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. Review and 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: farmstead model, day habilitation centers and supported employment sites

The SDS 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 attached as Appendix B.

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 will submit information on all farmstead residential habilitation sites to CMS to be subjected to the process of heightened scrutiny.

Review of day habilitation settings

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. SDS will continue to offer technical assistance to providers that require settings remediation and will submit the outcomes of the remediation efforts as an element for heightened scrutiny review.

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, the 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, including ensuring payment of at least the minimum wage for each position, and offering positions, as they became available, for general employment. SDS will continue to offer technical assistance to providers that require settings remediation, and will submit the outcomes of remediation efforts as an element of heightened scrutiny review.

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 was constructed so that each element of the settings characteristics was emphasized by presenting it as a question for provider evaluation. 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 survey could be printed for the provider's self-assessment, or alternatively, providers could participate in an online survey. 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 in the SDS News Archives portion of 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.

3. Next Steps: Settings Verification and Remediation

SDS developed and offered the *Provider Self-Assessment of Settings* so that providers could evaluate their settings and make corrections if settings requirements were not met. Because the response rate for use of this tool was inadequate, SDS has planned another approach to training and provider evaluation that will require review and reporting on the status of all settings in which residential habilitation, supported living, day habilitation, adult day, supported employment, chore, and congregate meal services are provided. If a setting is found to be deficient in home and community-based characteristics and, consequently, presumed to be institutional in nature, the new approach calls for a settings remediation plan to be developed according to the process presented in the redesigned SDS provider training. SDS will offer technical assistance for choosing and implementing remediation strategies.

SDS will develop training regarding setting requirements designed to clarify the characteristics of home and community-based settings, and to provide strategies and best practices for remediation of settings that have the tendency to isolate or restrict the personal rights of recipients. The training will be mandatory for all SDS-certified program administrators and will be offered both in-person, and by webinar for provider agencies located in remote communities. SDS will track training attendance and satisfactory completion for all current providers, and will revise regulations to require the training for all new providers as part of certification requirements.

As part of the training, providers will be introduced to a standardized home and community-based setting verification report. Building on the work of the *Provider Self-Assessment of Settings* and the *Settings Qualities Checklist and Exploratory Questions for Home and Community-Based Settings*, the report format will guide the provider through assessment of each setting in which services are provided. If a setting is identified as having the tendency to isolate recipients from the larger community or impinges on recipient rights, the provider will be required to develop a detailed settings remediation plan that includes timelines for completion and that addressed changes to agency policy or to the physical environment designed to bring the setting into compliance.

The SDS Certification and Compliance Unit and the SDS Quality Assurance Unit will collaborate in the review of each plan, and will either accept the plan as sufficient to correct deficiencies or return the plan to the provider for further development. SDS will provide technical assistance for development of plans found to be insufficient.

A standardized home and community-based settings verification report will be the State's primary method for collecting information for the CMS "heightened scrutiny" process for those settings presumed to be institutional by federal regulation. These reports and the remediation plans developed by providers will be made public, and will be provided to CMS as evidence that a setting overcomes the presumption that isolation makes it institutional in nature.

The SDS Certification and Compliance Unit will assume responsibility for ongoing monitoring of settings. Setting review questions will be added to the standard site-visit materials used by the Unit, and settings verification will become a routine aspect of provider certification.

SDS development of the training curriculum and the home and community-based setting verification report will commence immediately, with a proposed completion date of July 1, 2016. SDS estimates that review and remediation of all settings will be complete July 1, 2018.

If a provider receives training and remediation on settings and seeks recertification as a provider of HCB services but SDS determines the provider remains noncompliant with the settings requirement, SDS will work to relocate recipients. This will involve providing advance notice to affected recipients, their care coordinators, and all other interested parties; providing information on the other service options available to help them make an informed decision; identifying the entities that will need to be involved in the transfer to other providers; and ensuring that critical services are in place in advance of the transition. The Certification & Licensing Unit will work with staff in the Intellectual and Developmental Disabilities (IDD) and Nursing Facility Level of Care (NFLOC) Units on these transitions on a case by case basis.

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 SDS into full compliance with federal regulations. In addition, SDS will work with the Divisions of Health Care Services, Alaska Pioneer Homes, and the Office of Children's Services to ensure the assisted living homes and foster home, for which they have administrative responsibility, have the qualities required of home and community-based settings.

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

- Develop requirements regarding settings for provider certification section of regulations
- 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 Plan of Care
- 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 Plan of Care

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 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. After enactment of state regulations regarding settings, all applicants for initial certification and for recertification will be required to answer and submit a questionnaire, similar to the *Provider Self-Assessment of Settings* survey developed by SDS, that indicates compliance with those requirements.

Provider remediation

Although a small number of Alaska provider agencies that were identified through settings assessment activities as appearing not to be in full compliance, SDS found from its analysis 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.

Revised 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
July - September	SDS amends Transition plan in response to CMS review	SDS develops revised process for verifying HCB characteristics of all service settings
September 15 – October 15	Public comment period for the Transition plan	Stakeholder input gathered, documented and incorporated into transition plan
September 28	Stakeholder workshop on transition plan and regulation changes	Stakeholder input gathered/documented; incorporated in transition plan
October 15 -	Transition plan finalized; submitted to CMS for	State in full compliance with CMS transition

17	approval	plan requirements
October - December	SDS begins development of new settings review and remediation process including provider “home and community-based setting verification report and remediation plan”	Review by final authority Providers identified through assessment in compliance
December 31	Transition Plan amendment to CMS containing findings of site specific review	Amended Transition Plan approved by CMS
2016	SDS revises waiver regulations to incorporate federal requirements	State regulations in full compliance with federal regulations
January - April		
May - July	SDS develops Provider training curriculum regarding HCB settings regulations	Providers fully informed regarding settings requirements
July 1 - ongoing	SDS offers HCB settings training and assistance with remediation plan development	Providers understand regulations, how to remediate settings and come into compliance with state and federal requirements
	Revised waiver regulations adopted and in effect	
	Begin review/monitoring for compliance with settings requirements	Only providers that meet settings requirements are certified or recertified
2018	End of two-year recertification cycle	All providers in full compliance with settings requirements
July 1		

Part 4

PUBLIC COMMENT AND RESPONSE

Initial Transition Plan

The State received comments regarding the initial state transition plan from one stakeholder only after extensive outreach that included workshops, webinars, and an opportunity for all providers to conduct a self-assessment of their settings as either an internal exercise or an on-line survey. Those comments (in bolded text) addressed in this section.

The document lacks a plan to assess providers that did not participate in the on-line survey.

The intent of the on-line survey was to provide a tool for self-assessment by which a provider could identify areas that must be addressed to bring its operations into compliance with the settings requirements. SDS personnel, including certification staff and assessors, identified providers that appeared to be non-compliant; other state personnel conducted on-site surveys of the providers that were identified.

SDS has added settings questions to its survey checklist and will assess settings as part of the certification process. As of March, 1, 2015, to be certified or for renewal of certification, providers will be required to have the home and community-based settings characteristics identified by federal regulation.

Only assisted living homes and foster homes were assessed and addressed in the transition plan.

In regard to this comment, the stakeholder referenced a document that is the analysis of state regulations pertaining to settings, not the state transition plan. In addition to meeting certification requirements, residential facilities that provide services for home and community-based services recipients must be licensed as assisted living homes or foster homes. SDS reviewed regulations applicable to those facility types to determine whether they are sufficient to meet the settings requirements and where additional regulations might need to be enacted to achieve into compliance.

SDS, through a review of its own regulations and an internal review of certified providers, addressed the settings qualities of non-residential provider type, including day habilitation and supported employment that were of concern to the stakeholder.

The transition plan timeline is missing a timeframe for provider remediation; a 6-month timeframe is suggested.

SDS believes the timeframe would vary on the basis of the nature of the settings characteristic that is to be remediated; consequently, a 6-month timeframe for compliance that would be applicable to all providers would seem unworkable. SDS believes that most providers can be brought into compliance through technical assistance with the new settings requirements and improvements to the certification process; those that cannot will be subject to the formal process in 7 AAC 130.220 that allows for sanctions or decertification for noncompliance.

The transition plan timeline should include an item to reassess compliance of settings one year following adoption of the new regulations.

Reassessment of compliance with settings requirements will be on-going, primarily through the provider certification process. Providers are required to perform an assessment of their operations annually as a quality assurance measure, and submit a report based on findings when applying for recertification. In addition, concerned parties can raise the issue of non-compliance by contacting SDS at any time, or through a complaint or critical incident reporting process.

Quality management standards are specified in the *Provider Conditions of Participation*. SDS will revise these standards to require provider assessment of its settings to ensure compliance.

The state should create definitions and standards for what it means to have “the same degree of access as individuals not receiving Medicaid home and community-based services”.

SDS does not believe the phrase needs to be defined. SDS plans to integrate federal definitions and concepts regarding degree of access in standards contained in the *Conditions of Participation* and in training courses for providers.

Current state regulations that allow assisted living homes to have house rules restrict recipients’ rights.

Assisted living homes and foster homes are regulated by other divisions of the department using regulations specific to licensing and the facility type. SDS can implement changes for home and community-based services recipients, but organizationally, SDS is not in a position to require changes in licensing or facility regulations. SDS will work with the state offices that regulate assisted living homes and foster homes to eliminate regulations that appear to restrict recipient rights.

SDS should institute a system for monitoring and quality assurance to ensure continuing compliance regarding settings.

SDS quality assurance processes currently in place are sufficient to monitor providers regarding on-going compliance with settings requirements.

The State received comments from two entities on the revised Transition Plan.

Revised Transition Plan

The State received comments regarding the revised state transition plan from three stakeholders. Those comments (in bolded text) are addressed in this section.

Settings review questions must take assisted living home and foster home regulations into consideration.

Assisted living home regulations regarding house rules need to be amended to rectify discrepancies between personal freedoms and house rules.

SDS is aware that some regulations for assisted living homes and foster homes will mean those facilities may not comply with federal settings requirements. SDS can implement changes for home and community-based services recipients, but organizationally, SDS is not in a position to require changes in licensing or facility regulations. SDS will work with the state offices that regulate assisted living homes and foster homes to revise regulations that are not consistent with settings requirements.

Careful assessment is needed in the review of “possibly isolating settings” because providers that fall into this category offer community integration opportunities that center around the needs and interests of people with disabilities.

SDS recognizes that recipient choice is a factor in measuring the extent of an individual’s community integration; however, providers must demonstrate that they support full access to community activities that are available to individuals not receiving home and community-based services. SDS will work with any provider to bring it into compliance so that it is not considered to be a “possibly isolating setting”. See pages 12-15.

The emphasis on integrated employment could mean job loss for currently employed individuals with disabilities.

SDS does not see the settings requirements as intended to cause job loss for recipients. SDS will work with supported employment providers to bring them into compliance to avoid such an eventuality. See pages 12-15.

The transition plan does not describe in detail what remediation efforts would be for day habilitation and supported employment settings, and how the success of these efforts will be measured.

Remediation plans for those settings will depend on the requirements that are not met by individual providers. Until that is known, SDS cannot provide details for remediation. SDS will provide technical assistance for providers that are required to develop and implement remediation plans. See pages 12-15.

SDS should develop regulations for home and community-based settings similar to those of assisted living homes regarding residents' plans, general environmental requirements, and residential contracts.

SDS believes this is a good suggestion insofar as it relates to settings, and will incorporate assisted living home requirements that are pertinent for a specified home and community-based service into the *Conditions of Participation* for that service.

SDS should specify the details of the process for relocating recipients who are receiving services in settings that are determined not to meet the settings requirements.

SDS has amended the Transition Plan to include an explanation of the process that will be followed when a recipient has to change providers due to a provider's setting not meeting the settings requirements. See page 13.

Documentation of the state public notice process is attached as Appendix D.

Appendix A

Review of Statute and Regulation

This section revised in response to CMS review

Review of Statute and Regulation

Purpose

The purpose of this systemic review was to

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

Review

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

SDS reviewed the *Conditions of Participation* for all services, but only those that had some reference to settings are mentioned in the following table.

Conclusion

While the table shows some commonalities regarding settings requirements and the *SDS Conditions of Participation* can be amended to include a number of points as indicated, **SDS finds that the better approach to achieving provider compliance would be to write new settings regulations to supplement the current provider certification requirements**

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

By amending SDS' Conditions of Participation and regulations, and by working with other divisions to highlight where revisions are needed to statutes and regulations, Alaska's HCB settings will move to comport with the CMS settings requirements.

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 all recipients as members 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>OCS FH Handbook. Employment may be appropriate if recipient (teen) wants to work; must be paid at same rate as other employees performing same duties if employed by business owned or operated by FH adults.</p>		<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>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
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 (a)</u> [Resident’s plan must] (1) promote participation in the community AKPH brochure “A Matter of Rights”. [Resident has right to] participate in and benefit from community services and activities to achieve the highest level of independence, autonomy, and interaction in the community.</p> <p><u>FH (Foster home) 7 AAC 56.310 (a)(7)</u> [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 OCS FH Handbook. Important for recipient to participate in recreational, school, religious, and community activities; FH should encourage recipient to participate in activities that are appropriate and safe</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
control personal resources	<p>No reference in SDS regulations /COPs to personal resources</p> <p><u>ALH AS 47.33.300 (a)(7)</u> [Res has right to] manage the resident’s own money.</p> <p>AKPH P&P No. 01.04 [Res has right] to manage the resident’s own money and finances.</p> <p><u>FH 7 AAC 50.430 (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><u>(g)</u> [FH may limit amount of money child may possess or have unencumbered access if in child’s best interest]</p> <p>OCS FH Handbook. Money earned by recipient is personal property; if over \$200 should have savings account; spending habits may be guided; not FH may borrow or spend recipient’s money</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: Individuals have knowledge of and access to community services</p> <p><u>ALH AS 47.33.300 (a)</u> [Res has right to]</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>(12) [access health care providers of resident’s choosing in community] AKPH brochure “A Matter of Rights”. [Resident has right to] participate in and benefit from community services . . . [including] access to adequate and appropriate health care and health care providers of the resident’s own choosing . . .</p> <p>FH 7 AAC 56.310 (a)(6) [Child receiving services has the following right] appropriate health care</p>		
42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including			
non-disability specific settings	<p>7 AAC 130.217 (a)(3)(C) [Written POC] identifies family and community supports available to recipient</p> <p>CC COP IV.B.1.b. [CC must] provide information about service options for medical, social, educational, and other services</p>	Revise CC COP IV.B.1.b. to read, provide information about options, <u>including those available in non-disability specific settings,</u> <u>i. for medical, social, educational, and other services; and</u> <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</u>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		<p><u>cover the cost of a private unit in the recipient’s chosen residential setting.</u></p>	
<p>option for a private unit in a residential setting</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>, i. for medical, social, educational, and other services”; and ii. for residential services, <u>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>	<p><i>CMS clarified that settings do not have to have private units, but that the recipient must be given the choice of a private unit from among all residential settings that are available.</i></p>
<p>options documented in service plan</p>	<p>7 AAC 130.217 (a)(3) [Written POC] (B) identifies providers available to render services (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”. Revise POC form to include section re settings: ~confirm residence choice by recipient ~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>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
<p>options based on needs and preferences</p>	<p>7 AAC 130.213 (a)(2) [The dept. will assess] physical, emotional, and cognitive functioning to determine LOC</p> <p>7 AAC 130.217 (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>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> i. for medical, social, educational, and other services”; and ii. <u>for residential services, if such services are of interest to or</u></p>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		<p><u>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>	
<p>42 CFR 441.301 (c)(4)(iii) Settings must ensure an individual's rights to privacy, dignity, and respect, and freedom from coercion and restraint</p>			
<p>privacy</p>	<p><u>ALH AS 47.33.300 (2)</u> [ALH resident] has the right to . . . privacy in [health-related circumstances, resident's room, bathing and toileting, personal possessions]. AKPH P&P No. 01.04 [Restates AS 47.33.300 92)].</p> <p>7 AAC 75.260 (a)(5) [ALH shall ensure resident has] reasonable privacy when sharing a room.</p> <p><u>FH 7 AAC 50.530(d)</u> [Requirements for space in bedrooms.] OCS FH Handbook. [FH] must provide sleeping space appropriate for age of child, and similar to that of other household members</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
dignity and respect	<p>SDS Mission: [SDS facilitates access to services/supports] that foster independence, personal choice, and dignity.</p> <p>SDS Service Principles: Individuals . . . are treated with respect, dignity, and compassion.</p> <p>CC COP IV. A. 4. The provider must operate its CC services program for the following purposes: To treat the recipients with dignity and respect in the provisions of services.</p> <p>Provider COP III. C. 1. The provider must treat all recipients respectfully.</p> <p><u>Persons with disabilities</u> AS 47.80.110 (2) . . . service providers shall ensure each [person with disabilities] has right to confidentiality and treatment with dignity</p> <p><u>ALH AS 47.33.300 (2)</u> [ALH resident] has the right to be treated with consideration and respect for personal dignity, individuality, and the need for privacy . . . AKPH P&P No. 01.04 [Restates AS 47.33.300 92)].</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>FH 7 AAC 50.430 (b) A foster parent shall recognize, encourage, and support the religious beliefs, ethnic and cultural heritage, and language of a child’s birth parents, and shall respect the expressed religious preference of the birth parents of their child. However, the foster parent shall respect the preference of a foster child nine years of age or older.</p> <p>(d) A foster parent shall treat foster children equitably with the foster parent’s own children.</p>		
<p>freedom from coercion/restraint</p>	<p>SDS Service Principles: Individuals a right to choice and self-determination . . . Individuals are safe and serviced in the least restrictive manner.</p> <p><u>Persons with disabilities</u> AS 47.80.110 (6) . . . service providers shall provide services in the least restrictive setting . . .</p> <p>7 AAC 130.255 [Specifies limited circumstances for use of restrictive intervention.]</p> <p>7 AAC 130.255 (d) A provider of residential supported living services under this section may not</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>compel a recipient to be absent from an assisted living home for the convenience of the provider.</p> <p>7 AAC 130.265 (j) A provider of residential habilitation services under this section may not compel a recipient to be absent from an assisted living home, foster home, or group home for the convenience of the provider.</p> <p><u>ALH 7 AAC 75.220 (a)</u> [ALH shall provide safeguards to ensure that no person abuses, neglects, or exploits a resident.]</p> <p>7 AAC 75.295 (a) [ALH] must have a written procedure regarding the use of physical restraint [approved by the department]. AKPH P&P No. 04.09 [limits the use of restraints]; P&P No. 06.01 [addresses resident abuse]</p> <p><u>FH 7 AAC 50.435 (b)</u> [To guide behavior, FH] shall provide positive enforcement, redirection, and the setting of realistic expectations and clear and consistent limits.</p> <p>(c) [FH] may not use discipline or a behavior management technique that is cruel, humiliating, or otherwise damaging to the child.</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>(d) - (j) [List of prohibited practices, including restraint and isolation (except under limited circumstances)] OCS FH Handbook. [FH] barred from specific types of discipline, including corporal punishment, isolation, physical restraints, and verbal abuse</p>		
42 CFR 441.301 (c)(4)(iv) Settings must optimize recipient initiative, autonomy, and independence in making life choices, including			
daily activities	<p><u>ALH AS 47.33.230 (a)</u> [Resident's plan must] (1) promote participation in the community and increased independence through training and support ... (2) [recognize the right of the resident to evaluate and choose ... when making decisions re abilities, preferences, and service needs] (b) [Resident's plan must describe] (3) resident's preferences in ... recreational activities, religious affiliation (4) – (5) [ADLs needing assistance and how assistance will be provided] <u>FH 7 AAC 50.430 (c)</u> [FH to provide structure and daily</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>activities designed to promote development and health of child] 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 ...] OCS FH Handbook. [FH] must ensure recipient attends school; should foster participation in social activities; may assign chores similar to those expected of family members of the same age;</p>		
physical environment	<p><u>ALH AS 47.33.300 (a)(10)</u> [Res has right to reasonable opportunity to exercise and to go outdoors, when weather permits.] AKPH P&P 01.04 restates right.</p> <p>7 AAC 260 (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 (a)</u> [FH must have indoor and outdoor space to accommodate physical/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>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>7 AAC 50.540 (a) [FH] must select equipment and supplies so that amount, variety, arrangement and use are appropriate for developmental needs of child</p>		
with whom to interact	<p><u>ALH AS 47.33.230 (b)(3)</u> [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 (a) (4)</u> [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] OCS FH Handbook. [FH] dating is normal part of adolescence; FH may guide re safe dating practices, and set rules and boundaries for dating.</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
42 CFR 441.301 (c)(4)(v) The setting facilitates individual choice regarding			
services and supports	<p>SDS Visions: Choice, safety, independence, and dignity in home and community-based living.</p> <p>SDS Service Principles: Individuals a right to choice and self-determination . . . Individuals have knowledge of and access to community services.</p> <p>CC COP IV. B. 2. b. [The CC must provide an opportunity for the recipient and family] to request services that meet identified needs, and to explain how they would prefer that the services be delivered.</p> <p><u>ALH AS 47.33.300 (6)</u> [ALH resident] has the right to . . . participate in and benefit from community services and activities</p>		
who provides services/supports	<p>SDS Service Principles: Quality services are provided by competent trained caregivers who are chosen by individuals and their families.</p> <p>CC COP IV. B. 1. C. The CC must affirm the recipient’s right to choose to receive services from any qualified provider.</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>Provider COP III. C. 3. The provider must cooperate with recipients who elect to change service providers.</p> <p><u>ALH AS 47.33.300 (12)</u> [ALH resident] has the right to . . .have access to adequate and appropriate health care and health care providers of the resident’s own choosing . . .</p> <p>AKPH P&P No. 01.04 restates right.</p>		
<p>42 CFR 441.301 (c)(4)(vi) [Applies to provider-owned or -controlled settings]</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><u>ALH AS 47.33.210 (a)</u> [Residential services contract required for residency] AKPH No. 03.03 Services are . . . defined in the assisted living contract; signed by the recipient or recipient resident;</p> <p><u>FH 7 AAC 50.300 (f)</u> [A facility must have an agreement signed by the parties that includes or attaches the following: (17 item list)] <u>7 AAC 56.500</u> [For FH placements, agency shall develop a</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
	placement agreement; can combine agreement with FH agreement required by 7 AAC 50.300 (f)]		
agreement must address recipient responsibilities	<p><u>ALH AS 47.33.210 (b)(3)</u> [must specify rights, duties, and obligations of resident] AKPH No. 03.03 Services are . . . defined in the assisted living contract; includes description of the rights, duties, and obligations of the resident.</p> <p><u>FH 7 AAC 56.300 (a)</u> [Agency shall provide] a written statement or pamphlet indicating client and agency rights and responsibilities <u>7 AAC 56.500 (b)(4)</u> [Agreement must include delineation of the respective roles and responsibilities of all parties ...]</p>		AS 43.03.20 Rental agreement may be written or verbal; may include conditions not prohibited by L/T Act or by law. 43.03.120 Tenant obligations
agreement must address recipient protections from eviction	<p><u>ALH AS 47.33.210 (b)(4)</u> [Residential services contract must set out policies/procedures for termination of contract] <u>AS 47.33.360</u> [No termination except for stated reasons; notice required; resident right to contest termination] AKPH No. 03.03 Services are . . . defined in the assisted living</p>		L/T Act uses “termination of tenancy” (eviction refers to court order when tenant refuses to move) AS 34.03.220 [Landlord remedies] Noncompliance with rental agreement AS 34.03.290 [Termination requires notice to tenant] AS 34.03.310 Retaliatory conduct prohibited

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>contract; includes policy for termination of the contract.</p> <p>FH 7 AAC 56.300 (b) [Agency written statement or pamphlet must have a written appeal process for clients]</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 (a) [Res has right to] (2)(B) [privacy in the resident's room or portion of a room]; (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>AKPH P&P No. 01.04 [Restates AS 47.33.300.]</p> <p>AS 47.33.330 (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>unit entrance doors lockable by the recipient</p>	<p>ALH No reference</p> <p>AKPH P&P No. 01.05. Home entrance doors are locked for security reasons after visiting</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>times. Special accommodations can be made to allow visitor access to the home after the doors are locked.</p> <p><u>FH</u> No reference</p>		
<p>only appropriate staff having keys to the unit entrance doors</p>	<p><u>ALH</u> No reference</p> <p><u>FH</u> No reference</p>		
<p>choice of roommates</p>	<p><u>ALH AS 47.33.230 (b)(3)</u> [Resident’s plan must describe] preference in roommates AKPH P&P No. 03.03. Assignment of residence rooms in the homes is based on the assessment of medical, physical, and behavioral issues, and gender of the resident. Private rooms are assigned by assessed need, not seniority. [Those] assigned to a private room are not assured that they will remain in a private room.</p> <p><u>FH</u> No reference</p>		<p>8/31/15 Alaska Pioneer Homes have a waiting list numbering in the thousands. Admission is on a first come, first serve basis. The average age of residents is 85 years.</p>
<p>freedom to furnish and decorate units within the lease/agreement</p>	<p><u>ALH 7 AAC 260 (a)(1)</u> [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the</p>		<p><i>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</i></p>

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	resident <u>FH</u> No reference to decorating 7 AAC 50.430 (h) [FH must allow child] to bring and acquire personal belongings		<i>receiving HCB services.</i>
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 (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. AKPH P&P No. 01.01. [Homes follow a] resident-centered care philosophy by honoring resident’s life experiences, choices, routines, and the spontaneity of daily life.</p> <p><u>FH</u> 7 AAC 50.430 (d) [Foster child to be treated equitably with foster parent’s own children] 7 AAC 50.440 (a) [Child must receive responsible supervision appropriate to age and developmental needs]</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
access to food at all times	<p><u>ALH 7 AAC.265 (a)</u> [ALH must offer three meals and at least one snack daily] AKPH Brochure “A Matter of Rights. [Residents may have microwave oven, pots for heating water, and small refrigerators in their rooms.]</p> <p><u>FH 7 AAC 50.460 (a)</u> [FH] shall ensure that all snacks and meals meet child care food program requirements of 7 CFR 226.20 [Minimum meal requirements] (g) [FH] may not deny a meal or snack to a child. OCS FH Handbook. [FH] must provide regular, balanced meals and snacks; may not deny meals or force/coerce child to eat.</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 (a)(4)(C)</u> [Res has right to visit] with persons of the resident’s choice, subject to visiting hours established by the home AKPH Brochure “A Matter of Rights. Residents are encouraged to receive guests; children are welcome.</p>		

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>FH 7 AAC 56.310 (a)(b) [Child must have opportunity for sibling visits and contact, and visits with extended family]</p>		
visitors at any time	<p>ALH AS 47.33.300 (a)(4)(C) [ALH may establish visiting hours] AKPH P&P No. 01.05 [Alaska Pioneer Homes have posted times when entrance doors are locked for security reasons; however, “in special circumstances”, accommodations may be made to allow access after doors are locked.</p>		
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 (b)(2)(A) [Dept. will pay for environmental modifications 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 ... <u>2. confirm that settings where services are to be provided are physically accessible for the recipient</u> 3. coordinate delivery of services 4. support independence... 5. teach how to evaluate ... 	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
<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 ~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>		<p>Develop regulations, or add settings requirements to Provider COP.</p> <p>Revise CC COP IV.B. POC; add: <u>4. Residential Setting</u> ~POC must identify place of residence chosen by recipient and that recipient has legally enforceable agreement ~Setting meets requirements ~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>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 ~location in a building on the grounds of, or immediately</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>	

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
adjacent to a public institution ~location that isolates recipients from the broader community of individuals who do not receive HCB services			

Appendix B

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

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

Setting name	
Setting address	
Services provided at setting	
Reviewer	Date
Notes:	
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? 	
<input type="checkbox"/> 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

Appendix C

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

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.

PART ONE

Home and community-based services settings

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

Instructions

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

For each setting where waiver services are provided to recipients

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

Setting quality: NON-INSTITUTIONAL CHARACTERISTICS

Federal regulation

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

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

Program impact

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

Self-assessment questions

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

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

No

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

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

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

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

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

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

Setting quality: COMMUNITY INTEGRATION AND SUPPORT FOR RECIPIENT PARTICIPATION

Federal regulation

42 CFR 441.301 (c)(4)(i) Home and community-based settings must be integrated in and support full access by recipients to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving waiver services.

Program impact

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

Self-assessment questions

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

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

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

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

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

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

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

Setting quality: SELECTION OF SETTING BY THE RECIPIENT

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

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

Yes

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

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

Yes

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

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

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

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

Yes

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

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

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

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

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

Yes

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

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

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

Yes

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

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

Yes

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

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

Federal regulation

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

Program impact

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

Self-assessment questions

- 16. Do all settings in which the agency provides waiver services facilitate recipient choice regarding**
- services and supports, and**
 - agency staff that provide those services and supports?**

Yes

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

END OF PART ONE

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

PART TWO

Provider-owned or -controlled residential settings: additional conditions

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

Instructions

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

For each setting where waiver services are provided to recipients

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

Setting quality: SELECTION OF SETTING BY THE RECIPIENT

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

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

Yes

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

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

Federal regulation

42 CFR 441.301 (c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the recipient, and the recipient has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.

Program impact

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

Self-assessment questions

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

Yes

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

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

Federal regulation

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

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

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

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

Program impact

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

Self-assessment questions

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

Yes

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

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

Yes

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

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

Yes

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

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

Yes

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

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

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

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

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

Yes

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

Setting quality: RECIPIENT RIGHT TO HAVE VISITORS AT ANY TIME

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

Setting quality: PHYSICAL ACCESSIBILITY FOR RECIPIENT

Federal regulation

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

Program impact

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

Self-assessment questions

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

Yes

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

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

Federal regulation

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

A specific and individualized assessed need

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

Program impact

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

Self-assessment questions

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

Yes

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

Appendix D

Evidence of Public Information and Opportunity for Public Comment



March 19, 2014

SDS E-Alert – Information Sharing Webinar: New CMS Regulations Governing Home and Community-Based Medicaid Waivers

Join Angela Salerno, Policy and Program Development Unit Manager, and SDS training staff for information about new CMS Home and Community Based Waiver regulations.

On March 17, 2014 new Centers for Medicare and Medicaid (CMS) regulations governing 1915(c) Medicaid waivers became effective. This webinar will cover the pertinent changes including amendments to the person-centered planning process, and new requirements for acceptable sites for delivery of home and community-based services.

There will be time for Q and A.

Audio for the session is available free of charge over your computer speakers or headset. Alternatively you may call on the phone for audio. The webinar system provides a long distance toll call number for the webinar. You would be charged regular long distance by your carrier.

REGISTER NOW

Title: *SDS Information Sharing Session: Introduction to New CMS HCB Waiver Regulations*
Date: Tuesday, April 1, 2014
Time: 1:30 PM - 3:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet



The new CMS regulations along with informational materials can be found at [Medicaid.Gov, Home and Community-Based Services](#).

This message is a follow-up to the March 19 E-Alert below. If you have already registered for the webinar, you do not have to re-register. Thank you.

March 19, 2014

SDS E-Alert – Information Sharing Webinar: New CMS Regulations Governing Home and Community-Based Medicaid Waivers

Join Angela Salerno, Policy and Program Development Unit Manager, and SDS training staff for information about new CMS Home and Community Based Waiver regulations.

On March 17, 2014 new Centers for Medicare and Medicaid (CMS) regulations governing 1915(c) Medicaid waivers became effective. This webinar will cover the pertinent changes including amendments to the person-centered planning process, and new requirements for acceptable sites for delivery of home and community-based services.

There will be time for Q and A.

Audio for the session is available free of charge over your computer speakers or headset. Alternatively you may call on the phone for audio. The webinar system provides a long distance toll call number for the webinar. You would be charged regular long distance by your carrier.

REGISTER NOW

Title: *SDS Information Sharing Session: Introduction to New CMS HCB Waiver Regulations*
Date: Tuesday, April 1, 2014
Time: 1:30 PM - 3:00 PM AKDT



April 4, 2014

SDS E-Alert – SDS Presentation on Changes to 1915(c) Medicaid Waiver Regulations

Attached is the April 1 SDS presentation on changes to federal regulations governing the Medicaid waiver program. The presentation is also available on the [SDS web](#).

On slide 11 of the presentation, the link provided for the CMS web page has been inoperable for two days. Please check back.

June 10, 2014

SDS E-Alert – CMS Regulations – Upcoming Meetings

SDS Information Sharing Session: Upcoming Meetings about New CMS HCB Waiver Regulations

REGISTER NOW



SDS Information Sharing Session

Join us for a Webinar on June 27

Join Angela Salerno, Health Program Mgr III and SDS management team. Learn a short history of the HCB waiver in Alaska, how to prepare for meaningful system change in response to the new CMS regulations, and how to get the most out of upcoming face to face meetings.

Audio for the session is available via the computer system speakers (VOIP). VOIP is free of charge. Alternatively you may call the phone number provided for audio instead of using the computer system. Please be aware that this is a long distance toll call.

Title: *SDS Information Sharing Session: Upcoming Meetings about New CMS HCB Waiver Regulations*

Date: Friday, June 27, 2014

Time: 11:00 AM - 12:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet

Space is limited.

Reserve your Webinar seat now at:

<https://www2.gotomeeting.com/register/707478314>

June 27, 2014

SDS E-Alert – Invitation to Community Forums on State Implementation of CMS Regulations

SDS is hosting a series of Community Forums to gather input from providers and other stakeholders on state implementation of the March 17, 2014 [CMS regulations](#). These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided.

Some of the topics we want to discuss:

- *How best to assess providers and settings for their home and community-based qualities;*
- *How to identify what makes a non-residential setting home and community-based;*
- *The practical issues around separating service planning from service provision;*
- *The role of care coordination/case management in SDS service system;*
- *Possible state statutory/regulatory strategies*

Dates/Locations

- August 18 – Fairbanks – *North Star Borough Assembly Chambers*
- August 19 – Kenai - *River Center*
- August 20 – Anchorage –*Anchorage Senior Center*
- August 21 – Juneau – *CBJ Assembly Chambers*
- August 22 – Statewide webinar/audio conference

You may also provide your input in writing at angela.salerno@alaska.gov , or call 465-4874.

Attached are documents (used during 6-27-14 webinar) containing additional information on the CMS regulations, the history of Medicaid waivers, and SDS guidance so far.

July 14, 2014

SDS E-Alert – UPDATE: Dates and Times for Community Forums on State Implementation of CMS Regulations

SDS is hosting a series of Community Forums to gather input from providers and other stakeholders on state implementation of the March 17, 2014 [CMS regulations](#). These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided.

Dates/Times/Locations

- Monday August 18, 1:30 – 3:00: Fairbanks – *North Star Borough Assembly Chambers*
- Tuesday August 19, 1:30 – 3:00: Kenai – *Kenai River Center*
- Wednesday August 20, 12:00 – 1:30: Anchorage – *Anchorage Senior Center*
- Thursday August 21, 1:30 – 3:00: Juneau – *City & Borough of Juneau Assembly Chambers*
- Friday August 22, 1:30 – 3:00: Statewide webinar/audio conference (registration information will be sent in a future E-Alert)

Some of the topics we want to discuss:

- *How best to assess providers and settings for their home and community-based qualities;*
- *How to identify what makes a non-residential setting home and community-based;*
- *The practical issues around separating service planning from service provision;*
- *The role of care coordination/case management in SDS service system;*
- *Possible state statutory/regulatory strategies*

You may also provide your input in writing at angela.salerno@alaska.gov , or call 465-4874.

August 14, 2014

SDS E-Alert – Reminder: Dates and Times for Community Forums on State Implementation of CMS Regulations

SDS is hosting a series of Community Forums to gather input from providers and other stakeholders on state implementation of the March 17, 2014 [CMS regulations](#). These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided.

Dates/Times/Locations

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- Thursday August 21, 1:30 – 3:00: Juneau – *City & Borough of Juneau Assembly Chambers*
- Friday August 22, 1:30 – 3:00: Statewide webinar/audio conference (registration information will be sent in a future E-Alert)

Some of the topics we want to discuss:

- *How best to assess providers and settings for their home and community-based qualities;*
- *How to identify what makes a non-residential setting home and community-based;*
- *The practical issues around separating service planning from service provision;*
- *The role of care coordination/case management in SDS service system;*
- *Possible state statutory/regulatory strategies*

You may also provide your input in writing at angela.salerno@alaska.gov , or call 465-4874

August 15, 2014

SDS E-Alert – Information Sharing: Community Input on New CMS Regs
SDS Information Sharing Session: Gathering Input about New CMS HCB Waiver Regulations

REGISTER NOW



SDS Information Sharing Session

Join us for a Webinar on August 22

SDS is hosting a statewide webinar to gather input from providers and other stakeholders on state implementation of the March 17, 2014 CMS regulations. These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided. Audio for the session is available via the computer system speakers (VOIP). VOIP is free of charge. Alternatively you may call the phone number provided for audio instead of using the computer system. Please be aware that this is a long distance toll call.

Title: *SDS Information Sharing Session: Gathering Input about New CMS HCB Waiver Regulations*

Date: Friday, August 22, 2014

Time: 1:30 PM - 3:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet

Space is limited.

Reserve your Webinar seat now at:

<https://www2.gotomeeting.com/register/765789554>



September 15, 2014

SDS E-Alert – CMS Regulation Update

Thank you to everyone who participated during the week of August 18th in the SDS community forums on implementation of the new CMS regulations.

These federal regulations require a “conflict-free” Medicaid waiver system with separation of care planning and monitoring from care provision, and home and community-based service settings that provide full access to the benefits of community living. Attached is a summary of questions asked and “themes” discussed at the community forums. Also attached is the community forum PowerPoint presentation.

The next phase of work is development and submission of Alaska’s “*Statewide Transition Plan.*” The plan is due to CMS on March 17, 2015. **This is not the date by which all system changes must be in place.** While federal regulations allow for up to five years for transition (March 17, 2019), in its transition plan, Alaska will have to justify the amount of transition time requested.

SDS must now verify that all individuals receiving Medicaid home and community-based services receive those services in integrated community settings appropriate to their needs. [Updated guidance from the Centers for Medicare and Medicaid](#) clarifies that states must conduct “site specific evaluations” of settings using the federal requirements as a basis.

SDS will employ a “provider self-assessment” survey during which agencies will evaluate every setting in which services are provided, both residential and non-residential. The survey will provide an opportunity for the agency to analyze the characteristics of their service settings, and to consider improvements to policies, procedures or the physical environment that would make the setting consistent with the CMS requirements. **Look for the setting self-assessment survey in the month of September.**

SDS will also conduct targeted assessments of those settings identified by SDS staff as possibly being out of compliance with federal requirements. SDS will contact those providers directly to arrange for site visits of identified settings. Again, the purpose of the site visit is to provide technical assistance regarding policies, procedures and specific setting qualities and characteristics.

Please note: SDS is now sending E-Alerts through an account set up exclusively for that purpose. If you have questions, please respond directly to this E-Alert. Thank you.

**Themes from Statewide Community Forums on New CMS Regulations
August 18-22, 2014**

Alaska Department of Health and Social Services - Division of Senior and Disabilities Services

Topic	Sub-topic	Questions/Comments
Care Coordination	Care coordination capacity	Expedite certification of care coordinators?
		What if there are not available care coordinators in a locality?
		System will lose care coordinators; loss of workforce
		Use of technology, telemedicine
		How will care coordinator be able to track quality of services in an independent agency?
		New agency care coordinators who must go independent need three years of supervisory experience.
	Care coordinator quality, coordination and oversight	Maximum caseloads
		Policy to hold recipients harmless if care coordinator disappears?
		Will parents be able to assess quality of care coordinator?
		Providers rely on care coordinators for timely POC so providers can bill for services
	Dealing with acuity	Cherry picking fear
		IDD, CCMC waivers require higher level of involvement
		High acuity recipients will fare worse
	Families	Family education about purpose of change
		Families are hesitant to seek care coordination services from those they do not know

Topic	Sub-topic	Questions/Comments
Care Coordination “Conflict-free” service system “		Loss of association with, support of agency will be detrimental for families.
		Long standing relationships between families and experienced care coordinators will end
	Roles/responsibilities	Distinguish between roles of provider and care coordinator in service planning
		What will the agency responsibility be in case planning? Care coordination;” vs. “case management”?
		How will an individual access a care coordinator
		Agencies that provide both - can they provide care coordination for recipients that don’t receive HCB services?
		Agency care coordinators have immediate access to recipients, which will be lost.
		Loss of care coordination within HCBS agency – loss of institutional knowledge and experience
		Grant and waiver service rules in alignment?
		<i>Medicaid Reform Advisory Group</i> redesign of care coordination system. Is the Dept. looking at incorporating their recommendations? More global planning than just for waiver services?
	Affiliation	Can agencies share administrative resources?
		Co-op, regional representation?
		Meaning of “conflict free” and “affiliation.”
		Rural communities – how will you separate service planning and provision?
		Will mentoring be allowed?
	Rates	Agencies have been “subsidizing” care coordination. Rate hike?

Topic	Sub-topic	Questions/Comments
Care Coordination		Rates for care coordination not sufficient to support independent care coordination
		Care coordinator workload will increase
HCBS settings	Full access to community living	Additional services may be needed
		What is "access enough"?
		What happens when guardian places restrictions on recipient access?
		Employment settings – need provider enterprise sites where people can "start the process" toward integrated employment settings.
	Recipient choice	How to ensure recipients have choice, are able to keep familiar caregivers
		Recipients with complex needs, behavior issues, and dementia need options that are more structured, restrictive
		Will "intentional community" be acceptable to CMS?
		Will there be exceptions to rules about food, visitors?
		Recipients with cognitive disabilities – what is the role of representative decision-makers?
	Recipient protections	Landlord/tenant vs. ALH regs: which takes precedence?
Will a rental agreement require ALH to accommodate a resident's increased need with additional services or personnel?		
Are "house rules" allowable? (mandatory in licensing regulations)		
Provider-run residences – CMS bias. How will State view them?		
Compliance & monitoring	Documentation	Adequacy of justification – who decides?
		How to verify if care coordinator is "statewide" or the "only available entity"

Topic	Sub-topic	Questions/Comments
		Documentation – by care coordinator around POC, and provider, day-to-day service provision?
Transition Plan	Process of developing transition plan	<p>Must have external participation</p> <p>Provider community needs to come together to strategize</p> <hr/> <p>AADD – ask for maximum time for transition – need to educate recipients and families</p> <hr/> <p>Anticipate growth in senior population</p>



October 2, 2014

New federal regulations governing the Medicaid waiver program require SDS to verify that all individuals receiving Medicaid home and community-based services receive those services in integrated community settings appropriate to their needs and that provide full access to the benefits of community living. [Updated guidance from the Centers for Medicare and Medicaid](#) clarifies that states must conduct “site specific evaluations” of settings using the federal requirements as a basis.

The first step in this verification process is the *Provider Self-Assessment of Settings* survey. All SDS-certified home and community-based provider agencies are asked to evaluate every setting in which services are provided, both residential and non-residential. The survey is designed to help educate providers regarding the provisions of the new regulations, and the accompanying documents provide clarifying information. In the process of conducting the survey, providers will analyze the characteristics of their service settings, and identify those improvements to policies, procedures or the physical environment that will make the setting consistent with the CMS requirements.

Please use this link to access the survey: <https://www.surveymonkey.com/s/RLNMHV5>

Also attached to this message is a “short form” survey (PDF version) that, prior to completing the survey, you may use to familiarize yourself with the questions, and a “settings quality checklist” with exploratory questions that may assist you in the analysis of your service settings. Also attached are “FAQs” that reflect CMS guidance on completing this phase of federal regulation implementation. The link to the survey and accompanying documents will also be available on the [SDS web](#).

Please complete the survey by October 31, 2014..

Thank you in advance for your participation. While it is the state’s responsibility to verify that all service sites meet federal home and community-based requirements, your participation is essential. Please complete the survey, and help SDS build a home and community-based service system that promotes independency, dignity and excellent quality of life for recipients.

Frequently Asked Questions Regarding Implementation of Federal Regulations Governing Home and Community-Based Settings for Recipients of Medicaid Waiver Services

Q1: The new regulations require that residents of a provider-owned or controlled residential setting have a locking “front door,” choice of roommates, freedom to furnish and decorate, the right to control their own schedule and activities, and be allowed to have visitors at any time. How will residential supported living and residential habilitation providers balance the practical needs of running a residential setting while allowing residents control of their environment? Can the home make exceptions?

A1: The new federal regulations at [42 CFR 441.301\(c\)\(4\)\(vi\)](#) (A) through (D) detail additional home and community-based characteristics of provider-owned or operated settings. Providers should assume that all residents must be given the opportunity to enjoy these “baseline” rights and freedoms. For example, an assisted living home that provides Residential Supported Living services may not impose “blanket” rules prohibiting overnight visitors or establishing a time for “lights out.”

If a provider or the resident’s representative wishes to make an exception and place restrictions on any of these rights or freedoms, regulations at [302\(c\)\(4\)\(vi\)\(F\)](#) clarify that any modification “must be supported by a specific assessed need and justified in the person-centered service plan.”

For example, a resident who experiences a cognitive disability may not have the capacity to safely manage their own schedule and activities, and visitors at any time may pose the danger of abuse or exploitation. If restrictions are to be imposed, the regulations in (F) of this section specify the process that must be documented, in the plan of care, before any setting modifications may be made.

Q2: “House rules” are a regulatory requirement of running an assisted living home. This seems like a conflict with the “recipient protections” found in the new CMS regulations.

A2: Reasonable house rules that respect all residents’ rights are an important part of assisted living home life. But restrictive, blanket house rules that needlessly constrain the resident’s rights or freedoms will put the home out of compliance with CMS regulations. The guiding principle of individualized planning according to each resident’s preferences and needs, including safety and security, remains.

Q3: I operate a small assisted living home that serves five individuals in a family home. I have never negotiated a “lease” with the residents – how do I proceed?

A3: The CMS regulations call for a “legally enforceable agreement” that could be a “lease, residency agreement or other form of written agreement.” Alaska statute at [47.33.210](#) governing assisted living homes requires the resident to enter into a “residential services contract” that may serve as the vehicle for resident protection if it addresses the eviction process and appeals comparable to those provided under landlord/tenant laws.

Q4: Some recipients who experience intellectual or developmental disabilities and who want to work need a workplace or other setting in which to test out their employment skills. Do the new regulations allow for employer-controlled employment settings where recipients can start the employment process in a more sheltered environment?

A4: No. The federal regulations at [42 CFR 441.301\(c\)\(5\)](#), *Settings that are not Home and Community-Based*, include “any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution..” This directive, coupled with Alaska’s Medicaid waiver regulations and Conditions of Participation, prohibit SDS from paying for Supported Employment services in sheltered workshops or sheltered enclaves that employ only people with disabilities, or that segregate individuals with disabilities from the larger community. Regulations at [7 AAC 130.270\(b\)\(2\)\(A\)](#) state that Supported Employment services are available (only) at worksites where individuals without disabilities are employed. The opening statement/definition of Supported Employment found in the [COP](#) states “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.”

Regulations governing Supported Employment services do allow for up to three months of job preparation services, which can include “pre-employment” activities that may take place in a non-integrated setting.



The *Provider Self-Assessment of Settings* survey is to be completed by the provider agency administrator or their designee. If your agency provides any home and community-based services through any of the four Medicaid waivers, please complete the survey. **Independent care coordinators, and agencies that provide care coordination only do not complete the survey.**

This phase of work involves only service provider agencies as they assess their service settings in light of the new CMS regulations. SDS is still in the process of working with the provider community on development of an action plan for implementation of “conflict-free case management” which will involve care coordinators.

October 2, 2014

New federal regulations governing the Medicaid waiver program require SDS to verify that all individuals receiving Medicaid home and community-based services receive those services in integrated community settings appropriate to their needs and that provide full access to the benefits of community living. [Updated guidance from the Centers for Medicare and Medicaid](#) clarifies that states must conduct “site specific evaluations” of settings using the federal requirements as a basis.

The first step in this verification process is the *Provider Self-Assessment of Settings* survey. All SDS-certified home and community-based provider agencies are asked to evaluate every setting in which services are provided, both residential and non-residential. The survey is designed to help educate providers regarding the provisions of the new regulations, and the accompanying documents provide clarifying information. In the process of conducting the survey, providers will analyze the characteristics of their service settings, and identify those improvements to policies, procedures or the physical environment that will make the setting consistent with the CMS requirements.

Please use this link to access the survey: <https://www.surveymonkey.com/s/RLNMHV5>

Also attached to this message is a “short form” survey (PDF version) that, prior to completing the survey, you may use to familiarize yourself with the questions, and a “settings quality checklist” with exploratory questions that may assist you in the analysis of your service settings. Also attached are “FAQs” that reflect CMS guidance on completing this phase of federal regulation implementation. The link to the survey and accompanying documents will also be available on the [SDS web](#).

Please complete the survey by October 31, 2014..

Thank you in advance for your participation. While it is the state’s responsibility to verify that all service sites meet federal home and community-based requirements, your participation is essential. Please complete the survey, and help SDS build a home and community-based service system that promotes independency, dignity and excellent quality of life for recipients.

October 10, 2014

SDS E-Alert – Info Sharing Session: *Provider Self-Assessment of Sites Survey*

SDS Information Sharing Session: New CMS HCB Waiver Regulations - Q&A on "Provider Self-Assessment of Sites" Survey

REGISTER NOW



SDS Information Sharing Session

Join us for a Webinar on October 15

SDS is hosting a statewide webinar to answer questions from providers on the SDS "Provider Self-Assessment Survey of Sites."

Audio for the session is available via the computer system speakers (VOIP). VOIP is free of charge. Alternatively you may call the phone number provided for audio instead of using the computer system. Please be aware that this is a long distance toll call.

Title: *SDS Information Sharing Session: New CMS HCB Waiver Regulations - Q&A on "Provider Self-Assessment of Sites" Survey*
Date: Wednesday, October 15, 2014
Time: 1:30 PM - 3:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees
Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees
Required: Mac OS® X 10.6 or newer

Mobile attendees
Required: iPhone®, iPad®, Android™ phone or Android tablet

Space is limited.

Reserve your Webinar seat now at:

<https://www2.gotomeeting.com/register/592969306>

Frequently Asked Questions Regarding Implementation of Federal Regulations Governing Home and Community-Based Settings for Recipients of Medicaid Waiver Services

Provider Self-Assessment of Settings Survey

Q5: Why are you asking providers to complete the Provider Self-Assessment of Settings survey?

A5: New federal regulations require the state to verify that every recipient of Medicaid waiver services is receiving those services in a CMS-defined “home and community-based setting,” and we need your help. This self-assessment is your opportunity to understand the new federal regulations, and to look objectively at the way the services you provide either integrate, or isolate recipients in their homes and communities. SDS is asking providers to analyze and assess their service settings to see if they meet, or could be modified to meet, the CMS regulatory requirements. The self-assessment survey will also be the state’s primary source of data for gauging system-level compliance with the setting requirements.

Q6: Is this the only way SDS will verify that agencies are in compliance with the setting requirements?

A6: No. Early in the process the SDS Provider Certification and Compliance Unit began identifying agency sites that, according to the CMS guidance needed additional scrutiny. SDS staff are making informal, technical assistance site visits to see agency facilities, discuss agency policy, and suggest strategies for compliance.

Q7: Is completing the survey mandatory?

A7: Completing the survey is not mandatory, but will help providers, in light of new requirements, to evaluate their service settings and develop changes in policy or the setting physical environment to promote full access to the benefits of community living. SDS will also continue to make informal visits if concerned about a site’s home and community-based qualities.

Q8: What will happen if I do indicate in the survey that one or more of our agency service settings may have deficiencies in home and community-based qualities as defined by CMS?

A8: SDS will respond with technical assistance in the form of proposals for policy changes or changes in the setting physical environment. In some cases SDS and the provider will develop a “Plan of Correction” with timelines set for completion. SDS will also integrate the new CMS setting requirements into State regulations, *Conditions of Participation* and ongoing provider certification and quality assurance efforts.

Q9: My agency serves individuals in their own homes. Are these settings subject to CMS setting requirements?

A9: A recipient’s residence, if not owned or operated by a provider, is not subject to CMS setting requirements. Therefore a provider who offers a service, (e.g., chore services, home-delivered meals) in a recipient’s residence, is not required to complete the survey for that service. If a recipient’s residence is owned or operated by a provider, it must meet CMS setting requirements and afford the recipient their personal rights to enjoy their home the same as any renter who is not receiving Medicaid home and community-based services.



October 16, 2014

SDS E-Alert –*Provider Self-Assessment of Settings Survey Due Date Extended*

SDS apologizes for the technical difficulties and failure of the 10/15/14 *Provider Self-Assessment of Service Settings* webinar. The webinar will be rescheduled for the week of October 27. Registration information will be sent by E-Alert on Monday October 20.

Because of this delay, the due date for the Survey is extended to November 14th. We apologize for the inconvenience.



November 7, 2014

Thanks to everyone who participated in the October 27th webinar on the *Provider Self-Assessment of Settings Survey*.

To access the survey, please go to the [SDS web](#) front page where you'll find the link and additional resources." Please complete the survey by November, 14, 2014.

Attached are the webinar slides and "FAQ II", a compilation of webinar questions and answers. These FAQs follow the first Q&A guidance on HCBS settings, now on the [SDS web](#).



SDS E-Alert - Open Letter to Providers, Recipients and their Families, and other Stakeholders in the Medicaid Waiver Program Regarding New CMS Regulations

In this letter, Director Duane Mayes offers information on SDS progress understanding and implementing the new Centers for Medicare and Medicaid (CMS) regulations governing the Medicaid waiver program. Please share the attached letter (the text of the letter is below) with staff, families and other interested stakeholders.

Dear friends:

The Division of Senior and Disabilities Services (SDS) manages four Medicaid waivers that provide access to home and community-based services for low-income Alaskans who are elderly, or experience a physical, intellectual or developmental disability. On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicaid waiver program, released new regulations that will require significant changes to the way services are provided through the Medicaid waiver program.

First, the regulations define and describe the qualities and characteristics of a “home and community-based setting,” and make it a requirement that all waiver services, in order to be considered for reimbursement, must be provided in settings that have these qualities. The state must develop a “transition plan” that informs CMS regarding the state’s current level of compliance, as well as the specific actions the state will take to meet the requirements. The state must submit this plan to CMS no later than March 17, 2015, one year after the regulations were issued. SDS is in the process of working with providers toward this goal, and is confident that the transition to the new setting requirements will be complete within the maximum five-year transition period.

Also, the new regulations go farther than ever before in mandating the requirements for “person-centered planning,” the process by which waiver recipients and their supporters develop a plan of care (POC) and freely choose service providers. The changes in regulation reflect the belief that recipients have real choice of providers only if that choice is made free from provider influence or pressure. To achieve this “conflict-free case management” as it is described by CMS, provider agencies that offer case management services (or care coordination, as we now call it in our waiver system) may not also provide any other waiver services. There is one exception. If any locality has only one agency willing and able to serve waiver recipients, the state will waive the “conflict-free” requirements and allow the agency to provide both case management and other waiver services.

We understand that news of these changes, especially the transition to “conflict-free case management,” is causing concern in our community of stakeholders. Care coordinators working at agencies that also offer waiver services face uncertainty about future employment. Families worry about losing long-term, successful relationships with care coordinators, and agencies are anticipating big changes to the way they do business. In response, SDS is working with a group of providers, including representatives of the Alaska Association on Developmental Disabilities (AADD) and AGENET, to develop a plan to address these issues and effect changes that will accommodate recipients and their families, assure stability in our service system, and meet the new federal mandates.

A few specific clarifications:

- *March 15, 2015 is the date by which the state must submit to CMS its “transition plan,” not the date on which conflict-free case management must be in place in Alaska. SDS is in discussion with CMS regarding the transition, and will inform stakeholders on further progress and deadlines;*
- *Conflict-free case management allows, but does not require case managers to be “sole practitioner” entities; a group of two or more care coordinators may work together in a care coordination agency;*
- *SDS understands the challenges of verifying that an agency in a certain locality is the only agency willing and able to provide waiver services. We are working with providers to devise a system to manage this exception and ensure stability in the system;*
- *SDS considered the option of using existing “Community Developmental Disability” and “Older Alaskans” grant funds to build capacity for independent case management in Alaska. Discussions with providers convinced us that this strategy may have destabilizing effects on services currently funded through grants, and we have abandoned this strategy for at least two years.*

Thanks to all the providers, provider agency board members, recipients and families who have participated in our efforts to inform you about the new CMS regulations as well as our collaborative efforts to meet the new challenges the regulations bring. Please feel free to write or call me directly, or, you may also contact Jon Sherwood at 465-5481, jon.sherwood@alaska.gov, or Angela Salerno at 465-4874, angela.salerno@alaska.gov.

Sincerely,



Duane G. Mayes, MS CDMS CRC

Director

Division of Senior & Disabilities Services

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VP: 206-452-5853

888-735-0513

January 21, 2015

SDS E-Alert – SAVE THE DATE – Opportunity for Public Comment on State of Alaska CMS Regulation Transition Plan

On Monday, January 26, SDS will release its draft CMS regulation “Transition Plan.” The Plan outlines the state’s process for assessing provider and state readiness for new federal regulations at CFR 42 441(c)(4) *Home and Community-Based Settings*, as well as its plan for coming into compliance. The Plan will be available for public comment from January 26th through February 28th. Information on submitting written comment will follow.

This January 30th webinar is an opportunity for questions and oral public comment.

CMS Regulation Transition Plan- Opportunity for Public Comment

Join us for a webinar on Jan 30, 2015 at 1:30 PM AKST.

Register now!

<https://attendee.gotowebinar.com/register/5376033880690811906>

Join Angela Salerno, Manager, Policy and Program Development Unit, Senior and Disabilities Services, for an opportunity to comment on the draft Transition Plan. Learn about proposed State regulation changes that will bring the state into compliance.

After registering, you will receive a confirmation email containing information about joining the webinar.

. Choose one of the following audio options:

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If you prefer to use your phone, you must select "Use Telephone" after joining the webinar and call in using the numbers below.

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January 26, 2015

SDS E-Alert – CMS Regulation Transition Plan Available for Public Comment

In accordance with CFR 42 §441.301(c)(6) the State of Alaska offers this *Transition Plan* for public comment. The Plan outlines the state's process for assessing provider and state readiness for new federal regulations at CFR 42 441(c)(4) *Home and Community-Based Settings*, as well as its plan for coming into compliance. The Plan will be available for public comment from January 26th through February 28th, and may be modified in response to public comment.

Please send written comments to Angela Salerno, Manager, Policy and Program Development
by mail: PO Box 110680, Juneau, AK 99811-060
by electronic mail: angela.salerno@alaska.gov

Interested individuals may also provide oral comment during a statewide webinar on Friday, January 30th, 1:30 – 3:00.

If you plan on attending, please register for the webinar at the following address, whether or not you plan to offer comment:

<https://attendee.gotowebinar.com/register/5376033880690811906>

Choose one of the following audio options for the webinar:

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September 15, 2015

SDS E-Alert – Revised *Transition Plan for Home and Community-Based Service Settings* Available for Public Comment; Webinar

SDS has revised its *Transition Plan for Home and Community-Based Services* as required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics..

On January 26, 2015, SDS published for public comment the draft *Transition Plan for Home and Community-Based Services*. On March 17, 2015, SDS submitted the draft plan to the Centers for Medicare and Medicaid Services (CMS) for review. The *Transition Plan* underwent two levels of CMS review, one to verify that the required elements were present in the *Plan*, the second to evaluate the state's process for verifying the home and community-based nature of all settings where waiver services are delivered. On July 9, 2015, SDS received the CMS review and response.

The *Plan* successfully passed the first review, but not the second. In its evaluation, CMS found that, because the response rate to the *Provider Self-Assessment of Settings* was inadequate, SDS had not sufficiently verified that every setting in which services are provided have home and community-based characteristics. To be in compliance with federal regulation, SDS has revised the *Transition Plan* to include implementation of an additional process to successfully verify the home and community-based nature of all waiver service settings, and to remediate non-compliant settings. In addition, CMS found deficiencies in the SDS review and evaluation of current waiver regulations and *Conditions of Participation*. SDS has re-evaluated waiver, assisted living home, foster care, and associated regulations for a more comprehensive assessment of amendments needed to bring the state into compliance with federal regulation.

The revised *Plan* is attached to this E-Alert, and is also available on the [SDS web](#) and on the [State of Alaska On-Line Public Notice](#) system. SDS will accept public comment on the *Plan* until 5:00 pm, October 15. Please send written comments to:

Jetta Whittaker
PO Box 110680
Juneau, AK 99811-0680 or
jetta.whittaker@alaska.gov

The original *Plan* is also available for review in the [SDS News Archives](#).

SDS will also host a webinar on Tuesday, September 29, 1:30 – 3:00 to provide more information and take oral public comment. To register for the webinar:

<https://attendee.gotowebinar.com/register/3829630155004210946>

Fairbanks Daily NewsMiner

Notice of Opportunity for Public Comment:

Statewide Transition Plan for Home and Community- Based Services

The Department of Health and Social Services, Division of Senior and Disabilities Services (SDS) has revised its Transition Plan for Home and Community-Based Services required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics.

SDS will accept public comment on the Transition Plan until 5:00 pm, October 15. Please send written comments to:

Jetta Whittaker

PO Box 110680

Juneau, AK 99811-0680
or

jetta.whittaker@alaska.gov

The revised Plan available on the State of Alaska On-Line Public Notice system and the SDS web. The original Transition Plan is also available for review in the SDS News Archives.

SDS will also host a webinar on Tuesday, September 29, 1:30 – 3:00 to provide more information and take oral public comment. To register for the webinar:

<https://attendee.gotowebinar.com/register/3829630155004210946>

Published: September 20, 2015



**Notice of Opportunity for Public Comment:
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Juneau, AK 99811-0680 or jetta.whittaker@alaska.gov

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Anchorage Daily News

Notice of Opportunity for Public Comment: Statewide Transition Plan for Home and Community-Based Services

The Department of Health and Social Services, Division of Senior and Disabilities services (SOS) has revised its Transition Plan for Home and Community-Based Services

required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics.

DS will accept public comment on the Transition Plan until 5:00 pm, October 15.

Please send written comments to: Jetta Whittaker

PO Box 110680

Juneau, AK 99811-0680 or jetla.whitlaker@alaska.gov

The revised Plan available on the State of Alaska On-Line Public Notice system and the SOS web. The original Transition Plan is also available for review in the SDS News Archives.

SOS will also host a webinar on Tuesday, September 29, 1:30 – 3:00b provide more information and take oral public comment. To register for the webinar: <https://atlandee.gotowebinar.com/register/3829630155004210946>

Tribal Consultation Notice

Revised Transition Plan for Home and Community-Based Services September 15, 2015

The Department of Health and Social Services, Division of Senior and Disabilities Services (SDS) has revised its *Transition Plan for Home and Community-Based Services* required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics.

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To be in compliance with federal regulation, SDS has revised the *Transition Plan* to include implementation of an additional process to successfully verify the home and community-based nature of all waiver service settings, and to remediate non-compliant settings. In addition, CMS found deficiencies in the SDS review and evaluation of current waiver regulations and *Conditions of Participation*. SDS has re-evaluated waiver, assisted living home, foster care, and associated regulations for a more comprehensive assessment of amendments needed to bring the state into compliance with federal regulation.

The revised *Plan* is attached, and is also available on the [SDS web](#). SDS will accept public comment on the *Plan* until 5:00 pm, October 15. Please send written comments to:

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