

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.