



**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

[Updated September 14, 2015](#)

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.

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

Part 2

EVALUATION OF STATE COMPLIANCE WITH NEW FEDERAL REGULATIONS

To evaluate compliance with federal requirements for home and community-based settings, SDS undertook a comprehensive review of its service philosophy and state regulations, and a project to assess the characteristics of settings in Alaska. The project sought to identify non-compliant settings through an internal review of certified providers and a review performed by the providers themselves. SDS made in-person site visits to review providers with possibly isolating settings and to review supported employment workplaces.

Review of the SDS Mission, Vision, and Principles

The State 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

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

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

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

1. [SDS internal review: 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 for the CMS 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 at the [SDS website](#), as are links to a variety of home and community-based settings training materials, including a *Settings Checklist and Exploratory Questions, Frequently Asked Questions*, a PDF version of the survey itself, and copies of the training webinar PowerPoint presentation.

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.

Part 3

STATE PLAN FOR ACHIEVING COMPLIANCE WITH FEDERAL REGULATIONS

Amendment of state regulations and *Conditions of Participation*

Through its internal review of regulations and evaluation of home and community-based service settings, SDS has determined that amendments to regulations governing the waiver program and to provider standards in the SDS *Conditions of Participation* will bring ~~the state~~ 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 number of Alaska provider agencies that do not appear to be in full compliance were identified through settings assessment activities, SDS found that the majority of services locations in Alaska have the required qualities of home and community-based settings. SDS will provide technical assistance to bring those agencies lacking the full range of settings qualities to ensure services are provided to recipients in settings with the required home and community-based characteristics.

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

Revised Transition plan timeline

<p align="center">Home and community-based services settings</p> <p align="center">Alaska transition plan</p>		
Time	Activity	Outcome
2015	SDS internal review and revision of the transition plan	Internal comment incorporated
January 6 - 23		
January 26 - February 28	Public comment period for the transition plan	Stakeholder input gathered, documented and incorporated into transition plan
January 30	Stakeholder workshop on transition plan and regulation changes	Stakeholder input gathered/documented; incorporated in transition plan
March 1 - 15	Transition plan finalized; submitted to CMS for approval	State in full compliance with CMS transition plan requirements
June—July	Public comment period for proposed regulation amendments	Stakeholder input gathered/incorporated in proposed regulations
August/July - September	SDS <u>amends Transition plan in response to CMS review</u> internal review of revised regulations	SDS <u>input incorporated in revised regulations</u> SDS <u>develops revised process for verifying HCB characteristics of all service settings</u>
October— November/September 15 – October 15	Public comment period for the <u>Transition plan</u> Revised regulations forwarded to Department of Law	Stakeholder input gathered, documented and incorporated into transition plan <u>Review and revisions by Regulation Attorney</u>
September 28	Stakeholder workshop on transition plan and regulation changes	Stakeholder input gathered/documented; incorporated in transition plan
October 15 - 17	Transition plan finalized; submitted to CMS for approval	State in full compliance with CMS transition plan requirements
October - December	Revised regulations forwarded to <u>Office of the Lieutenant Governor</u> <u>Completion of provider remediation plans</u> SDS <u>begins development of new</u>	Review by final authority Providers identified through assessment in compliance

	<u>settings review and remediation process including provider “home and community-based setting verification report and remediation plan”</u>	
2016	<u>SDS revises waiver regulations to incorporate federal requirements</u>	State regulations in full compliance with federal regulations
January - <u>April</u>	<u>Lieutenant Governor certifies regulations</u>	
<u>May - July</u>	<u>SDS develops Provider training curriculum regarding HCB settings regulations</u>	Providers fully informed regarding settings requirements
<u>July 1 - ongoing</u>	<u>SDS offers HCB settings training and assistance with remediation plan development</u>	<u>Providers understand regulations, how to remediate settings and come into compliance with state and federal requirements</u>
	<u>Revised waiver regulations adopted and in effect</u>	
	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
<u>July 1</u>		

Part 4

PUBLIC COMMENT AND RESPONSE

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Appendix A

Review of Statute and Regulation

This section revised in response to CMS review

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

Purpose

The purpose of this evaluation was to

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

Review

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

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.

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
<p>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</p>			<p><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></p>
<p>opportunities to seek employment and work in competitive integrated settings</p>	<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>		<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></p>

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

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>		

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

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>		

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

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>	<p>Revise CC COP IV.B.1.b. to read, provide information about options, <u>including those available in non-disability specific settings,</u></p> <p><u>i. for medical, social, educational, and other services; and</u></p> <p><u>ii. for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient’s resources for room and board, and whether those resources would</u></p>	

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		<u>cover the cost of a private unit in the recipient’s chosen residential setting.</u>	
option for a private unit in a residential setting		Revise CC COP IV.B.1.b. to read, “provide information about options, <u>including those available in non-disability specific settings</u> , i. for medical, social, educational, and other services”; and ii. <u>for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient’s resources for room and board, and whether those resources would cover the cost of a private unit in the recipient’s chosen residential setting.</u>	<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>
options documented in service plan	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.	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	<i>6/5/14 CMS clarified that all settings considered, and why they were not chosen, must be documented in POC.</i>

HCB Final Rule Setting Requirements/Alaska Regulations Evaluation

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
options based on needs and preferences	<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>		
residential setting options based on resources for room and board		<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 <u>ii. for residential services, if such services are of interest to or</u></p>	

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		<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>	
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			
privacy	<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>		

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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>		

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	<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>		
freedom from coercion/restraint	<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>		

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	<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>		

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	<p>(d) - (j) [List of prohibited practices, including restraint and isolation (except under limited circumstances)]</p> <p>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]</p> <p>(1) promote participation in the community and increased independence through training and support ...</p> <p>(2) [recognize the right of the resident to evaluate and choose ... when making decisions re abilities, preferences, and service needs]</p> <p>(b) [Resident’s plan must describe]</p> <p>(3) resident’s preferences in ... recreational activities, religious affiliation</p> <p>(4) – (5) [ADLs needing assistance and how assistance will be provided]</p> <p><u>FH 7 AAC 50.430 (c)</u> [FH to provide structure and daily</p>		

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	<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>

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	<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>		

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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>		

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	<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>		
42 CFR 441.301 (c)(4)(vi) [Applies to provider-owned or -controlled settings]			
42 CFR 441.301 (c)(4)(vi) (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied			
under a legally enforceable agreement similar to landlord/tenant law of jurisdiction	<p><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)]</p> <p><u>7 AAC 56.500</u> [For FH placements, agency shall develop a</p>		AS 34.03.010 – 34.03.260 Landlord/Tenant Act applicable to rental of a residence.

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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>ALH AS 47.33.210 (b)(3) [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>FH 7 AAC 56.300 (a) [Agency shall provide] a written statement or pamphlet indicating client and agency rights and responsibilities 7 AAC 56.500 (b)(4) [Agreement must include delineation of the respective roles and responsibilities of all parties . . .]</p>		<p>AS 43.03.20 Rental agreement may be written or verbal; may include conditions not prohibited by L/T Act or by law. 43.03.120 Tenant obligations</p>
agreement must address recipient protections from eviction	<p>ALH AS 47.33.210 (b)(4) [Residential services contract must set out policies/procedures for termination of contract] AS 47.33.360 [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>		<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</p>

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	<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>		
42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where HCB services are provided.			
privacy in unit	<p>ALH AS 47.33.300 (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>		
unit entrance doors lockable by the recipient	<p>ALH No reference</p> <p>AKPH P&P No. 01.05. Home entrance doors are locked for security reasons after visiting</p>		

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	<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>		
only appropriate staff having keys to the unit entrance doors	<p><u>ALH</u> No reference</p> <p><u>FH</u> No reference</p>		
choice of roommates	<p><u>ALH 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>		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.
freedom to furnish and decorate units within the lease/agreement	<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>		<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>

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	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>		

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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.</i></p> <p><i>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.</i></p> <p><i>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>		

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	FH 7 AAC 56.310 (a)(b) [Child must have opportunity for sibling visits and contact, and visits with extended family]		
visitors at any time	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.		
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 ... 	

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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			
<ul style="list-style-type: none"> ~specific and individualized assessed need ~positive interventions and supports used prior to any modification ~less intrusive methods of meeting the need tried, but did not work ~condition that lead to the specific assessed need ~regular collection/ review of data to measure the ongoing effectiveness ~times for review of data to determine continuation/termination of modification ~informed consent of the recipient ~assurance of no harm to recipient resulting from modifications 		<p>Develop regulations, or add settings requirements to Provider COP.</p> <p>Revise CC COP IV.B. POC; add: <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>	
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			
<ul style="list-style-type: none"> ~location in a building that is a publicly or privately operated facility that provides inpatient institutional treatment ~location in a building on the grounds of, or immediately 	<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>	

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adjacent to a public institution ~location that isolates recipients from the broader community of individuals who do not receive HCB services			