



# Statewide Transition Plan for Compliance with Home and Community-Based Services Final Rule

State of Indiana  
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## References

- [CMS Home and Community-Based Services](https://www.medicaid.gov/medicaid/hcbs/index.html) URL address <https://www.medicaid.gov/medicaid/hcbs/index.html>
- [Division of Aging](http://www.in.gov/fssa/2329.htm) URL address <http://www.in.gov/fssa/2329.htm>
- [Division of Disability and Rehabilitative Services](http://www.in.gov/fssa/2328.htm) URL address <http://www.in.gov/fssa/2328.htm>
- [Division of Mental Health and Addiction](http://www.in.gov/fssa/dmha/index.htm) URL address <http://www.in.gov/fssa/dmha/index.htm>
- [Family and Social Services Administration Calendar](https://calendar.in.gov/) URL address <https://calendar.in.gov/>
- [Indiana Home and Community-Based Services Final Rule](https://secure.in.gov/fssa/da/4917.htm) URL address <https://secure.in.gov/fssa/da/4917.htm>

## PURPOSE

On March 17, 2014, the Centers for Medicare & Medicaid Services (CMS) issued regulations that define the settings in which it is permissible for states to pay for Medicaid Home and Community-Based Services (HCBS) known as the HCBS Settings Final Rule. The purpose of these regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated and that support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as individuals who do not receive HCBS. These changes will maximize the opportunities for participants in HCBS programs to have access to the benefits of community living and to receive services in the most integrated setting.

States must ensure all HCBS settings comply with the new requirements by completing an assessment of existing state standards including rules, regulations, standards, policies, licensing requirements, and other provider requirements to ensure settings comport with the HCBS settings requirements. States must submit a transition plan to CMS that includes timelines and deliverables for compliance with 42 CFR 441.301(c) (4) (5), and Section 441.710(a) (1) (2). States must be in full compliance with the federal requirements by the time frame approved in the transition plan but no later than March 17, 2023. More information on the rules can be found on the CMS website at: [CMS Home and Community-Based Services](#).

The Indiana Family and Social Services Administration (FSSA) has created a Statewide Transition Plan (STP) to assess compliance with the HCBS Final Rule and identify strategies and timelines for coming into compliance with it as it relates to all FSSA HCBS programs. Indiana's initial STP (version 1) was submitted to CMS for review and approval in December 2014. In October 2015, CMS responded to Indiana's STP with a request for supplemental information, noting it was not approved by CMS at that time. Through guidance from CMS, Indiana submitted a modified STP (version 2) in April 2016 that provided additional detail from systemic assessments and incorporated changes related to October 2015 guidance from CMS. In September 2016 and per CMS requirement, Indiana submitted an amended STP (version 3) with the results of its site-specific assessments along with detailed plans for remediation, heightened scrutiny, ongoing monitoring, and relocation processes. During that time, CMS requested technical corrections for Indiana's STP systemic assessments in order to receive initial approval. CMS did not require this version to be submitted for public comment. Indiana submitted a technical corrections revision of the STP (version 4) in October 2016. In November 2016, CMS requested a few additional technical corrections. Indiana submitted version 5 of the STP on November 4, 2016. On November 8, 2016, CMS granted initial approval to Indiana's STP for the systemic portion of the plan. CMS requested additional edits for the site-specific assessment portion of the STP. Indiana submitted version 6 of the STP in March 2017 with additional updates and details for remediation, heightened scrutiny, ongoing monitoring, and relocation processes. In August 2017, CMS requested technical corrections for Indiana's STP for consideration of final approval. CMS did not require this version to be submitted for public comment. Indiana submitted version 7 of the STP to CMS on September 29, 2017. On December 1, 2017, CMS requested technical corrections for consideration of final approval. As a result of a directive from the Secretary, Indiana paused its efforts towards becoming compliant with the Final Rule to allow all divisions an opportunity to regroup to better reflect the partnerships between FSSA, other agencies, and key stakeholders, including CMS, and to better understand how to meet our members' needs. As of May 1, 2018, all efforts have resumed, and Indiana's plan is to resubmit the STP for final approval. Indiana submitted version 8 to CMS in October 2018, and CMS responded to Indiana with additional guidance and requests for additional information to be included in the STP. Indiana submitted version 9 to CMS in August 2019, and is resubmitting version 9 to CMS in March 2020, and December 2021 to answer questions CMS had with regard to version 9.

### Overview of the Settings Provision.

The HCBS Final Rule requires that all home and community-based settings meet certain criteria. These include:

- The setting is integrated in and supports full access to the greater community;
- The setting is selected by the individual from among setting options;
- Each individual has a right to privacy, is treated with dignity and respect, and is free from coercion and restraint;
- Provides individuals independence in making life choices; and
- The individual is given choice regarding services and who provides them.

In residential settings owned or controlled by a service provider, additional requirements must be met:

The individual has a lease or other legally enforceable agreement providing similar protections;

- Each individual must have privacy in their living unit including lockable doors;
- Individuals sharing a living unit must have choice of roommates;
- Individuals must be allowed to furnish or decorate their own sleeping and living areas;

- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

Any modification to these additional requirements for provider-owned home and community-based residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

The HCBS Final Rule clarifies settings in which home and community-based services cannot be provided. These settings include: nursing facilities, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospitals.

It is not the intention of CMS or FSSA to take away any residential options or to remove access to services and supports. The intent of the federal regulation and the Indiana transition plan is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community.

## FSSA PROGRAMMATIC IMPACT

FSSA as the single state Medicaid agency is comprised of five divisions, all of which play a role in the operation, administration, and reimbursement of HCBS. The Division of Family Resources determines Medicaid eligibility. The Office of Medicaid Policy and Planning (OMPP) develops medical policy, ensures proper reimbursement of Medicaid services, and acts as the administrative authority for all HCBS programs. The remaining three divisions, listed below, operate multiple programs including Medicaid HCBS programs. The programs currently under review include 1915(c) HCBS Waivers and 1915(i) State Plan benefits operated by the following divisions within the FSSA:

### Division of Aging (DA)

- Aged & Disabled (A&D) Waiver – IN.210
- Traumatic Brain Injury (TBI) Waiver – IN.4197

### Division of Disability and Rehabilitative Services (DDRS)

- Community Integration and Habilitation (CIH) Waiver – IN.378
- Family Supports Waiver (FSW) – IN.387

### Division of Mental Health and Addiction (DMHA)

#### Youth Services

- Child Mental Health Wraparound Services (CMHW) – TN No. 12-013

#### Adult Services

- Behavioral and Primary Healthcare Coordination (BPHC) – TN No. 13-013
- Adult Mental Health Habilitation (AMHH) – TN No. 12-003

The following pages include plans presented by each of the three FSSA divisions that operate Indiana's HCBS programs. Each division is presenting a customized plan, including methods and timelines that best suit their operations as well as their members and stakeholder groups. Although each plan is unique, they each include the following fundamental steps of the process necessary to comply with the HCBS Final Rule:

- A systemic assessment of HCBS programs, service definitions, rules and policies addressing all settings including both residential and non-residential.
- Site-specific assessment plans to determine whether the setting complies with the HCBS Final Rule.
- Remediation plans for issues discovered in systemic and site-specific assessments including plans for heightened scrutiny and relocation of members.
- Description of data collection to validate assumptions.
- Quality assurance processes to ensure ongoing compliance.
- Involvement of key stakeholders, associations, advocacy groups and members throughout the process of transition plan development through public comment.

Individuals who are enrolled in and receiving services from one of the HCBS programs may also be referred to in this STP as participants, members, beneficiaries, consumers, individuals, or clients.



## DIVISION OF AGING (DA)

### HCBS Programs Aged and Disabled (A&D) Waiver – 1915(c) Traumatic Brain Injury (TBI) Waiver – 1915(c)

#### SECTION 1: SETTINGS INCLUDED IN THE STP

The DA's analysis of settings where HCBS are provided has included:

- A crosswalk of Indiana Statute, Indiana Administrative Code (IAC), HCBS policy;
- A self-survey of residential providers to assess operating practices, waiver participation levels and general adherence to HCBS rule principles;
- Review of licensing rules and regulations, recently noted statute governing housing with services establishment (IC 12-10) is added to this analysis; and
- Site surveys of all assisted living (AL), adult day service (ADS), and adult family care (AFC).

The DA has determined the following waiver services can be presumed to fully comply with the regulatory requirements because they are individualized services provided in a residential setting that is not provider owned or controlled.

- **Attendant Care (A&D, TBI):** Assistance with activities of daily living.
- **Behavior Management/Behavior Program and Counseling (TBI):** Specialized therapies to address behavioral needs.
- **Care/Case Management (A&D, TBI):** Coordination of other waiver services, assuring freedom of choice and person-centered planning.
- **Community Transition (A&D, TBI):** Funds to purchase household needs for participants transitioning into their own home.
- **Environmental Modification Assessment (A&D, TBI):** Support to assure that home modifications are effective and efficient.
- **Environmental Modifications (A&D, TBI):** Home modifications to meet the participant's disability-related needs.
- **Healthcare Coordination (A&D, TBI):** Specialized medical support for participants with complex medical needs.
- **Home Delivered Meals (A&D, TBI):** Nutritional meals for participants who are unable to prepare them.
- **Homemaker (A&D, TBI):** Assistance with cleaning and routine household tasks.
- **Nutritional Supplements (A&D, TBI):** Liquid supplements such as "Boost" or "Ensure."
- **Personal Emergency Response System (A&D, TBI):** Medical emergency alert systems for participants who spend time alone.
- **Pest Control (A&D, TBI):** Pest extermination services when health and safety is compromised.
- **Residential Based Habilitation (TBI):** Specialized therapies in the home setting.
- **Respite Home Health Aide/ Respite Nursing (A&D, TBI):** Respite services are services that are provided temporarily or periodically in the absence of the usual caregiver. Service may be provided in the following locations: in an individual's home or in the private home of the caregiver.
- **Specialized Medical Equipment and Supplies (A&D, TBI):** Adaptive equipment and supplies to help participants live more independently.
- **Structured Family Caregiving (A&D):** A living arrangement in which a participant lives in his or her private home or the private home of a principal caregiver who may be a related or unrelated individual who is not the participant's spouse, the parent of the participant who is a minor, or the legal guardian of the participant; support services are provided by the principal caregiver (family caregiver) as part of structured family caregiving; only agencies may be structured family caregiving providers, with the structured family caregiving settings being approved, supervised, trained, and paid by the approved agency provider. Per CMS request, the DA has conducted initial assessments and validations of SFC settings where the waiver participant resides in the home of a non-family member. The DA evaluation included phone interviews where the caregiver and participant were asked about their experience in the setting specifically in regards to whether the setting has the characteristics of HBCS; for those interviews that presented concerns that the site was not HCBS, an on-site visit was conducted by the DA. The interviews touched on all criteria for provider-owned and controlled settings. The DA spoke, via phone, solely to participants. In order to

further minimize the likelihood that an unrelated caregiver was present during the interview, participants were not told a time to expect the call. During evaluation and validation, the DA determined there are 58 provider-owned and controlled SFC settings. All 58 settings have now been assessed, and one of those settings required an on-site visit. The visit revealed the setting did not require remediation. Through ongoing compliance reviews, all provider-owned and controlled SFC settings will be assessed and validated for Settings Rule compliance.

- **Transportation (A&D, TBI):** Rides to assist participants in accessing community services, activities, and resources identified in the service plan.
- **Vehicle Modifications (A&D, TBI):** Modifications to vehicles to meet a participant’s disability-related need.

It is not the intention of CMS or DA of Indiana to take away any residential options, or to remove access to services and supports. The intent of the federal regulation and the Indiana transition plan is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. The DA has identified five services which are provided in provider-owned settings:

- **Adult Family Care (A&D, TBI):** Residential services provided in a family-like setting; the AFC homes are approved to serve not more than four participants in a home-like setting in a residential community with a live-in caregiver.
- **Adult Day Services (A&D, TBI):** Activities provided in a group setting, outside the home.
- **Assisted Living (A&D, TBI):** Residential services offering an increased level of support in a home or apartment-like setting.
- **Structured Day Program (TBI):** Activities and rehabilitative services provided in a group setting outside the home.
- **Supported Employment (TBI):** Supported employment includes activities needed to sustain paid work by individuals receiving waiver services, including supervision and training. Supported employment is conducted in a variety of settings, particularly worksites where persons without disabilities are employed. Can be provided one-on-one or in a group setting.

## SECTION 2: SYSTEMIC ASSESSMENT

DA’s systemic assessment process included a thorough review of all applicable regulations in Indiana:

- [455 IAC 2](#) – DA administrative code currently covering all HCBS service providers and settings
- [455 IAC 3](#) – DA administrative code currently covering AL providers under DA Medicaid waivers
- [410 IAC 16.2](#) – Indiana State Department of Health (ISDH) residential care facility (RCF) licensure rules (all Medicaid waiver AL providers are required to be licensed by ISDH)
- DA Medicaid Waiver Provider Reference Module – provider manual for DA’s Medicaid waiver programs
- [IC 12-10-15](#) – Indiana code on housing with services establishments which requires a registration process and imposes other requirements on both licensed and unlicensed AL communities in Indiana.
- [IC 12-10-11.5-8](#) – Indiana code for AL facilities that prohibits the DA from requiring certain features in the “home and community based services program” in regards to assisted living providers.

DA completed a preliminary review in 2015 followed by a more thorough legal review in early 2016. Following the completion of part of the site surveys, DA revisited the systemic assessment related to AL providers in particular. At that time, IC 12-10-15 was added to the review. Significant conflicts with 410 IAC 16.2 were noted. The extent of this conflict was highlighted as the site survey process was underway. DA’s final systemic review and crosswalk is now complete.

**Systemic Assessment Crosswalk**

**Federal Requirement:** Settings are integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>No reference is made to community integration activities or employment in the current provider rule.</p>	<p>455 IAC 2 will be open for review and is applicable to residential and non-residential settings; language to be added includes:</p> <p>DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add to its rule additional language to specify required characteristics of HCBS settings to include that settings are integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.</p> <p>DA will add to its rule that AFC services include: “transportation for community activities that are therapeutic in nature or assist with maintaining natural supports; participant-focused activities appropriate to the needs, preferences, age, and condition of the individual participant; ... and therapeutic social and recreational programming.”</p> <p>DA will add to its rule that AFC providers must ensure that a participant has the ability to: come and go in and out of the home when they choose; have guests when they choose; control their own schedule and choose to participate in activities or not; and participate in activities outside the adult family care.</p> <p>DA will add to its rule that AL facilities are required to ensure that a participant has the ability to: come and go from the facility when they chose, have guests when they choose; control own schedule and choose whether to participate in activities; participate in activities outside the facility; and receive services in the community.</p> <p>DA will add to its rule that assisted living AL services include transportation for community</p>	<p>January 2023</p>



<p><a href="#">Current DA Assisted Living Rule 455 IAC 3</a>                  455 IAC 3-1-6 (g) The provider shall provide services in a manner that:                  (1) makes the services available in a homelike environment for recipients with a range of needs and preferences;                  (2) facilitates aging in place by providing flexible services in an environment that accommodates and supports the recipient’s individuality; and                  (3) Supports negotiated risk, which includes the recipient’s right to take responsibility for the risks associated with decision making.</p>	<p>Partially complies</p>	<p>activities that are therapeutic in nature or assist with maintaining natural supports; are participant focused and appropriate to the needs, preferences, age and condition of the individual; and therapeutic social and recreational programming.</p>	<p>January 2023</p>
<p><a href="#">455 IAC 3-1-2 (18)</a> “Homelike” means an environment that has the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one’s living area to suit one’s individual preferences, which promotes the dignity, security, and comfort of recipients through the provision of personalized care and services to encourage independence, choice, and decision making by the recipients. A homelike environment also provides recipients with an opportunity for self-expression and encourages interaction with the community, family, and friends.</p>	<p>Does not specifically address employment opportunity.</p>	<p>455 IAC 3 will be updated to comply.</p>	
<p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2(b)                  “Residents have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Residents have the right to exercise their rights as a resident of the facility and as a citizen or resident of the United States.”                   410 IAC 16.2-5-1.2(t) Residents have the right to manage their personal affairs and funds. When the facility manages these services, a resident may, by written request, allow the facility to execute all or part of his or her financial affairs.</p>	<p>Partially complies</p> <p>This addresses need for activities but is silent on community integration. References to employment rights is more focused on protecting the individual</p>	<p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA will establish a memorandum of understanding (MOU) with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by <a href="#">IC 16-28-1-10</a>.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>MOU between ISDH and FSSA/DA – February 2017.</p> <p>January 2023</p>

410 IAC 16.2(z)

Residents have the right to:

- (1) refuse to perform services for the facility;
- (2) perform services for the facility, if he or she chooses, when:
  - (A) the facility has documented the need or desire for work in the service plan;
  - (B) the service plan specifies the nature of the duties performed and whether the duties are voluntary or paid;
  - (C) compensation for paid duties is at or above the prevailing rates; and
  - (D) the resident agrees to the work arrangement described in the service plan.
- (s) “Residents have the right to manage their personal affairs and funds. When the facility manages these services, a resident may, by written request, allow the facility to execute all or part of his or her financial affairs. Management does not include the safekeeping of personal items...”
- (dd) “The facility shall provide reasonable access to any resident, consistent with facility policy, by any entity or individual that provides health, social legal, and other services to any resident, subject to the resident’s right to deny or withdraw consent at any time.”
- (ff) “Residents have the right to participate in social, religious, community services, and other activities of their choice that do not interfere with the rights of other residents at the facility.”

410 IAC 16.2-5-7.1 Activities programs

Sec. 7.1. (a) The facility shall provide activities programs appropriate to the abilities and interests of the residents being served.

(b) The facility shall provide and/or coordinate scheduled transportation to community-based activities.

[DA Medicaid Waiver Provider Reference Module](#)

Silent

No reference is made to community integration activities or employment in the current provider manual, *i.e.* reference module.

DA will add additional language to specify required characteristics of HCBS settings to include that settings are integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.

Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.

HCBS settings language added in 2018, and any new service updates are reflected in the module on an ongoing basis. The module has

		Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.	been brought up to date and was published in October 2020.
		Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.	
<a href="#">Housing with Services IC 12-10-15</a>	Partially complies	455 IAC 2 and 3 are being updated and replaced with a provider and participant rule that addresses all facets of the settings rule, including employment. They will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.	January 2023
IC 12-10-15-9(c)(2) the ability of a resident to engage in activities away from the establishment regardless of the time, duration, and distance of the activities may not be restricted;	Language supports integration in the greater community and control of personal resources. Does not specifically address employment.		
<a href="#">Assisted Living IC 12-10-11.5-8</a>	Silent. No reference to community integration.	Community integration will be addressed in the updated provider/participant rules	January 2023

**Federal Requirement:** Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">Current DA Provider Rule 455 IAC 2</a> 455 IAC 2-17-1 A provider of case management services shall have the following information about an individual receiving case management services: (1) The needs and wants of an individual, including the following: (A) Health. (B) Welfare. (C) Wishes for self-directed care. (2) The array of services available to an individual whether the services are available under this article or are otherwise available.	Partially compliant	455 IAC 2 will be open for review; language to be added includes: DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”  DA will add to its rule the following definitions:  Case Management defined – “Case management means a comprehensive service including, but not limited to, the following, assisting participants in the establishment of a person centered service plan.”  Person centered service planning process defined: “Person centered service planning process has the meaning set forth in 42 CFR 441.301 (c) (1).”  Person centered service plan defined: “Person centered service plan has the meaning set forth in 42 CFR 441.301(c) (2).”	January 2023

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		<p>DA will add additional language to specify required characteristics of HCBS settings to include that settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>DA will add to its rule - Person Centered Service Plan; Service Coordination - (b) at a minimum of every ninety (90) days, the case manager, using the ninety (90) day monitoring tool, will review service deliverables as determined by the person-centered plan, to determine if participant's assessed needs are being addressed and assess whether the participant is satisfied that the services meet their needs and goals. As necessary, the case manager will assist the participant with updating the person-centered service plan. The case manager must conduct the first face-to-face assessment with the participant in the home. The case manager must conduct at least two of the four required assessments in the home.</p> <p>(c) All case managers must:</p> <ul style="list-style-type: none"><li>(5) coordinate services;</li><li>(6) share information on the participant's well-being as required by the participant's person-centered plan;</li><li>(7) collaborate with the participant's other providers; and</li><li>(8) collaborate with other authorized entities.</li></ul> <p>(d) the participant or their legal representative and any persons chosen by the participant are the only individuals that may assist with the development of the participant's person centered service plan.</p> <p>DA will add to its rule- General Direct Care Service Standards: A provider shall:</p> <ul style="list-style-type: none"><li>(1) develop person-centered service plan specific to participants' assessed needs;</li><li>(2) allow decision-making and self-determination to the fullest extent possible;</li><li>(3) provide services that maintain or enhance a participant's quality of life and promotes participant:<ul style="list-style-type: none"><li>(A) privacy;</li><li>(B) dignity;</li><li>(C) choice;</li><li>(D) independence; and</li><li>(E) individuality.</li></ul></li><li>(b) SFC, AFC, and AL providers shall maintain a safe, clean, and comfortable living environment.</li></ul>	
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<p><a href="#">Current DA AL Rule 455 IAC 3</a>                  455 IAC 3-1-8(d) “The provider shall ensure the service plan:                  (1) includes recognition of the recipient’s capabilities and choices and defines the division of responsibility in the implementation of services;                  (2) addresses, at a minimum, the following elements:                  (A) assessed health care needs;                  (B) social needs and preferences;                  (C) personal care tasks; and                  (D) limited nursing and medication services, if applicable, including frequency of service and level of assistance;                  (3) is signed and approved by:                  (A) the recipient;                  (B) the provider;                  (C) the licensed nurse;                  (D) the case manager; and                  (4) Includes the date the plan was approved.”</p>	<p>Partially complies</p> <p>Language supports recognition of personal preferences but does not address all elements person centered planning nor does it reference offering setting options to individuals.</p>	<p>DA will add to its rule - AL Service Plan – “The provider shall provide the intensity and level of services as outlined in the participant’s person centered service plan.”</p> <p>455 IAC 3 will be updated to comply.</p>	<p>January 2023</p>
<p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a></p>	<p>Silent</p> <p>Not applicable to this requirement. Case management would be responsible for assuring that the individual is provided with setting options and the person centered planning process.</p>	<p>This will be addressed under the settings rule and update provider/participant rules</p>	<p>January 2023</p>
<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p> <p>Page 23 - Medicaid waiver case managers coordinate and integrate all services required in a participant’s person centered service plan, link participants to needed services, and ensure that participants continue to receive and benefit from services. Waiver case managers enable participants to receive a full range of services needed due to a medical condition in a planned, coordinated, efficient, effective manner.</p> <p>Page 26, 16. Case managers will ensure that person centered planning is occurring on an ongoing basis....                  18. Case managers will base the service plan upon the individual’s needs, strengths, and preferences.</p>	<p>Partially complies</p> <p>Language does support person centered planning but does not specifically reference documentation of the need to offer setting options.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>

<p><a href="#">Housing with Services IC 12-10-15</a></p>	<p>Silent</p> <p>Case management would be responsible for assuring that the individual is provided with setting options and the person centered planning process.</p>	<p>settings requirements during semi-annual updates.</p> <p>The DA provider and participant rules are being revised to ensure settings meet all facets of the Settings Rule, including enforcing the selection of non-disability settings options</p>	<p>January 2023</p>
<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p>	<p>Silent</p> <p>Case management would be responsible for assuring that the individual is provided with setting options and the person centered planning process.</p>	<p>The DA provider and participant rules are being revised to ensure settings meet all facets of the Settings Rule, including enforcing the selection of non-disability settings options</p>	<p>January 2023</p>

**Federal Requirement:** Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a>                      455 IAC 2-8-1 “Each provider will inform individuals of their right to exercise any or all guaranteed rights without:                      (1) restraint;                      (2) interference;                      (3) coercion;                      (4) discrimination; or                      (5) threat of reprisal”</p>	<p>Partially complies</p> <p>Language is silent on rights of privacy, dignity, and respect but does address freedom from coercion and restraint.</p>	<p>455 IAC 2 will be open for review; language to be added includes:</p> <p>DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.</p> <p>DA will add to its rule that providers must inform participants, or participants’ legal representative of their right to be free from:                      (1) restraint;                      (2) interference;                      (3) coercion;                      (4) discrimination; and                      (5) threat of reprisal;                      by the provider and its employees                      The AL facility must assure that the participant has freedom from coercion, restraint and seclusion.</p>	<p>January 2023</p>

<p><a href="#">Current DA AL Rule 455 IAC 3</a></p> <p>455 IAC 3-1-8(b) -- A provider shall:                  (1) promote the ability of recipients to have control over their time, space, and lifestyle to the extent that the health, safety, and well-being of other recipients is not disturbed;                  (2) promote the recipient's right to exercise decision making and self-determination to the fullest extent possible;                  (3) provide services for recipients in a manner and in an environment that encourages maintenance or enhancement of each recipient's quality of life and promotes the recipient's:                  (A) privacy;                  (B) dignity;                  (C) choice;                  (D) independence;                  (E) individuality; and                  (F) decision making ability; and                  (4) provide a safe, clean, and comfortable homelike environment allowing recipients to use their personal belongings to the extent possible.</p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2-5-1.2 (c)                  "Resident have the right to exercise any or all of the enumerated rights without: (1) restraint; (2) interference; (3) coercion; (4) discrimination; or (5) threat of reprisal by the facility. These rights shall not be abrogated or changed in any instance, except that, when the resident has been adjudicated incompetent, the rights devolve to the resident's legal representative. When a resident is found by his or her physician to be medically incapable of understanding or exercising his or her rights, the rights may be exercised by the resident's legal representative."                  (d) Residents have the right to be treated with consideration, respect, and</p>	<p>Fully complies as 455 IAC 2, discussed above, applies to all providers and requires providers to tell individuals about their freedom from coercion and restraint.</p> <p>Does not comply</p> <p>Restraints are permitted as part of treatment for medical symptoms.</p>	<p>DA will add to its rule that the AL services provider shall provide services that assure "freedom from coercion and from chemical or physical restraint of the participant."</p> <p>DA will add to its rule that the AFC provider must assure that the participant has freedom from coercion and restraint.</p> <p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>A RCF license will not be required to participate in the new program. Standards, through rulemaking, will be developed to support a new certification system for these providers that will be administered through DA and not ISDH. Additionally, ISDH is under a state statutory mandate at IC 16-28-2-11 to update their administrative rules to comply more fully with HCBS settings.</p>	<p>MOU between ISDH and FSSA/DA – February 2017.</p> <p>January 2023</p>
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<p>recognition of their dignity and individuality.</p> <p>410 IAC 16.2-5-1.2(u) “Residents have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms.”</p> <p>410 IAC 16.2-5-1.2(v)(6) – “Residents have the right to be free from ...involuntary seclusion.”</p> <p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p> <p>AFC service definition, page 32: “...goal is to preserve the dignity, self-respect, and privacy of the participant by ensuring high-quality care in a non-institutional setting.”</p> <p>AL service definition, page 36: “...Care must be furnished in a way that fosters the independence of each individual to facilitate aging in place. Routines of care and service delivery must be individual-driven to the maximum extent possible and must treat each person with dignity and respect.”</p> <p><a href="#">Housing with Services IC 12-10-15</a></p> <p><a href="#">Assisted Living IC 12-10-11.5-8</a></p> <p>(d) The office may not do any of the following concerning assisted living services provided in a home and community based services program:</p> <ul style="list-style-type: none"> <li>(5) Require a housing with services establishment provider to separate an agreement for housing from an agreement for services.</li> <li>(7) Preclude the use of a shared bathroom between adjoining or shared units if the participants consent to the use of a shared bathroom.</li> </ul>	<p>Partially complies</p> <p>Does reference privacy, dignity, and respect in AL and AFC settings but not in the broader spectrum of all HCBS.</p> <p>Silent</p> <p>Code does not mention specifically respect, dignity, or privacy protections or freedom from coercion or restraints.</p> <p>Partially compliant</p> <p>Settings rules do not require a separate agreement for housing and for services. Individuals must have privacy; shared bathrooms should include locks.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p> <p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule in order to reflect all facets of the Settings Rule. This will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p> <p>DA reviews all service agreements to ensure they include tenant protections pursuant to Indiana landlord tenant laws. DA requires that all of these agreements are legally enforceable.</p> <p>DA will ensure that facilities have locking doors in shared bathrooms and private units. Remediation plan and validation activities by the DA will ensure individual privacy. The updated participant and provider rule will have the requirement for freedom from coercion and privacy</p>	<p>Reference Module reviewed for inclusion of HCBS settings language – in progress and will be compliant by next update.</p> <p>Reference Module updated to reflect any changes to waiver services or programs – ongoing. Next update: September 2021.</p> <p>January 2023</p> <p>January 2023</p>
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**Federal Requirement:** Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>Current rule does not reference individual initiative, autonomy, or independence in life choices with respect to their daily activities.</p>	<p>455 IAC 2 will be open for review; language to be added includes:</p> <p>DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>DA will add to its rules that under the general direct care services standards, provider shall “allow decision-making and self-determination to the fullest extent possible; and “provide services that maintain or enhance a participant’s quality of life and promotes participant:</p> <ul style="list-style-type: none"> <li>(A) privacy;</li> <li>(B) dignity;</li> <li>(C) choice;</li> <li>(D) independence; and</li> <li>(E) individuality.”</li> </ul> <p>DA will add to its rule that an AL service provider shall provide services in a manner that “support negotiated risk, which includes the participant’s right to take responsibility for the risks associated with decision making.”</p>	<p>January 2023</p>
<p><a href="#">Current DA AL Rule 455 IAC 3</a></p> <p>455 IAC 3-1-2 (11) “Choice” means a recipient has viable options that enable him or her to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility to provide opportunities for recipients to select where and how to spend time and receive personal assistance.</p> <p>(18) “Homelike” means an environment that has the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one’s living area to suit one’s individual preferences, which promotes the dignity, security, and comfort of</p>	<p>Partially complies</p> <p>Language is nearly compliant but is not clear on choice to interact with whom the individual choses.</p>	<p>455 IAC 3 will be updated to comply.</p>	<p>January 2023</p>



<p>recipients through the provision of personalized care and services to encourage independence, choice, and decision making by the recipients. A homelike environment also provides recipients with an opportunity for self-expression and encourages interaction with the community, family, and friends.</p> <p>(20) “Independence” means being free from the control of others and being able to assert one’s own will, personality, and preferences within the parameters of the house rules or residency agreement.</p> <p>455 IAC 3-1-6                  (g) The physical environment and the delivery of AL Medicaid waiver services shall be designed to enhance autonomy in ways which reflect personal and social values of dignity, privacy, independence, individuality, choice, and decision making of recipients. The provider shall provide services in a manner that:</p> <p>(1) makes the services available in a homelike environment for recipients with a range of needs and preferences;</p> <p>(2) facilitates aging in place by providing flexible services in an environment that accommodates and supports the recipient’s individuality; and</p> <p>(3) supports negotiated risk, which includes the recipient’s right to take responsibility for the risks associated with decision making.</p>			
<p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2(b)                  “Residents have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.”</p>	<p>Partially complies</p> <p>Rule does not specifically address individual control of schedule in daily activities.</p>	<p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>An RCF license will not be required to participate in the new program. Standards, through rulemaking, will be developed to support a new certification system for these providers that will be administered through DA and not ISDH. Additionally, ISDH is under a state statutory mandate at IC 16-28-2-11 to update their administrative rules to comply more fully with HCBS settings. DA will add additional language to specify required characteristics of HCBS settings to include that settings optimize, but do not regiment, individual initiative, autonomy, and</p>	<p>MOU between ISDH and FSSA/DA – February 2017.</p> <p>January 2023</p> <p>HCBS settings language was added in</p>
<p><a href="#">DA Medicaid Waiver Provider Reference Module</a>                  AFC service definition, page 32:                  “...goal is to preserve the dignity, self-</p>	<p>Partially complies</p> <p>Does reference independence in care routines in AL and</p>		

<p>respect, and privacy of the participant by ensuring high-quality care in a non-institutional setting.”                  AL service definition, page 36:                  “...Care must be furnished in a way that fosters the independence of each individual to facilitate aging in place. Routines of care and service delivery must be individual-driven to the maximum extent possible and must treat each person with dignity and respect.”</p>	<p>AFC settings but not in the broader spectrum of all HCBS.</p>	<p>independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
<p><a href="#">Housing with Services IC 12-10-15</a>                  IC 12-10-15-9(c)(2) the ability of a resident to engage in activities away from the establishment regardless of the time, duration, and distance of the activities may not be restricted;                  (3) except to protect the rights and activities of other residents, the housing with services establishment may not restrict the ability of the resident to have visitors and to receive family members and guests;</p>	<p>Partial complies</p> <p>While language is supportive of individual choice and autonomy in activities away from the setting and in the ability to have visitors, it is not strong enough to insure that individuals will autonomy, and independence in making life choices including but not limited to, daily activities, and physical environment.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>
<p><a href="#">Assisted Living IC 12-10-11.5-8</a>                  (d) The office may not do any of the following concerning assisted living services provided in a home and community based services program:                  (1) Require the installation of a sink in the kitchenette within any living unit of an entity that participated in the Medicaid home and community based service program before July 1, 2018.</p>	<p>Compliant</p> <p>Individual must have control of his/her own schedule including access to food at any time.</p>	<p>DA will ensure that facilities do not construe this to mean facilities can restrict an individual from freely accessing food as he or she wishes.</p> <p>The updated provider rule will be the source of this requirement. Remediation plan and validation activities along with ongoing compliance efforts and complaint resolution will allow for initial and ongoing enforcement.</p>	<p>January 2023</p>

**Federal Requirement:** Settings facilitate individual choice regarding services and supports, and who provides them.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">Current DA Provider Rule 455 IAC 2</a>	Silent	455 IAC 2 will be open for review; language to be added includes:	

<p><a href="#">Current DA AL Rule 455 IAC 3</a>                  455 IAC 3-1-6(h) If requested by a recipient, the provider will assist a recipient and a recipient’s case manager in obtaining, arranging, and coordinating services outlined in a recipient’s plan of care that are not AL Medicaid waiver services.</p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2-5-0.5(c)                  ...The provision by a licensed home health agency of medication administration or residential nursing care in a facility which provides room, meals, a laundry, activities, housekeeping, and limited assistance in activities of daily living does not require the facility to be licensed, regardless of whether the facility and the home health agency have common ownership, provided, however, that the resident is given the opportunity to contract with other home health agencies at any time during the resident’s stay at the facility.                  (d) Notwithstanding subsection (f), a resident is not required to be discharged if receiving hospice services through an appropriately licensed provider of the resident’s choice.</p> <p>(j) Residents have the right to the following:                  (1) Participate in the development of his or her service plan and in any updates of that service plan.                  (2) Choose the attending physician and other providers of services, including arranging for on-site health care services unless contrary to facility policy. Any limitation on the resident’s right to choose the attending physician or service provider, or both, shall be clearly stated in the admission agreement. Other providers of services, within the content of this subsection, may include home health care agencies, hospice care services, or hired individuals.</p>	<p>While there are references to individual choice and the provider selection process, the manual fails to specifically note individual choice regarding services and supports, and who provides them.</p> <p>Partially complies</p> <p>Additional language is need to specify choice of providers.</p> <p>Partially complies</p> <p>Language provides for choice of providers but does not require the setting to facilitate that choice.</p>	<p>DA will add language that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that settings facilitate individual choice regarding services and supports, and who provides them.</p> <p>455 IAC 3 will be updated to comply.</p> <p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>January 2023</p> <p>January 2023</p> <p>MOU between ISDH and FSSA/DA – February 2017.</p> <p>January 2023</p>
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<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>While there are references to individual choice and the provider selection process, the manual fails to specifically note individual choice regarding services and supports, and who provides them.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that settings facilitate individual choice regarding services and supports, and who provides them.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
<p><a href="#">Housing with Services IC 12-10-15</a> IC 12-10-15-9(c) (4) except as stated in the contract and identified in the disclosure document, an operator may not:</p> <p>(A) restrict the ability of a resident to use a home health agency, home health provider, or case management service of the resident’s choice; or</p> <p>(B) Require a resident to use home health services.</p>	<p>Partially complies</p> <p>Language provides for choice of providers but does not require the setting to facilitate that choice.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the settings rule. The updated rule will draw authority from IC 12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023.</p>
<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p>	<p>Silent</p> <p>The statute does not specifically note individual choice regarding services and supports, and who provides them</p>	<p>The settings rule and the updated provider rule are the source of authority for this requirement. The state will ensure individual choice through remediation plan and validation activities, along with ongoing compliance efforts and complaint resolution.</p>	<p>January 2023</p>

**Federal Requirement:** In provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>Current rule language does not reference requirement agreement or lease.</p>	<p>455 IAC 2 will be open for review; language to be added includes: DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a</p>	<p>January 2023</p>

<p><a href="#">Current DA AL Rule 455 IAC 3</a>                  455 IAC 3-1-6 (2) Should a recipient require more intense AL Medicaid waiver services (a higher level of services) than the provider is approved to provide, or require services more intense than level 3, the provider shall assist the recipient in transferring to a more appropriate setting and shall observe all discharge requirements of 410 IAC 16.2-5.</p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2-5-1.2(e) Residents have the right to be provided, at the time of admission to the facility, the following:                  (1) A copy of his or her admission agreement...                  (5) The facility’s policy on voluntary termination of the admission agreement by the resident, including the disposition of any entrance fees or deposits paid on admission. The admission agreement shall include at least those items provided for in IC 12-10-15-9.</p> <p>410 IAC 16.2-5-0.5(e)                  (f) The resident must be discharged if the resident:                  (1) is a danger to the resident or others;</p>	<p>Does not comply</p> <p>Language forces compliance with 410 IAC 16.2-5 discharge requirements which conflict with landlord/tenant agreement requirements.</p> <p>Does not comply</p> <p>Language is not comparable to landlord/tenant protections. Repeated references to “discharge” and “transfer” do not reflect appropriate tenant/participant rights. Requirements for allowable discharge or transfer inside or outside of the setting do not offer protections comparable to landlord/tenant agreements.</p>	<p>community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has similar responsibilities and protections from eviction as all tenants under landlord/tenant law. A lease, residency agreement or other written agreement is in place providing protections comparable to those provided under the jurisdiction’s landlord tenant law.</p> <p>DA will add to its rule that the AFC provider must assure that the participant has a “lease or other legally enforceable agreement that address eviction procedures and is consistent with or comparable to applicable State and local landlord tenant laws.”</p> <p>DA will add to its rule that the AL service provides must assure that the participant has a “lease or other legally enforceable agreement that address eviction procedures and is consistent with or comparable to applicable State and local landlord tenant laws.”</p> <p>455 IAC 3 will be updated to comply.</p> <p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>January 2023</p> <p>MOU between ISDH and FSSA/DA – February 2017.</p> <p>January 2023</p>
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(2) requires twenty-four (24) hour per day comprehensive nursing care or comprehensive nursing oversight;  
(3) requires less than twenty-four (24) hour per day comprehensive nursing care, comprehensive nursing oversight, or rehabilitative therapies and has not entered into a contract with an appropriately licensed provider of the resident's choice to provide those services;  
(4) is not medically stable; or  
(5) meets at least two (2) of the following three (3) criteria unless the resident is medically stable and the health facility can meet the resident's needs:  
(A) Requires total assistance with eating.  
(B) Requires total assistance with toileting.  
(C) Requires total assistance with transferring.

410 IAC 16.2-5-1.2(r)  
(4) Health facilities must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:  
(A) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;  
(B) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;  
(C) the safety of individuals in the facility is endangered;  
(D) the health of individuals in the facility would otherwise be endangered;  
(E) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or  
(F) the facility ceases to operate.

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<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>Current rule language does not reference requirement agreement or lease.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
<p><a href="#">Housing with Services IC 12-10-15</a>                  IC 12-10-15-9                  Sec. 9. (a) Each resident or the resident’s representative must be given a complete copy of the contract between the establishment and the resident or the resident’s representative and all supporting documents and attachments and any changes whenever changes are made.</p> <p>(b) A housing with services establishment contract must include the following elements in the contract or through supporting documents or attachments in clear and understandable language:</p> <p>(4) Supportive services under arrangement with the operator.                  (5) The term of the contract....                  (9) A description of the process through which the contract may be modified, amended, or terminated.                  (10) A description of the housing with services establishment’s complaint resolution process available to the residents....                  (15) The billing and payment procedures and requirements....</p> <p>(c) The housing with services establishment contract must state that:</p>	<p>Partially complies</p> <p>It is unclear that the level of protection is comparable to landlord/tenant arrangements. That can be clarified in administrative rule.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participants rule. The provider rule will be updated for this particular requirement. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>

<p>except where the resident’s safety or the health or safety of others are endangered, an operator shall provide at least thirty (30) days’ notice to the resident or the resident’s designated representative before terminating the resident’s residency.</p> <p><a href="#">Assisted Living IC 12-10-11.5-8</a></p> <p>(d) The office may not do any of the following concerning assisted living services provided in a home and community based services program:                  (5) Require a housing with services establishment provider to separate an agreement for housing from an agreement for services.</p>	<p>Compliant</p> <p>Settings rules do not require a separate agreement for housing and for services.</p>	<p>The DA reviews all service agreements in new and existing assisted living settings. Settings that do not comply with these protections will not be considered compliant with the Settings Rule and will not be allowed to serve waiver participants either immediately, if a new setting, or after March 2023 if an existing facility. The authority is the Settings Rule and the new provider rule will contain this requirement as well.</p> <p>DA reviews all service agreements to ensure they include tenant protections pursuant to Indiana landlord tenant laws. DA requires that all of these agreements are legally enforceable.</p>	<p>January 2023</p>
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**Federal Requirement:** In provider-owned or controlled residential settings, each individual has privacy in their sleeping or living unit.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>Current rule does not reference privacy in individual’s sleeping or living unit.</p>	<p>455 IAC 2 will be open for review; language to be added includes:                      DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, each individual has a choice for privacy in their sleeping or living unit.</p> <p>DA will add to its rule that AFC allows an individual to choose to reside with a full-time caregiver in a home owned, rented or managed by the AFC provider. The provider must assure that the participant has a private room.</p>	<p>January 2023</p>
<p><a href="#">Current DA AL Rule 455 IAC 3</a>                      455 IAC 3-1-5 (e) “Residential units provided to recipients must be single units unless the recipient chooses to live in dual-occupied unit and the recipient and other occupant consent to the arrangement.”</p>	<p>Partially complies</p> <p>Rule has several references to privacy and requires single units unless otherwise requested by the individual. However, privacy references are generally in relation to the provision of services and</p>	<p>455 IAC 3 will be updated to comply.</p>	<p>January 2023</p>

<p>(g) The physical environment and the delivery of AL Medicaid waiver services shall be designed to enhance autonomy in ways which reflect personal and social values of dignity, privacy, independence, individuality, choice, and decision making of recipients.</p> <p>(f) Residential units provided to recipients shall be able to be locked at the discretion of the recipient, unless a physician or a mental health professional certifies in writing that the recipient is cognitively impaired so as to be a danger to self or others if given the opportunity to lock the door.</p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>          410 IAC 16.2-5-1.2(y) Residents have the right to be treated as individuals with consideration and respect for their privacy. Privacy shall be afforded for at least the following:</p> <ol style="list-style-type: none"> <li>(1) Bathing.</li> <li>(2) Personal care.</li> <li>(3) Physical examinations and treatments.</li> <li>(4) Visitations.</li> </ol> <p>410 IAC 16.2-5-1.6          (z) A comfortably furnished resident living and lounge area shall be provided on each resident occupied floor of a multistory building. This lounge may be furnished and maintained to accommodate activity and dining functions.</p> <p>410 IAC 16.2-5-1.6          (5) Equip each resident unit with a door that swings into the room and opens directly into the corridor or common living area.          (6) Not house a resident in such a manner as to require passage through the room of another resident. Bedrooms shall not be used as a thoroughfare.</p> <p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>not specifically in relation to living or sleeping areas.</p> <p>Does not comply</p> <p>Rule has several references to privacy. However, privacy references are generally in relation to the provision of services and not specifically in relation to living or sleeping areas. In fact, this rule references common living areas as shared spaces.</p> <p>Silent</p> <p>Manual, <i>i.e.</i> Reference Module, does not reference privacy in individual's sleeping or living unit.</p>	<p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, each individual has the choice of privacy in their sleeping or living unit.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p>	<p>MOU between ISDH and FSSA/DA – February 2017.</p> <p>January 2023</p> <p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. The module has been brought</p>
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		<p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>up to date and was published in October 2020</p>
<p><a href="#">Housing with Services IC 12-10-15</a> IC 12-10-15-9</p>	<p>Silent</p> <p>Statute does not reference privacy in individual’s sleeping or living unit.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule. The updated rules will contain references to privacy in a sleeping or living unit. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>
<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p> <p>(d) The office may not do any of the following concerning assisted living services provided in a home and community based services program: (3) Require a provider to offer only private rooms.</p>	<p>Silent</p> <p>Statute does not reference privacy in individual’s sleeping or living unit.</p> <p>The State is required to ensure private rooms are available to participants, however the Settings Rule does not require individual facilities offer only private rooms. There is a variety of buildings across the state with many different entry points for individuals desiring private rooms.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule. The rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments. The updated rules will contain references to privacy in a sleeping or living unit.</p>	<p>January 2023</p>

**Federal Requirement:** In provider-owned or controlled residential settings, units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>Current rule does not reference lockable doors in provider owned or controlled residential settings.</p>	<p>455 IAC 2 will be open for review; language to be added includes: DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, units have entrance doors</p>	<p>January 2023</p>



<p><a href="#">Current DA AL Rule 455 IAC 3</a>                  455 IAC 3-1-5 (f) “Residential units provided to recipients shall be able to be locked at the discretion of the recipient, unless a physician or mental health professional certifies in writing that the recipient is cognitively impaired so as to be a danger to self or others if given the opportunity to lock the door. This section does not apply if this requirement conflicts with applicable fire codes.”</p>	<p>Not compliant</p> <p>While the current rule does reference the need for units that can be locked at the discretion of the resident, no reference is made to only appropriate staff having access to keys.</p> <p>Additionally, the current rule implies a modification can be made based on a certification from a physician or mental health provider that a recipient has a cognitive impairment that could pose danger to self or others if given the opportunity to lock the door.</p>	<p>lockable by the individual, with only appropriate staff having keys to doors.</p> <p>DA will add to its rule that the AFC provider must assure that participants have the ability to lock their room unless otherwise properly documented in the person centered service plan.</p> <p>DA will add to its rule that the AL facility must assure that participants have the ability to lock their room unless otherwise properly documented in the person centered service plan.</p>	<p>January 2023</p>
<p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a></p>	<p>Silent</p> <p>Current rule does not reference lockable doors in provider owned or controlled residential settings.</p>	<p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>MOU between ISDH and FSSA/DA – June 2018.</p> <p>January 2023</p>
<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>Current manual, <i>i.e.</i> reference module, does not reference lockable doors in provider owned or controlled residential settings.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module</p>



		Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.	on an ongoing basis. The module has been brought up to date in October 2020.
<a href="#">Housing with Services IC 12-10-15</a> IC 12-10-15-9	Silent  Statute does not reference lockable doors in provider owned or controlled residential settings.	Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.  455 IAC 2 and 3 are being updated and replaced with a provider and participants rule reflecting all facets of the Settings Rule, including lockable doors. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.	January 2023
<a href="#">Assisted Living IC 12-10-11.5-8</a>	Silent  Statute does not reference lockable doors in provider owned or controlled residential settings.	455 IAC 2 and 3 are being updated and replaced with a provider and participants rule reflecting all facets of the Settings Rule, including lockable doors. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.	January 2023

**Federal Requirement:** In provider-owned or controlled residential settings individuals sharing units have a choice of roommates.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">Current DA Provider Rule 455 IAC 2</a>	Silent  Current rule does not reference choice of roommates in provider owned or controlled residential settings.	455 IAC 2 will be open for review; language to be added includes: DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”	January 2023
<a href="#">Current DA AL Rule 455 IAC 3</a>	Partially complies	DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings individuals sharing units have a choice of roommates.  DA will add to its rule that the AL facility must assure that the individual has the ability to choose a roommate, if desired.  455 IAC 3 will be updated to comply.	

<p>455 IAC 3-1-5 (e) “Residential units provided to recipients must be single units unless the recipient chooses to live in dual-occupied unit and the recipient and other occupant consent to the arrangement.”</p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a></p> <p>410 IAC 16.2-5-1.2(m) “The facility must promptly notify the resident and, if known, the resident’s legal representative when there is a change in roommate assignment.”</p> <p>410 IAC 16.2-5-1.2(q) Residents have the right to appropriate housing assignments as follows: (1) when both husband and wife are residents in the facility, they have the right to live as a family in a suitable room or quarters and may occupy a double bed unless contradicted for medical reasons by the attending physician. (2) Written facility policy and procedures shall address the circumstances in which persons of the opposite sex, other than husband and wife, will be allow to occupy a bedroom, if such an arrangement is agreeable to the residents or the residents’ legal representatives.</p>	<p>Reference to “consent” is not equivalent to choice in roommates.</p> <p>Does not comply</p> <p>Reference to “roommate assignment” is in direct conflict with choice of roommates.</p>	<p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>January 2023</p> <p>MOU between ISDH and FSSA/DA – June 2018.</p> <p>January 2023</p>
<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>Current rule does not reference choice of roommates in provider owned or controlled residential settings.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings individuals sharing units have a choice of roommates.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
<p><a href="#">Housing with Services (Assisted Living) IC 12-10-15</a></p>	<p>Silent</p> <p>Current rule does not reference choice of roommates in provider</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participants rule reflecting all facets of the Settings Rule, including choice of roommate. The updated rule will draw authority from IC 12-10 when</p>	<p>January 2023</p>

<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p>	<p>owned or controlled residential settings.</p> <p>Silent</p> <p>Statute does not reference choice of roommates in provider owned or controlled residential settings.</p>	<p>referencing services, like AL, provided in housing with services establishments.</p> <p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule including choice of roommate. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>
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**Federal Requirement:** In provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p> <p><a href="#">Current DA AL Rule 455 IAC 3</a>                      (18) “Homelike” means an environment that has the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one’s living area to suit one’s individual preferences, which promotes the dignity, security, and comfort of recipients through the provision of personalized care and services to encourage independence, choice, and decision making by the recipients. A homelike environment also provides recipients with an opportunity for self-expression and encourages interaction with the community, family, and friends.</p>	<p>Silent</p> <p>Current rule does not reference the freedom to furnish and decorate their sleeping or living units in provider owned or controlled residential settings.</p> <p>Fully complies</p>	<p>455 IAC 2 will be open for review; language to be added includes:                      DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p> <p>DA will add to its rule that the AFC provider must assure that participants have the ability to decorate or furnish their rooms as they choose within reasonable lease limitations.                      DA will add to its rule that the AL facility must assure that participants have the ability to decorate or furnish their rooms as they choose within reasonable lease limitations.</p>	<p>January 2023</p>

<p>455 IAC 3-1-8 (b)(4) “A provider shall:                  (4) Provide a safe, clean, and comfortable homelike environment allowing recipients to use their personal belongings to the extent possible.”</p>	<p>Partially complies</p>	<p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p>	<p>MOU between ISDH and FSSA/DA – February 2017.</p>
<p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2-5-1.2(gg) “Residents have the right to individual expression through retention of personal clothing and belongs as space permits unless to do so would infringe upon the rights of others or would create a health or safety hazard.”</p>	<p>The reference to the use of personal belongings does not go far enough to meet this requirement regarding the ability to decorate and furnish units.</p>	<p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>January 2023</p>
<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>Current rule does not reference the freedom to furnish and decorate their sleeping or living units in provider owned or controlled residential settings.</p>	<p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p> <p>January 2023</p>
<p><a href="#">Housing with Services IC 12-10-15</a></p>	<p>Silent</p> <p>Statute does not reference does not reference the freedom to furnish and decorate their sleeping or living units in provider owned or controlled residential settings.</p>	<p>455 IAC 2 and 3 will be updated and replaced with a provider and participant rule reflecting all facets of the settings rule, including freedom to furnish and decorate a living or sleeping unit. Additions to the updated rule will draw authority from IC 12-10when referencing services, like AL, provided in housing withservices establishments.</p>	<p>January 2023</p>
<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p>	<p>Silent</p>	<p>455 IAC 2 and 3 will be updated and replaced with a provider and participant rule,</p>	

	<p>Statute does not reference does not reference the freedom to furnish and decorate their sleeping or living units in provider owned or controlled residential settings.</p>	<p>reflecting all facets of the settings rule, including freedom to furnish and decorate a living or sleeping unit. The updated rule will draw authority from IC 12-10 when referencing services, like AL, provided in housing with services establishments.</p>	
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**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals have the freedom and support to control their schedules and activities and have access to food any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>The current rule does not reference control of schedule or access to food in provider owned or controlled residential settings.</p>	<p>455 IAC 2 is already open for review; language to be added includes:                      455 IAC 2.1-3-27 “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, individuals have the freedom and support to control their schedules and activities, and have access to food any time.</p> <p>DA will add to its rule that the AFC provider must assure that participants have the ability to control their own schedule and to choose whether to participate in activities.</p> <p>DA will add to its rule that the AL facility must assure that participants have the ability to control their own schedule and to choose whether to participate in activities.</p>	<p>January 2023</p>
<p><a href="#">Current DA AL Rule 455 IAC 3</a></p> <p>455 IAC 3-1-8 (b)(1)-(3) “A provider shall:                      (1) promote the ability of recipients to have control over their time, space, and lifestyle to the extent that the health, safety, and well-being of other recipients is not disturbed; (2) promote the recipient’s right to exercise decision making and self-determination to the fullest extent possible;</p>	<p>Partially complies</p> <p>There is a reference to control in terms of schedule but there is no reference to access to food specifically through the rule does require the presence of food storage and food preparation capability in the units.</p>	<p>DA will add to its rule that the AFC provider must assure that participants have the ability has access to food at all times.                      DA will add to its rule that the AL facility must assure that participants have the ability to have access to food at all times.</p> <p>455 IAC 3 will be updated to comply.</p>	<p>January 2023</p>

455 IAC 3-1-5

- (4) A kitchenette that contains:
  - (A) a refrigerator;
  - (B) a food preparation area; and
  - (C) a microwave. and
- (5) access to a stovetop/oven for hot food preparation in the common area.

[Current ISDH Health Facilities Rule](#)

[410 IAC 16.2-5-1.2](#)

410 IAC 16.2-5-1.2

- (u) The resident has the right to the following:
  - (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.
  - (2) Interact with members of the community both inside and outside the facility.

(ff) “Residents have right to participate in social, religious, community services, and other activities of their choice that do not interfere with the rights of other residents at the facility.”

410 IAC 16.2-5-5.1 (a) The facility shall provide, arrange, or make available three (3) well-planned meals a day, seven (7) days a week that provide a balanced distribution of the daily nutritional requirements.

(b) The menu or substitutions, or both, for all meals shall be approved by a registered dietician.

(c) The facility must meet:

- (1) daily dietary requirements and requests, with consideration of food allergies;
- (2) reasonable religious, ethnic, and personal preferences; and
- (3) the temporary need for meals delivered to the resident’s room.

410 IAC 16.2-5-1.6

(l) The facility shall have a nourishment station for supplemental food service separate from the resident’s unit.

[DA Medicaid Waiver Provider Reference Module](#)

Partially complies

Language supports control of schedule and activities. Language also provides for provision of food but access is not control by the individual.

Silent

The manual, i.e. reference module, does not reference control of schedule or access to food in provider owned or controlled residential settings.

410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.

DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.

A RCF license will not be required to participate in the new program. Standards, through rulemaking, will be developed to support a new certification system for these providers that will be administered through DA and not ISDH. Additionally, ISDH is under a state statutory mandate at IC 16-28-2-11 to update their administrative rules to comply more fully with HCBS settings.

DA will include additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, individuals have the freedom and support to control their schedules and activities, and have access to food any time.

Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.

MOU between ISDH and FSSA/DA – February 2017.

January 2023

HCBS settings language was added in 2018 and any new service updates are reflected in the module on an



		Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.	On an ongoing basis. The module has been brought up to date in October 2020.
<a href="#">Housing with Services IC 12-10-15</a>	Silent  Statute language does not reference control of schedule or access to food in provider owned or controlled residential settings.	Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.  455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including access to food. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.	January 2023
<a href="#">Assisted Living IC 12-10-11.5-8</a>	Silent  Statute language does not reference control of schedule or access to food in provider owned or controlled residential settings.	455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including access to food. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.	January 2023

**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals are able to have visitors of their choosing at any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">Current DA Provider Rule 455 IAC 2</a>	Silent  Current rule language does not reference ability to have visitors in provider owned or controlled residential settings.	455 IAC 2 will be open for review; language to be added includes: DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”  DA will include additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, individuals are able to have visitors of their choosing at any time.  DA will include to its rule that the AFC provider must assure that participants have the ability to have guest when they choose.	January 2023

		<p>The DA will add to its rule that the AL facility must assure that participants have the ability to have guests when they choose.</p>	
<p><a href="#">Current DA AL Rule 455 IAC 3</a></p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2-5-1.2(f) “Residents have the right to be informed of any facility policy regarding overnight guests. The policy shall be clearly stated in the admission agreement.”</p> <p>410 IAC 16.2-5-1.2(bb) Residents have the right and the facility must provide immediate access to any resident by:                  (1) individuals representing state or federal agencies;                  (2) any authorized representative of the state;                  (3) the resident's individual physician;                  (4) the state and area long term care ombudsman;                  (5) the agency responsible for the protection and advocacy system for developmentally disabled individuals;                  (6) the agency responsible for the protection and advocacy system for mentally ill individuals;                  (7) immediate family or other relatives of the resident, subject to the resident’s right to deny or withdraw consent at any time;                  (8) the resident’s legal representative or spiritual advisor subject to the resident’s right to deny or withdraw consent at any time; and                  (9) others who are visiting with the consent of the resident subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time.</p> <p>410 IAC 16.2-5-1.2(cc)                  “Residents have the right to choose with whom they associate. The facility shall provide reasonable visiting hours, which should include at least twelve (12) hours a day, and the hours shall be made available to each resident. Policies shall also provide for emergency visitation at other hours. The facility shall not restrict visits from the resident’s legal representative or spiritual advisor, except at the request of the resident.”</p>	<p>Silent</p> <p>Current rule language does not reference ability to have visitors in provider owned or controlled residential settings.</p> <p>Does not comply</p> <p>Rule only requires a 12 hour a day visiting hours’ schedule.</p>	<p>455 IAC 3 will be updated to comply.</p> <p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p>	<p>January 2023</p> <p>MOU between ISDH and FSSA/DA – February 2017</p> <p>January 2023</p>

<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>Current rule language does not reference ability to have visitors in provider owned or controlled residential settings.</p>	<p>DA will include additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, individuals are able to have visitors of their choosing at any time.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	<p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
<p><a href="#">Housing with Services IC 12-10-15</a>                  IC 12-10-15-9(c)(3) except to protect the rights and activities of other residents, the housing with services establishment may not restrict the ability of the resident to have visitors and to receive family members and guests;</p>	<p>Fully complies</p>		
<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p>	<p>Silent</p> <p>Current rule language does not reference ability to have visitors in provider owned or controlled residential settings.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including the ability to have visitors. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>

**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, the setting is physically accessible to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a></p>	<p>Silent</p> <p>No mention of accessibility requirements for provider owned settings.</p>	<p>455 IAC 2 is already open for review; language to be added includes: 455 IAC 2.1-3-27 “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p>	<p>January 2023</p>

		<p>DA will include additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, the setting is physically accessible to the individual.</p> <p>DA will include to its rule that the AFC provider must assure accessibility for the participants residing in the building.</p> <p>DA will include to its rule that the AL facility must assure accessibility for the participants residing in the building.</p>	
<p><a href="#">Current DA AL Rule 455 IAC 3</a></p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a>                  410 IAC 16.2-5-1.6(n)                  (1) Dining, lounge, and activity areas shall be:                  (A) readily accessible to wheelchair and ambulatory residents                  (4)...a restroom large enough to accommodate a wheelchair and equipped with grab bars located near the activity room shall be provided.</p>	<p>Silent</p> <p>No mention of accessibility requirements for provider owned settings.</p> <p>Partially complies</p> <p>Reference is made to accessibility in dining and activity areas but is not sufficient in meeting this requirement.</p>	<p>455 IAC 3 will be updated to comply.</p> <p>410 IAC 16 contains licensing requirements for RCF; currently Medicaid waiver AL providers are required to be licensed as an RCF.</p> <p>DA established an MOU with ISDH to waive certain provisions of the RCF license for Medicaid waiver providers and/or participants as permitted by IC 16-28-1-10.</p> <p>The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule.</p> <p>DA will add additional language to specify required characteristics of HCBS settings to include that, in provider-owned or controlled residential settings, the setting is physically accessible to the individual.</p>	<p>January 2023</p> <p>MOU between ISDH and FSSA/DA – February 2017</p> <p>January 2023</p> <p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
<p><a href="#">DA Medicaid Waiver Provider Reference Module</a></p>	<p>Silent</p> <p>No mention of accessibility requirements for provider owned settings.</p>	<p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p> <p>Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.</p>	

<p><a href="#">Housing with Services IC 12-10-15</a> IC 12-10-15-9</p>	<p>Silent</p> <p>No mention of accessibility requirements for provider owned settings.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including accessibility requirements. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>
<p><a href="#">Assisted Living IC 12-10-11.5-8</a></p>	<p>Silent</p> <p>No mention of accessibility requirements for provider owned settings.</p>	<p>455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including accessibility requirements. The updated rule will draw authority from IC12-10 when referencing services, like AL, provided in housing with services establishments.</p>	<p>January 2023</p>

**Federal Requirement:** Any modifications of the additional conditions for provider-owned and controlled residential settings must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

1. Identify a specific and individualized need.
2. Document the positive interventions and supports used prior to any modifications to the person-centered plan.
3. Document less intrusive methods of meeting the need that have been tried but did not work.
4. Include a clear description of the condition that is directly proportionate to the specific need addressed.
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Include the informed consent of the individual.
8. Include an assurance that interventions and supports will cause no harm to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">Current DA Provider Rule 455 IAC 2</a> 455 IAC 2-17-1 A provider of case management services shall have the following information about an individual receiving case management services:</p> <p>(1) The needs and wants of an individual, including the following:</p> <p>(A) Health. (B) Welfare. (C) Wishes for self-directed care.</p> <p>(2) The array of services available to an individual whether the services are available under this article or are otherwise available.</p>	<p>Silent</p> <p>Does not address modifications to HCBS settings requirements that may be as part of the person centered planning process.</p>	<p>455 IAC 2 is already open for review; language to be added includes: DA will add to its rule that “Home and community-based services” or “HCBS” means supportive services provided in the home or a community setting that meets the requirements of 42 CFR 441.301.”</p> <p>DA will add the following definitions: Case Management defined – “Case management means a comprehensive service including, but not limited to, the following, assisting participants in the establishment of a person centered service plan.”</p> <p>Person centered service planning process defined: “Person centered service planning process has the meaning set forth in 42 CFR 441.301 (c) (1).</p> <p>Person centered service plan defined as “Person centered service plan has the meaning set forth in 42 CFR 441.301(c) (2).”</p>	<p>January 2023.</p>

<p><a href="#">Current DA AL Rule 455 IAC 3</a>                  455 IAC 3-1-8(d) “The provider shall ensure the service plan:                  (1) includes recognition of the recipient’s capabilities and choices and defines the division of responsibility in the implementation of services;</p>	<p>Silent</p> <p>Does not address modifications to HCBS settings requirements that may be as part of the person centered planning process.</p>	<p>Any modifications to the requirements must be supported by specific need and justified in the participant’s person-centered service plan.</p> <p>For individuals with dementia related issues who require modifications to HCBS settings characteristic due to safety risks, the person centered service plan must document:                  (1) The personal history of the individual with dementia;                  (2) The person’s current health condition and remaining abilities;                  (3) The conditions that trigger wandering or exit-seeking, their history and background;                  (4) Previously tried responses to wandering and exit-seeking that respond to the person’s unique circumstances;                  (5) The specific modification being agreed to by the individual and/or their legal guardian;                  (6) The time period agreed to for the modification to be in place before the next review of the individual’s circumstances; this cannot exceed 180 days.</p> <p>DA will add additional language to specify that any modifications of the additional conditions for provider-owned and controlled residential settings must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:                  1. Identify a specific and individualized need.                  2. Document the positive interventions and supports used prior to any modifications to the person-centered plan.                  3. Document less intrusive methods of meeting the need that have been tried but did not work.                  4. Include a clear description of the condition that is directly proportionate to the specific need addressed.                  5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.                  6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.                  7. Include the informed consent of the individual.                  8. Include an assurance that interventions and supports will cause no harm to the individual.</p> <p>455 IAC 3 will be updated to comply.</p>	<p>January 2023</p>
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<p>(2) addresses, at a minimum, the following elements:                  (A) assessed health care needs;                  (B) social needs and preferences;                  (C) personal care tasks; and                  (D) limited nursing and medication services, if applicable, including frequency of service and level of assistance;                  (3) is signed and approved by:                  (A) the recipient;                  (B) the provider;                  (C) the licensed nurse;                  (D) the case manager; and                  (4) Includes the date the plan was approved.”</p> <p><a href="#">Current ISDH Health Facilities Rule 410 IAC 16.2-5-1.2</a></p> <p><a href="#">DA Medicaid Waiver Provider Reference Module</a>                  Page 23 - Medicaid waiver case managers coordinate and integrate all services required in a participant’s person centered service plan, link participants to needed services, and ensure that participants continue to receive and benefit from services. Waiver case managers enable participants to receive a full range of services needed due to a medical condition in a planned, coordinated, efficient, effective manner.</p> <p>Page 26, 16. Case managers will ensure that person centered planning is occurring on an ongoing basis....                  18. Case managers will base the service plan upon the individual’s needs, strengths, and preferences.</p>	<p>Silent</p> <p>Does not address modifications to HCBS settings requirements that may be as part of the person centered planning process.</p> <p>Silent</p> <p>Does not address modifications to HCBS settings requirements that may be as part of the person centered planning process.</p>	<p>Not applicable – covered in 455 IAC 2.1</p> <p>DA will add additional language to specify that any modifications of the additional conditions for provider-owned and controlled residential settings must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:                  1. Identify a specific and individualized need.                  2. Document the positive interventions and supports used prior to any modifications to the person-centered plan.                  3. Document less intrusive methods of meeting the need that have been tried but did not work.                  4. Include a clear description of the condition that is directly proportionate to the specific need addressed.                  5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.                  6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.                  7. Include the informed consent of the individual.                  8. Include an assurance that interventions and supports will cause no harm to the individual.</p> <p>Waiver services must comply with HCBS Settings Rule. Requirements to be addressed primarily in 455 IAC 2 revisions.</p> <p>Reference Module to be updated to reflect any changes made to HCBS waiver services or programs when they occur.</p>	<p>MOU between ISDH and FSSA/DA – February 2017</p> <p>HCBS settings language was added in 2018 and any new service updates are reflected in the module on an ongoing basis. This module has been brought up to date and was published in October 2020.</p>
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		Reference Module will be reviewed for inclusion of language supporting HCBS settings requirements during semi-annual updates.	
<a href="#">Housing with Services IC 12-10-15</a>	Silent  Does not address modifications to HCBS settings requirements that may be as part of the person centered planning process.	455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including that modifications to HCBS settings that may be part of the person centered planning process.	January 2023
<a href="#">Assisted Living IC 12-10-11.5-8</a>	Does not address modifications to HCBS settings requirements that may be as part of the person centered planning process.	455 IAC 2 and 3 are being updated and replaced with a provider and participant rule reflecting all facets of the Settings Rule, including that modifications to HCBS settings that may be part of the person centered planning process.	January 2023

### SECTION 3: SITE SPECIFIC ASSESSMENT

The DA’s site specific assessment process generally consists of a provider self-survey, desk review of policy and procedure, and site assessments of all provider sites with current waiver participants to validate survey results.

The DA’s plan for site specific assessments started with provider self-surveys. DA distributed these to providers beginning in 2014 through spring of 2015. Participation was voluntary and return rates varied by service. More detail is provided in the service specific descriptions below. The intent of the self-survey process was to obtain a broad sense of where compliance issues existed in each type of setting. Between late 2015 and early 2016, DA utilized a contractor to request documentation from some service providers to conduct a broad policy and procedure review. Again, participation by providers was voluntary and the response rates varied. Once again the intention was to obtain a broad sense of the compliance issues and begin to validate the results of the self-survey process. Beginning in the spring of 2016, DA utilized a contractor to conduct site visits at 100 percent (23) of its AFC, ADS, and AL sites with active waiver participants. In the spring of 2017, DA checked again for providers with active participants and completed site visits at that time if they did not have a 2016 site visit. Site visits were completed for an additional 14 providers of AFC at this time. Again, more detail on this process are provided in each service specific section below.

- **Adult Family Care (A&D, TBI):** Residential services provided in a family-like setting; the AFC homes are approved to serve not more than four participants in a home-like setting in a residential community with a live-in caregiver. While the HCBS waiver service definition reflects the requirements set forth in the final rule, it lacks the specificity of the rule. A self-survey of AFC providers was conducted as an initial assessment to identify areas in need of remediation. There are currently 37 enrolled AFC homes. There are 44 current waiver consumers. The response rate for the self-survey was 38 percent. The self-survey indicates that at least 73 percent of AFC homes will need to implement changes to address the standards:
  - The individual can have visitors at any time;
  - The individual controls his/her own schedule including access to food at any time;
  - The setting is integrated in and supports full access to the greater community;
  - The individual has choice of roommates; and
  - Results also indicate that approximately 64 percent of providers use a lease or residency agreement, but it has not been determined if these are legally enforceable.

Surveys of 23 sites with active waiver participants were completed between February 2016, and June 2016. The site surveys confirmed the issues identified in the self-survey process. The most common areas of non-compliance include:

- Freedom and support to control own schedule and activities.
  - Participants are able to participate in activities of their choice in the community alone.
- Ability to have visitors of choosing at any time.

- Optimizes individual initiative, autonomy, and independence in making life choices.
  - Medications maintained and distributed in a way that promotes individual control and privacy.
- Units have locking doors; with only appropriate staff having keys/privacy in sleeping or living unit.
- Setting is physically accessible to the individual – entrances, common areas, and dining rooms in the setting handicap accessible.

There may also be issues with lease agreements and the DA is currently reviewing leases and working with providers on areas of noncompliance.

The site surveys did not include any formal participant interviews. The surveyor may have spoken to several participants at each site informally but no specific questions were asked or answers recorded. Since all sites were found to need some measure of remediation, participant interviews will be conducted as part of the validation process once remediation is completed. For AFC settings, all participants at the site will receive a short interview. The questions asked will be focused on the areas that required remediation. Interviews will be conducted by phone or in person by DA staff or contractor staff.

In February 2017, DA developed a remediation plan template for providers. In December of 2016, DA held a provider training and reviewed compliance criteria for HCBS settings and possible remediation strategies. Providers will receive a copy of their site survey as well as a letter outlining areas of non-compliance. These notifications were sent out in March 2017. Provider remediation plans were due back to DA in June 2017. DA is reviewing these plans, requesting changes as needed, and compiling a master calendar for remediation activities. DA will monitor, follow up with providers on their progress, and then complete a site visit to validate the completion of the plan. Providers who choose not to submit a remediation plan will not be permitted to accept any new participants. Current participants served in these locations will be assisted with the transition process according to their preferences. These providers and any others unable or unwilling to remediate areas of non-compliance will be decertified by March 2023. Providers have been told they must notify the DA by March 2021 if they choose not to comply with the Settings Rule. Participants in those sites will be transitioned to a fully compliant site or transition off the waiver, if this is their choice, by March of 2023.

Providers that do not have current waiver participants and who therefore did not have a site survey completed in the spring of 2016, received notice in April 2017 that requirements have changed for participation in the waiver program. The DA will complete a check for any sites that may have active participants then that did not in the spring of 2016. If such sites are identified, a site visit will be completed so that any necessary remediation activities can be identified. Any providers not in compliance by March 2022 will be decertified.

There are no regulatory barriers to remediation. Language in regulations is largely silent or partially compliant in reference to AFC. Language will be enhanced or added to assure that all settings are required to be fully compliant with the HCBS settings requirements. Providers will be notified of the issues identified at each site. The DA will provide technical assistance to those providers who wish to remediate. For those providers that do not wish to remediate, the DA will work with care managers to provide person centered service planning and support to each individual to transition them into compliant HCBS settings as they may choose. At this time, the DA believes all providers will participate in remediation and no individual transitions will be needed. No AFC sites are co-located with nursing facilities.

- **Assisted Living (A&D, TBI):** Residential services offering an increased level of support in a home or apartment-like setting.

DA fully supports the concept of “aging in place” for elderly individuals who choose to receive services conveniently or in a residence which allows them to remain close to a loved one in a nearby nursing facility. Some of Indiana’s AL sites are co-located with nursing facilities. The physical arrangement varies from being completely under the same roof to sharing common areas, to having various wings or floors in facility, etc.

There are currently 102 enrolled AL providers. There are approximately 3,100 current waiver participants in AL sites. A number of the enrolled AL providers have 10 or fewer waiver participants. Self-surveys completed by AL providers in the fall of 2014 indicated a high percentage of compliance with isolated incidents of remediation needed to achieve the following standards:

- The individual controls his/her own schedule including access to food at any time.
- The individual has privacy in their unit including lockable doors.

- The individual has choice of roommates.
- The individual has a lease or other legally enforceable agreement providing similar protections.
- The setting is integrated in and supports full access to the greater community.
- The setting ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint.
- The individual can have visitors at any time.

Documentation review of AL providers was completed in February 2016 with 56 percent of providers responding to the request for documentation, including policies, procedures, handbooks, staff training schedules, lease agreement templates, participant rights documents, etc. Documentation review and site surveys completed between February 2016 and June 2016 indicated more widespread lack of compliance in several key areas. These areas included:

- Freedom and support to control own schedule and activities.
  - Participants are able to freely move about inside and outside the site.
  - Participants are able to participate in activities of their choice in the community alone.
- Privacy in sleeping or living unit
  - Staff and/or other participants knock on each other's doors or ask for permission before entering participants' rooms.
  - Lockable bathrooms
- Ability to have visitors of choosing at any time – with appropriate privacy considerations.
- Access to food at any time – flexibility in meal times.
- Is the site free from gates, locked doors, or other barriers preventing individuals' entrance to and exit from all areas of the setting?
- Optimizes individual initiative, autonomy, and independent in making life choices.
  - Medications are maintained and distributed in a way that promotes individual control and privacy.
  - Participants are able to dine alone or in a private area.
  - Participants have easy access to have private communications with people outside the site by telephone, e-mail, and/or mail.
- Units have locking doors; with only appropriate staff having keys.

In total, 102 AL locations were surveyed as part of the site assessments. 80 surveys were completed in 2016. The 22 new providers added since then have been surveyed as well after June of 2016 and were required to be in compliance at the time of certification. One of the new settings is co-located. The DA will not add this setting as a waiver provider until the DA determines the setting overcomes the presumption of institutionalism and the setting's heightened scrutiny packet has been submitted for CMS review and potential approval.

Following the site visits, it was determined that:

1. Forty-three AL sites are co-located with a nursing facility.<sup>1</sup>
2. The remainder of AL sites are not co-located, as initially determined by the DA, but as further compliance assessment reveals, could be found institutional on a case-by-case basis.

The site surveys did not include any formal participant interviews. The surveyor may have spoken to several participants at each site informally but no specific questions were asked or answers recorded. Since all sites were found to need some measure of remediation, participant interviews will be conducted as part of the validation process once remediation is completed. The DA believes the interview selection should be determined on a case-by-case basis as some settings may require more interviews where the reviewer may find the setting has institutional characteristics and fewer interviews for those settings that exhibit home and community-based characteristics. In settings where there were particular concerns, there will be a greater emphasis on participant interviews. The questions asked will be

<sup>1</sup> The DA was recently contacted by A Rosie Place for Children regarding becoming a HCBS waiver provider. A Rosie Place for Children is a unique setting – the only setting of its kind in Indiana – that provides respite care for medically fragile children in a nature-inspired home-like setting. A Rosie Place for Children is presumed institutional because it is licensed as a specialty hospital. The setting will follow the same process and timeline as presumed institutional assisted living settings and will not be added as a waiver provider until the DA has determined they overcome the presumption of institutionalism and the setting has been reviewed and potentially approved by CMS through the heightened scrutiny process.

focused on the areas that required remediation. Interviews will be conducted by phone or in person by DA staff or contractor staff. More extensive interviews will be completed as part of any heightened scrutiny reviews.

Providers that do not have current waiver participants and who therefore did not have a site survey completed in the spring of 2016, received notice in April 2017 that requirements have changed for participation in the waiver program. Site visits will be used to validate compliance. As these notices are prepared, DA will complete a check for any sites that may have active participants that did not in the spring of 2016. If such sites are identified, a site visit will be completed so that any necessary remediation activities can be identified.

In February 2016, a comprehensive crosswalk was completed comparing the CMS Final Rule HCBS setting requirements to both current and proposed DA and ISDH regulations. This crosswalk focused on the services that had been identified as having possible compliance issues: AL, adult day service, adult family care, and structured day programs. The results of this comparison mapped out areas where regulations could include more specific provisions to ensure that sites are compliant with the HCBS requirements. Changes will be made in conjunction with stakeholder groups before the rule is put out for formal public comment.

The ISDH regulations are significant in regards to the Medicaid HCBS service of AL. It should be noted though that ISDH does not have licensure or regulations specific to the service of AL. ISDH regulations do not actually define or regulate “assisted living.” Currently both the A&D and TBI waivers require providers of the service of AL to be licensed by ISDH. These providers are therefore licensed as what ISDH rules refer to as residential care facilities. The RCF regulations clearly force providers towards institutional characteristics. Even the language used, residents, discharge, admission, etc. all speak to an institutional model. Removing the licensure requirement will not in and of itself make these settings home and community-based. However, it can remove substantial barriers that the regulations create for HCBS providers. A drawback to this option is the need to create a new oversight and monitoring structure in the absence of licensure. Most of the AL market in Indiana is private pay. According to our best data, Medicaid waiver accounts for about 10 percent of the licensed residential care capacity in the state. To impact this private pay market with large scale changes to the residential care licensure does not seem appropriate.

There was an approximately six-month hiatus on new AL provider enrollment beginning in September 2016 ending in April 2017. During this time DA entered into an MOU with ISDH to waive certain provisions of the residential licensure requirements for those providers participating in the Medicaid waiver program. This waiver is allowed under IC 16-28-1-10. DA worked with ISDH and providers to draft this MOU to address all areas identified as non-compliant in the systemic assessment. Additionally, DA staff received training to be prepared to appropriately review and certify new AL providers after the hiatus is over. This process will address areas of partial compliance in IC 16-28-1-10. The certification process developed includes the following language:

- Settings must be integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.
- Setting must be selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.
- Setting must ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.
- Setting must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.
- Setting must facilitate individual choice regarding services and supports, and who provides them.
- Setting must be a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.
- Each individual must have privacy in their sleeping or living unit.
- Units must have entrance doors lockable by the individual, with only appropriate staff having keys to doors.



- Individuals sharing units must have a choice of roommates.
- Individuals must have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals must have the freedom and support to control their schedules and activities, and have access to food any time.
- Individuals must be able to have visitors of their choosing at any time.
- The setting must be physically accessible to the individual.
- Any modifications of the requirements (other than physical accessibility which cannot be modified) must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
  - Identify a specific and individualized need.
  - Document the positive interventions and supports used prior to any modifications to the person-centered plan.
  - Document less intrusive methods of meeting the need that have been tried but did not work.
  - Include a clear description of the condition that is directly proportionate to the specific need addressed.
  - Include regular collection and review of data to measure the ongoing effectiveness of the modification.
  - Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
  - Include the informed consent of the individual.
  - Include an assurance that interventions and supports will cause no harm to the individual.

This will allow existing licensed residential care facilities certified as waiver AL providers to continue participating in the current waiver programs, assuming they do meet all of the HCBS characteristics and pass heightened scrutiny review if they are presumed institutional.

In the fall of 2016, a workgroup was established consisting of varied representatives of the provider community as well as other advocates and stakeholders. This workgroup collaborated with the DA to work on compliance evaluation criteria as well as the ISDH MOU. DA will develop a remediation plan template for providers. In December of 2016, DA held a provider training and reviewed compliance criteria for HCBS settings and possible remediation strategies. Providers, not presumed institutional, will then receive a copy of their site survey as well as a letter outlining areas of non-compliance. These notifications were sent out in March 2017. Provider remediation plans were due back to DA in June 2017. DA is reviewing these plans, requesting changes as needed, and compiling a master calendar for remediation activities. DA will monitor, follow up with providers on their progress, and then complete a site visit to validate the completion of the plan. Providers who choose not to submit a remediation plan will not be permitted to accept any new participants. Current participants served in these locations will be assisted with the transition process according to their preferences. These providers and any others unable or unwilling to remediate areas of non-compliance will be decertified by March 2023.

The DA and ISDH are working together to update their rules in order to create licensure standards that are modified to be consistent with all aspects of the Settings Rule. Standards will be developed to support a new licensure system for these providers. These standards will be based on HCBS characteristics, Money Follows the Person qualified community setting guidelines, and state statute regarding housing with services establishments. Administrative rules will be amended to reflect these standards. Specific waiver, manual, and administrative code language for this new services will include the following requirements:

- Settings must be integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.
- Setting must be selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- Setting must ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.



- Setting must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.
- Setting must facilitate individual choice regarding services and supports, and who provides them.
- Setting must be a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Each individual must have privacy in their sleeping or living unit.
- Units must have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals sharing units must have a choice of roommates.
- Individuals must have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals must have the freedom and support to control their schedules and activities, and have access to food any time.
- Individuals must be able to have visitors of their choosing at any time.
- The setting must be physically accessible to the individual.
- Any modifications of the requirements (other than physical accessibility which cannot be modified) must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
  - Identify a specific and individualized need.
  - Document the positive interventions and supports used prior to any modifications to the person-centered plan.
  - Document less intrusive methods of meeting the need that have been tried but did not work.
  - Include a clear description of the condition that is directly proportionate to the specific need addressed.
  - Include regular collection and review of data to measure the ongoing effectiveness of the modification.
  - Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
  - Include the informed consent of the individual.
  - Include an assurance that interventions and supports will cause no harm to the individual.

Additionally, rate methodology will be reassessed to align with the new service definition and assure that rates are sufficient to build provider capacity. DA hopes to implement this program by January 2020. Upon successful implementation, qualified providers and consumers in the current (c) waivers will be migrated to the new program.

- **Adult Day Services (A&D, TBI):** Activities provided in a group setting, outside the home; in February 2015, a self-survey was requested of ADS providers to determine the level of compliance with the HCBS rule. There was a 75 percent response rate to the self-survey. The results of that self-survey of ADS providers indicates a high percentage of compliance with isolated incidents of remediation needed to achieve the following standards:
  - The individual can have visitors at any time.
  - The individual can have privacy when desired, for instance to take a phone call.
  - The individual receives activities of daily living (ADL) assistance and other care in areas of the center that allow them appropriate privacy.
  - The individual's service plan is not posted in a public area.
  - The individual has a secure place in which to store personal items.
  - There are no physical barriers which prevent mobility-impaired individuals from accessing restrooms, appliances or other program areas which other participants can access.
  - Settings are not restricted to individuals of one specific diagnosis or to a specific age group.
  - Service plans are developed individually, taking into account personal preferences for activities and individualized schedules and routines.
  - The individual is able to access food at times of their choosing.

- The individual is provided opportunities for activities outside the service site to allow interaction with the general community.

Current service standards require the service be "...community-based group programs designed to meet the needs of adults with impairments through individual service plans."

Current waiver requirements forbid any use of individual restraint but do not extend this definition to include the restriction of facilities which may have secured perimeters or delayed egress systems. A significant percentage of ADS sites do have secured perimeters that in many cases prevent the ability of participants to leave the building. This will require remediation strategies as described below as well as person centered planning practices to identify individuals who have require such a safety measure as part of their service plan.

There are currently 48 enrolled ADS providers. There are 777 current waiver consumers. The assessment and remediation strategies delineated below will be implemented to identify and correct deficiencies.

Documentation review of ADS providers was completed in February 2016 with 62 percent of providers responding to the request for documentation, including policies, procedures, handbooks, staff training schedules, lease agreement templates, client rights documents, etc. Some documents were reviewed as part of the site surveys. Any missing elements will be reviewed as part of the review to validate the site's eventual remediation.

Site visits were conducted by June of 2016 at 37 of these sites serving current participants. The remaining 11 sites were visited between 2017 and 2020. The site surveys confirmed the issues identified in the self-survey process. There is one site that is co-located with a nursing facility. The DA will conduct a heightened scrutiny review of these sites including public comment and only submit to CMS for consideration as an HCBS site if they are found to have no institutional qualities and they fully comply with the HCBS requirements. The most common areas of non-compliance are:

- Freedom and support to control own schedule and activities.
  - Are participants able to freely move about inside and outside the site?
  - Are participants able to participate in activities of their choice in the community alone?
- Setting is physically accessible to the individual - entrances, common areas, and dining rooms in the setting handicap accessible.
- Optimizes individual initiative, autonomy, and independent in making life choices.
  - Medications maintained and distributed in a way that promotes individual control and privacy.
  - Presence of gates, locked doors, or other barriers preventing individuals' from freely coming and going.
- Access to food at any time - flexibility in meal times.

For the remaining sites, there are no regulatory barriers to remediation. Language in regulations is largely silent or partially compliant in reference to ADS. Language will be enhanced or added to assure that all settings are required to be fully compliant with the HCBS settings requirements. Providers will be notified of the issues identified at each site. The DA will provide technical assistance to those providers who wish to remediate. For those providers that do not wish to remediate, the DA will work with care managers to provide person centered service planning and support to each individual to transition them into compliant HCBS settings as they may choose. With ADS, the site is not the residence of the individual. So, the transition process would be less complicated. Part of the transition planning must include efforts to recruit more providers in order to fully cover the state and offer choice to consumers. We have seen some increase in providers but this is a continuing process. At this time though, the DA believes all providers will participate in remediation.

Some ADS sites do have secure perimeters, but the DA believes these can be modified to allow participants to come and go freely and only restrict those for whom a person centered planning process has identified an appropriate modification be made (such as to address safety issues caused by a documented issue with wandering due to dementia).

The site surveys did not include any formal participant interviews. The surveyor may have spoken to several participants at each site informally but no specific questions were asked or answers recorded. Since all sites were found to need some measure of remediation, participant interviews will be conducted as part of the validation process once remediation is completed. In settings where there were particular concerns, there will be a greater emphasis on participant interviews. The questions asked will be focused on the areas that required remediation. Interviews will be conducted by phone or in person by DA staff or contractor staff. More extensive interviews will be completed as part

of any heightened scrutiny reviews. The DA believes the interview selection should be determined on a case-by-case basis as some settings may require more interviews where the reviewer may find the setting has institutional characteristics and fewer interviews for those settings that exhibit home and community-based characteristics.

Providers that do not have current waiver participants and who therefore did not have a site survey completed in the spring of 2016, received notice in April 2017 that requirements have changed for participation in the waiver program. Site visits will be used to validate compliance. As these notices are prepared, DA will complete a check for any sites that may have active participants that did not in the spring of 2016. If such sites are identified, a site visit will be completed so that any necessary remediation activities can be identified.

In the fall of 2016, a workgroup of providers in coordination with DA began developing a remediation plan template for providers. In December 2016, DA held a provider training and reviewed compliance criteria for HCBS settings and discussed possible remediation strategies. Providers, not presumed institutional, will then receive a copy of their site survey as well as a letter outlining areas of non-compliance. These notifications were sent out in April 2017. Although provider remediation plans were due to DA in June 2017, the DA wants all providers of provider-owned or controlled settings who wish to continue with the waiver to give remediation plans to the Division by March 2021 and providers who do not wish to continue will not be able to accept any new participants after this date. DA has reviewed these plans, requested changes as needed, and is compiling a master calendar for remediation activities. DA will monitor, follow up with providers on their progress, and then complete a site visit to validate the completion of the plan. Providers who choose not to submit a remediation plan will not be permitted to accept any new participants. Current participants served in these locations will be assisted with the transition process according to their preferences. These providers and any others unable or unwilling to remediate areas of non-compliance will be decertified by March 2023.

Upon review of this section, the Division of Aging realized that there was an error made on the number of site visits and that this section was unclearly worded. The site number is incorrect due to a record keeping error where some ALF settings were duplicated; there were actually 80 site visits completed by June 2016. Additionally, the Division of Aging was unclear in its explanation of the remaining sites and when they received settings visits. Any assisted living setting that was certified by the Division of Aging after June 2016 was required to comply with the Settings Rule and thus received a site visit at the time of their certification which would have been conducted between July 2016 and the start of 2020.

- **Structured Family Care (A&D):** A living arrangement in which a participant lives in his or her private home or the private home of a principal caregiver who may be a nonfamily member or a family member who is not the participant's spouse, the parent of the participant who is a minor, or the legal guardian of the participant; support services are provided by the principal caregiver (family caregiver) as part of structured family caregiving; only agencies may be structured family caregiving providers, with the structured family caregiving settings being approved, supervised, trained, and paid by the approved agency provider.

This is not usually a provider-owned or controlled setting – 58 settings were identified as provider-owned and controlled based on whether the caregiver was unrelated and whether the participant owned or controlled the setting. The DA interviewed all 58 participants by phone. Some participants were told in advance that the DA would call that day for an interview but no set time was indicated. Some participants had no notification prior to the interview. A staff member of the Division of Aging was trained to ask participants questions about each specific Settings Rule requirement. All settings have been successfully validated as HCBS compliant. The DA continues to evaluate each situation individually. There are 11 current Structured Family Care (SFC) providers and 2,082 participants overseen by SFC provider agencies. SFC is covered by language in 455 IAC 2 and this rule will be amended to reflect Settings Rule requirements. Requirements for provider-owned or controlled residential settings will cover any SFC situations that do involve services in the home of an unrelated paid caregiver.

- **Structured Day Program (TBI):** Activities and rehabilitative services provided in a group setting outside the home. Current service standards require the service to be tailored to the needs of the individual participant. Current waiver requirements forbid any use of individual restraint but do not extend this definition to include the restriction of facilities which may have secured perimeters or delayed egress systems.

Structured day programs provide assistance with acquisition; retention; or improvement in self-help, socialization, and adaptive skills. Services take place in a nonresidential setting, separate from the home in which the individual resides. There are currently 54 enrolled structured day providers certified under the TBI waiver. There are 0 TBI waiver consumers receiving this service

The structured day programs under the TBI waiver provides assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills and takes place in a non-residential setting, separate from the home in which the individual resides. The approved TBI waiver providers also serve individuals with intellectual and developmental disabilities in congregate community-based settings. The DA will work in conjunction with DDRS to evaluate these sites shared by the TBI waiver population and the individuals with intellectual disabilities/developmental disabilities (IID/DD) population. Since the TBI waiver has so very few active structured day providers and program participants compared to the DDRS operated waivers in Indiana, the DA will not utilize a separate assessment process for these providers. DA will abide by the conclusions reached in the DDRS site assessment process. Language in regulations is largely silent in reference to structured day programs. Language will be added to assure that all settings are required to be fully compliant with the HCBS settings requirements.

DA will work with DDRS to align evaluation and remediation processes with these shared providers. All SDP providers will be assessed. These providers and any others unable or unwilling to remediate areas of non-compliance will be decertified by March 2023.

- Supported Employment (TBI):** Supported employment (SE) includes activities needed to sustain paid work by individuals receiving waiver services, including supervision and training. SE is conducted in a variety of settings, particularly worksites where persons without disabilities are employed. There are 49 certified providers for the TBI waiver. There are currently only two waiver participants receiving this service under the DA’s TBI waiver. DA has reviewed the settings in which these two participants receive this service. Since the TBI waiver has so very few active SE providers and program participants compared to the DDRS operated waivers in Indiana, the DA will not utilize a separate assessment process for these providers. DA will abide by the conclusions reached in the DDRS provider assessment process. Language in regulations is largely silent in reference to structured day programs. Language will be added to assure that all settings are required to be fully compliant with the HCBS settings requirements.

DA will work with DDRS to align evaluation and remediation processes with these shared providers. In addition to DDRS efforts, the participant’s waiver care manager will conduct reviews with the individual SE participants to identify any specific concerns indicating provider non-compliance with HCBS characteristics. Notifications of identified issues will be sent out to providers as issues arise since this is an ongoing process. DA will then review submitted remediation plans, request changes as needed, and then compile a master calendar for remediation activities. DA will monitor, follow up with providers on their progress, and then complete a site visit to validate the completion of the plan. Providers who choose not to submit a remediation plan will not be permitted to accept any new participants. Current participants served in these locations will be assisted with the transition process according to their preferences. These providers and any others unable or unwilling to remediate areas of non-compliance will be decertified by March 2023.

**Results and Remediation**

None of DA’s provider-owned or controlled sites were found to be fully compliant based on self-surveys, document reviews, and site surveys to date. All sites have issues that will require remediation. Sites subject to heightened scrutiny will be reviewed again following any remediation and only at that point will DA, in conjunction with OMPP, make the decision whether or not to submit the site for CMS heightened scrutiny review.

Group #	Initial Grouping of Settings	Description	Approximate Number of Sites
1	Settings that are not HCB	NF, IMDs, ICF/ID, hospitals.	0
2	Settings that are presumed not to be HCBS	Co-located AL and ADS sites or respite.	1 ADS site 43 AL sites 1 Respite site
3	Settings that could be fully compliant with the HCBS Rule with modifications	AL and ADS sites that are not co-located; all AFC sites.	48 ADS sites 37 AFC sites 56 AL sites 58 SFC sites
4	Settings presumed to be HCB and meet the rule without any changes required	All private residences that are not provider owned or controlled.	Maximum approximately 16,500

This table summarizes the four more specific groups into which provider-owned and controlled sites are classified as a result of the participant experience surveys, site surveys and documentation reviews.

	Sites Not Subject to Heightened Scrutiny	Sites Subject to Heightened Scrutiny due to Co-Location	Sites That May be Subject to Heightened Scrutiny
Found to be institutional in nature – provider not able or willing to make modifications.	Group 1	Group 1	Group 1
Found to be fully compliant with HCBS settings requirements.	Group 3	Group 2	
Found to be partially compliant with HCBS settings requirements but can become fully compliant with modifications.	Group 4	Group 5	
Modifications can remove characteristics that have the effect of isolating individuals as well as become fully compliant HCBS setting requirements.			Group 4
Modifications can remove characteristics that have the effect of isolating individuals but the site is still found to be institutional in nature.			Group 1
Modifications cannot remove the characteristics that have the effect of isolating but the site, with other modifications is found to be compliant by DA.			Group 2

- Group 1 settings are not HCBS compliant. Provider will be decertified and afforded an appropriate appeal and review process. Participants in these settings will be transitioned to compliant settings.
- Group 2 settings will be submitted to CMS through the heightened scrutiny process for approval as a compliant HCBS setting.
- Group 3 settings are HCBS compliant and not subject to heightened scrutiny. Participants may remain in this setting with ongoing monitoring measures in place.
- Group 4 settings will make modifications in the remediation process and if successfully completed, will be fully compliant. Participants may remain in this setting with ongoing monitoring measures in place. Settings that do not successfully complete remediation will be moved to Group 1.
- Group 5 same as 4, except settings that do successfully complete remediation will be moved to group 2.

Based on current information from the completed site surveys,

- All AFC sites are in Group 4 and remediation activities will be complete by March 2022.
- All ADS sites, except one that is co-located, are also in Group 4 and remediation activities will be completed by March 2022.
- The one co-located ADS site will undergo further consideration and review by the Division if they will remain in Group 1 or move to Group 2.
- With respect to AL sites:
  - Many sites could be in Group 4
  - All other AL sites would have to be in Group 5 depending on the degree of co-location and the ability and willingness of the provider to remediate.
  - No AL sites are found to be in Group 3

For Group 4 providers, a remediation plan will be developed and monitored to ensure the setting comes into compliance within a specified time period. The timeline will be dependent upon the modifications required. Specific remediation action(s) will be based on the noncompliance findings. For example, if there is a restriction in place for health or safety reasons that are not documented in the person centered plan, the corrective action would be for the person centered plan to be updated to include the required information consistent with DA policy. The DA is currently working with these providers on their remediation plans.

Indiana Code and Indiana Administrative Code already provide for issuance of citation for violations of provider requirements, remedies, and considerations in determining remedy. Specifically, [455 IAC 2-6-4](#) provides for a monitoring, corrective action process. This process could be utilized in the setting modification process if necessary, although the DA wants to be as collaborative as possible when remediating providers consistent with the rights of participants. Code and rule also provide



guidance regarding appeal rights and remedies for violations. This will also provide an appeal process for those sites that are found to be institutional and thus will be decertified as waiver providers.

Service/ Setting	Areas in Need of Remediation to Comply with HCBS Characteristics	Validation/Remediation Strategies	Timeline for Start/Completion	Assuring Ongoing Compliance
<p>Adult Family Care (AFC)</p> <p>37 enrolled providers</p> <p>44 participants</p>	<ul style="list-style-type: none"> <li>• Appropriate lease agreements.</li> <li>• The individual can have visitors at any time.</li> <li>• The individual controls his/her own schedule including access to food at any time.</li> <li>• The setting is integrated in and supports full access to the greater community.</li> <li>• The individual has choice of roommates.</li> <li>• The individual is able to participate in activities of their choice in the community alone.</li> <li>• Optimizes individual initiative, autonomy, and independence in making life choices.</li> <li>• Medications maintained and distributed in a way that promotes individual control and privacy.</li> <li>• Units have locking doors; with only appropriate staff having keys/privacy in sleeping or living unit.</li> <li>• Setting is physically accessible to the individual - entrances, common areas, and dining rooms in the setting handicap accessible.</li> </ul>	<p>Provider self-surveys</p> <p>Site surveys completed on all sites</p> <p>Analysis of site survey results</p> <p>Develop remediation plan template</p> <p>Held provider education on remediation plan process and expectations for compliance</p> <p>Provide each provider with a copy of their site survey results and a remediation plan template</p> <p>Providers of provider-owned or controlled settings who wish to continue with the waiver to give remediation plans to the DA</p> <p>Providers who do not wish to be remediated will be blocked from accepting any new participants</p> <p>DA maintains remediation calendar and monitors for completion of the plan</p> <p>DA provides one-on-one technical assistance to providers as needed</p> <p>DA conducts site visits to validate completion of remediation plan</p> <p>Participants served by providers who either cannot or will not remediate will be notified of providers pending termination</p> <p>Providers who have failed to be remediated will be decertified</p>	<p>October 2014</p> <p>February - June 2016</p> <p>July 2016 - October 2016</p> <p>October 2016 - January 2017</p> <p>December 2016</p> <p>April 2018</p> <p>by March 2021</p> <p>March 2021</p> <p>January 2017 – March 2022</p> <p>July 2019 – March 2022</p> <p>As such providers are identified, no later than March 2021</p> <p>As such providers are identified, no later than March 2021</p> <p>March 2022 (once participants are transitioned according to their preferences)</p>	<p>Provider Compliance Reviews are conducted every three years.</p> <p>Case managers complete and document Person Centered Monitor Tool (PCMT) every 90 days for active participants. Items on this tool map to requirements of <b>all</b> HCBS settings criteria. Results can be monitored by provider. Any discrepancies in what is reported by a beneficiary and what is on record in terms of a specific setting's compliance is compared.</p> <p>NCI-AD will be an annual random sampling survey. Items on the survey map to all requirements of HCBS settings.</p>
<p>Adult Day Service (ADS)</p> <p>48 enrolled providers</p> <p>777 participants</p>	<ul style="list-style-type: none"> <li>• Freedom and support to control own schedule and activities.</li> <li>• Individuals are able to freely move about inside and outside the site.</li> </ul>	<p>Provider self-surveys</p> <p>Site surveys completed on all sites</p> <p>Analysis of site survey results</p> <p>Develop remediation plan template and compliance expectation guidelines</p>	<p>February 2015</p> <p>February - June 2016</p> <p>July 2016 - October 2016</p> <p>October 2016 – January 2017</p>	<p>Provider Compliance Reviews are conducted every three years.</p> <p>Case managers complete and document</p>

Service/ Setting	Areas in Need of Remediation to Comply with HCBS Characteristics	Validation/Remediation Strategies	Timeline for Start/Completion	Assuring Ongoing Compliance
	<ul style="list-style-type: none"> <li>• Individuals are able to participate in activities of their choice in the community alone.</li> <li>• Setting is physically accessible to the individual - entrances, common areas, and dining rooms in the setting handicap accessible.</li> <li>• Optimizes individual initiative, autonomy, and independent in making life choices.</li> <li>• Medications maintained and distributed in a way that promotes individual control and privacy.</li> <li>• Presence of gates, locked doors, or other barriers preventing individuals' from freely coming and going.</li> <li>• Access to food at any time - flexibility in meal times.</li> </ul>	<p>working with a stakeholder workgroup that includes providers and advocates</p> <p>Held provider education on remediation plan process and expectations for compliance</p> <p>Provide each provider with a copy of their site survey results and a remediation plan template</p> <p>Providers who wish to continue as a waiver provider return remediation plans to DA</p> <p>Providers who do not wish to be remediated will be blocked from accepting any new participants</p> <p>DA maintains remediation calendar and monitors for completion of the plan</p> <p>DA provides one-on-one technical assistance to providers as needed</p> <p>DA conducts site visits to validate completion of remediation plan</p> <p>Participants served by providers who either cannot or will not remediate will be notified of providers pending termination</p> <p>Providers who have failed to be remediated will be decertified</p>	<p>December 2016</p> <p>March 2017</p> <p>April – June 2017</p> <p>As identified as early as January 2017, no later than June 2019</p> <p>January 2017 – March 2022</p> <p>January 2017 – March 2022</p> <p>As such providers are identified, no later than March 2021</p> <p>As such providers are identified, no later than March 2021</p> <p>March 2022 (once participants are transitioned according to their preferences)</p>	<p>Person Centered Monitor Tool (PCMT) every 90 days for active participants. Items on this tool map to requirements of <b>all</b> HCBS settings criteria. Results can be monitored by provider. Any discrepancies in what is reported by a beneficiary and what is on record in terms of a specific setting's compliance is compared.</p> <p>NCI-AD will be an annual random sampling survey. Items on the survey map to all requirements of HCBS settings.</p>
<p>Assisted Living (AL)</p> <p>98 enrolled providers</p> <p>3,100 participants</p>	<ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• Freedom and support to control own schedule and activities, including the ability to move about freely inside and outside of the site and the ability to participate in activities of their choice in the community alone.</li> <li>• Privacy in sleeping or living unit, including having staff and/or other participants knock on each other's doors or ask for permission before entering participants' rooms.</li> </ul>	<p>Provider self-surveys</p> <p>Documentation and policy desk review</p> <p>Site surveys completed on all sites</p> <p>Analysis of site survey results</p> <p>Develop remediation plan template and compliance expectation guidelines working with a stakeholder workgroup that includes providers and advocates</p> <p>Held provider education on remediation plan process and expectations for compliance</p> <p>Provide each provider with a copy of their site survey results and a remediation plan template</p>	<p>October 2014</p> <p>January – February 2016</p> <p>February - June 2016</p> <p>July 2016 – March 2022 (ongoing)</p> <p>October 2016 – January 2018</p> <p>December 2016</p> <p>March 2018</p> <p>By March 2022</p>	<p>Provider Compliance Reviews will be conducted every three years.</p> <p>Case managers complete and document Person Centered Monitor Tool (PCMT) every 90 days for active participants. Items on this tool map to requirements of <b>all</b> HCBS settings criteria. Results can be monitored by provider. Any discrepancies in what is reported by a beneficiary and what is on record in terms of a</p>

Service/ Setting	Areas in Need of Remediation to Comply with HCBS Characteristics	Validation/Remediation Strategies	Timeline for Start/Completion	Assuring Ongoing Compliance
	<ul style="list-style-type: none"> <li>• Individuals are able to have visitors of choosing at any time.</li> <li>• Individuals are able to have access to food at any time.</li> <li>• Site is from gates, locked doors, or other barriers preventing individuals' entrance to and exit from all areas of the setting.</li> <li>• Optimizes individual initiative, autonomy, and independent in making life choices.</li> <li>• Medications are maintained and distributed in a way that promotes individual control and privacy.</li> <li>• Individuals are able to dine alone or in their apartments.</li> <li>• Individuals have easy access to have private communications with people outside the site by telephone, e-mail, and/or mail.</li> <li>• Units have locking doors; with only appropriate staff having keys.</li> </ul>	<p>Providers who wish to continue as a waiver provider return remediation plans to DA</p> <p>Providers who do not wish to be remediated will be blocked from accepting any new participants</p> <p>DA maintains remediation calendar and monitors for completion of the plan</p> <p>DA provides one-on-one technical assistance to providers as needed</p> <p>DA conducts site visits to validate completion of remediation plan</p> <p>Participants served by providers who either cannot or will not remediate will be notified of providers pending termination</p> <p>Providers who have failed to be remediated will be decertified</p>	<p>No later than March 2021</p> <p>January 2017 – March 2022</p> <p>January 2017 – March 2022</p> <p>July 2019 – March 2022</p> <p>July 2019 – March 2022</p> <p>As such providers are identified, no later than March 2021</p> <p>By March 2022 (once participants are transitioned according to their preferences)</p>	<p>specific setting's compliance is compared.</p> <p>NCI-AD will be an annual random sampling survey. Items on the survey map to all requirements of HCBS settings.</p>
<p>Structured Family Care (SFC)</p> <p>11 enrolled provider agencies</p> <p>2,082 participants served by agency providers employing and overseeing the individual caregiver</p>	<ul style="list-style-type: none"> <li>• No identified needs yet</li> </ul>	<p>DA will ask providers to self-assess for situations that may be provider-owned or controlled</p> <p>DA will contact SFC providers and case managers of any participant that is found to be receiving SFC in a provider owned or controlled setting.</p> <p>DA will review evaluations and work with case managers and SFC provider agencies to remediate any non-compliance areas</p> <p>Situations that cannot be remediated will be transitioned into other service options or settings as determined by the participant in the person centered planning process.</p>	<p>November 2016</p> <p>January 2019– July 2019</p> <p>Ongoing</p> <p>Beginning as situations are identified and completed no later than March 2022</p>	<p>Provider Compliance Reviews will be conducted every three years.</p> <p>Case managers complete and document Person Centered Monitor Tool (PCMT) every 90 days for active participants. Items on this tool map to requirements of <b>all</b> HCBS settings criteria. Results can be monitored by provider. Any discrepancies in what is reported by a beneficiary and what is on record in terms of a specific setting's compliance is compared.</p>

Service/ Setting	Areas in Need of Remediation to Comply with HCBS Characteristics	Validation/Remediation Strategies	Timeline for Start/Completion	Assuring Ongoing Compliance
				NCI-AD will be an annual random sampling survey. Items on the survey map to all requirements of HCBS settings
Structured Day Program (SDP)  54 enrolled providers  0 participants	<ul style="list-style-type: none"> <li>• The setting is integrated in and supports full access to the greater community.</li> <li>• Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint.</li> <li>• Optimizes autonomy and independence in making life choices.</li> </ul>	DA will collaborate with DDRS in their assessment process and follow their recommendations with regard to these shared providers.  Providers who do not wish to be remediated will be blocked from accepting any new participants  Participants served by providers who either cannot or will not remediate will be notified of providers pending termination  Providers who have failed to be remediated will be decertified	Ongoing  March 2021  March 2021  March 2022 (once participants are transitioned according to their preferences)	Provider Compliance Reviews will be conducted every three years.  Case managers complete and document Person Centered Monitor Tool (PCMT) every 90 days for active participants. Items on this tool map to requirements of <b>all</b> HCBS settings criteria. Results can be monitored by provider. Any discrepancies in what is reported by a beneficiary and what is on record in terms of a specific setting's compliance is compared.  NCI-AD will be an annual random sampling survey. Items on the survey map to all requirements of HCBS settings.

Service/ Setting	Areas in Need of Remediation to Comply with HCBS Characteristics	Validation/Remediation Strategies	Timeline for Start/Completion	Assuring Ongoing Compliance
Supported Employment (SE)  49 enrolled providers  2 participants	<ul style="list-style-type: none"> <li>• The setting is integrated in and supports full access to the greater community.</li> <li>• Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint.</li> <li>• Optimizes autonomy and independence in making life choices.</li> </ul>	DA will collaborate with DDRS in their assessment process and follow their recommendations with regard to these shared providers.  Providers who do not wish to be remediated will be blocked from accepting any new participants  Participants served by providers who either cannot or will not remediate will be notified of providers pending termination  Providers who have failed to be remediated will be decertified	Ongoing  March 2021  As such providers are identified, no later than March 2021  March 2022 (once participants are transitioned according to their preferences)	Provider Compliance Reviews will be conducted every three years.  Case managers complete and document Person Centered Monitor Tool (PCMT) every 90 days for active participants. Items on this tool map to requirements of <b>all</b> HCBS settings criteria. Results can be monitored by provider. Any discrepancies in what is reported by a beneficiary and what is on record in terms of a specific setting's compliance is compared.  NCI-AD will be an annual random sampling survey. Items on the survey map to all requirements of HCBS settings.

DA developed a remediation plan template that was distributed to providers of AL and ADS in March of 2017. The template was provided to them along with the results of their site specific assessments. The plan will require each provider to identify strategies for becoming fully compliant with each HCBS requirement. The provider will need to include milestones and dates as part of the plan. Plans were due back to the DA as completed by the provider prior to final compliance date. The DA is reviewing all plans and working with the provider on any required changes prior to approval. The DA will then enter these into a master remediation calendar that will be used by DA staff to follow up with providers on their progress. DA staff will regularly check the calendar for milestones expected to be reached and contact the provider through email to request confirmation of the successful completion of the milestone. If there are barriers to completion this will afford the provider an opportunity to seek technical assistance from DA staff on those challenges.

When a provider believes they have completed remediation, they will be required to notify the DA. DA will then complete any validation activities required. These will vary based on the nature of the non-compliance issue. Some validation efforts will take place over time to assure that remediation strategies have been fully implemented. Validation of the remediation may take the form of document review, interviews with staff, participants, care managers, families or others, as well as site visits. All or some of these methods may be used again depending on the nature of what is being validated. For instance, if the primary non-compliance issue is the use of an appropriate lease. That remediation can largely be validated through document review and may not require a site visit. Other issues, like the ability to have visitors, might include a document review of a new or revised policy as well as site visits, perhaps multiple to observe visitor activity, as well as participant interviews by phone or in person. Remediation changes will be completed by March of 2022. (More detail provided under the Relocation of Beneficiaries sections).

## Heightened Scrutiny

**1. Identification of sites for heightened scrutiny:** Using site assessment information, the DA will determine which settings are presumed institutional and subject to heightened scrutiny. The Provider Relations team within the DA will review all provider remediation plans. There will be a committee with the DA made up of at least three people including the Provider Relations Director and Deputy Director that will make the status determination. After the DA accepts a provider's remediation plan, the DA will then validate that plan after the remediation plan has been completed by the provider. This will be done by members of the DA Provider Relations team. DA will test for all three prongs for presumed institutional status:

- Prong 1 – adjacent to, or on the grounds of a public institution;
- Prong 2 – co-located (in the same building, not including breezeway connections) as a nursing facility or other inpatient treatment facility; and
- Prong 3 – settings that have the effect of isolating.

Based on stakeholder and CMS feedback, the DA has adjusted its initial determinations of settings that are presumed institution pursuant to prong 2 by clarifying that co-located settings are not presumed institutional if, but for a breezeway connection, the setting and the nursing facility or inpatient treatment center would not be in the same building. So far, this adjustment has removed three providers from the presumed institutional category and more providers may be removed from the presumed institutional category as the DA reviews the physical layout of settings. The DA will still evaluate all provider-owned and controlled settings on a case-by-case basis to determine whether a setting is institutional, regardless of the threshold analysis of whether a setting falls into one of the three prongs.

Successful completion of remediation plans will be required to determine whether a site can overcome the presumption. Remediation will be validated by DA. A letter will be sent to the provider to communicate successful completion.

**Heightened Scrutiny Evidence Packet (HSEP):** HSEP will be created by DA staff. The HSEP will contain evidence of the provider's compliance with all of the requirements of an HCBS setting.

Items that should be included in the packet:

- Which prong the site was flagged for as PI;
- Observations from on-site reviews/surveys;
- Summary of member surveys;
- Pictures of the site and other demonstrable evidence;
- Including signage, front door area, areas separating institutional units from HCBS unit;
- Comments or summary of comments submitted by the public during the public comment period; and
- Aerial map of the facility.

The HSEP may also include, but is not limited to, the following items:

- Copies of lease/residency agreements;
- Organizational charts;
- Redacted service plans;
- Licensure requirements or other state regulations;
- Residential housing or zoning requirements;
- Proximity to/scope of interactions with the broader community;
- Provider qualifications for HCBS staff;
- Service definitions that explicitly support setting requirements;
- Evidence that setting complies with requirements for provider owned or controlled settings;
- Documentation in the person-centered treatment plan that individual's preferences and interests are being met;
- Evidence that the individual chose the setting from among setting options, including non-disability specific setting; or
- Details of proximity to public transport or other transportation strategies to facilitate integration.

The HSEP will not exceed 10 pages.

In the case of sites triggering heightened scrutiny based on the first or second prong, heightened scrutiny packets will need to include information supporting the fact that there is a meaningful distinction between the HCBS setting and the institutional



based facility, and that the latter is integrated and supports full access of individuals receiving HCBS to the greater community. Additionally, information should establish that the services provided to the individual and the activities that the individual engages in are intertwined with the broader community.

In the case of sites triggering heightened scrutiny based on the third prong, there should be information to support that the setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not a setting of only persons with disabilities. Additionally, the information in the packet should support that individuals participate regularly in typical community life activities outside of the setting to the extent they desire and the activities are engaged with the broader community.

**Review & Submission of the HSEP:** Once the HSEP are completed, they should be submitted to the OMPP for review. If there is a need to review, a meeting will be scheduled between OMPP and DA. Once the HSEP is approved by OMPP, the packets will be submitted for the public comment period. Based on the evidence and recommendation and the outcome of public comment, OMPP makes the final determination of which packets are submitted to CMS for heightened scrutiny.

If a setting has institutional qualities that cannot be addressed by modifications by the provider, the setting will be considered institutional (Group 1). If a setting does not have institutional qualities, it will be reviewed for HCBS settings characteristics.

### **Relocation of Beneficiaries**

The DA has not yet determined the number of individuals who may be affected by relocation. Estimates are included on the chart above, but the final number will be determined as provider remediation plans are submitted and reviewed and validated. For Group 1 sites, a transition plan will be established both for the site and each individual participant. The site transition plan shall include a list of participants requiring transition, a plan for communicating with these individuals and their person centered support circle throughout the transition period, a timeline for decertification of the provider, and regular progress reports to be submitted to DA. Currently, available appeal and administrative review processes will be provided to participants impacted, as well as to the providers that must be decertified.

The participant specific transition plan will be developed and monitored by the waiver care manager. It will provide for appropriate notice to the individual and their person centered support circle regarding the site's noncompliance, the action steps that will occur, and procedural safeguards available to them. The care manager will work with the participant and their representatives to examine all available options. Timelines will be established to support transitioning individuals to a compliant setting no later than March 2021, provided they wish to remain in the waiver program. Beginning summer of 2021, transitions could start occurring.

### **Beneficiary Communication Timeline**

DA will seek to notify beneficiaries in a timely way. Notices should not be so early as to spark unnecessary panic for individuals and their families; yet the notice should give them as much time as possible to plan for a potential move. Additionally, DA does not want to alarm beneficiaries that may be confused by letters they receive without explanation.

Beginning in March of 2021 through July of 2021, care managers will hand deliver notices to beneficiaries residing in sites that will not or cannot become compliant. Most notices would be delivered by July of 2021 but later notices may be made if a provider is failing to make satisfactory progress towards remediation. In some cases, that may not become apparent until closer to the March 2022 target date for completion of remediation.

Beneficiaries will be provided with options counseling on all setting options available to them. Beneficiaries will also be notified of potential sources of advocacy (including Indiana Disability Rights, ombudsman, the Arc, other advocacy organizations) along with their right to appeal. The transition plan developed by the care manager will be completed as part of the person centered planning process involving the individual's circle of support. The transition plan document will be an addendum to the person centered service plan. Transition plans will be reviewed by DA as part of service plan review.

All transition plans should be submitted to the DA within 90 days of beneficiary notification. DA will complete their review within 30 days. The care manager will be able to document and track milestones in the care management system. The system will allow DA staff to monitor beneficiaries still in non-compliant settings as we approach March of 2022. DA staff will provide technical support and assistance to care managers as they aid the beneficiary in the transition process.

## Ongoing Compliance and Monitoring of Settings

The Person Centered Monitoring Tool (PCMT), formerly the 90 Day Review tool, is administered by the care manager for every waiver participant, face-to-face, every 90 days. This will be the DA's primary compliance monitoring tool. To complete the PCMT, the care manager conducts an interview with the participant as well as anyone else the participant has identified. This tool has already been updated to include an assessment of the service and setting as experienced by the individual and reports have been developed to identify specific settings for which a service participant has indicated any state of non-compliance within the setting. These reports will be reviewed on a monthly basis and corrective actions required at that time. Discrepancies between beneficiary and provider responses during the PCMT review could mean that a setting is out of compliance with one or more of the settings criteria. Any beneficiary response where there is an unresolved discrepancy will be investigated by the Division of Aging on an ongoing basis to ensure compliance with the Settings Rule.

Additionally, in 2016 DA began participating in the National Core Indicators survey for the aged and disabled population (NCI-AD). NCI-AD is being administered to a statistically valid sampling of participants in all of the DA's HCBS programs, Medicaid and non-Medicaid. This survey tool replaces the Participant Experience Survey (PES) that had been used with waiver participants for many years. The NCI-AD focuses on how participants experience the services they receive and how they impact the quality of life they experience. A number of the NCI-AD questions crosswalk to the characteristics of a HCBS setting. A crosswalk is provided below of PCMT items and NCI-AD questions to HCB characteristics. These assessments will continue throughout the transition process and will be updated to include the new standards as the State moves through the transition period.

The PCR is conducted every three years for all waiver providers not licensed by the ISDH. The PCR focuses on the provider's policies and procedures and looks for evidence that those are being followed.

With both types of reviews, all negative findings may be addressed through a "corrective action plan" (CAP) which allows the provider to describe how it intends to address the problem. The DA then either approves the CAP, or works with the provider to develop an acceptable plan. DA intends to use these same tools and processes to assess and correct many of the areas which are identified as non-compliant with the HCBS rule, and will also continue to use updated versions of these tools to assure compliance with the HCBS rule over the long-term.

## Offering Non-Disability Specific Setting Options

Care managers are required, as part of options counseling, to explain to individuals the various settings under which they may receive HCBS. This requirement will be documented in revisions to 455 IAC 2. Care managers will receive training as part of their orientation and ongoing training on this requirement and best practices for meeting it. Individuals will be supported in the decision making process so that their person centered service plan will include their selection of the setting in which they receive services. This may well be their current residence, private home or apartment, or a relative's home, or a congregate, provider owned or controlled setting that has the characteristics of an HCB setting.

Individuals on the Aged & Disabled and Traumatic Brain Injury HCBS waivers are offered twenty service options in order to stay in their homes, and we believe that the current service options are robust enough to allow individuals of any level of need to stay in their home if they choose to do so. Each individual on the waiver attests that their service choices were made freely. Individuals are also offered settings that include assisted living, adult day service, adult family care, and structured family care. None of these settings require a specific disability.

### Crosswalk of NCI-AD and PCMT to HCBS Setting Characteristics

HCBS Settings Characteristics	NCI-AD Survey Questions
The setting is integrated in and supports full access to the greater community	7. Can you see or talk to your friends and family (who do not live with you) when you want to? 48. Are you able to do things you enjoy outside of your home when and with whom you want to? (For example, visit with friends or neighbors, go shopping, go to a movie or a show or out to eat, to religious functions, to volunteer in the community)? 50. Do you have transportation when you want to do things outside of your home, like visit a friend, go for entertainment, or do something for fun? 53. Do you have a paying job in the community, either full-time or part-time?
The setting is selected by the individual from among setting options	2. In general, do you like where you are living right now? 4. Would you prefer to live somewhere else? We are not talking about geography, but rather the kind of place you'd like to live in.
Each individual has a right to privacy, is treated with dignity and respect, and is free from coercion and restraint	27. Do you feel that the people who are paid to help you treat you with respect? 44. Can you use the phone privately whenever you want to? 46. Do people read your mail or email without asking you first?
Provides individuals independence in making life choices	59. Do you get up and go to bed at the time when you want to? (No one else decides for you when you get up or go to bed, and you get the help you need to get up and go to bed when you want to?) 60. Can you eat your meals when you want to? (no one else decides for you when you eat)
The individual is given choice regarding services and who provides them	16. Can you choose or change what kind of services you get and determine how often and when you get them? 17. Can you choose or change who provides your services if you want to? 86. Do you feel in control of your life?
Responsibilities and rights of tenant, legally enforceable agreement	Within the Person Centered Monitoring Tool that Care Managers ask questions from every 90 days.
Privacy in sleeping or living unit	38. Do people ask your permission before coming into your home/apartment? 40. Do you have enough privacy in your home? ( <i>Can you have time to yourself?</i> )
Lockable doors, staff have keys only as needed	39. Are you able to lock the doors to your room if you want to?
Freedom to furnish and decorate	41. Are you able to decide how you furnish and decorate your room?

Choice of roommates for shared rooms	47. Are you able to choose who your roommate is here?
Control own schedule and activities and access to food at any time	45. Do you have access to food at all times of the day? Can you get something to eat or grab a snack when you get hungry?
Able to have visitors at any time	42. Are your visitors able to come at any time, or are there only certain times of day that visitors are allowed? 43. Do you have privacy with visitors at home if you want it?
Physically accessible	32. Are you able to get to safety quickly in case of an emergency like a fire or a natural disaster? 30. Many people make changes to their homes, for example, adding grab bars, ramps, or bathroom modifications to make it easier for you to live at home. Do you have or need any of the following changes made to your home (or an upgrade to the one you have)? To clarify, we are not talking about general repairs to the house, but rather specialized modifications.

**Training and Technical Assistance**

DA has identified four groups that require trainings on HCB characteristics: DA staff, care managers, providers of AL, ADS, and AFC services, and contractors completing provider and participant surveys. DA staff include individuals involved with the review of new provider sites, individuals that will complete remediation validation, individuals who conduct compliance reviews, individuals who review service plans, and individuals who monitor incident reports. All have been trained on the required HCBS characteristics with the level appropriate to their role in the process.

DA is also developing training tools for care managers. Trainings will focus on general overview of the HCB settings requirements, the use of the PCMT for ongoing compliance monitoring, tips for monitoring compliance during onsite visits to provider owned and controlled settings, the completion of person centered modifications to HCB setting requirements, and the care manager’s role in any heightened scrutiny submissions. Trainings will be supplemented with webinars for Q&A and in person trainings largely in a train the trainer model.

The DA uses contractors currently to complete NCI-AD interviews. Other contractors may be used as part of the remediation validation reviews as well. Any contract staff will have to complete the same training as DA staff prior to completing any assessments of sites or interviews with participants.

## SECTION 4: KEY STAKEHOLDERS AND OUTREACH

It is the DA's intention to assist each provider in reaching full compliance and assist each participant with realizing the full benefits of the HCBS rule. To achieve these outcomes, it is imperative that the providers and participants, as well as their advocates and representatives, are included in each step of the process. Steps taken to date include:

- Several meetings occurred with trade associations representing AL and ADS providers.
- During the month of October 2015, Division staff met with care managers in regional training sessions to introduce them to the HCBS requirements and to open dialog as to how they will be involved and asked them to encourage their consumers and advocates to participate in transition planning and processes.
- Five regional forums were scheduled in November 2014. These were conducted on-site at provider-owned AL facilities to meet with participants and their family members regarding the rule, the transition process, and opportunities to participate in that process.
- All DA HCBS waiver providers were invited to a provider training day November 10, 2014. This day included an "all-provider" session on the HCBS rule, as well as an extended session to gather provider input into the process.
- The DA has engaged with individual providers throughout the assessment process, explaining the need for self-surveys and emphasizing the need for public participation, both in scheduled forums and ongoing. The DA will continue this individual approach as opportunities arise.
- In February 2016, the DA met again with AL and ADS providers and the Alzheimer's Association specifically on the topic of secure memory care units.
- Meetings and discussions have been ongoing with provider associations, in particular AL provider associations.
- October 2016 through January 2016 two workgroups will collaborate on remediation plan template design and technical assistance materials that outline future requirements for ADS and AL.
- DA held an open provider forum in December 2016 to continue provider education on the settings rule, the State's transition plan, and the upcoming remediation process. Special breakout sessions were held for ADS, AFC, and AL providers to focus on a review of the survey results and the most common areas in need of remediation as well as best practices for coming into compliance.

The DA has identified some specific areas for key stakeholder participation in the transition plan. We will consider the process to be dynamic and will be looking for opportunities to include stakeholders, particularly DA HCBS waiver participants, in the development and implementation as it evolves.

We have identified "Key Stakeholders" to be the DA HCBS waiver participants, their family members and advocates; HCBS waiver providers, along with their various trade associations; care managers and their managing entities, the 16 Area Agencies on Aging, the Long-Term Care Ombudsman and local representatives; and established advocacy groups representing senior citizens and individuals with disabilities.

## **DIVISION OF DISABILITY AND REHABILITATIVE SERVICES (DDRS)**

### **HCBS Programs**

#### **Community Integration and Habilitation (CIH) Waiver – 1915(c)**

#### **Family Supports Waiver (FSW) – 1915(c)**

In the 2017 legislative session, [House Bill 1102](#) mandated a Task Force to assess services and supports for people with intellectual and other developmental disabilities. DDRS recognizes the constraint of current regulations and service definitions to address the need for continued improvement of home and community-based services and supports in order to improve quality outcomes for individuals and ensure compliance with HCBS. DDRS plans to conduct a universal redesign and modernization effort of the HCBS service delivery system that will include the revision of the current waivers. DDRS will incorporate the findings and recommendations of the Task Force within a future STP amendment or Milestone updates in order to align all settings with the HCBS final rule.

In January 2018, FSSA decided to temporarily suspend activities associated with the CMS, HCBS Settings Rule. This pause allowed an opportunity to regroup to better reflect the partnerships between FSSA, other agencies, and key stakeholders, including CMS, to better understand how to meet our participants' needs.

DDRS used this period to review and reconsider planned STP activities associated with the Bureau of Developmental Disabilities Services' (BDDS) HCBS waivers. DDRS revised the STP timeframes given the extended timeline offered to states for HCBS compliance by 2022. The revised timelines will promote a successful transition that will realign incentives to support a navigable, person-centered system that promotes quality of life, quality of care, and the individual's freedom of choice. While the intent is for all settings to be compliant by the appropriate timeframe outlined above, Indiana also recognizes the need to continually evolve its HCBS waiver system to improve the quality of life for the individuals it serves. The Task Force report intends to provide a 10 year plan for the state of Indiana.

### **SECTION 1: SETTINGS INCLUDED IN THE STP**

DDRS is evaluating all residential and non-residential settings for HCBS compliance. This includes provider owned or controlled residential settings, day service settings, congregate settings, and any setting where HCBS are delivered. BDDS defines provider owned or controlled settings to include those residential settings that are owned by a provider or in those residential settings in which individuals, who are not living in their family home, and utilize Residential Habilitation and Support – Level Two, Residential Habilitation and Support - Daily (RHS Daily), or Structured Family Caregiving. A full listing of settings evaluated for compliance can be located in the SETTING ASSESSMENT in Section 3.

### **SECTION 2: SYSTEMIC ASSESSMENT**

From May through September 2014, DDRS completed a systemic assessment of HCBS requirements. The assessment examined the HCBS requirements and determined DDRS's level of compliance. The assessment was completed by DDRS/BDDS internal staff, OMPP, and the FSSA Office of General Counsel (OGC) by reviewing Indiana Administrative Code ([IAC 460](#)), policies, procedures, provider agreements, and ongoing monitoring forms with the goal of identifying specific policies requiring updates, documents and processes requiring modifications in order to more appropriately represent HCBS compliance. DDRS' intent throughout the process was to determine where systemic improvements or changes would need to be made to meet CMS' HCBS standards and identify areas which will require remediation.

The assessment determined changes may be needed to 460 IAC as well as policy and procedure to incorporate and reinforce the requirements of the HCBS Final Rule for both residential and nonresidential settings. These changes will need to specify the settings in which HCBS may not be provided and include the requirements that individuals be offered the opportunity to choose among services or a combination of services and settings that address the individual's assessed needs in the least restrictive manner, promote the individual's autonomy and full access to the broader community, and ensure an individual is provided with opportunities to seek employment and work in integrated settings. Changes will also outline the elements required for individuals choosing to receive services in provider-owned or controlled settings.

Through the systemic assessment it was also determined that some service definitions in the waivers may need to be revised to strengthen requirements of the final rule. Both the CIH and FSW service definitions will be reviewed for compliance and any service definition found to be in conflict with the final rule will be updated through waiver changes (amendments or proposed waivers) and posted for public comment.



Another outcome of the systemic assessment led to DDRS transforming how Indiana provides services and supports to its citizens with intellectual and developmental disabilities by incorporating the LifeCourse Framework through the Person Centered Individualized Support Plan (PCISP). These revisions provided an opportunity to develop greater capacity to value and support people to be a part of their community while incorporating system changes that embed and address HCBS compliance questions within life domains.

Any proposed modifications to Indiana Code will follow the [Administrative Rules drafting procedure](http://www.in.gov/legislative/iac/IACDrftMan.pdf), located at <http://www.in.gov/legislative/iac/IACDrftMan.pdf>, and will be published for a public comment period to ensure meaningful feedback from all stakeholders. Indiana Administrative Code changes have been drafted as of May 2018 as outlined in the remediation strategy to ensure compliance with the HCBS Final Rule. Additionally, the policies and procedures listed in the crosswalk that were reviewed and showed partial compliance, silence, or did not comply with the HCBS Final Rule will be updated as outlined in the proposed remediation strategies by December 2020 to reinforce the requirements of the HCBS Final Rule.

The table below outlines DDRS’s systemic setting crosswalk. The systemic setting crosswalk shows the results of DDRS’s level of compliance with the HCBS rules, identifies remediation activities, and constructs a timeline for completion of the remediation.

### Systemic Assessment Crosswalk

**Federal Requirement:** Settings are integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">460 IAC 6-20-2</a> “community-based employment services shall be provided in an integrated setting.”	Fully complies due to requirement of being in the community and in an integrated setting.	No remediation needed.	n/a
<a href="#">460 IAC 6-24-3</a> Management of Individual’s financial resources (b) The provider shall assist an individual to: (1) obtain, possess, and maintain financial assets, property, and economic resources.	Partially complies due to requirement of assisting the individuals with maintaining financial assets and economic resources.	Additional rule language will be added to policies/procedures that address both residential and non-residential settings to clarify CMS setting regulations to ensure protections are in place to address control of personal resources to the same degree of access as individuals not receiving Medicaid HCBS.	Drafted 4/2021  Expected completion 12/2022
<a href="#">460 IAC 6-3-58</a> “Transportation supports” means supports, such as tickets and passes to ride on public transportation systems that enable an individual to have transportation for access to the community.	Partially complies due to supporting accessing the community.	Additional rule language will be added to policies/procedures that address both residential and non-residential settings to clarify CMS setting regulations that address individuals accessing the community to the same degree of access as individuals not receiving HBCS.	Drafted 4/2021  Expected completion 12/2022
<a href="#">460 IAC 6-3-32</a> “ISP” means a plan that establishes supports and strategies, based upon the person-centered planning process.	Partially complies due to accommodating the resources of the individual to achieve outcomes.	Additional rule language will be added to policies/procedures that address both residential and non-residential settings to clarify CMS setting regulations that address individuals accessing the community to the same degree of access as individuals not receiving HBCS.	Drafted 4/2021  Expected completion 12/2022
<a href="#">460 IAC 7-3-12 AND 6-3-38.5</a> (PCP) (4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that: (A) is based on the individual’s preferences, dreams, and needs;	Partially complies due to full range of supports including community and natural supports based on the individual’s preference and needs through the person-centered planning process.	Additional rule language will be added to policies/procedures that address both residential and non-residential settings to clarify CMS setting regulations that address individuals receiving services to the same degree of access as individuals not receiving HBCS.	Drafted 4/2021

<p>(B) encourages and supports the individual's long term hopes and dreams; (C) is supported by a short term plan that is based on reasonable costs, given the individual's support needs; (D) includes individual responsibility; and (E) includes a range of supports, including funded, community, and natural supports.</p> <p><a href="#">460 IAC 6-9-4</a> System for protecting Individuals (h) A provider shall establish a system for providing an individual with the opportunity to participate in social, religious, and community activities.</p>	<p>Fully complies due to requirement of providers to ensure opportunity for individuals to engage in community life.</p>	<p>No remediation needed.</p>	<p>Expected completion 12/2022</p> <p>n/a</p>
<p><b>Monitoring Checklist</b> Is the individual's setting integrated in and does it support access to the greater community?</p>	<p>Fully complies due to including participation in community activities and events.</p>	<p>Additional rule language has been added to policies/procedures that address both residential and non-residential settings to clarify CMS setting regulations that address individuals receiving services to the same degree of access as individuals not receiving HBCS.</p>	<p>Completed 08/2016</p>
<p><b>Monitoring Checklist</b> Does discussion with the individual and legal guardian, if indicated, confirm the individual's needs and desires are being addressed in the PCISP?</p> <p><a href="#">PC/ISP</a> In the domain of daily life and employment, information recorded should include the role of the supporter and specifics about what works and does not work for the individual.</p> <p><a href="#">Pre-Post Monitoring Checklist</a> Transportation available to meet all community access needs.</p>	<p>Fully complies due to addressing the needs of the individual as outlined in the person-centered planning process.</p> <p>Fully complies due to ensuring individuals are supported in the opportunity to seek competitive employment.</p> <p>Fully complies due to ensuring transportation is available to meet all community access needs prior to approving a transition.</p>	<p>No remediation needed.</p> <p>No remediation needed.</p> <p>No remediation needed.</p>	<p>n/a</p> <p>Completed 04/2018</p> <p>n/a</p>

**Federal Requirement:** Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 6-4</a> Rule 4. Types of Supported Living Services and Supports.</p>	<p>Silent due to not specifying non-disability specific settings as an option.</p>	<p>Additional rule language will be added to policies/procedures that address both residential and non-residential settings to clarify CMS setting regulations that ensure settings are selected by the individual from options including non-disability specific settings.</p>	<p>Drafted 4/2021</p> <p>Expected completion 12/2022</p>

<p><a href="#">460 IAC 6-29-3</a>                  Sec. 3. The provider designated in an individual’s ISP as responsible for providing environmental and living arrangement support shall ensure that appropriate devices or home modifications, or both (1) are provided to the individual in accordance with the individual’s ISP.</p>	<p>Fully complies due to setting option is identified and documented in the person-centered planning process.</p>	<p>No remediation necessary.</p>	<p>n/a</p>
<p><a href="#">(Part 4.5 and 4.6 of Manual-FSW/CIH)</a>                  Participants may choose to live in their own home, family home, or community setting appropriate to their needs.</p>	<p>Fully complies due to individual choice in where to live.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">460 IAC 6-14-4</a> Training - (a) A provider shall train the provider’s employees or agents in the protection of an individual’s rights, including how</p>	<p>Fully complies due to setting option is identified and documented in the person-centered planning process and employees are trained on protecting individual’s rights.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p>to: (3) implement person centered planning and an individual’s ISP;  <a href="#">460 IAC 7-4-2</a> Collection of information Sec. 2. The support team shall collect all the information required to complete the ISP. In collecting the information needed to complete the ISP, the team shall be cognizant of the past, present, and future influences of a variety of factors that define the Individual’s quality of life.</p>	<p>Fully complies due to requirement of collecting all relevant information from the person-centered planning process to complete the ISP.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">460 IAC 6-3-32</a> “Individualized support plan” or “ISP” defined Sec. 32. “Individualized support plan” or “ISP” means a plan that establishes supports and strategies, based upon the person centered planning process, intended to accomplish the individual’s long term and short term outcomes by accommodating the financial and human resources offered to the individual through paid provider services or volunteer services, or both, as designed and agreed upon by the individual’s support team.</p>	<p>Fully complies due to person-centered planning process outlining the supports and strategies to accomplish goals and documenting a person’s resources available.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">460 IAC 6-3-38.5</a> “Person centered planning” defined                  (1) allows an individual, the individual’s legal representative, if applicable, and any other person chosen by the individual to direct the planning and allocation of resources to meet the individual’s life goals;                  (2) achieves understanding of how an individual:                  (A) learns;                  (B) makes decisions; and (C) is and can be productive;</p>	<p>Partially complies. Language does not specify documenting residential options in the person-centered planning process including non-disability specific and the option for a private unit in a residential setting.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that require documentation in the person-centered planning process that settings are selected by the individual from options including non-disability specific settings and the requirement to document resources available for room and board.</p>	<p>Drafted 4/2021                   Expected completion 12/2022</p>

<p>(3) discovers what the individual likes and dislikes; and                  (4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that:                  (A) is based on the individual’s preferences, dreams, and needs;                  (B) encourages and supports the individual’s long term hopes and dreams;                  (C) is supported by a short term plan that is based on reasonable costs, given the individual’s support needs;                  (D) includes individual responsibility; and                  (E) includes a range of supports, including funded, community, and natural supports.</p> <p><a href="#">460 IAC 6-24-3</a> Management of Individuals Financial Resources (b)                  The provider shall assist an individual to: (1) obtain, possess, and maintain financial assets, property, and economic resources; and (2) obtain insurance at the individual’s expense to protect the individual’s assets and property.</p> <p><a href="#">DSP Training</a> (4600228027)                  Initial DSP training requires an approved core competency such as Person Centered Planning, Respect/Rights, Choice, Competence, and Community presence and participation</p> <p><a href="#">Professional Qualifications and Requirements</a> (4600228021)                  Provider shall ensure that services provided to individual meet the needs of the individual</p> <p><a href="#">(Part 4.5 and 4.6 of Manual-FSW/CIH)</a>                  Participants develop an Individualized Support Plan (ISP) using a person centered planning process guided by an Individual Support Team (IST).</p>	<p>Partially complies due to documenting resources available for room and board.</p> <p>Fully complies due to training requirements in choices, rights and the person-centered planning process.</p> <p>Complies due to requirements in PC/ISP process that ensures choices, rights and the person-centered planning process.</p> <p>Complies due to the person-centered planning process based on an individual’s needs and preferences.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that require documentation in the person-centered planning process resources available for room and board.</p> <p>No remediation required.</p> <p>Additional rule language has been added to policies/procedures to clarify CMS setting regulations that require documentation in the person-centered planning process that settings are selected by the individual from options including non-disability specific settings and the requirement to document resources available for room and board.</p> <p>Additional rule language has been added to policies/procedures to clarify CMS setting regulations that require documentation in the person-centered planning process that settings are selected by the individual from among setting options including non-disability specific settings and the requirement to document resources available for room and board.</p>	<p>Drafted 4/2021</p> <p>Expected completion 12/2022</p> <p>n/a</p> <p>Completed 04/2018</p> <p>Completed 04/2018</p>
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**Federal Requirement:** Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 7-3-12</a> “Person centered planning” or “PCP” defined- Sec. 12. “Person centered planning” or “PCP” means a process that:</p> <p>1) allows an individual, the individual’s legal representative, if applicable, and any other person chosen by the individual to direct the planning and allocation of resources to meet the individual’s life goals;</p> <p>(2) achieves understanding of how an individual:</p> <p>(A) learns;</p> <p>(B) makes decisions; and</p> <p>(C) is and can be productive;</p> <p>(3) discovers what the individual likes and dislikes; and</p> <p>(4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that:</p> <p>(A) is based on the individual’s preferences, dreams, and needs;</p> <p>(B) encourages and supports the individual’s long term hopes and dreams;</p> <p>(C) is supported by a short term plan that is based on reasonable costs, given the individual’s support needs;</p> <p>(D) includes individual responsibility; and</p> <p>(E) includes a range of supports, including funded, community, and natural supports.</p>	<p>Partially complies due to the person-centered planning process is based on the individual’s needs.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that any use of restraint must be supported by a specific assessed need and justified in the person-centered planning process.</p>	<p>Drafted 4/2021</p> <p>Expected completion 12/2022</p>
<p><a href="#">460 IAC 6-8-2</a> - Constitutional and statutory rights Sec. 2. (a) A provider shall ensure that an individual’s rights as guaranteed by the Constitution of the United States and the Constitution of Indiana are not infringed upon.</p>	<p>Fully complies due to requirement of ensuring individual’s rights.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">IC 12-27-4</a> – Seclusion and Restraint laws</p> <p><b>IC 12-27-4-1</b>  <b>Cases in which seclusion or restraint may be used</b></p> <p>Sec. 1. A service provider may use seclusion or restraint of a patient only in the following cases:</p> <p>(1) When necessary to prevent danger of abuse or injury to the patient or others.</p>	<p>Fully complies due to limits on restraints.</p>	<p>No remediation needed.</p>	<p>n/a</p>

<p><a href="#">460 IAC 6-8-3</a> Promoting the exercise of rights Sec. 3. To protect an individual's rights and enable an individual to exercise the individual's rights, a provider shall do the following: (3) Obtain written consent from an individual, or the individual's legal representative, if applicable, before releasing information from the individual's records unless the person requesting release of the records is authorized by law to receive the records without consent. (5) Inform an individual, in writing and in the individual's usual mode of communication, of:                  (A) the individual's constitutional and statutory rights using a form approved by the BDDS; and                  (B) the complaint procedure established by the provider for processing complaints.</p>	<p>Fully complies due to ensuring an individual's rights and privacy are protected and individuals are informed of their rights.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">460 IAC 6-10-8</a> Resolution of disputes (b) The resolution of a dispute shall be designed to address an individual's needs.</p>	<p>Fully complies due to any resolution of a dispute will address the individual's needs.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">460 IAC 6-9-4</a> Systems for protecting individuals (b) A provider shall require that at regular intervals, as specified by the individual's ISP, the individual be informed of the                  Following                  (1) The individual's medical condition.                  (2) The individual's developmental and behavioral status.                  (3) The risks of treatment.                  4) The individual's right to refuse treatment.                  A provider shall establish a protocol for ensuring that an individual is free from unnecessary medications and physical restraints.                  A provider shall establish a system to reduce an individual's dependence on medications and physical restraints.                  (e) A provider shall establish a system to ensure that an individual has the opportunity for personal privacy.</p>	<p>Partially complies due to requirement of providers to ensure unnecessary medications and restraints are not used. The word <i>unnecessary</i> to be removed.</p>	<p>Necessary modifications will be made to 460 IAC 6 to reach HCBS compliance.</p>	<p>Drafted 4/2021                  Expected completion 12/2022</p>
<p><a href="#">460 IAC 6-9-3</a> Prohibiting violations of individual rights Sec. 3. (a) A provider shall not:                  (1) abuse, neglect, exploit, or mistreat an individual; or                  (2) violate an individual's rights.</p>	<p>Fully complies due to language prohibiting the violations of rights.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">Aversive Techniques</a> (BDDS 4601207003)                  It is the policy of the Bureau of Developmental Disabilities Services (BDDS) that aversive techniques shall</p>	<p>Fully complies due to restrictions on any aversive techniques.</p>	<p>No remediation needed.</p>	<p>n/a</p>



<p>not be used to support individuals receiving waiver funded services.</p> <p><a href="#">Use of Restrictive Interventions, Including Restraint</a> (BDDS 460 0228 025)                  It is the policy of the Bureau of Developmental Disabilities Services (BDDS) and Bureau of Quality Improvement Services (BQIS) that behavioral support plans containing restrictive interventions are the least desirable approach to supporting individuals receiving waiver funded services, and that restrictive interventions will be used only with those individuals presenting challenging/dangerous behaviors for which nonrestrictive behavioral support plans have been attempted and documented as ineffective.</p>	<p>Fully complies due to need to document any nonrestrictive plans that have been attempted and limitations on interventions.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">Human Rights Committee</a> (BDDS 460 0221 012)                  c. have a written policy defining the committee’s functions, including review of:                  i. the use of restrictive interventions with an individual; and                  ii. other human rights issues for individuals.</p>	<p>Fully complies due to requirement of a HRC to review any restrictive interventions and other human rights issues.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">Protection of Individual Rights</a> (4600228022)                  It is the policy of the Bureau of Developmental Disabilities Services (BDDS) that an individual’s rights shall not be violated and shall be protected under penalty of the law.</p>	<p>Fully complies due to ensuring an individual’s rights shall not be violated and are protected under penalty of the law.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">Requirements &amp; Training of Direct Support Professional Staff</a> (4600228027) – Annual Training on the protection of individual rights and respecting dignity of individual  <a href="#">Professional Qualifications and Requirements</a> (4600228021)                  3. A Provider’s owners, directors, officers, employees, contractors, subcontractors or agents performing any management, administrative or direct service to an Individual on behalf of a Provider company shall receive initial and at minimum annual training in the protection of an Individual’s rights, including:</p>	<p>Fully complies due to requirement for all direct support professionals to be trained annually on dignity and rights.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p>a. respecting the dignity of an Individual;                  b. protecting an Individual from Abuse, Neglect, and Exploitation</p>	<p>Fully complies due to requirements for all employees to be trained annually on rights, respects, and protection from exploitations.</p>	<p>No remediation needed.</p>	<p>n/a</p>

<p><a href="#">DDRS Policy: Personnel Policies and Manuals</a>                  The written personnel policy required by 460 IAC 6-16-2 shall include:                  A process for suspension of the owner, director, officer, employee, contractor, subcontractor or agent from services to Individuals following a report of, and during an investigation of, alleged Abuse, Neglect, or Exploitation of an Individual by the owner, director, officer, employee, contractor subcontractor or agent.</p> <p>Safeguards that ensure compliance with HIPAA and all other Federal and State privacy laws.</p> <p><a href="#">Provider Agreement Checklist 12</a>                  Prohibiting Violations of Individual Rights                  The provider must have a written policy and procedures that prohibit its employees/agents from violating individuals' rights.</p> <p><a href="#">Provider Agreement Checklist 14</a>                  Individual Freedoms                  The provider must have a written protocol for ensuring individuals' rights as outlined in 460 IAC and DDRS Policies.</p> <p><a href="#">Provider Agreement Checklist 15</a>                  Personnel Policy- Safeguards that ensure compliance with HIPAA and all other Federal and State Privacy Laws.</p>	<p>Fully complies due to requirements of ensuing all privacy laws are followed.</p> <p>Fully complies due to ensuring an individual's rights shall not be violated and are protected under penalty of the law.</p> <p>Fully complies due to requirement of written protocol for ensuing individual rights.</p> <p>Fully complies due to requirement of written procedure for compliance of all privacy laws.</p>	<p>No remediation needed.</p> <p>No remediation needed.</p> <p>No remediation needed.</p> <p>No remediation needed.</p>	<p>n/a</p> <p>n/a</p> <p>n/a</p> <p>n/a</p>
<p><b>Monitoring Checklist</b>                  Does record review and discussion with staff, the individual and legal guardian if indicated confirm the individual is free from abuse, neglect or exploitation?                  Is there documentation confirming that the individual and/or his or her legal guardian have been informed of their rights as an individual receiving services?</p>	<p>Fully complies due to ensuring each individual is informed annually or more often of their rights and ensuring the individual is being treated with respect.</p>	<p>No remediation needed.</p>	<p>n/a</p>

**Federal Requirement:** Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">460 IAC 6-24-1</a> Coordination of training services and training plan (be designed to enhance skill acquisition and increase independence).	Fully complies due to optimizing the environment to enhance skill acquisition and increase independence.	No remediation needed.	n/a
<a href="#">460 IAC 6-8-2</a> Constitutional and statutory rights	Fully complies due to requirement of ensuring individual’s rights including promoting rights.	No remediation needed.	n/a
<a href="#">460 IAC 6-8-3</a> promoting the exercise of rights Sec. 3. To protect an individual’s rights and enable an individual to exercise the individual’s rights, a provider shall do the following:	Fully complies due to requirement of ensuring individual’s rights including promoting rights.	No remediation needed.	n/a
(2) Provide services that: (A) are meaningful and appropriate; <a href="#">460 IAC 6-36-2</a> Code of ethics Sec. 2. A provider, in the provision of services under this article, shall abide by the following code of ethics: 1) A provider shall provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services. (3) A provider shall provide sufficient objective information to enable an individual, or the individual’s guardian, to make informed decisions.	Fully complies due to enabling individuals to make informed decisions.	No remediation needed.	n/a
<a href="#">460 IAC 6-3-54</a> “Support team” defined are designated by the individual;	Fully complies due to individual designating members of the team.	No remediation needed.	n/a
<b>Monitoring Checklist</b> Is the individual’s setting integrated in and does it support access to the greater community?	Fully complies due to ensuring individual is participating in activities of his or her choice.	No remediation needed.	n/a

**Federal Requirement:** Settings facilitate individual choice regarding services and supports, and who provides them.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 7-4-3</a> Composition of the support team</p>	<p>Fully complies due to individual choosing members of team.</p>	<p>No remediation necessary</p>	<p>n/a</p>
<p><a href="#">460 IAC 7-3-12</a> AND <a href="#">6-3-38.5</a> (PCP)</p> <p>(4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that:</p> <p>(A) is based on the individual’s preferences, dreams, and needs;</p> <p>(B) encourages and supports the individual’s long term hopes and dreams;</p> <p>(C) is supported by a short term plan that is based on reasonable costs, given the individual’s support needs;</p> <p>(D) includes individual responsibility; and</p> <p>(E) includes a range of supports, including funded, community, and natural supports.</p>	<p>Fully complies due to individual creating life plan based on preferences, needs and dreams.</p>	<p>No remediation necessary.</p>	<p>n/a</p>
<p><a href="#">460 IAC 7-5-5</a> (Outcome section)</p> <p>(4) Proposed strategies and activities for meeting and attaining the outcome, including the following:</p> <p>(5) The party or parties, paid or unpaid, responsible for assisting the individual in meeting the outcome. A responsible party cannot be changed unless the support team is reconvened and the ISP is amended to reflect a change in responsible party.</p>	<p>Fully complies due to requirements for amending ISP.</p>	<p>No remediation necessary.</p>	<p>n/a</p>
<p><a href="#">IST</a> (4600228016)</p> <p>Coordinate the provision and monitoring of needed supports for the individual</p>	<p>Fully complies due to the IST supporting the Individual in coordinating supports. Identifies other persons identified by the individual AND requires the individual to be present at all meetings.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">(Part 4.5 and 4.6 of Manual-FSW/CIH)</a></p> <p>The participant with the IST selects services, identifies service providers of his or her choice and develops a Plan of Care/Cost Comparison Budget (CCB)</p> <p>Freedom of Choice Form</p> <p>Provider Pick List.</p>	<p>Fully complies due to ensuring the participant selects providers of his or her choice.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><b>Monitoring Checklist</b></p>	<p>Fully complies due to ensuring a participant is</p>	<p>No remediation needed.</p>	

Provided information on participant’s right to choose and change providers and case managers?	informed of his or her choice to choose and change providers at any time.	n/a
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**Federal Requirement:** In provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">IC 22-9-6-3</a> Full and equal access to housing Sec. 3. All persons with disabilities are entitled to full and equal access, as other members of the public, to all housing accommodations offered for rent, lease, or compensation in Indiana.</p> <p><a href="#">460 IAC 6-24-3</a> Management of Individual’s financial resources (b) The provider shall assist an individual to: (1) obtain, possess, and maintain financial assets, property, and economic resources.</p>	<p>Fully complies due to state land lord/tenant law.</p> <p>Partially complies due to requirement of assisting the individuals with maintaining property.</p>	<p>No remediation needed.</p> <p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations to ensure protections are in place to address the eviction process.</p>	<p>n/a</p> <p>Drafted 4/2021</p> <p>Expected completion 12/2022</p>
<p><b>Monitoring Checklist</b> Does the individual have the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity?</p> <p><a href="#">PC/ISP</a> Individuals’ Property/Financial resources being properly managed?</p>	<p>Complies due to checking of rental agreement and assuring protections are in place.</p> <p>Complies due to assuring individuals property is being properly managed.</p>	<p>Additional rule language has been added to clarify CMS setting regulations to ensure protections are in place to address the eviction process.</p> <p>Additional rule language has been added to policies/procedures to clarify CMS setting regulations to ensure protections are in place to address the eviction process.</p>	<p>n/a</p> <p>Completed 04/2018</p>

**Federal Requirement:** In provider-owned or controlled residential settings, each individual has privacy in their sleeping or living unit.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 6-9-4</a> Systems for protecting individuals (e) A provider shall establish a system to ensure that an individual has the opportunity for personal privacy.</p> <p>(1) the opportunity to communicate, associate, and meet privately with persons of the individual’s choosing;</p>	<p>Fully complies due to requirement for individuals to have the opportunity for personal privacy.</p>	<p>No remediation needed.</p>	<p>n/a</p>

<p>(2) the means to send and receive unopened mail; and</p> <p>(3) access to a telephone with privacy for incoming and outgoing local and long distance calls at the individual's expense</p> <p><a href="#">PC/ISP</a>                  Does the individual have privacy in his or her sleeping or living quarters?</p>	<p>Fully complies due to requirement for individuals to have privacy in their sleeping or living quarters.</p>	<p>Additional rule language has been added to clarify CMS setting regulations that in provider-owned or controlled residential settings, individuals have privacy in their sleeping or living quarters.</p>	<p>Completed                  04/2018</p>
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**Federal Requirement:** In provider-owned or controlled residential settings, units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p>No applicable regulation.</p>	<p>Silent due to rules not currently addressing lockable doors in residences.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations to address in provider-owned or controlled residential settings units having entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>Completed                  4/2018</p>

**Federal Requirement:** In provider-owned or controlled residential settings individuals sharing units have a choice of roommates.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p>No applicable regulation.</p>	<p>Silent due to rules not currently addressing individuals having a choice of roommates.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations to address in provider-owned or controlled residential settings that individuals sharing units have a choice of roommates.</p>	<p>Completed                  4/2018</p>

**Federal Requirement:** In provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 6-9-4</a> Systems for protecting individuals                  (g) A provider shall establish a system that ensures that an individual has: (i) A provider shall establish a system that ensures that an individual has the right to retain and use appropriate personal possessions and clothing.</p>	<p>Does not comply. Need to remove language <i>appropriate</i>.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that in provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Drafted                  4/2021                   Expected completion                  12/2022</p>



<p><a href="#">PC/ISP</a>                  Does the individual have the freedom to furnish and decorate his/her sleeping or living quarters within the lease or other agreement?</p>	<p>Complies due to unrestricted access to personal possessions and freedom to furnish and decorate.</p>	<p>Additional rule language has been added to clarify CMS setting regulations that in provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Completed                  04/2018</p>
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**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals have the freedom and support to control their schedules and activities, and have access to food any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 6-3-38.5</a> “Person centered planning” defined                      Sec. 38.5. “Person centered planning” means a process that:                      1) allows an individual, the individual’s legal representative, if applicable, and any other person chosen by the individual to direct the planning and allocation of resources to meet the individual’s life goals;                      (4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that:</p>	<p>Partially complies due to the individual directing the planning of services. Language does not address <i>freedom and support to control of activities and schedules</i>.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that individuals have the freedom and support to control their activities and schedules.</p>	<p>Drafted                      4/2021                       Expected completion                      12/2022</p>
<p><a href="#">460 IAC 6-14-2</a> Requirement for qualified personnel                      Sec. 2. A provider shall ensure that services provided to an individual:                      (1) meet the needs of the individual;                      (2) conform to the individual's ISP; and                      3) are provided by qualified personnel as required under this article.</p>	<p>Partially complies. Language does not address <i>freedom and support to control of activities and schedules</i>.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that individuals have the freedom and support to control their activities and schedules.</p>	<p>Drafted                      4/2021                       Expected completion                      12/2022</p>
<p><a href="#">460 IAC 6-19-1</a> Information concerning an individual                      Sec. 1. A provider of case management services shall have the following information about an individual receiving case management services from the provider:                      (1) The wants and needs of an individual, including the health, safety and behavioral needs of an individual.</p>	<p>Partially complies. Language does not address <i>freedom and support to control of activities and schedules</i>.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that individuals have the freedom and support to control their activities and schedules.</p>	<p>Drafted                      4/2021                       Expected completion                      12/2022</p>
<p><a href="#">460 IAC 6-36-2</a> Code of ethics                      (1) A provider shall provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services.</p>	<p>Partially complies. Does not address specific language.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations.</p>	<p>Drafted                      4/2021                       Expected completion                      12/2022</p>
<p><b>Monitoring Checklist</b></p>	<p>Complies. Language addresses <i>freedom and</i></p>	<p>Additional rule language has been added to clarify CMS setting regulations that individuals</p>	<p>Completed                      08/2016</p>

<p>Does the individual have the freedom and support to control his/her schedules and activities?</p> <p><a href="#">460 IAC 6-9-3</a> Prohibiting violations of individual rights (4) A practice that denies an individual any of the following without a physician’s order (C) Food</p>	<p><i>support to control of activities and schedules.</i></p> <p>Partially complies due to language does not address <i>access to food at any time.</i></p>	<p>have the freedom and support to control their activities and schedules.</p> <p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that individuals have access to food at anytime.</p>	<p>Drafted 4/2021</p> <p>Expected completion 12/2022</p>
<p><b>Monitoring Checklist</b> Does the individual have the freedom and support to control his/her schedules and activities and have access to food at any time?</p> <p><a href="#">Protection of Individual Rights</a> (4600228022) Practices prohibited under this section include but are not limited to the following c. A practice that denies an Individual any of the following without a physician’s order: iii. Food. iv. Drink.</p>	<p>Complies due to language addresses <i>access to food at any time.</i></p> <p>Partially complies due to language does not address <i>access to food at any time.</i></p>	<p>Additional rule language has been added to clarify CMS setting regulations that individuals have access to food at any time and any modification must be addressed in the person-centered planning process.</p> <p>Additional rule language will be added to address access to food at any time.</p>	<p>Completed 08/2016</p> <p>12/2021</p>

**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals are able to have visitors of their choosing at any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 6-9-4</a> (1) the opportunity to communicate, associate, and meet privately with persons of the individual’s choosing;</p>	<p>Partially Complies. Language does not address <i>at any time.</i></p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that individuals are able to have visitors of their choosing at any time.</p>	<p>Drafted 4/2021</p> <p>Expected completion 12/2022</p>
<p><a href="#">460 IAC 6-9-3</a> Prohibiting violations of individual rights Sec. 3. (a) A provider shall not: (1) abuse, neglect, exploit, or mistreat an individual; or (2) violate an individual’s rights.</p>	<p>Fully Complies due to requirement of not violating an individual’s rights.</p>	<p>No remediation needed.</p>	<p>n/a</p>
<p><a href="#">PC/ISP</a> Free to receive visitors with no restrictions?</p>	<p>Fully Complies due to verifying visitors can be received without any restrictions.</p>	<p>No remediation needed.</p>	<p>Completed 04/2018</p>

**Federal Requirement:** In provider-owned or controlled residential or non-residential settings, the setting is physically accessible to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 6-29-2</a> Safety of individual’s environment                      c) If an environmental assessment determines that an environment is unsafe for an individual, the provider shall take the appropriate steps to ensure that the individual is safe  <a href="#">460 IAC 6-29-3</a>                      monitoring an individual’s environment Sec. 3. The provider designated in an individual’s ISP as responsible for providing environmental and living arrangement support shall ensure that appropriate devices or home modifications, or both:                      (1) are provided to the individual in accordance with the individual’s ISP; and                      (2) satisfy the federal Americans with Disabilities Act requirements and guidelines</p> <p><a href="#">Environmental Requirements</a> (BDDS 460 1216039)                      A Provider designated in the Individual’s Individual Support Plan (ISP) as responsible for providing environmental and living arrangement support for the individual shall ensure that an Individual’s physical environment included modification and adaptations in compliance with the requirements of a. The individual’s ISP</p>	<p>Fully Complies due to requirement for provider to ensure an individual’s environment is safe.</p> <p>Fully Complies with due to requirements for providing environmental and living supports based on individual need.</p> <p>Fully Complies due to requirement of provider to ensure accessibility to the individual.</p>	<p>No remediation needed.</p> <p>No remediation needed.</p> <p>No remediation needed.</p>	<p>n/a</p> <p>n/a</p> <p>n/a</p>
<p><a href="#">Transition Activities</a> (4600316031)</p> <p><a href="#">Pre-Post Monitoring Checklist</a>                      Home Adaptations in place?</p>	<p>Fully Complies due to requirement of BDDS to only approve transitions after home visits that verify individuals in residential settings receive services and supports appropriate to meet their needs including the completion of a pre-post monitoring checklist.</p> <p>Fully Complies due to requirement of having home adaptations in place prior to and after residential moves.</p>	<p>No remediation needed.</p> <p>No remediation needed.</p>	<p>n/a</p> <p>n/a</p>

**Federal Requirement:** Any modifications of the additional conditions for provider-owned and controlled residential settings must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

1. Identify a specific and individualized need.
2. Document the positive interventions and supports used prior to any modifications to the person-centered plan.
3. Document less intrusive methods of meeting the need that have been tried but did not work.
4. Include a clear description of the condition that is directly proportionate to the specific need addressed.
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Include the informed consent of the individual.
8. Include an assurance that interventions and supports will cause no harm to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">460 IAC 7-3-12</a> “Person centered planning” or “PCP” defined Sec. 12. “Person centered planning” or “PCP” means a process that:</p> <p>1) allows an individual, the individual’s legal representative, if applicable, and any other person chosen by the individual to direct the planning and allocation of resources to meet the individual’s life goals;</p> <p>(2) achieves understanding of how an individual:</p> <p>(A) learns;</p> <p>(B) makes decisions; and</p> <p>(C) is and can be productive;</p> <p>(3) discovers what the individual likes and dislikes; and</p> <p>(4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that:</p> <p>(A) is based on the individual’s preferences, dreams, and needs;</p> <p>(B) encourages and supports the individual’s long term hopes and dreams;</p> <p>(C) is supported by a short term plan that is based on reasonable costs, given the individual’s support needs;</p> <p>(D) includes individual responsibility; and</p> <p>(E) includes a range of supports, including funded, community, and natural supports.</p> <p><a href="#">460 IAC 7-4-1</a> Development of an ISP- Sec. 1. (a) An ISP shall be developed by an individual’s support team using a “person centered planning” process. The support team shall be led by a facilitator chosen by the individual.</p>	<p>Does Not Comply. Language does not address documentation requirements.</p> <p>Does Not Comply. Language does not address documentation requirements.</p>	<p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that any modifications of the additional conditions for provider-owned and controlled residential and non-residential settings must be supported by a specific assessed need and justified with the requirements outlined above documented in the person-centered service plan.</p> <p>Additional rule language will be added to policies/procedures to clarify CMS setting regulations that any modifications of the additional conditions for provider-owned and controlled residential and non-residential settings must be supported by a specific assessed need and justified with the requirements outlined above documented in the person-centered service plan.</p>	<p>Drafted 4/2021</p> <p>Expected completion 12/2022</p> <p>Drafted 4/2021</p> <p>Expected completion 12/2022</p>
	<p>Complies due to requirement of documentation of efforts</p>	<p>No remediation necessary.</p>	<p>n/a</p>

<p><b><u>POLICY: BEHAVIORAL SUPPORT PLAN-</u></b>                  5. All efforts at positive behavioral and environmental supports shall be assessed by the behavioral support services provider on a regular basis, with at minimum quarterly reports to the IST of progress that include graphs of both targeted behavior and replacement behavior.                  6. A BSP is a component of the individual’s ISP.</p>	<p>at positive and environmental supports.</p>	
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**SECTION 3: SITE SPECIFIC ASSESSMENT**

The site-specific assessment activities were general in nature and did not imply that any specific provider or location is non-compliant solely by classification or service type. Final determination will depend upon information gathered through additional assessment activities, outlined in this comprehensive transition plan. This will include but many not be limited to, onsite reviews, provider self-assessments, internal and external programmatic data, and provider/participant surveys. These activities will be ongoing and place a direct focus on the individual’s experience within the DDRS system.

**Individual Experience Survey**

The DDRS developed a high quality, comprehensive survey that targeted the specific HCBS requirements and provided additional data to determine DDRS’s compliance status. DDRS contracted with The Indiana Institute on Disability and Community (IIDC) to design and develop the survey to be completed by participants when able or the person who knows them best.

Prior to the implementation of the statewide survey, DDRS, in conjunction with the IIDC, administered the survey using a pilot group which allowed DDRS to be confident in the validity and reliability of the survey questions. The IIDC, in consultation with DDRS, then finalized the survey questions for dissemination to all waiver participants. In November 2014, individuals and their families were invited to participate in an educational webinar on the HCBS rule which outlined the setting requirements as well as rights of beneficiaries.

Various trainings had taken place prior to the implementation of the IES for staff administering the survey. Case managers participated in mandatory webinar trainings conducted by DDRS and IIDC explaining in detail the IES process and how to implement the survey. Guidance materials and an FAQ were also provided to case managers prior to implementing the survey.

Case managers were instructed to educate and introduce individuals and family to the survey by explaining why DDRS was conducting the survey prior to actually completing it. The individual’s case manager was responsible for ensuring completion of the survey with the individual during his or her quarterly meeting. If an individual was unable to answer the questions, the case manager was trained to work with the individual’s guardian or other close advocate to complete the survey.

All case managers were instructed to complete the survey in person at a face-to-face meeting with the individual or chosen family member. Results of the survey did not differentiate if it was completed by the individual or a chosen family member. At this time the data is not able to be separated, but any future surveys will identify who the respondent is. Since it was a face-to-face meeting, all individuals’ responses were protected and not shared with the providers of services. The survey was completed for 95 percent of waiver participants.

DDRS released the IES Report on June 28th, 2016 to all stakeholders throughout the system outlining the results of the survey, the methodology behind the survey, as well as the intent of the survey to bring services into HCBS compliance by March 2019. Through the Individual Experience Survey, DDRS identified and analyzed the experiences and choices individuals with intellectual and developmental disabilities have in their daily lives.

The IES was a starting point to a better understanding of individual experiences in the system which lead to a more in-depth analysis and validation of the data through record reviews and site visits. A review of the IES base line data provided guidance to DDRS to establish a method through the person-centered planning process that would validate a residential settings

compliance with the HCBS final rule. Section 4: Ongoing Monitoring outlines the ongoing validation and monitoring process for residential settings that has been established in response to the original findings.

### Provider Assessments

DDRS determined the need for providers of identified non-residential settings to complete a self-assessment of their current policies and procedures to report compliance of HCBS Final Rule to the State.

All Non-Residential Day Service sites were instructed to complete an online self-assessment. The self-assessment was designed to identify areas where non-residential service sites are HCBS compliant as well as identify any gaps that would require modifications to become compliant. In preparation for the assessment, DDRS hosted a mandatory webinar, two technical webinar sessions, as well as provided a tutorial and FAQ for providers.

Validation of the compliance of the specific sites is determined by CMS guidance as to what is and is not a community setting. CMS issued [guidance](#) that any setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS is presumed to have the qualities of an institution. DDRS utilized this guidance in developing and establishing the criteria for engaging in site-specific assessments.

For residential settings, DDRS is presuming individual private homes that are integrated in community neighborhoods meet home and community-based requirements. In order to verify that the individuals continue to reside in such settings, the case manager notes in the Person-Centered Individualized Support Plan (PC/ISP) the individuals' living arrangements. The PC/ISP process is based on the LifeCourse Framework that ensures all people have the right to live, love, work, learn, play, and pursue their dreams in their community. The PC/ISP process begins with an individual's vision for a preferred life and takes the concept of self-determination from theory to practice. If the plan indicates that an individual resides in a Provider Owned or Controlled Setting as documented by the Case Manager within the system; the IST is required to address additional HCBS questions which will populate in the PC/ISP.

These questions address the requirements of privacy in sleeping or living quarters, lockable doors and access to keys, choice of roommate, freedom to furnish and decorate sleeping or living quarters, freedom and support to control own schedule, ensuring the setting owned, rented, or occupied is under a lease with same responsibilities/protections from eviction as other tenants, physical accessibility, access to food, and access to visitors.

DDRS has also determined individualized supported employment and individualized community day activities (referred to as Extended Services and Community-Based Habilitation- Individual in our waivers) meet the HCBS requirements due to only providing Community-Based Habilitation Individual in the greater community and Extended Services providing supports to individuals who are in integrated competitive employment. There are approximately 24,645 service delivery sites that meet the rule without any changes.

A tiered evaluation process is being used to determine each settings' compliance with the HCBS Final Rule. All settings are being evaluated for full compliance with the rule. For Tier 1, non-residential providers were first asked to complete a self-assessment, responding to a series of questions regarding their setting and the options individuals have within that setting. Once the providers completed the self-assessment, responses were reviewed for potential compliance with the rule and initial determinations of compliance were made (Compliant, Additional Information Needed, Site Visit Needed).

DDRS worked in conjunction with a contractor to complete all non-residential site visits for validation purposes. The contractor reviewed the provider's documentation prior to the site visit and used a comprehensive tool that was completed along with pictures of the sites to validate survey responses. The state's NCI Data was collectively reviewed to identify potential areas of systemic non-compliance prior to the onset of site visits.

The initial Tier 1 analysis of both residential and non-residential settings have determined the below estimate of compliance levels based on the number of individuals served during that time period:

#### *Residential*

- 89 percent of residential sites were found to be in compliance with the final rule. A breakdown of the findings and next steps is below:
  - o 16,145 residential settings were found to be in compliance with the final rule.
  - o 1,044 sites required additional information before a determination could be made. DDRS or its contracted entity will be requesting additional information. There may be provider owned or controlled homes that require no modifications to meet the settings rule.



- 500 sites were identified as provider owned or controlled requiring additional validation to determine if a site visit is warranted. Those 500 settings are included in the 1,044 settings found compliant in the Tier II summary. This number reflects the provider owned or controlled residential settings where respondents (1,011) to the IES indicated few social interactions outside of their home (potentially isolating).

#### *Non-Residential*

- 28 percent of non-residential sites were found to be in compliance with the final rule. A breakdown of the findings and next steps is below:
  - 71 sites were initially determined compliant based on the self-survey. DDRS contracted entity validated the responses by requesting any supporting documentation.
  - 221 sites were initially determined to require a site visit based on responses from the survey (not identified as still needing a site visit). 200 of those site visits were already completed by a contractor at the time of the submission of the STP. BDDS has since conducted an additional 22 site visits. The remaining 19 sites are no longer operating.
  - 19 sites are no longer operating.

For Tier 2 of the validation process, providers of non-residential services were asked to provide documentation that validated their answers to the self-assessment and supported their level of compliance with the rule. Documentation included: policies and procedures, manuals, staff training materials, or any other documentation necessary to assess compliance with each requirement within the rule. This documentation was reviewed, and a secondary determination of compliance was sent to the provider (Compliant-no site visit needed; non-compliant or partially compliant-Site visit needed). Materials were submitted to DDRS and the contracted entity through a secure e-mail that was developed for this process. Assessment and validation through site visits and documentation reviews have been completed on all non-residential sites except for two identified as still requiring site visits.

A breakdown of findings is below:

- Contractor site visits completed with remediation plans: 175
- BDDS site visits completed with remediation plans: 23
- BDDS site visits remaining/pending due to new locations: 2 new sites identified
- No remediation plan required due to no findings on site visits (fully compliant): 21
- No site visit required due to community-based habilitation only or location was confirmed to be in community places such as a church or YMCA (fully compliant): 71
- Sites no longer operating: 19

The two new sites identified above are not new setting types, rather, they are sites which are already included in the HCBS delivery system. The initial settings compliance determination determined these two sites fall under Tier II “May need modifications” in order to be fully compliant by 2023. There is no transition period for new setting types, and any new setting type not compliant with the Settings Rule cannot be established with a timeline for transition into compliance. Residential settings are continuously assessed for compliance through ongoing monitoring as outlined in Section 4: Ongoing Monitoring through the Person-Centered Individualized Support Plan (PCISP) and the Monitoring Checklist.

The table below specifically identifies the setting results based on Tier 2 assessment activities as of September 2019. This assessment is an estimate of total settings in each category and does not imply that any specific provider or location is non-compliant solely by classification. Final determination will depend upon information gathered through all assessment activities outlined in the comprehensive STP, including but not limited to onsite reviews, provider self-assessments, internal programmatic data, and provider/participant surveys

<b>Tier II Summary of Identified Settings for HCBS Enrollees in Indiana</b>						
<b>(as of April 2022)</b>						
	Total Number Identified	Fully Compliant	May Need Modifications	Unable to Comply	Pending Site visit to determine compliance	Sites no longer operating
Provider Owned of Controlled Residential Setting	5,998	5,998	0	0	0	
Non-Residential Setting	311	92	200	0	0	19
Private/Independent Residential settings	16,145	Private/Independent Residential Settings are presumed to be fully compliant with the federal HCBS final rule.				

Within each non-residential setting location, providers were asked to identify which services are provided at each site. Accounting for multiple services being delivered within each site location, the assessment results identified a total of 311 sites where individuals received HCBS non-residential services. 19 of those sites are no longer operating leaving a total of 292 sites assessed for compliance. The array of services provided in any one location are listed below.

Of the 92 sites assessed found fully compliant:

- 1 site provides Adult Day Services,
- 1 site provides Facility Habilitation and Community Habilitation,
- 2 sites provide Community Habilitation and Extended Services,
- 1 site provides Behavior Management,
- 1 site provides Extended Services,
- 1 site provides Pre-vocational Services,
- 1 site provides Facility and Community Habilitation,
- 1 site provides Facility Habilitation, Community Habilitation, and Extended Services
- 1 site provides Facility Habilitation, Community Habilitation, Adult Day Services, and Prevocational Services,
- 82 sites provide Community Habilitation.

Of the 200 sites assessed and found to need modifications in order to bring into full compliance, BDDS worked with providers to develop transition plans addressing any area in need of remediation. Each site visited had at least one area of non-compliance identified. No settings were identified as unable to comply.

Of the 200 sites found to need modifications:

- 1 site provides Behavior Management,
- 6 sites provide Adult Day Services,
- 1 site provides Adult Day Services, Community Habilitation, Recreational Therapy and Music Therapy,
- 15 sites provide Community Habilitation,
- 2 sites provide Community Habilitation, Adult Day Services, Recreational Therapy and Music Therapy,
- 1 site provides Community Habilitation and Extended Services,
- 3 sites provide Community Habilitation and Music Therapy,
- 2 sites provide Community Habilitation, Music Therapy, and Extended Services,
- 4 sites provide Community Habilitation and Prevocational Services,
- 1 site provides Community Habilitation, Prevocational Services, and Music Therapy,
- 1 site provides Community Habilitation and Recreational Therapy,
- 1 site provides Community Habilitation and Respite,
- 8 sites provide Facility Habilitation,
- 2 sites provide Facility Based Habilitation and Adult Day Services,
- 1 site provides Facility Based Habilitation, Adult Day services, and Prevocational Services,
- 47 sites provide Facility Based Habilitation and Community Habilitation,
- 11 sites provide Facility Based Habilitation, Community Based Habilitation and Adult Day Services,

- 1 site provides Facility Based Habilitation, Community Based habilitation, Adult Day Services, and Music Therapy,
- 2 sites provide Facility Based Habilitation, Community Based Habilitation, Adult Day Services and Prevocational Services,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Adult Day Services, Prevocational Services, Music Therapy and Extended Therapy,
- 3 site provides Facility Based Habilitation, Community Based Habilitation, Adult Day Services, Recreational Therapy, Occupational Therapy, Physical Therapy and Music Therapy,
- 6 sites provide Facility Based Habilitation, Community Based Habilitation and Extended Services,
- 2 sites provide Facility Based Habilitation, Community Based Habilitation, and Music Therapy,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Music Therapy and Recreational Therapy,
- 2 sites provide Facility Based Habilitation, Community Based Habilitation, PAC, and Respite,
- 20 sites provide Facility Based Habilitation, Community Based Habilitation, and Prevocational Services,
- 3 sites provide Facility Based Habilitation, Community Based Habilitation, Prevocational Services and Adult Day Services,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Prevocational Services, Adult Day services and Music Therapy,
- 2 sites provide Facility Based Habilitation, Community Based Habilitation, Prevocational Services, Adult Day Services, Music Therapy, Physical therapy Recreational therapy and Extended Services,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Prevocational Services, Adult Day Services and Music Therapy,
- 14 sites provide Facility Based Habilitation, Community Based Habilitation, Prevocational Services, and Extended Services,
- 3 sites provide Facility Based Habilitation, Community Based Habilitation, Prevocational Services and Music Therapy,
- 2 sites provide Facility Based Habilitation, Community Based Habilitation, Prevocational Services, Music Therapy and Extended Services,
- 5 sites provide Facility Based Habilitation, Community Based Habilitation, Recreational Therapy and Music Therapy,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Recreational Therapy, Occupational Therapy and Music Therapy,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Recreational Therapy, Music Therapy and Behavioral Services,
- 3 sites provide Facility Based Habilitation and Prevocational Services,
- 1 site provides Facility Based Habilitation, Adult Day Services and Prevocational Services,
- 2 sites provide Facility Based Habilitation, Prevocational Services and Music Therapy,
- 2 sites provide Facility Based Habilitation, Prevocational Services, Music Therapy and Extended Services,
- 1 site provide Facility Based Habilitation, Recreational Therapy and Music Therapy,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Extended Services and Adult Day Services,
- 1 site provides Facility Based Habilitation, Community Based Habilitation, Music Therapy and Extended Services,
- 7 sites provide Prevocational Services,
- 1 site provides Prevocational Services and Extended Services,
- 1 site provides Prevocational Services, Recreational Therapy, Music Therapy, and Extended Services,
- 2 sites provide Respite Services.

The prior total of 1,044 Provider Owned or Controlled Residential settings identified was from January 2018. The current breakdown of provider owned or controlled residential settings as of April 2022 is below.

Service	# Sites
<b>Settings that utilize Residential Habilitation and Support</b>	5,525
<b>Structured Family Caregiving Settings</b>	255
<b>Settings with Both Structured Family Caregiving and Residential Habilitation and Support</b>	218

### Validation Process for Residential and Non-residential Settings

Continuing with the validation process, if a setting was found to be non-compliant or partially compliant, a site visit was scheduled. DDRS had determined from initial findings that 241 non-residential service delivery settings required a site visit. DDRS worked with a contracted entity as an impartial third party to conduct and validate the non-residential provider self-

assessment responses.

Site visits have been completed and DDRS is in the process of identifying remediation results. Once provider specific remediation is completed, verification of requirements and identification of sites requiring Heightened Scrutiny will be finalized. The number of individuals potentially affected by relocation will then be determined. Currently, no sites have been identified as non-HCBS-compliant as outlined in the setting assessment.

Documentation reviews (provider policies, procedures, etc.) were used to validate the results of the self-assessments. In addition, onsite validations of those providing services within the non-residential site were completed. Onsite validations were not performed for those non-residential providers who only utilize an office space but provide services out in the community (community habilitation). For those sites, the documentation reviews were used to validate the results.

The State did not mandate what documents the provider was required to submit for the provider self-assessments. BDDS allowed a variety of supporting documentation that could be submitted. Providers submitted such items as provider specific policies, participant handbooks, procedures, staff training curriculum and pamphlets. For the desk review, BDDS reviewed the results of the onsite visits which included mapping of the location, photos, and narratives explaining the compliance level of each of the HCBS requirements. In addition, BDDS reviewed the services approved to be delivered at the noted location. In order to ensure consistency across reviews, BDDS identified three employees to complete the desk reviews. A crosswalk was developed to identify common identifiers and responses. Weekly meetings were also conducted among the reviewers to discuss the findings to ensure consistency.

If a provider is found to be out of compliance in any area of the HCBS Final Rule, DDRS will work with the provider to create a provider specific transition plan to address each identified issue and DDRS will monitor the time frames for completion. A template will be provided to ensure consistency. This will be a desk review/validation process.

For residential surveys, provider self-assessments were not conducted, rather the IES was used to gauge initial compliance. A review of the IES base line data provided guidance to DDRS to establish a method through the person-centered planning process that would continually validate and monitor a residential settings compliance with the HCBS final rule. Section 4: Ongoing Monitoring outlines the validation and ongoing monitoring process for residential settings. Questions addressing the HCBS final rule have been embedded into the PC/ISP and Monitoring Checklist. The questions on the PC/ISP and Monitoring Checklist are used to validate and monitor residential settings.

The IES survey did find some provider owned or controlled residential settings where respondents indicated few social interactions outside of their home. In order to gauge a better understanding of the responses, DDRS selected a small amount of these residential sites to conduct informative visits. Prior to the site visits, DDRS reviewed the Individualized Support Plans to ensure any limitations or reasons for limited community participation were noted.

DDRS conducted 10 preliminary onsite visits to these settings that could be construed as potentially isolating due to individuals responses. It was found that these sites were home and community-based on observations and interviews with individuals residing there. These 10 sites have been validated using the Tier 2 process to determine compliance with the settings rule.

During the non-residential site-specific visits, DDRS' contracted agents reviewed the results of the provider self-assessments to validate the findings. Prior to the site-specific visits, a comprehensive training was conducted for all designated reviewers in order to ensure consistency of all reviews. Results of the site-specific assessments will be used to identify specific settings that may not meet the HCBS requirements or require Heightened Scrutiny.

At this time, since no settings were determined institutional, DDRS estimates through the validation process and remediation efforts, no individuals will require a transition plan.

## Remediation Strategies

As part of CMS regulations, DDRS must develop a plan to correct, through various means, any areas of non-compliance with HCBS rules. In order to do this, DDRS has developed a remediation plan with specific strategies and timelines. It is important to note that the intent of the transition plan and remediation strategies is not to close or terminate providers but instead, to work with individuals, providers and other stakeholders to come into compliance with the HCBS Final Rule and the vision of ensuring individuals are fully integrated into the community, afforded choice, and have their health and safety needs met. At this time, DDRS is unaware of a setting or site that is unable or unwilling to come into compliance.

DDRS used the results of the non-residential provider self-assessment and the Individual Experience Survey (IES) to identify settings that may not be in compliance. After the validation process, if a setting has been identified as either non-compliant or partially compliant, remediation will be required. The process for remediation will begin as soon as any areas of non-compliance are identified.

Examples of what will be in plans will be determined by the findings. For instance, if it is found that a provider does not have a policy to address an individual's rights to access to food at any time, the remediation action will include development of a policy that addresses documentation of any modifications in the person-centered service planning process while ensuring individual's rights are protected. Another example would be if it is identified that the setting was designed specifically for people with disabilities and therefore potentially isolating, the provider would be required to have policies to address ensuring individuals are integrated into the community to the same degree of access of those not receiving HCBS services. Monitoring completion of remedial plans will be done through various means.

For residential settings, the PC/ISP system will provide a database for ongoing monitoring. Individual-specific remediation, will be housed in the web based system which creates corrective action for any areas of non-compliance. Case managers will identify any HCBS related issues within the PC/ISP and work with the IST to resolve. BDDS will then conduct follow up to ensure remediation and to verify completion of any outstanding compliance. DDRS at any time can pull and review data from this system for additional monitoring of HCBS compliance.

For non-residential settings, a tracking database will be used to ensure timelines are met. Site-specific remedial plans will be created by the provider based on findings identified by DDRS or its contracted entity. A template will be provided with issues identified and the provider will be responsible for developing the corrective action and providing a time frame. The plan will then be reviewed by DDRS and either approved or modified to ensure each identified area is addressed and the time frame is appropriate for remediation activities that allow for confirmation and ample time for relocation if the plan is not achieved. Quarterly communication will be sent to providers to request progress updates on milestone achievements. If timelines change or providers are having difficulty achieving the remedial plans, DDRS will offer technical guidance to ensure completion.

The original 500 settings identified as potentially isolating due to responses from the IES survey led the state to create a database mechanism to continually monitor and validate HCBS compliance of provider owned or controlled residential settings through the Monitoring Checklist (completed by case managers) and the PCISP process (involving a team discussion). For provider owned or controlled settings, there are specific HCBS compliance questions that must be addressed for each individual in those settings on an ongoing basis. The Bureau is currently working to operationalize a corrective action process to monitor these database reporting areas on a regular basis to ensure any non-compliance is addressed timely, and any restriction measures for an individual are based on a specific, assessed need. The timeline for implementation of this process has been delayed due to COVID-19 needs, and significant capacity challenges in implementing provider and case management training throughout the state.

DDRS will apply a combination of existing guidelines to address the necessary remedial strategies. Mirroring Indiana Code, [IC 12-11-1.1-11 Issuance of citation for violations; requirements; remedies; considerations in determining remedy](#); once DDRS identifies an issue that requires corrective action, DDRS will document the findings within the citation and identify the necessary corrective action for the provider. Mirroring an existing process outlined within Indiana Administrative Code, [460 IAC 6-7-2 Monitoring, corrective action](#), DDRS will then identify the time period in which corrective action shall be submitted to the Division or its designee and the time period in which the corrective action is to be completely implemented by the provider. Further, [IC 12-11-1.1-11](#) provides applicable guidance regarding appeal rights and remedies for violations. Timelines will be determined based on the final results of the summarized data.

DDRS understands that remedial issues must also be addressed within the allotted time for completion of the waiver transition plan. The specified time for settings to dispute the compliance findings will mirror those of current Indiana Code, [IC 12-11-1.1 for BDDS; Community-Based Services](#), which allows a time period of fifteen days from the date of any citation for a dispute to be filed. **Item (b) of [IC 12-11-1.1-11 Issuance of citation for violations; requirements; remedies; considerations](#)**

**in determining remedy states**, “A person aggrieved by a citation issued under this section may request a review under [IC 4-21.5-3-7](#). If a request for a hearing is not filed within the fifteen (15) day period, the determination contained in the citation is final.”

In general, DDRS will utilize pre-existing guidance found in Indiana Code and Indiana Administrative Code to address remedial strategies related to this transition.

The table below outlines the remediation strategies that DDRS has developed to both assess compliance and to then address areas of non-compliance.



Action Item	Description	Remediation Strategies	Timeline/Status of Completion	Source Document	Key Stakeholders
<b>Provider and Individual Surveys</b>	DDRS had developed an Individual comprehensive survey for residential settings and a Non-residential provider self-survey targeting specific HCBS requirements that provided data to further determine DDRS compliance status with the HCBS rules.	Survey results served as a tool to identify settings that may not be in compliance with HCBS rules and allow DDRS to develop strategies for working with these providers to come in to compliance in the required timelines.	Pilot IES Survey: Completed 01/2015  IES Comprehensive Survey: Completed 01/2016  IES Survey Results: Completed 04/2016  Non-Residential Provider Self Survey: Completed 09/2016  Non-Residential Provider Self Survey Responses Validated: Completed 12/2017	IES Survey Document Aggregate and site -specific survey results  Online provider self-survey	DDRS/BDDS internal staff, OMPP, DDRS Advisory Council, IIDC, Pilot group. Providers, Individuals Served
<b>Site-Specific Assessment</b>	Based on the results of the preliminary settings inventory and statewide survey, DDRS identified specific sites that required further review. In addition, specific sites had been identified for data validation.	Validation of the compliance of the specific sites will be determined by CMS guidance as to what is and is not a community setting.	Completed 12/2017	STP	DDRS or its contracted entity.

Action Item	Description	Remediation Strategies	Timeline/Status of Completion	Source Document	Key Stakeholders
		Specifically, DDRS will identify any setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.  DDRS will utilize this guidance in developing and establishing criteria for ongoing site- specific assessments.			
<b>Evaluation of Collected Data</b>	After completion of the site- specific surveys, DDRS or its contracted entity evaluated all collected data.	The information gathered was utilized to determine next steps.	Completed 07/31/2016 for residential site- specific assessment  Completed 12/2017 for Provider Self Survey	Aggregate and site-specific survey results	DDRS/BDDS/ IIDC
<b>Heightened Scrutiny</b>	DDRS will identify settings that require Heightened Scrutiny and submit for public comment.	Settings identified that overcome the institutional presumption will be submitted to CMS for approval.	12/2020	STP	DDRS/BDDS internal staff, OMPP, DDRS Advisory Council, IIDC, Advocacy groups, Providers, Participants, Self-Advocates and Families
<b>Revisions to Indiana Administrative Code</b>	DDRS will initiate the rule making process in order to revise Indiana Administrative Code. Indiana will revise rules related to community integration, individual rights, and individual choice.	Revisions to Indiana Administrative Code.	12/2020	<a href="#">Administrative Rules Drafting Manual</a>	DDRS/BDDS internal staff, OMPP
<b>Revisions to Forms</b>	Revise all applicable internal and external forms to meet HCBS final rule, administrative rules and policy and procedures.	Revisions to Forms.	12/2020	To Be Determined	DDRS/BDDS internal staff, OMPP, Case Management Companies
<b>Revisions to DDRS HCBS Waivers Provider Reference Module</b>	In order to ensure current and ongoing compliance with the HCBS requirements, DDRS will review the DDRS HCBS Waivers Provider Reference Module. Changes to this Manual may constitute changes to the FSW and CIH application. Amendments to the FSW and CIH application will be completed to maintain program consistency.	Revisions to DDRS HCBS Waivers Provider Reference Module.	Ongoing with amendments and waiver renewals	<a href="#">DDRS HCBS Waivers Provider Reference Module</a>	DDRS/BDDS internal staff, OMPP

Action Item	Description	Remediation Strategies	Timeline/Status of Completion	Source Document	Key Stakeholders
<b>Participant Rights and Responsibilities Policy/ Procedure Modifications</b>	DDRS will revise policies and procedures related to participant rights, due process, and procedural safeguards.	Participant Rights and Responsibilities Policy/Procedure modifications.	12/2020	<a href="#">Review of current Rights and Responsibilities policy</a> <a href="#">Review of Protection of Individual Rights</a>	DDRS/BDDS internal staff, OMPP, Self-Advocates, individuals served
<b>Review and Revisions to Provider Enrollment and Provider Training</b>	Review and potentially revise the provider enrollment and recertification process. Provide training to new and existing providers to educate them on the HCBS requirements.	Review and Revisions to Provider Enrollment/Provider training.	12/2020	<a href="#">Review of current enrollment/re-enrollment process</a>	DDRS/BDDS internal staff, OMPP, Providers
<b>Corrective Action Process</b>	The provider corrective action process/plan is to ensure providers are in compliance with HCBS requirements. Once a provider has been identified as non-compliant, DDRS will work to develop a provider remediation process and framework of plans.	Provider training on the HCBS requirements Deadlines for completion & periodic status update requirements for significant remediation activities.	12/2020	<a href="#">IC 12-11-1.1-11</a> <a href="#">460 IAC 6-7-2</a>	DDRS/BDDS internal staff, OMPP
<b>Develop process for Provider Sanctions and Disenrollment</b>	In the event the provider has gone through remediation activities and continues to demonstrate noncompliance with HCBS requirements, DDRS will develop a specific process for issuing provider sanctions and dis-enrollments.	DDRS will dis-enroll or sanction providers that fail to meet remediation standards and fail to comport with the HCBS setting requirements.	03/2021	DDRS will formally disseminate the provider sanctions and disenrollment criterion during a public comment period.	DDRS/BDDS internal staff, OMPP, Providers
<b>Convene a Transition Taskforce</b>	DDRS has developed a Transition Taskforce called the HCBS Workgroup to provide technical assistance and support for individuals identified as requiring significant changes, such as, relocation, adjustments to allocation, mediations to resolve internal conflicts and compliance issues.	The identified areas of noncompliance will be used to guide the Transition Taskforce to gather further qualitative feedback from providers, participants, and their families.	Completed 03/2018 and ongoing	n/a	DDRS/BDDS staff, Self-Advocates, individuals served, Providers, Advocacy groups
<b>Relocation</b>	Identification of settings that have not achieved compliance after all remedial strategies have been employed.	DDRS will begin notification to providers and individuals identified in 2021. The Transition Taskforce will provide technical assistance as well.	03/2021	<a href="#">460 IAC 6-29-9</a> <a href="#">BDDS Transition Activities Policy</a>	DDRS/BDDS staff Transition Taskforce
<b>Ongoing Monitoring</b>	DDRS will continue to monitor ongoing compliance through utilizing the PC/ISP process, utilizing self-	DDRS will apply a combination of existing	04/2018 and beyond	<a href="#">IC 12-11-1.1-11</a>	DDRS/BDDS staff, Self-Advocates,

Action Item	Description	Remediation Strategies	Timeline/Status of Completion	Source Document	Key Stakeholders
	reporting from stakeholders as well as incorporating ongoing monitoring through the provider re-certification processes.	guidelines to address the necessary remedial strategies.		<a href="#">460 IAC 6-7-2</a> PC/ISP	individuals served, Providers, Advocacy groups
<b>Universal Overhaul of HCBS System</b>	As a result of initial assessments activities and stakeholder input, DDRS has determined the need to reframe the current service delivery system to match the changing needs of individuals and to modernize service delivery.	- Incorporate Life Course Framework - Conduct ongoing Family Forums - Continue Rule Draft - Revision of Policy - Employment VR Model	2017	CIH Waiver FSW Waiver	House Enrolled Act No. 1102 Task Force, Individuals and Families Served, DDRS/BDDS internal staff, OMPP, DDRS Advisory Council, IIDC, Providers, and all stakeholders.
		- Ensure Quality PCP to include HCBS Q and A's - Start Rule Promulgation Process - Recommendations of HB 1102	2018		
		- Complete Waiver Redesign (Children's waiver, FSW, CIH) - Cost/Rate Analysis	2019		
			Finalized in 2022 and beyond		

**Heightened Scrutiny**

Any residential or non-residential setting that is suspected to not have the qualities of a home and community-based setting will require a site visit to validate the findings. These settings may be found to meet the HCBS requirements, may be found to not meet the requirements, or be determined to require Heightened Scrutiny.

Settings requiring Heightened Scrutiny include any setting that can overcome the presumption of being institutional. These include settings located on or adjacent to a public institution. DDRS will be reaching out to field staff, providers and case managers to verify that no residential settings are located on the grounds of or immediately adjacent to a public institution. The non-residential self-assessment conducted indicated seven potential sites were identified to be in this category. After the Tier 2 analysis, only two of those sites were determined to possibly meet this criteria.

Other settings to be reviewed for Heightened Scrutiny include settings that may have the effect of isolating individuals from the greater community including residential settings where respondents indicated few social interactions outside of the home, day settings and congregate settings of four or more homes located close together.

If it is found that the setting would meet the criteria of being presumed institutional after remediation efforts but DDRS believes it can present an indication that the setting meets the requirements; Heightened Scrutiny will be applied. Heightened Scrutiny will include a period of public comment to be submitted with other evidence to CMS for approval. If the setting is determined to be compliant with the Final Rule HCBS, DDRS will continue monitoring to ensure ongoing compliance. If DDRS determines the setting cannot meet the requirements with modifications, the relocation process/timelines outlined in the next section will commence.

Current analysis of the Tier 2 process estimates that as of September 2019, two sites may require Heightened Scrutiny once all potential remediation has been completed. If CMS provides additional guidance and any future settings are identified as being presumptively institutional but the State feels they are home and community-based; those settings will be forwarded for Heightened Scrutiny review.

The below steps will determine if Heightened Scrutiny will be submitted to CMS:

**1. Identification of sites for heightened scrutiny.**

- a. **Site Assessment Tools** –Throughout the site assessment process, DDRS evaluated CMS’ three prongs to determine the potential for heightened scrutiny. These include settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; settings that are located in a building on the grounds of, or immediately adjacent to a public institution; or settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. The comprehensive assessment tools used include the IES survey, the monitoring checklist, provider agencies self-surveys, applicable provider agency policies and procedures, and any on-site visit reports to determine PI.
  - b. **Determining PI Settings:**
    - i. A compliance determination will be based on the comprehensive review and assessment of each setting. Any setting found to meet one of the three prongs will be subject to a determination of PI.
    - ii. BDDS staff will review the initial recommendation of the contractor who performed the onsite visits as well as all of the materials compiled and make the initial determination that a setting meets the presumption.
  - c. **Determining if a setting can overcome the Presumption and should be a candidate for heightened scrutiny:**
    - i. A summary of findings will be assembled to determine if a PI setting is a potential candidate for heightened scrutiny and can overcome the assumption based on information review. Specific criteria within the various tools include:
      1. Identifying if the setting is located in or adjacent to a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.
      2. Identifying if the setting provides onsite medical, behavioral, or therapeutic services.
      3. Confirmation that the setting is integrated in and supports access to the greater community.
    - ii. DDRS will make the final determination that a setting can overcome the presumption and should be a candidate for heightened scrutiny.
    - iii. Once a setting is determined to be a candidate for heightened scrutiny, notification will be sent to the provider and residents of the setting in a letter outlining the determination and how DDRS made the determination as well as the next steps of the process.
2. **Heightened Scrutiny Evidence Packet (HSEP)**
- a. **HSEP Creation**
    - i. DDRS will compile information on each PI setting into a packet to present to OMPP.
    - ii. HSEP information will be organized according to which prong the setting falls under:  
**For Prong 1 and Prong 2 –**
      1. Information will support the fact that there is a meaningful distinction between the HCBS setting and the institutional based facility, and that the former is integrated and supports full access of individuals receiving HCBS to the greater community.
      2. Information will establish that the services provide to the individual and the activities that the individual engages in are intertwined with the broader community.**For Prong 3 –**
      1. Information will support that the setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not a setting of only persons with disabilities.
      2. Information will support that individuals participate regularly in typical community life activities outside of the setting to the extent they desire and the activities are engaged with the broader community.
    - iii. DDRS will include the following items during the HSEP process:
      1. Prior to submission to OMPP for review, DDRS will notify the provider identified and individuals and families impacted.
        - a. This notification will allow for input/interviews with the provider and individuals.
      2. DDRS will summarize the information into a HSEP packet. The packet will include:
        - a. The setting name and whether the setting is provider owned or controlled/residential or nonresidential.
        - b. The PI prong the setting falls under and reasons for making that determination.
        - c. A description of the assessment tools used to make the PI determination:
          - i. Summary of provider self-assessments.
          - ii. Observations from desk reviews, site visits, surveys.

- iii. Feedback from individuals served within the setting.
- d. Evidence that the site can overcome the PI determination. Including:
  - i. Pictures of the site.
  - ii. Written justification of compliance that includes a summary of the site visit and documentation review.
  - iii. A summary of comments/interviews of persons within the setting.
- b. Review & Submission of the HSEP**
  - i. Once the HSEPs are completed, they will be submitted to the OMPP for review.
  - ii. Once the HSEPs are approved by OMPP, the packets will be submitted for statewide public comment. Any comments during the public comment period will be taken into consideration and revisions applied, if applicable.
- c. Based on the division’s evidence and recommendation and the outcome of public comment, OMPP will make the final determination of which packets are submitted to CMS for heightened scrutiny.

<b>Estimate of Potential Heightened Scrutiny (as of February 2019)</b>	
	Total Number Identified
Settings located in a building that is also a public or private facility providing inpatient institutional treatment	0
Settings located on the grounds of or adjacent to a public institution	2
Settings that may have the effect of isolating individuals	0

**Relocation of Individuals**

Reasonable notice will be given to the participant and the Individual Support Team (IST) regarding any setting found to be non-compliant. Action steps will be provided as well as procedural safeguards explained. Individuals will be provided a choice of remaining in the HCBS funded program or choosing to remain in their current location. It is anticipated per the remediation strategies DDRS has developed that teams will be provided with 6 months’ notice prior to transitioning individuals from identified non-compliant settings. The below steps outline this process:

- Site has been determined as non-compliant for the following reasons:
  - Provider declines to become compliant
  - Site has still been determined to be non-compliant after all remedial action
- Notification of non-compliance will be sent to Provider and IST outlining findings and cause.
- Per [460 IAC 6-7-6](#) Administrative Review, the provider has 15 days to request Administrative Review, preserving the right to appeal.
- The IST notification will outline individuals’ choices to remain in setting and locate an alternative funding source or transition to HCBS Compliant setting.
- This will allow for the IST’s to meet and conduct the following transition steps as outlined in [BDDS Transition Activities Policy](#).
  - Coordination of transition planning meetings
  - Person-Centered Planning process
  - Updating of the Individualized Support Plan
  - Referrals to HCBS approved providers
  - Meeting and selection of roommates for residential moves
  - Home visits
  - Safety inspections
  - Pre- and post-monitoring by the individual’s Case Manager
  - BDDS shall ensure individuals are provided with a choice of providers and facilitate the transition process to ensure all supports are in place prior to any movement



BDDS will use its process for transitioning people from the non-compliant setting to a setting that meets HCBS requirements. Individuals will be informed in writing of the agency's decision outlining the procedure established for transitioning to an approved HCBS setting. This will ensure reasonable notice and procedural safeguards are provided to anyone needing to transition.

A transition plan will be developed to allow for sufficient time to safely transition individuals to compliant settings of their choice. BDDS or its contracted entity will ensure individuals are informed of the opportunity to select settings and roommates of their choice and will facilitate all transitions as outlined in the [BDDS Transition Activities Policy](#). Both the existing provider and the newly selected provider will participate in the transition activities. The change in the individual's residence may not take place until written approval is received from the individual's service coordinator. The participant and the Individual Support Team will actively participate in the transition process.

The [460 IAC 6](#) citations are found at URL address <http://www.in.gov/legislative/iac/T04600/A00060.PDF>

## SECTION 4: ONGOING MONITORING

### Monitoring Checklist Data Review

The Monitoring Checklist is used as a tool for case managers to ensure supports are provided consistent with BDDS policies and procedures. While the State was unable to validate a settings compliance based solely on past data of the 90- Day Checklist, the updated Monitoring Checklist allows for ongoing compliance measurement. Since April 2018, the below HCBS questions are currently addressed and recorded in the Monitoring Checklist:

- Is the individual's setting integrated in and does it support access to the greater community?
- Does the individual's setting provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources?
- Does the individual's setting ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services?
- Was the individual's setting selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting?
- Does the individual's setting ensure his/her rights of privacy, dignity, respect, and freedom from coercion and restraint?
- Does the individual's setting optimize the individual's initiative, autonomy, and independence in making life choices?

### Person-Centered Individualized Support Plan (PC/ISP) Data Review

DDRS has also made enhancements to the Person-Centered Planning process through the LifeCourse Framework and the development of the new Person-Centered Individualized Support Plan (PC/ISP). The DDRS began this process by opening a dialogue with all stakeholders on the need for transformation in how Indiana provides services and supports to its citizens with intellectual and developmental disabilities. Since then, DDRS has consulted with self-advocates, families, case managers, providers and other stakeholders to better understand a collective vision for services and supports for Hoosiers with disabilities and what we can do to transform our approach to move us toward supporting individuals and families in their community.

The PC/ISP is based on the LifeCourse Framework and developed annually, with reviews at least semi-annually by the IST. For provider owned or controlled residential settings a systemic verification process has been embedded within the PC/ISP to ensure ongoing monitoring of HCBS compliance by addressing and documenting the following questions:

- Does the individual have privacy in his or her sleeping or living quarters?
- Does the individual's living quarters have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed?
- If the individual shares living quarters, did the individual have a choice of roommates?
- Does the individual have the freedom to furnish and decorate his/her sleeping or living quarters within the lease or other agreement?
- Does the individual have the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity?
- Is the individual's dwelling/unit owned, rented, or occupied under a legally enforceable agreement?
- Is the setting physically accessible to the individual?

- Does the individual have access to food at any time?
- Is the individual allowed visitors at any time?
- Does the individual have the freedom and support to control his/her own schedules and activities?

Individual's HCBS requirements will be reviewed for compliance through both the Monitoring Checklist and the LifeCourse Framework's person-centered planning process. These tools are utilized for all individuals on the waiver, regardless of the type of residential setting. Questions are auto populated and individualized based on the type of residential setting (provider owned or controlled or a private residential setting). Questions specific to federal requirements are reviewed on a yearly basis.

For non-residential settings, ongoing monitoring will be conducted through provider re-approvals, policy revisions, and provider agreements to ensure continued compliance of its settings with the federal requirements by March 17, 2023.

Revisions to the provider enrollment process and the Compliance Evaluation and Review Tool (CERT) will be made to cover all aspects of the HCBS rule to measure ongoing compliance. Trainings will be scheduled for state staff, members, providers and case managers on any changes in policies, procedures, and the monitoring process of the HCBS rules. These trainings will ensure a clear understating of the steps DDRS will be undertaking and the ongoing compliance tools that will be used.

As part of waiver redesign, DDRS continues to assess various options to encourage more integration, autonomy, and choice of non-disability specific settings for individuals. DDRS has increased the cap on transportation rates in order to support community inclusion and will continue reviewing the service definitions outlined in the waivers in order to better support capacity to assure non-disability specific options.

In addition, on January 1, 2018, the BDDS implemented a change allowing an individual's budget allocation approach under the Objective Based Allocation System (OBA) to no longer distribute individual budgets into three categories or 'buckets' for individuals receiving services through the CIH. This change reinforced the concept of person-centeredness by removing budgetary restrictions of the OBA and allowing for more flexibility to support identified community integration needs.

A Task Force has also been developed for the assessment of services and supports for People with Intellectual and Other Developmental Disabilities as outlined in House Enrolled Act No. 1102. This Task Force will prepare a comprehensive plan of implementation of community based services provided to people with intellectual and other developmental disabilities and will be assessing the capacity to meet existing and prospective needs and services. The recommendations will allow DDRS to engage stakeholders, assess current resources, and build capacity through awareness and trainings. The Task Force must submit a finalized report or summary to the legislature no later than November 1, 2018.

DDRS is taking a transformational change approach to building additional access to non-disability specific setting options by embracing the LifeCourse Framework philosophy and tools. A revamping of the person centered planning approach using a combination of different kinds of supports helps individuals and families plot a trajectory toward an inclusive, quality, community life. The redesign of the person-centered plan encourages and supports teams to identify existing non-disability specific supports and resources available for individuals in each life domain, and enhanced functionality of this planning document now allows for fluid updates to the life domains.

One of the most important steps in building capacity is training on principles, strategies and tools of the LifeCourse Framework. DDRS has been conducting ongoing educational trainings for individuals, providers, families, case managers, and other stakeholders for the last two years and will continue to educate on the development of designing meaningful plans that encourage effective supports and services to get individuals closer to their definition of a good life. These trainings provide people with the knowledge, tools and resources available to achieve goals and potentially overcome any barriers leading to a good life. The PCISP is developed utilizing the LifeCourse Framework and includes a wide variety of options, including provider, relationship, and non-disability specific community supports.

While the policies, procedures and guidance related to PCP and case management have been updated; the statewide training series provides concrete, face-to-face learning opportunities regarding person-centered planning and the roles of team members. Regular updates to stakeholders on the progress toward new person-centered planning implementation ensure transparency and up to date information continues to be delivered.

Additionally, DDRS has been leveraging its partnership with the Communities of Practice through UMKC to annually identify opportunities to promote and engage a cross-section of stakeholders across the State with LifeCourse Framework themed events. DDRS coordinates these events in partnership with the Indiana's Governor's Council for People with

Disabilities. These events have been targeted to participants in services, families, providers, case managers, and state staff and offer resources and strategies for adoption of LifeCourse tools and philosophy and infusion in participants' local community.

As a member of the Communities of Practice, DDRS is afforded the opportunity to participate in Charting the LifeCourse Ambassador Training. This is an intensive training on the philosophy and tools of charting the LifeCourse than spans several months. DDRS has utilized its allotted Ambassador Trainings for not only DDRS staff but also staff from provider agencies, case management agencies, and advocacy organization staff. The Ambassadors role is to further the philosophy of Charting the LifeCourse which focuses on ALL people having the opportunity to live, love, work, play, and pursue their dreams in their community. The focus is not on services but rather on the individuals vision for his good life and how to get there utilizing paid, unpaid, formal and natural supports which include disability specific and more generic, non-disability specific sources.

Furthermore, DDRS introduced community 'Building Bridges' regional sessions open to family members, and individuals in services or potentially eligible for services. These community sessions are coordinated and facilitated by a Family Engagement Specialist (employed by DDRS) who is a LifeCourse Ambassador, to engage individuals and families on relevant issues, and largely the coordination of services, and the identification of non-disability specific resources and local resources. While these sessions are coordinated by a DDRS employee, the conversation is largely led by the families themselves, and the State staff serve to answer technical questions. Family members often talk among themselves in these sessions to work toward common goals and outcomes, discussing creative problem solving and ways they have successfully established community supports for long-term successes. The Building Bridges sessions are held quarterly and are scheduled in all areas of the State, and typically scheduled in the evenings to accommodate family schedules. The LifeCourse planning tools are available at the Building Bridges meetings. DDRS does not require families or teams to use these forms. However, if requested by families at the Building Bridges meetings, state staff will review and explain how to use them.

DDRS was also one of the states awarded a Living Well Grant in 2018. DDRS will be using the Living Well grant as another means to build capacity with providers to facilitate access to non-disability specific settings. This includes revisiting and improving state strategies for quality improvement monitoring, incident reporting, and provider training opportunities.

DDRS will align the Living Well Grant activities with the kickoff of the Division's plan to redesign HCBS waivers through a Redesign Project set to kick off in the spring of 2019. DDRS has engaged a vendor to assist the Division to realign systems and services to comply with the HCBS Rule, finalize our Administrative Code to align with HCBS, in addition to modernizing service structures and rates. It is intended these systemic efforts will enhance and support provider, and system capacity to increase access to non-disability specific setting options across HCBS.

Indiana continues the process of evaluating its HCBS programs to identify potential opportunities to improve these programs and enable them to better meet the needs of individuals. Currently, all individuals have options for receiving services in non-disability specific settings, including both residential and non-residential services through the Person-Centered Planning Process.

## SECTION 5: KEY STAKEHOLDERS AND OUTREACH

As DDRS moves forward in assessing the system's compliance with HCBS rules, DDRS intends to continue to work closely with providers, self-advocates, individuals served and families. DDRS' intent is to engage in a collaborative process which will involve a high level of inclusion of all stakeholders. Throughout the transition process DDRS will continually seek out and incorporate stakeholder and other public input.

DDRS posts all ongoing activities around the transition plan online through DDRS Announcements. In addition, announcements of the public comment periods and other related activities are posted on the BDDS Provider Portal and the BDDS Case Management system encouraging all to become familiar with the new HCBS criteria outlined in the rule and to assist in informing individuals and their families about the transition plan and asking that they submit their comments, questions, or concerns. DDRS continues to work with stakeholders such as the ARC of Indiana, INARF, and providers to promote public input through various public meetings including quarterly provider meetings.

Outreach activities have included webinars, resources, FAQ's, Power Point Presentations and the development of a HCBS workgroup that has been actively assisting in crafting provider and family messaging related to the STP, providing feedback on assessment activities, and providing ongoing feedback and input around the STP activities. In addition, family listening sessions have been taking place throughout the State to allow families an open forum to share their desired service needs for both the CIH and FS waivers for input into any new HCBS services.

DDRS is committed to a high level transparency and will continue to publish the planned steps to ensure that all providers, families, participants, and potential participants are given meaningful opportunity for public input.

## DIVISION OF MENTAL HEALTH AND ADDICTION - YOUTH (DMHA-Y)

### HCBS Programs

#### Child Mental Health Wraparound (CMHW) – 1915(i)

**Update June 2018:** The DMHA Youth program portion of the STP has been modified. The PRTF Transition Waiver has been terminated (2017), therefore references to the program have been removed. Action items have been updated.

**Update September 2017:** The DMHA-Y programs portion of the STP has been modified. Narrative texts and action items have been updated as well.

#### Background

The DMHA-Y operates the CMHW 1915(i) HCBS program that serves eligible youth with serious emotional disturbance (SED). This program includes Wraparound Facilitation, and may include Habilitation, Respite, and Training & Support for the Unpaid Caregiver.

#### SECTION 1: SETTINGS INCLUDED IN THE STP

The FSSA DMHA, youth services completed an internal review and analysis of all settings where HCBS services are provided. The CMHW program does not provide residential supports, though services may be provided in the home as well as the community. Youths in services reside in the family home, natural or foster, or in the community. Services available on the CMHW program include the following:

- **Wraparound Facilitation (Care Coordination):** Comprehensive service that follows a series of steps and is provided in the community through a Child and Family Wraparound Team.
- **Habilitation:** Enhances a participant's level of functioning through one-on-one support.
- **Training and Support for Unpaid Caregivers:** Provide education and support to the unpaid caregiver of a participant.
- **Respite<sup>2</sup>:** Short-term relief for person who normally provides care for the participant.

All services offered by the CMHW are individualized services, chosen by the Child and Family Team, and provided in one of the following settings:

- 1) Public, community-based, non-disability specific settings such as retail locations, public parks, community spaces, etc., used by the general public;
- 2) Youth's private family home; and/or
- 3) Home of a licensed foster family if the child is under the jurisdiction of the Department of Child Services (DCS).

Services and the settings in which they are provided are individualized according to the participant's needs as outlined in the plan of care, and must include options for non-disability specific settings. The plan is developed with the Child and Family Team in which the participant and family choose on what they will be working, when, with whom, and where. Services are expected to occur in the family home and/or community-based environment to allow for a smooth transition to natural supports when the youth transitions out of the program.

The number of settings may only be calculated by multiplication of the number of participants in the programs by the number of services settings outlined in their plans of care. Currently, there approximately 642 participants served through the CMHW.

<sup>2</sup>Respite in a Psychiatric Residential Treatment Facility is an approved service, as allowable under 42 CFR § 441.310(a)(2)(i). CMS indicates in the HCBS Final Rule that "Institutional Respite" is an allowable setting.

## SECTION 2: SYSTEMIC ASSESSMENT

The FSSA’s DMHA Youth Services conducted a systemic assessment, including a crosswalk of the final rule and sections of Indiana Administrative Code related to the Child Mental Health Wraparound services program ([405 IAC 5-21.7](#)) and the Child Welfare Services ([465 IAC 2](#)).

### Systemic Assessment Crosswalk

**Federal Requirement:** Settings are integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p>In the <a href="#">405 IAC 5-21.7-2</a> Definitions</p> <p>In the general provisions section of IAC (<a href="#">405 IAC 5-21.7-1</a>) General provisions Sec. 1. (a) This rule provides . . . (CMHW) <b>services, which are intensive, home and community-based intervention services</b> provided according to a systems of care philosophy within a wraparound model of service delivery.</p> <p>In the general provisions section of IAC (<a href="#">405 IAC 5-21.7-1</a>) General provisions Sec. 1 (g) The state’s purposes for providing CMHW services are to: (2) enable them to benefit from receiving . . . <b>services within their home and community with natural family supports.</b></p> <p>In the <a href="#">405 IAC 5-21.7-2</a> Definitions (g) "Child mental health wraparound" or "CMHW" services mean intensive, <b>home and community-based</b>, behavioral health wraparound <b>services</b> and interventions . . . <a href="#">405 IAC 5-21.7-17</a> Habilitation services Sec. 17. (b) Habilitation <b>services are provided</b> face-to-face in either the participant's <b>home or other Community-based setting</b>, based upon the preferences of the participant and the participant's family.</p>	<p>Silent, there is no definition of "Home and Community Based."</p> <p>Partially complies, states Home and Community based, but this term is not defined.</p> <p>Partially complies, states Home and Community based, but this term is not defined.</p> <p>Partially complies, states Home and Community based, but this term is not defined.</p> <p>Partially complies, states Home and Community based, but this term is not defined.</p>	<p>While the term “home and community based” is used frequently in IAC, as well as in policies, manuals, and training materials, the term is not defined. DMHA will add the definition of Home and Community-Based to 405 IAC 5-21.7 as defined by 42 CFR 441.301(c)(4)-(5).</p> <p>Once the definition of Home and Community Based is added to 405 IAC 5-21.7, this portion will be in full compliance.</p> <p>Once the definition of Home and Community Based is added to 405 IAC 5-21.7, this portion will be in full compliance.</p> <p>Once the definition of Home and Community Based is added to 405 IAC 5-21.7, this portion will be in full compliance.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p> <p>Currently in progress and will be compliant by March 17, 2023.</p> <p>Currently in progress and will be compliant by March 17, 2023.</p> <p>Currently in progress and will be compliant by March 17, 2023.</p>



<p><a href="#">405 IAC 5-21.7-19</a> Training and support for unpaid caregiver services (g) The hourly training and support service is provided in the following manner: (2) The <b>service is provided face-to-face in the home or a community-based setting.</b></p>	<p>Partially complies, states Home and Community based, but this term is not defined.</p>	<p>Once the definition of Home and Community Based is added to 405 IAC 5-21.7, this portion will be in full compliance.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>
<p><a href="#">465 IAC 2-1.5-13</a> Care of Children: general. The foster family shall include the child in the normal routine of the foster family unless the department determines that specific aspects of the routine are inappropriate.</p>	<p>Partially compliant: Lacks detail.</p>	<p>DMHA and DCS will work together to update the regulation. The regulation shall be amended to state, “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.” Failure to adhere to the regulation will be transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>

**Federal Requirement:** Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7-6</a> Individualized plan of care (c) The CMHW services plan of care developed within the team, with participant and family input and inclusion, must meet the following criteria:                      (2) Reflect the participant's and the family's preferences and choices for services and providers.</p>	<p>Partially Complies: Service settings are determined by the child and family team and documented in the plan of care.</p>	<p>405 IAC 5-21.7-6(c)(2) will be updated to include the words “and HCBS compliant settings.” Regarding residential placement, DMHA has consulted with DCS. Children placed in family foster homes will live in compliant settings, be moved to a compliant setting within 90-days, or will be transitioned from the program and instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>

**Federal Requirement:** Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7-6</a> Individualized plan of care (d) In addition to the plan of care, the team shall develop a crisis plan . . . and <a href="#">The Division of Mental Health and Addiction Child Mental Health Wraparound (CMHW) Services Provider Module</a> in Section 8: Crisis Plan Development states, “Seclusion and restraint are not</p>	<p>Partially Complies: 405 IAC 5-21.7-6 states that a crisis plan is a required component of a plan of care; in the provider module under crisis plan development that seclusion and restraint are not allowed; and 405 IAC 5-21.7-14 state that a provider may lose authorization to provider</p>	<p>DMHA will draft a stand-alone policy requiring all service settings ensure the youth’s rights of privacy, dignity, respect, and freedom from coercion and restraint.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>

<p>allowed interventions in the crisis plan.”  <a href="#">405 IAC 5-21.7-14</a> Provider sanctions (b) The loss of DMHA authorization for a provider to deliver CMHW services may occur due to, but not limited to, the following: (1) The provider's failure to adhere to and follow CMHW services policies and procedures for behavior, documentation, billing, or service delivery.  <a href="#">465 IAC 2-1.5-17</a> Foster parents shall not use mechanical or chemical restraints on the child. Foster parents may not use physical restraint on a child unless: (1) it is specifically authorized by the department in advance in writing, (2) the foster parent has been appropriately trained and certified by a department approved body in the prevention and use of physical restraint, (3) it is an emergency situation and the child is a clear and present danger to himself or herself or others, (4) less restrictive interventions have been determined to be ineffective.</p>	<p>services for failure to comply with policies and procedures.</p> <p>Fully complies.</p>	<p>DMHA and DCS will work collaboratively to address through policy the expectation that children in foster family homes receiving CMHW services will be free from the use of seclusion and restraint. Modifications made for individualized assessed need will be incorporated into the person-centered plan.</p> <p>Completed 11/2020</p>
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**Federal Requirement:** Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7-6</a> Individualized plan of care (c) The CMHW services plan of care developed within the team, with participant and family input and inclusion, must meet the following criteria: (1) Be developed for each participant based upon the participant's unique strengths and needs, as ascertained in the evaluation or assessment. (2) Reflect the participant's and the family's preferences and choices for services and providers.</p>	<p>Fully complies: All participants must have a plan of care, and the plan of care must reflect the participant's and the family's preferences and choices including services and the settings in which they are provided.</p>	<p>N/A</p>	<p>N/A</p>
<p><a href="#">405 IAC 5-21.7-15</a> Services: general provisions (a) All CMHW services provided to a participant must meet the following requirements: (1) Be supported by the participant's level of need.</p>	<p>Fully complies: Applies to all services, and references the requirement that services are documented in the plan of care, which is required to reflect the participant's and the family's preferences and</p>	<p>N/A</p>	<p>N/A</p>

(2) Be documented in the participant's plan of care. <a href="#">465 IAC 2-1.5-14(b)</a> Children shall be encouraged to participate in extracurricular school and educational activities where appropriate.	choices for services and providers.  Fully complies.	N/A	N/A
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**Federal Requirement:** Settings facilitate individual choice regarding services and supports, and who provides them.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">405 IAC 5-21.7-7</a> Participant freedom of choice Sec. 7. The participant and the participant's family have freedom of choice regarding the following aspects of CMHW service delivery: (1) Determining who will participate in the team. (2) Identifying the plan of care goals and the method for achieving those goals. (3) Selecting the CMHW services, as supported by the participant's assessment and level of need that will be included in the plan of care. (4) Choosing the DMHA-certified CMHW service provider or providers who will provide, oversee, and monitor implementation of the plan of care. (5) Changing the CMHW service provider or providers at any time during the participant's enrollment in the CMHW services program.	Fully Complies: All participants must have a plan of care, and the plan of care must reflect the participant's and the family's preferences and choices including services, who provides them, and the settings in which they are provided.	N/A	N/A
<a href="#">405 IAC 5-21.7-15</a> Services: general provisions (a) All CMHW services provided to a participant must meet the following requirements: (1) Be supported by the participant's level of need. (2) Be documented in the participant's plan of care.	Fully complies: Applies to all services, and reference the requirement that services are documented in the plan of care, which is required to reflect the participant's and the family's preferences and choices for services and providers.	N/A	N/A

**Federal Requirement:** In provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
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<p><a href="#">405 IAC 5-21.7-1</a> General Provisions</p>	<p>Silent: IAC does not acknowledge provider-owned or controlled residential setting.</p>	<p>Update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>
<p><a href="#">405 IAC 5-21.7-2</a> Definitions (g) (3) The services include clinical and supportive behavioral health services provided for eligible participants who are: (A) living with their family in the community</p>	<p>Fully complies: There are no residential services available on the DMHA Youth HCBS Wraparound programs. Participants are children who live at home with their families. These children have the same degree of access and opportunity as children not receiving Medicaid HCBS.</p>	<p>N/A</p>	<p>N/A</p>
<p><a href="#">405 IAC 5-21.7-6</a> Individualized plan of care (b) The plan of care must include all indicated medical and behavioral support services needed by a participant in order to assist the participant in the following: (1) Remaining in the home or community.</p>	<p>Fully complies: There are no residential services available on the DMHA Youth HCBS Wraparound programs. Participants are children who live at home with their families. These children have the same degree of access and opportunity as children not receiving Medicaid HCBS.</p>	<p>N/A</p>	<p>N/A</p>

**Federal Requirement:** In provider-owned or controlled residential settings, each individual has privacy in their sleeping or living unit.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7</a></p>	<p>Silent: This regulation does not govern residential setting requirements. Youths in Family Foster homes are the only participants in provider owned or controlled settings.</p>	<p>Update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>
<p><a href="#">465 IAC 2-1.5-9</a> Bedrooms shall have adequate ventilation for the health, safety, and welfare for the child. Bedrooms shall be clearly identified as bedrooms. Living, dining, and other areas not commonly used for a bedroom</p>	<p>Not compliant: Privacy is stated.</p>	<p>DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will result in members being transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>

**Federal Requirement:** In provider-owned or controlled residential settings, units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7</a></p> <p><a href="#">465 IAC 2-1.5-9</a> Bedrooms shall have adequate ventilation for the health, safety, and welfare for the child. Bedrooms shall be clearly identified as bedrooms. Living, dining, and other areas not commonly used for sleeping shall not be used for a bedroom.</p>	<p>Silent: This regulation does not govern residential setting requirements. Youths in Family Foster homes are the only participants in provider owned or controlled settings.</p> <p>Not compliant, no mention of lockable doors or staff having keys.</p>	<p>DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.</p> <p>DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will result in members being transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p> <p>Currently in progress and will be compliant by March 17, 2023.</p>

**Federal Requirement:** In provider-owned or controlled residential settings individuals sharing units have a choice of roommates.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7</a></p> <p><a href="#">465 IAC 2-1.5-9</a> Children (6) years of age and older, who share a room, shall be of the same sex. Children over twelve (12) months of age shall not share a bedroom with adults, except in the case of illness of developmental disabilities requiring close supervision and only with approval of department.</p>	<p>Silent: This regulation does not govern residential setting requirements. Youths in Family Foster homes are the only participants in provider owned or controlled settings.</p> <p>Not compliant, the choice of roommates is not included when a room is shared.</p>	<p>DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.</p> <p>DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will result in members being transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p> <p>Currently in progress and will be compliant by March 17, 2023.</p>

**Federal Requirement:** In provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">405 IAC 5-21.7</a>	Silent: This regulation does not govern residential setting requirements. Youths in Family Foster homes are the only participants in provider owned or controlled settings.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.	Currently in progress and will be compliant by March 17, 2023.
<a href="#">465 IAC 2-1.5-9</a> Bedrooms shall have adequate ventilation for the health, safety, and welfare for the child. Bedrooms shall be clearly identified as bedrooms. Living, dining, and other areas not commonly used for a bedroom	Silent: this regulation does not address the issue of room decorations.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will result in members being transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.	Currently in progress and will be compliant by March 17, 2023.

**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals have the freedom and support to control their schedules and activities, and have access to food any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">405 IAC 5-21.7</a>	Silent: This regulation does not govern residential setting requirements. Youths in Family Foster homes are the only participants in provider owned or controlled settings.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.	Currently in progress and will be compliant by March 17, 2023.
<a href="#">465 IAC 2-1.5-13</a> Care of Children: general. The foster family shall include the child in the normal routine of the foster family unless the department determines that specific aspects of the routine are inappropriate.	Silent, does not state the requirement.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will result in members being transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.	Currently in progress and will be compliant by March 17, 2023.
<a href="#">465 IAC 2-1.5-20</a> The foster family shall provide food of sufficient quality and quantity to meet the nutritional, medical, and psychological requirements of the	Partially compliant, addresses the provision of food by not access to food.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges	Currently in progress and will be compliant



child. The child’s diet shall be well balanced.	to the same extent as their non-disabled peers. Failure to adhere to the regulation will result in members being transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.	by March 17, 2023.
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**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals are able to have visitors of their choosing at any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">405 IAC 5-21.7</a>	Silent: This regulation does not govern residential setting requirements. Youths in Family Foster homes are the only participants in provider owned or controlled settings.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.	Currently in progress and will be compliant by March 17, 2023.
<a href="#">465 IAC 2-1.5-13</a> Care of Children: general. The foster family shall include the child in the normal routine of the foster family unless the department determines that specific aspects of the routine are inappropriate.	Silent, does not address the subject of visitors.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will be transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.	Currently in progress and will be compliant by March 17, 2023.

**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, the setting is physically accessible to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<a href="#">405 IAC 5-21.7</a>	Silent: This regulation does not govern physical accessibility.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers.	Currently in progress and will be compliant by March 17, 2023.
<a href="#">465 IAC 2-1.5-8</a> Physical facilities of the foster family home: General. The Foster family home shall be located, constructed, arranged, and maintained to provide adequately for the health, safety, and moral welfare of all occupants:	Partially compliant, does not specifically state physical accessibility.	DMHA will update 405 IAC 5-21.7 to include “Members receiving Child Mental Health Wraparound services while living in provider owned or controlled settings, such as foster care, shall have rights and privileges to the same extent as their non-disabled peers. Failure to adhere to the regulation will be transitioned from the program, and will instead receive services through the DCS-	Currently in progress and will be compliant by March 17, 2023.

funded Child Mental Health Initiative, or similar program.

**Federal Requirement:** Any modifications of the additional conditions for provider-owned and controlled residential settings must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

1. Identify a specific and individualized need.
2. Document the positive interventions and supports used prior to any modifications to the person-centered plan.
3. Document less intrusive methods of meeting the need that have been tried but did not work.
4. Include a clear description of the condition that is directly proportionate to the specific need addressed.
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Include the informed consent of the individual.
8. Include an assurance that interventions and supports will cause no harm to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">405 IAC 5-21.7-16</a> Wraparound facilitation services                      Authority: <a href="#">IC 12-8-6.5-5</a>; <a href="#">IC 12-15</a>                      Affected: <a href="#">IC 12-13-7-3</a>; <a href="#">IC 12-29</a>; <a href="#">IC 25-23.6-10.5</a>; <a href="#">IC 25-27.5-5</a>                      Sec. 16. (a) Wraparound facilitation services are as follows:                      (1) Comprehensive services comprised of a variety of specific tasks and activities designed to carry out the wraparound process.                      (2) A required component of the CMHW services program.                      (b) Wraparound facilitation is:                      (1) a planning process that follows a series of steps; and                      (2) provided through a child and family wraparound team.                      (c) The team is responsible for assuring that a participant's needs, and the entities responsible for addressing those needs, are identified in a written plan of care.                      (d) The wraparound facilitator manages and supervises the wraparound process through the following activities:                      (1) Completing a comprehensive evaluation of the participant, including administration of the DMHA-approved behavioral assessment tool.                      (2) Guiding the family engagement process by exploring and assessing strengths and needs.</p>	<p>Partially compliant: Not addressed were the documentation of less restrictive previous interventions, as well as the requirement of informed consent.</p>	<p>DMHA will create policy to require the standard. Failure to adhere to the regulation will be transitioned from the program, and will instead receive services through the DCS-funded Child Mental Health Initiative, or similar program.</p>	<p>Currently in progress and will be compliant by March 17, 2023.</p>

- (3) Facilitating, coordinating, and attending team meetings.
- (4) Working in full partnership with the participant, family, and team members to ensure that the plan of care is developed, written, and approved by the DMHA.
- (5) Assisting the participant and the participant's family in gaining access to the full array of services, that is, medical, social, educational, or other needed services.
- (6) Guiding the planning process for the plan of care by: (A) informing the team of the family's vision; and (B) ensuring that the family's vision is central to the planning and delivery of services.
- (7) Ensuring the development, implementation, and monitoring of a crisis plan.
- (8) Assuring that all work to be done to assist the participant and the participant's family in achieving goals on the plan of care is identified and assigned to a team member.
- (9) Overseeing and monitoring all services authorized for a participant's plan of care.
- (10) Reevaluating and updating the plan of care as dictated by the participant's needs and securing DMHA approval of the plan of care.
- (11) Assuring that care is delivered in a manner consistent with strength-based, family-driven, and culturally competent values.
- (12) Offering consultation and education to all CMHW service providers regarding the values and principles of the wraparound services model.
- (13) Monitoring a participant's progress toward meeting treatment goals.
- (14) Ensuring that necessary data for evaluation is gathered, recorded, and preserved.
- (15) Ensuring that the CMHW services assessment and service-related documentation are gathered and reported to the DMHA as required by the DMHA.
- (16) Completing an annual CMHW services level of need reevaluation, with active involvement of the participant,

the participant's family, and the team.  
(17) Guiding the transition of the participant and the participant's family from CMHW services to state plan services or other community-based services when indicated.

### SECTION 3: SITE SPECIFIC ASSESSMENT

To validate the State's assumption that no youth was living in or receiving services in an institutional or otherwise non-compliant setting, a [survey](#) was conducted of all interested participants that includes: living environment, number of individuals with or without disabilities living in residence, whether or not there is paid staff, number of hours with which the person spends time, activities in the community and choice in daily routine. Completion of the survey was required for each active participant by the Wraparound Facilitator at a Child and Family Team Meeting. The survey was developed to make it appropriate for youth. Many, if not most of the items considered to indicate choices appropriate for an adult to make were not indicative of institutional care for children. For example, while adults may determine when and what to eat, control of one's own schedule, and have visitors at any time, such measures are inappropriate, even irresponsible areas of control to grant to children. Children not living in the natural family home should only be residing in family foster homes if enrolled in the program. In the case of child in a family foster home setting, the choices of where to live and with who are as likely to be out of the parents' control as the child's. Many questions were therefore adapted to suit age appropriate decision-making for youth, and to assess if the children have the same degree of access and opportunity as children not receiving Medicaid HCBS. Questions were included to be answered by the conflict-free Wraparound Facilitator, such as descriptor of the living, service, and school environments. Wraparound Facilitators and Wraparound Facilitator Supervisors received distributions of the IN FSSA Home and Community-Based Settings Statewide Transition Plan Newsletter, a link to the Final Rule, as well as detailed instructions on the completion of the survey. DMHA Site Coaches were available for follow-up, both for questions from the Wraparound Facilitators and their supervisors, as well as to encourage completion of the surveys in a timely manner. The completed surveys were submitted to DMHA by March 11, 2016. The survey completion rate was 81 percent, with 379 responding of 469 participants. These surveys were linked to specific sites and used to validate the results of DMHA's systemic assessments. DMHA has completed a detailed review of each member survey.

## Results and Remediation

DMHA reviewed and analyzed surveys of 379 participants with the following results:

Category of Compliance	Number of settings in category	Total number of settings surveyed	Percentage of Total
Fully align with the Federal requirements.	379	379	100%
Does not comply and will require modifications.	0	379	0%
Cannot meet the requirements and will require removal from the program and/or relocation of individuals.	0	379	0%
Heightened Scrutiny	0	379	0%
Totals	379	379	100%

All settings surveyed, 379 of them, were found to fully align with the Federal Requirements. Most participants (358 of 379, or 94 percent) were found to live in single family homes in the community with less than 6 percent (21 of 379) of youth in foster care family homes in the community. DMHA followed up with 36 youth and families with additional questions to ensure settings were compliant. Follow-up inquiries included 100 percent of the 21 participants living in foster care, which is 58 percent (21 of 36) of follow-up inquiries. DMHA’s follow-up consisted of emails and phone calls with the conflict-free Wraparound Facilitators (care coordinators) to gain clarification of questions. All were found to be in compliance. Additionally, DMHA has analyzed and compared the findings of youth living in family homes with youth living in foster homes to determine if there are fundamental differences between the settings. DMHA found that overall, foster homes were no more restrictive on average than non-foster home settings; and often were less restrictive. Neither setting type, natural family nor foster family, was noted to present with indicators of institutional qualities or to have a lesser degree of access and opportunity as settings of children not receiving Medicaid HCBS; and therefore, do not require remediation.

The survey completion rate was 81 percent, with 379 responding of 469 participants. To ensure that 100 percent of those living in foster home settings were surveyed, DMHA ran a query, finding that approximately ten youth were living in foster care settings receiving HCBS who did not have a survey completed by them or on their behalf. DMHA is currently following up with these youths to conduct the survey and to determine the compliance of the settings. This was completed by March 31, 2017, with all settings found to be in compliance.

If, in the future, a setting is found to be out of compliance, DMHA would require the provider and/or participant to come into compliance.

If a CMHW provider is providing a service in a non-compliant setting, such as a Habilitation provider working with a youth in the school setting, DMHA would place the provider on a corrective action.

If the setting involved a licensed DCS foster care setting, it would be out of compliance with DCS standards as well. DMHA would work in conjunction with DCS to review the setting. A review of the setting would include observation, interviews, a review of the DCS home study that was conducted on the foster parent where indicated, and other document review. The results of a foster family setting review would be analyzed and communicated to the interested parties. Settings which are out of compliance would result in DMHA placing the provider on a corrective action and requiring the participant to move to a compliant setting within 90 days of receipt of notification of non-compliance. The determination of this 90-day window was developed in cooperation with DCS as a reasonable timeframe for remediation and relocation if necessary of participants.

## Heightened Scrutiny

After review of the results of the initial survey, no settings were found to be out of compliance.

If any residential setting is suspected to be out of compliance, a site visit will be conducted to determine if the setting 1) meets the HCBS requirements, 2) does not meet the requirements, or 3) requires heightened scrutiny.

Settings to be reviewed for heightened scrutiny include settings that are on the grounds of or adjacent to a nursing facility, ICF/ID facility, IMD, hospital, other public institution, and/or have the effect of isolating individuals from the greater community including residential settings where respondents indicate few social interactions outside of the home, school, and congregate settings of four or more homes located close together.

The below steps will determine if a setting requires heightened scrutiny, and therefore submitted to CMS:

1. Identification of sites for heightened scrutiny:
  - a. An initial site visit will be conducted by the conflict-free Wraparound Facilitator who will validate the setting is in compliance, or who will, if there is a reasonable indication of need, complete the [Site Assessment Tool](#).<sup>3</sup> The completed assessment tool will be submitted to the DMHA for review.
  - b. DMHA will review the completed Site Assessment Tool, and if indicated, a follow-up site visit will be conducted by a representative of DMHA and DCS who will together determine if the site is presumed institutional. In cases where there is a dispute in the findings, the review will request a further review by Indiana Disability Rights.
  - c. If the setting is determined to be presumed institutional, the entity will be notified by DMHA.
  - d. The entity will notify DMHA whether it will pursue the heightened scrutiny process or opt out of providing HCBS services. If the entity pursues the heightened scrutiny process, it must submit:
    - i. Site specific survey
    - ii. Findings report by DMHA and DCS
    - iii. Plan for remediation
  - e. DMHA and DCS will review the response submitted by the entity and determine if the site can overcome the presumption.
  - f. If the plan is approved, a heightened scrutiny packet will be compiled by DMHA and submitted to Office of Medicaid Policy and Planning (OMPP) for review. If there is a need to review, a meeting will be scheduled between OMPP and DMHA-Y. Once approved by OMPP, the packet would be submitted for the public comment period. Any comments during the public comment period will be taken into consideration and revisions will be applied, if applicable. DMHA is responsible for making the final determination to send a setting's heightened scrutiny packet to CMS for Heightened Scrutiny review.
2. If it is determined that the setting is compliant, DMHA will continue monitoring to ensure ongoing compliance.
3. If DMHA determines the setting cannot or will not come into compliance, the relocation process will commence

## Relocation of Beneficiaries Process

No participants were found to require relocation.

If it is determined that a participant in a foster care setting lives in a non-compliant setting DMHA will work with DCS to remediate the setting. If remediation is unsuccessful, DMHA would require the participant to move to a compliant setting within 90 days of receipt of notification of non-compliance or be transitioned from the program to other services. The determination of this 90-day window was developed in cooperation with DCS as a reasonable timeframe for remediation and relocation of participants if necessary.

Participants who reside with family members in homes or apartments in typical community neighborhoods where people who do not receive home and community-based services reside are presumed to be in compliance. If it is found that a participant

<sup>3</sup> URL address [https://www.in.gov/fssa/dmha/files/HCBS\\_Waiver\\_Wraparound\\_Facilitator\\_Survey.pdf](https://www.in.gov/fssa/dmha/files/HCBS_Waiver_Wraparound_Facilitator_Survey.pdf)



living with family members who do not reside in typical community neighborhoods, but have relocated to an institution or institution-like setting will be considered as not fully complying with federal and state requirements. DMHA would require the participant and family to move to a compliant setting, but rather than the 90-day timeframe required of foster families found to be out of compliance, would work with the family on a month-by-month basis with demonstrated progress (such as the exploration of alternate residences) as is reasonable to accommodate any lease or other legal obligations, not to exceed one year from the date of formal notice. Progress toward this transition would be monitored no less often than monthly as part of the required monthly Child and Family Team meetings, and would include assistance from the local System of Care and DMHA where appropriate.

### **Ongoing Compliance and Monitoring of Settings**

In order to ensure ongoing compliance and monitoring of settings, DMHA continues to train all providers on the setting requirements; Access personnel will include an assessment of the residential setting as part of the initial application for eligibility process; require an annual confirmation of the compliance of the residential setting (attestation form); require Wraparound Facilitators to assess any changes in the residential setting during the program year, and report the assessment to the State; and the Child and Family Team, guided by the Wraparound Facilitator and other providers, will determine the settings in which services will be delivered as part of plan development, to be reviewed for compliance and appropriateness before approval by the State.

All providers must attend orientation training and service specific training. This training includes HCBS Settings Final Rule requirements. A description of the setting in which services are delivered is required in all service notes, as discussed in training. Demonstrated competency measures are included in DMHA trainings, and questions on this requirement have been included. Potential providers are required to pass the competency measure in order to be approvable as a provider. Ongoing support is available to providers who may have questions regarding allowable settings. All providers are given state contacts for technical assistance in any areas of need.

As part of the initial application for eligibility and again at the time of annual eligibility renewal, questions related to settings compliance will be addressed and included in the DMHA Youth and Family Rights Attestation form, which includes all of the rights offered to all participants. A field will be added to the Youth and Family Rights Attestation form that the family signs to validate the compliance of the participant's residential setting. Access personnel (who complete initial assessments for application for eligibility on behalf of the State) receive training on the setting requirements, understanding that it is a fundamental part of the initial assessment. A description of the participants living situation has always been a requirement of the initial and annual application which is then reviewed by the State as part of the eligibility process. The Wraparound Facilitators are in the participants' home at least once per month. As part of the State's plan to ensure ongoing compliance, DMHA will draft a policy requiring that Wraparound Facilitators review any relocation of the participant to a new setting to ensure that the setting is compliant with the federal requirements, and communicate that to DMHA when updating the participant's demographic information.

If, during the eligibility period the participant is found to be in an institutional, institution-like, or otherwise non-compliant setting, the Wraparound Facilitator will immediately notify DMHA to begin the remediation process.

Wraparound Facilitators guide the Child and Family Team meeting for plan of care development including determining services, strategies, responsible parties, and the setting in which services will take place. The plan of care is then reviewed and approved by DMHA quality assurance staff for compliance. DMHA quality assurance staff review 100 percent of service plans submitted before approval.

There is currently an established process for the Wraparound Facilitator to notify DMHA if the participant will be out the identified setting for more than 24 hours. This includes but is not limited to camp, overnight with relatives or placement in an acute setting. This allows for DMHA to monitor changes in the living arrangement.

Upon enrollment in the program, youth and families are also given information regarding contacting DMHA for assistance with any concerns they may have.

Anyone, provider, family member, or other, may submit a complaint to DMHA about any concern they may have including services provided in non-compliant or questionable settings. Access to the web-based complaint portal is provided on several DMHA webpages.

**DMHA-YOUTH REMEDIATION CHART:**

Action Item	Description	Strategies	Timeline for Completion	Source Documentation	Key Stakeholders
<b>Participant Surveys Conducted</b>	DMHA and PCG have developed a survey specifically tailored for youth targeting specific HCBS requirements that will provide data to further determine Indiana’s compliance status with the HCBS rules.	Survey results will serve as a tool to identify settings that may not be in compliance with HCBS rules and allow DMHA to develop strategies for working with these providers to come in to compliance in the required timelines.	Surveys completed by March 11, 2016.  <b>These surveys have been completed.</b>	Survey document	Participants and families; Conflict free Wraparound Facilitators, DMHA Youth team.
<b>Participant Survey Analysis</b>	DMHA will complete a detailed review of each member survey and the final results will be available by March 31, 2016.	Settings indicating non-compliance or potential non-compliance will be scheduled for an on-site review by DMHA staff, and by DCS where that setting is indicated to be under the licensure jurisdiction of Indiana’s Department of Child Services.	State analysis completed by May 31, 2016.  <b>This analysis has been completed.</b>	Member surveys and aggregate analysis.	DMHA and DCS staff.
<b>Site Specific Review and Analysis</b>	State conducts site specific surveys and reviews. A review of the home study to help determine compliance with HCBS settings final rule will be conducted.	DMHA staff would conduct an on-site review of the setting to determine if the setting required remediation to bring it into compliance. DMHA would work in conjunction with DCS to review the setting.	June 30, 2016  <b>This process has been completed. All settings were found to fully comply with Federal requirements.</b>	Review of the settings would include observation, interviews, a review of the DCS home study that was conducted on the foster parent where indicated, and other document review.	Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA and DCS staff.
<b>Comprehensive Setting Results and Formal Notices Requiring Corrective Actions (where indicated)</b>	The results of the review would be analyzed and communicated to the interested parties.	The settings which are found to be out of compliance will result in DMHA placing the provider on a corrective action and/or requiring the participant to move to a compliant setting within 90-day of receipt of notification of non-compliance.	Communications distributed by July 29, 2016.  <b>No remediation was required.</b>	Aggregate and site specific survey results	Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA and DCS staff.
<b>Site Specific Remediation and/or Beneficiary Relocation as a result of the initial survey.</b>	Implementation of Corrective Action Plan submitted by providers where the provider is found to be non-compliant. Where the youth resides with the family, but the family is living in a setting that does not fully comply with federal	To be determined by the Corrective Action Plan with no less often than monthly monitoring by DMHA.	Corrective Action Plans submitted by a CMHW service provider, or involving a foster care setting must come into compliance no later than 90-days from the date of the plan’s	Corrective Action Plans; Monthly Child and Family Team meeting notes.	Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA and DCS staff.

<p>and state requirements, DMHA will require the participant modify their setting or relocate to a compliant setting, or be transitioned to appropriate services.</p>	<p>acceptance by DMHA. Where the non-compliance involves the family living in a setting that does not fully comply, and/or a setting determined to require Heightened Scrutiny, DMHA may extend the transition period on a month-by-month basis with demonstrated progress as is reasonable to accommodate any lease or other legal obligations not to exceed one year from the date of formal notice. Progress toward this transition would be monitored no less often than monthly as part of the required monthly Child and Family Team meetings, and may include assistance from the local System of Care and DMHA where appropriate. With this in mind, all settings found to potentially be out of compliance would be remedied or the participants discharged no later than December 2018, or one year after the identification of the non-compliant setting.</p> <p>No remediation from the initial survey was required.</p>		
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<p><b>Sites requiring Heightened Scrutiny</b></p> <p>Settings to be reviewed for heightened scrutiny include settings that are on the grounds of or adjacent to a nursing facility, ICF/ID facility, IMD, hospital, other public institution, and/or have the effect of isolating individuals from the greater community including residential settings where respondents indicate few social interactions outside of the home, school, and congregate settings of four or more homes located close together.</p>	<p>The below steps will determine if a setting requires heightened scrutiny, and therefore submitted to CMS:</p> <ol style="list-style-type: none"> <li>1. An initial site visit will be conducted by the conflict free Wraparound Facilitator.</li> <li>2. If indicated, a follow-up site visit will be conducted by a representative of DMHA.</li> <li>3. If the setting requires heightened scrutiny, the setting identified will be posted for public comment.</li> <li>4. If remediation is warranted, a remediation plan will be submitted.</li> <li>5. If site is in compliance with HCBS rules during site visit, public comment and/or after remediation, evidence including public comment will be submitted to CMS for Heightened Scrutiny review.</li> <li>6. If it is determined that the setting is compliant, DMHA will continue monitoring to ensure ongoing compliance.</li> <li>7. If DMHA determines the setting cannot or will not come into compliance, the relocation process will commence.</li> </ol> <p>Any setting identified as requiring Heightened Scrutiny will be submitted to CMS for review by March 2018. Any recipients requiring relocation will be remediated by Dec 2018.</p> <p><b>No setting required Heightened Scrutiny.</b></p>	<p>Documentation of site visit/s; Corrective Action Plans; Monthly Child and Family Team meeting notes.</p>	<p>Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA, OMPP, Indiana System of Care Governance Board; Youth and Family Subcommittee</p>
<p><b>Follow-up survey of youths in foster care setting not included in initial survey to determine compliance of their settings.</b></p> <p>DMHA ran a query to determine if all youth in foster care settings receiving HCBS were included in the surveys, finding that approximately ten youth were living in foster care settings receiving HCBS who did not have a survey completed by them or on their behalf. DMHA is currently following up with these youths to conduct the survey and determine the</p>	<p>DMHA will contact the conflict-free wraparound facilitator of the participant to conduct a survey. The survey will be reviewed by DMHA to determine if a follow-up inquiry is indicated to determine compliance, non-compliance, or if a setting meets the heightened scrutiny criteria. Remediation will be implemented as indicated.</p> <p>March 31, 2017 to complete surveys on all youth listed as living in foster care settings. Remediation of any non-compliant findings would be conducted based on timeframes detailed in the relocation of beneficiaries table.</p> <p><b>Each setting indicated as a foster care setting</b></p>	<p>Completed survey; communications between DMHA and stakeholders; formal notices and corresponding documentation as indicated.</p>	<p>Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA</p>

	compliance of their settings.			was individually followed-up on, and was found to be in compliance.		
<b>Update Indiana Administrative Code <a href="#">405 IAC 5-21.7</a></b>	Specify living with family in a compliant community setting as a requirement for eligibility for the program.	Work with state agencies and lawmakers with public input to draft updated language.	September 30, 2018	Updated, promulgated IAC.	Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA, OMPP, Indiana System of Care Governance Board; Youth and Family Subcommittee	
<b>Update Indiana Administrative Code <a href="#">405 IAC 5-21.7, cont.</a></b>	Update reasons for denial of eligibility to include non-compliant residential setting.	Work with state agencies and lawmakers with public input to draft updated language.	September 30, 2018	Updated, promulgated IAC.	Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA, OMPP, Indiana System of Care Governance Board; Youth and Family Subcommittee	
<b>Update Indiana Administrative Code <a href="#">405 IAC 5-21.7, cont.</a></b>	Documentation of a compliant setting required as a part of the initial assessment.	Work with state agencies and lawmakers with public input to draft updated language.	September 30, 2018	Updated, promulgated IAC.	Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA, OMPP, Indiana System of Care Governance Board; Youth and Family Subcommittee	
<b>The Application for Eligibility and Approval Process</b>	As part of the initial individualized planning process and again at the time of annual renewal of the plan, questions related to settings compliance will be addressed and included in the DMHA Youth and Family Rights Attestation form, which includes all of the rights offered to all participants. DMHA plans to add a field on the Youth and Family Rights Attestation form to validate the	Modify Attestation form.	September 30, 2018	Updated Attestation form	DMHA	



<p><b>Ongoing Compliance: Quality Assurance Review</b></p>	<p>compliance of the participants' setting.</p> <p>Field audits that include a review of the service settings for all services to ensure compliance.</p>	<p>DMHA will continue its current compliance reviews and monitoring activities to ensure continued compliance with the HCBS settings requirements. The audits include at least one of the following: a review of the case file, including a review of service notes, interviews with providers, and interviews with participants and family. These reviews included a review of settings where services are provided as well as settings where participants reside.</p>	<p>On-going indefinitely. DMHA will continue its current compliance reviews and monitoring activities beyond March 2019 to ensure continued compliance with the HCBS settings requirements.</p> <p>Policies will be completed and in place by September 30, 2018</p>	<p>Site review reports.</p> <p>Policies will be included in the CMHW Provider Modules (manuals) and posted on the DMHA website.</p>	<p>Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, DMHA and DCS staff.</p>
<p><b>Ongoing Compliance: Review of Residential Changes</b></p>	<p>When residential setting changes during the approval period, the Wraparound Facilitator (care coordinator) and DMHA will validate that the new setting is compliant.</p>	<p>The DMHA case management data base will be updated to include a notification when the address of a participant changes. This will require that the Wraparound Facilitator (care coordinator) validate that the new setting is compliant. DMHA staff will likewise be alerted and review for compliance. Policies will be drafted requiring this to be completed.</p>	<p>DMHA will update the case management database to include a notification when the address of a participant changes and to alert DMHA staff to review for compliance.</p> <p>Policies will be completed and in place by September 30, 2018</p>	<p>Case management database; DMHA Policies will be included in the CMHW Provider Modules (manuals) and posted on the DMHA website.</p>	<p>Participants and families; Foster parents; Child Placement Agencies; Providers; Conflict free Wraparound Facilitators, State Medicaid DMHA and DCS staff.</p>
<p><b>Ongoing Compliance: Review of Service Changes</b></p>	<p>When services are updated, the Wraparound Facilitator (care coordinator) and DMHA will validate that the new setting is compliant.</p>	<p>Wraparound Facilitators work with the child and family team to establish goals and strategies for the plan of care to ensure individualization of services, respect and dignity of the participant, individual rights including choice, and compliance with standards. DMHA QA staff review each care plan prior to approval for compliance.</p>	<p>Policies will be completed and in place by September 30, 2018</p> <p>Current and Ongoing</p>	<p>Policies will be included in the CMHW Provider Modules (manuals) and posted on the DMHA website.</p>	<p>Participants and families; Foster parents; Providers; Conflict free Wraparound Facilitators, and DMHA QA staff.</p>

<b>Provider Reference Materials</b>	Policies and procedures related to the final rule will be added to the Provider Reference Materials.	DMHA regularly updates Provider Reference Materials to communicate Policies and Procedures for its Home and Community Based Services. All policies are reviewed and approved of by the Youth and Family Subcommittee and the Indiana SOC Board.	September 30, 2017.  Complete	Provider Reference Materials	DMHA, OMPP, Indiana System of Care Governance Board; Youth and Family Subcommittee
<b>Provider Training and Support</b>	New providers/provider applicants will be given an understanding of compliant settings, both residential settings and service delivery settings, and will be able to demonstrate competency with these concepts before approval as providers.	All providers must attend orientation training and service specific training; and an important piece of this training will include HCBS Settings Final Rule requirements. Demonstrated competency measures are included in DMHA trainings, and questions on this requirement will be included. Potential providers are required to pass the competency measure in order to be approvable as a provider.	Training materials and competency measures were updated March 2016. Training on compliant settings is a permanent feature of provider orientation and service specific training.	DMHA training materials and competency measures.	DMHA, DMHA HCBS Providers.
<b>Provider Training and Support</b>	Existing providers will be given an understanding of the final rule and compliant residential and service delivery settings.	DMHA will conduct a required webinar for existing providers where they will be able to review the requirements and ask questions of DMHA, both during the webinar, and as needed afterward to ensure understanding.	Implemented by January 31, 2018.	Webinar recording.	DMHA, DMHA HCBS Providers.

#### SECTION 4: KEY STAKEHOLDERS AND OUTREACH

DMHA posted a copy of the STP to its website and sent emails to notify stakeholders when it was available for review and public comment. Stakeholders include family advocacy agencies, community mental health centers, persons with lived experience, youth and family participants, state agencies, community services agencies and individual providers. DMHA also receives input from families by way of the Indiana Systems of Care Youth and Family Subcommittee, a body which approves and provides input to all new DMHA Youth policies related to programming, including policies generated as a result of the STP.

Services are offered through a local System of Care (SOC) that includes the ten Wraparound Principles: Family Voice and Choice, Team-based, Natural Supports, Collaboration, Community-based, Culturally Competent, Individualized, Strengths-based, Persistent and Outcome-based.

As a result of input received through public comment, one advocacy agency has become an active partner of DMHA in the updating of Indiana Administrative Code, and has been invited to participant on the Indiana System of Care Board meetings.

## **DIVISION OF MENTAL HEALTH AND ADDICTION – ADULT (DMHA-A)**

### **HCBS Programs**

#### **Behavioral and Primary Healthcare Coordination (BPHC) – 1915(i)**

#### **Adult Mental Health Habilitation (AMHH) – 1915(i)**

Update February 2019 – The DMHA HCBS Adult Program portion of the STP has been modified from the version published for public comment and submitted to CMS in March 2017 as follows:

- 1) Updated number of settings assessed and number of settings that fall into each compliance category, based on newly identified settings and ongoing assessment of identified settings.
- 2) Seven providers chose to not pursue compliance for a total of 33 settings. Member Transition Plans have been submitted for all effected HCBS members.
- 3) Distinguished between a non-provider owned, controlled and/or operated setting and private/independent home.
- 4) Provided validation strategies for provider owned, controlled and/or operated (POCO) non-residential settings to ensure HCBS requirements are met.
- 5) Added clarifying language that defines POCO as not just community mental health centers (CMHCs) but includes all HCBS provider owned, controlled and/or operated settings.
- 6) Heightened Scrutiny process updated to reflect current practices and status. As of February 2019, DMHA has 6 setting's HSEP for the 6 providers that have a POCO residential and non-residential setting that are designated as "Presumed Institutional" to OMPP for review and discussion. With new CMS guidance, eight POCO non-residential settings will be submitted.

Update December 2016: The DMHA HCBS Adult Programs portion of the STP has been modified from the version published for public comment and submitted to CMS in July 2016 as follows:

- 1) Updated number of settings assessed and number of settings that fall into each compliance category, based on newly identified settings and ongoing assessment of identified settings.
- 2) Technical corrections requested by CMS, which were submitted in November 2016, are included in this version of the STP.
- 3) Previous versions of the STP reported numbers of settings and compliance status based on estimates and known data at the time of submission to CMS. This version contains data as of December 13, 2016, reflecting DMHA's ongoing site-specific identification, assessment, and compliance determination program.
- 4) Language in several sections was updated to indicate that site-specific assessments and compliance determinations are currently in progress.

Update July 2016: The DMHA HCBS Adult Programs portion of the STP has been modified from the version published for public comment and submitted to CMS in April 2016 as follows:

- 1) Publication date of February 25, 2016 for both the AMHH Provider Module and BPHC Services Provider Module was added to the DMHA-A Systemic Assessment Crosswalk table.
- 2) Updated number of settings assessed and number of settings that fall into each compliance category, based on data collected through June 30, 2016.
- 3) Modified and extended timeframes for data collection and analysis.
- 4) Provided links to assessment tools used for data collection.
- 5) Reorganized and expanded Section 3: Remedial Strategies to include:
  - a. New Subsection 3-A: Remediation Action Plans.
  - b. New Subsection 3-B: Site-Specific Remediation Methodology and Milestones.
  - c. Defined timeframes for required member transitions.
  - d. Added description for how settings will be designated "Unable to Fully Comply" and established timeframes and remediation steps for those settings.
- 6) Added information regarding content of evidence packets submitted for heightened scrutiny, and extended timeframe for submission of evidence packets from March 31 to June 30, 2017, to permit ample time for required public comment.

Update January 2016: The DMHA HCBS Adult Programs portion of the STP has been modified from the original version published for public comment and submitted to CMS in 2014 as follows:

- 1) The sections have been expanded and reorganized to align with the order of topic areas included in the CMS letter sent to Indiana on October 8, 2015. Table of contents has been updated and sections added in the updated STP.
- 2) A new definition for provider owned, controlled, or operated residential settings has been incorporated.
- 3) The Section 2 Heading was changed; deleted Proposed Remedial Strategies and replaced it with Systemic Assessments.
- 4) In Section 2 of the initial STP document submitted in December 2014, the Proposed Remediation DMHA Adult table was deleted and replaced with a narrative description of the identified setting types, systemic assessment, the site-specific assessment plan, and remedial strategies, and on-going monitoring of compliance.
- 5) Estimates have been updated, using more recent information, with regard to: program enrollment numbers, number of identified setting types, and number of HCBS members expected to be impacted by the federal regulations.
- 6) An updated systemic assessment was completed.
- 7) Revised site-specific assessment plans and timelines are included.

## Background

The DMHA sets care standards for the provision of mental health and addiction services to Hoosiers throughout Indiana. DMHA is committed to ensuring that clients have access to quality services that promote individual, family and community resiliency and recovery. The division also certifies all CMHCs and addiction treatment services provider agencies.

Indiana has two CMS approved 1915(i) HCBS programs for adults with serious mental illness: Adult Mental Health Habilitation (AMHH; SPA 3.1-I [TN 12-003]) and Behavioral and Primary Healthcare Coordination (BPHC; SPA 3.1-I [TN 13-013]). AMHH and BPHC are community-based programs focused on ensuring members have access to necessary supports and services for members to be engaged in and be an active part of the community, alongside and with the same opportunities as their fellow community members who do not have a disability. The CMS-approved SPAs require these services to be delivered in the community not institutional settings. Participation in each of these programs is voluntary, and enrolled individuals choose if, when and where they receive AMHH/BPHC services. Statewide there are 24 DMHA-certified CMHCs who are the exclusive providers of AMHH and BPHC services in Indiana.

AMHH is a comprehensive service program which provides community-based opportunities for adults with serious mental illness or co-occurring mental illness and addiction disorders who may most benefit from keeping or learning skills to maintain a healthy and safe lifestyle in the community. AMHH was implemented November 1, 2014, and consists of nine services which are individually selected, approved, and delivered to meet an enrolled member's individualized service needs and preferences.

BPHC consists of one service, which focuses on coordination of healthcare services to manage the healthcare needs of the individual. BPHC includes logistical support, advocacy and education to assist individuals in navigating the healthcare system. BPHC consists of activities that help participants gain access to needed health (physical and behavioral health) services, manage their health conditions such as adhering to health regimens, scheduling and keeping medical appointments, obtaining and maintaining a primary medical provider and facilitating communication across providers. Direct assistance in gaining access to services, coordination of care within and across systems, oversight of the entire case and linkage to appropriate services are also included. BPHC was implemented June 1, 2014.

Per CMS, DMHA is required to conduct at least one annual on-site quality assurance/quality improvement (QA/QI) visits with each approved provider of AMHH and BPHC services, in order to ensure that program standards are being met. In addition, DMHA plans to incorporate monitoring of HCBS compliance during these scheduled QA/QI visits, to ensure ongoing compliance with the HCBS final rule.

## SECTION 1: SETTINGS INCLUDED IN THE STP

Members who receive AMHH and/or BPHC services are categorized as living in one of four types of settings: POCO settings, non-POCO settings, non-CMHC POCO residential settings and private/independent homes.

*POCO residential settings*, as defined by CMS, are those settings in which an individual resides that are specific physical places that are owned, co-owned, and/or operated by a provider of HCBS. DMHA recognizes that any residence an individual lives in that is owned by a paid caregiver that is not a family member must be treated as a provider owned and controlled setting. DMHA's Adult 1915(i) programs compliance focus is on both the 24 DMHA-certified community mental health centers, who are the exclusive providers of AMHH and BPHC services in Indiana [per 1915(b)(4) waiver] and the settings that provide HCBS waiver services through the DA and the DDRS. DMHA regularly coordinates with sister divisions that have authority

over non-CMHC providers of HCBS (including DMHA Youth Services, DA, and DDRS) to ensure that the residential setting of each individual receiving HCBS is or becomes compliant with the federal HCBS final rule.

In the December 2014 version of this STP, four types of DMHA-certified residential facilities for adults were identified: alternative family homes for adults (AFA), transitional residential living facility (TRS), semi-independent living facilities (SILP), and supervised group living (SGL). Each of these DMHA-certified residential facilities meets the definition of a POCO residential setting. However, the designation as a POCO residential setting is not limited to only DMHA-certified residential facilities. AMHH/BPHC providers in Indiana can own, control, or operate other types of residential settings.

Non-POCO residential settings are owned, controlled and/or operated by a provider that does not provide HCBS services. Examples of non-POCO residential settings include but not limited to unlicensed assisted living facilities, room and board facilities and sober living environments (SLEs). DMHA requires the DMHA-certified CMHC provider to work with the setting operating authority to complete the Non-POCO HCBS compliance setting assessment and evaluate for institutional qualities.

*Amendment: As of March 28, 2019, DMHA's understanding is – nonresidential settings where Medicaid Rehabilitation Option (MRO) services are not delivered, no longer require assessment for HCBS compliance. Unlicensed assisted living facilities are now excluded from this list. POCO settings continue to be assessed against the HCBS settings criteria.*

Non-CMHC POCO residential settings provide HCBS waiver services through DA and/or DDRS. Therefore, these settings are considered provider owned, controlled and/or operated but not by a DMHA-approved CMHC. Settings under the authority of DA and/or DDRS work with those divisions to complete any necessary remediation to become HCBS compliant

Private/Independent Homes are those for which there is no financial relationship between the provider agency and the property owner. These include private homes owned/leased by the member or the member's family or friends, as well as apartments, condominiums, multi-family/multi-resident homes (duplexes and boarding homes, for example), manufactured homes, and other types of congregated residences leased by the member or the member's family or friends from a property owner. Per CMS, Private/Independent homes are under the assumption they meet the HCBS requirements but providers are still required to assess for compliance using the Residential Setting Screening Tool (RSST) process.

Non-residential settings while some AMHH and BPHC services may be delivered in the member's home/place of residence, others are provided at various locations throughout the community. These community locations may include non-institutional, non-residential public settings (restaurants, libraries, service centers, stores, etc.) which are available to everyone in the community, and are therefore compliant with the HCBS Final Rule. Some of the activities permitted under AMHH and BPHC may be delivered in a provider-operated, non-residential community setting, typically an outpatient community-based clinic operated by the provider agency.

The AMHH Adult Day Service may not be delivered in a member's home, residential setting, or an institutional setting. The intent of the AMHH Adult Day Service is to maximize community access and integration for the member by providing opportunities to participate in community activities to develop, enhance, and maintain previously learned social and daily living skills. Adult Day Service is typically delivered in a provider-operated non-residential setting which may or may not be co-located with an outpatient community-based clinic operated by the provider agency.

### **Building Capacity to Support Beneficiary Access to Non-Disability Specific Setting Options**

Indiana designed the Adult 1915(i) programs, AMHH and BPHC, with the intent to maximize capacity across the state by utilizing the CMS approved 1915(b)(4) waiver which allows DMHA to exclusively utilize DMHA-certified and approved CMHCs. All 24 DMHA-certified CMHCs provide a comprehensive array of mental health and addiction services in all 92 counties within Indiana of which 88 of those counties have more than one CMHC available.

All individuals live and receive services in non-institutional settings that are integrated into the community. Program services include activities to build and enhance individuals' daily and community living skills in an integrated non-disability specific setting. Included are such activities as shopping, church attendance, sports, access to employment, participation in clubs, etc. Adult 1915(i) programs are designed to support and address the member's individualized needs by engaging the members in meaningful community involvement and improving access to healthcare to enhance their quality of life.

During the application process for AMHH and BPHC, the DMHA-certified providers are required to provide applicants a choice of which DMHA-approved CMHC they wish to receive services as well as a choice in what services they want to receive. In addition, if an individual is in need of residential services, they are to be given a list of both non-disability and disability focused settings. Members are encouraged to choose the most appropriate setting based on their abilities, goals, and



needs at the time. This requirement of choice is captured during the initial assessment process when a provider informs DMHA of a newly identified residential and non-residential setting. The initial assessment process includes a Provider-Self Assessment and Resident Surveys. The surveys inquires whether residents are given a choice of available options of where to live and receive services.

## SECTION 2: SYSTEMIC ASSESSMENT

From March through September 2014 the FSSA DMHA, with the OGC and the OMPP, completed a preliminary review and analysis of all settings where HCBS services are provided to AMHH and BPHC members. The analysis included a review of Indiana Administrative Code (IAC), program policy, provider manuals, and the CMS approved 1915(i) State Plan Amendments. Through this process, DMHA determined that all services offered by the AMHH Services program and the BPHC program fully complied with the regulatory requirements because they are individualized services provided in a community-based setting or in the member’s private home.

Since the original systemic assessment occurred in 2014, prior to full implementation of the AMHH and BPHC programs, DMHA undertook a second systemic review of State standards for residential and non-residential settings, and cross-walked those standards with the federal requirements for HCBS. The second systemic review took place in January 2016, and the results are presented in the DMHA-A Systemic Assessment Crosswalk table. DMHA has determined that all State standards for both residential and non-residential settings remain in full compliance with the federal HCBS Final Rule.

### DMHA-A Systemic Assessment Crosswalk

**Federal Requirement:** Settings are integrated in and support full access of individuals receiving Medicaid HCBS 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 Medicaid HCBS.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(a)(6)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016)</p> <p>In January 2014, the Centers for Medicare &amp; Medicaid Services (CMS) published regulations to better define the settings in which states can provide Medicaid Home and Community-Based Services. The HCBS Final Rule became effective March 17, 2014. The HCBS Final Rule, along with additional guidance and fact sheets, is available on the CMS Home and Community Based</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation. This pertains to both residential and non-residential settings.</p>	<p>The Adult DMHA 1915(i) team will update the AMHH policy module to reflect that all individuals receiving HCBS services in non-residential settings must have experiences consistent with those individuals not receiving HCBS services, for example, the same access to food and visitors.</p>	<p>Completed</p>



<p>Services site. Per the CMS final rule on HCBS, service settings must exhibit the following qualities to be eligible sites for delivery of HCBS:</p> <ul style="list-style-type: none"> <li>• Are integrated in and support full access to the greater community</li> <li>• Are selected by the individual from among setting options</li> <li>• Ensure the individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint</li> <li>• Optimize autonomy and independence in making life choices</li> <li>• Facilitate choice regarding services and who provides them</li> </ul> <p><b>BPHC:</b> <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>BPHC is a home and community-based service (HCBS) program. In accordance with federal regulations for 1915(i) State Plan HCBS programs, service activities are to be provided within the individual’s home (place of residence) or at other locations based in the community. Service activities cannot not be provided in an institutional setting.</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>The Adult DMHA 1915(i) team will update the BPHC policy module to reflect that all individuals receiving HCBS services in non-residential settings must have experiences consistent with those individuals not receiving HCBS services, for example, the same access to food and visitors.</p>	<p>Completed</p>
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**Federal Requirement:** Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<b>AMHH:</b> <a href="#">IC 12-8-6.5-5</a> ;	Fully Complies – All settings in which AMHH or	In an effort to bring our rule into compliance with the requirement for members to be offered	Completed



The Secretary may adopt rules under [IC 4-22-2](#) to implement this chapter and the State Medicaid program.

[405 IAC 5-21.6 Section 4\(a\)\(6\)](#)

“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”

[Adult Mental Health Habilitation Provider Module](#): Section 2 and Section 6 (published February 25, 2016).

In January 2014, the Centers for Medicare & Medicaid Services (CMS) published regulations to better define the settings in which states can provide Medicaid Home and Community-Based Services. The HCBS Final Rule became effective March 17, 2014. The HCBS Final Rule, along with additional guidance and fact sheets, is available on the CMS Home and Community Based Services site. Per the CMS final rule on HCBS, service settings must exhibit the following qualities to be eligible sites for delivery of HCBS:

- Are integrated in and support full access to the greater community
- Are selected by the individual from among setting options
- Ensure the individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint
- Optimize autonomy and independence in making life choices
- Facilitate choice regarding services and who provides them

**BPHC:**  
[IC 12-8-6.5-5](#);

The Secretary may adopt rules under [IC 4-22-2](#) to implement this chapter and the State Medicaid program.

[405 IAC 5-21.8, Section 3\(d\)](#)

“(d) An application must, at a minimum, include documentation demonstrating the following: [...] (3) The applicant has chosen, from a randomized list of eligible BPHC service providers in the

BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.

Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as

a choice of non-disability setting choices, the Adult 1915(i) program team will review and draft language specifically addressing this issue during the next AMHH module review.

In an effort to bring our rule into compliance with the requirement for members to be offered a choice of non-disability setting choices, the Adult 1915(i) program team will review and draft language specifically addressing this issue during the next BPHC module review.

Completed

<p>applicant’s community, a provider to deliver the office authorized BPHC services under this rule.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>Before a member’s selection of a residential placement, alternatives are discussed with the member, family, and guardian, as applicable. The decision for the choice of residence is based on the member’s identified needs, goals, and resources. After the resident chooses a residence, an Individualized Integrated Care Plan (IICP) is developed or updated with the resident. The IICP reflects his or her aspirations and goals toward an independent lifestyle and how the residential setting contributes to empowering the member to continue to live successfully in the community.</p>	<p>evidence of the agency’s intended interpretation.</p>
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**Federal Requirement:** Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>In January 2014, the Centers for Medicare &amp; Medicaid Services (CMS) published regulations to better define the settings in which states can provide Medicaid Home and Community-Based Services. The HCBS Final Rule became effective March 17, 2014. The HCBS Final Rule, along with additional guidance and fact sheets, is available on</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>the CMS Home and Community Based Services site. Per the CMS final rule on HCBS, service settings must exhibit the following qualities to be eligible sites for delivery of HCBS:</p> <ul style="list-style-type: none"> <li>• Are integrated in and support full access to the greater community</li> <li>• Are selected by the individual from among setting options</li> <li>• Ensure the individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint</li> <li>• Optimize autonomy and independence in making life choices</li> <li>• Facilitate choice regarding services and who provides them</li> </ul> <p><b>BPHC:</b> <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>Each member’s essential personal rights of privacy, dignity, and respect, and freedom from coercion and restraint, are protected.</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b> <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules,</p>	<p>No remediation is required.</p>	<p>N/A</p>

[405 IAC 5-21.6 Section 4\(6\)\(A\)](#)

“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”

[Adult Mental Health Habilitation Provider Module](#): Section 2 and Section 6 (published February 25, 2016).

In January 2014, the Centers for Medicare & Medicaid Services (CMS) published regulations to better define the settings in which states can provide Medicaid Home and Community-Based Services. The HCBS Final Rule became effective March 17, 2014. The HCBS Final Rule, along with additional guidance and fact sheets, is available on the CMS Home and Community Based Services site. Per the CMS final rule on HCBS, service settings must exhibit the following qualities to be eligible sites for delivery of HCBS:

- Are integrated in and support full access to the greater community
- Are selected by the individual from among setting options
- Ensure the individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint
- Optimize autonomy and independence in making life choices
- Facilitate choice regarding services and who provides them

**BPHC:**

[IC 12-8-6.5-5](#);

The Secretary may adopt rules under [IC 4-22-2](#) to implement this chapter and the State Medicaid program.

[405 IAC 5-21.8 Section 4\(4\)\(A\)](#)

“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”

[Behavioral and Primary Healthcare Coordination Services Provider Module](#): Section 4 and Section 12 (published February 25, 2016).

providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.

Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.

No remediation is required.

N/A

“The overall atmosphere of the setting is conducive to the achievement of optimal independence, safety, and development by the resident with his or her input.”

**Federal Requirement:** Settings facilitate individual choice regarding services and supports, and who provides them.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b> <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 3(d)</a></p> <p>“The applicant must, at a minimum, include documentation indicating the following: (1) the applicant is requesting the service or services listed on the proposed IICP submitted with the application, or (2) the applicant chose, from a randomized list of eligible AMHH service providers in the applicant’s community, a provider to deliver the office authorized AMHH services under this rule.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 7 (published February 25, 2016).</p> <p>The FSSA/DMHA-approved AMHH provider agency is responsible for informing the applicant of his or her right to select an AMHH provider.</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations. Additionally, the state regulation requires providers to provide a choice of services to the member.</p>	<p>No remediation is required.</p>	<p>N/A</p>
<p><b>BPHC:</b> <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 3(d)(2)</a></p> <p>“An application must, at a minimum, include documentation demonstrating the following: [...] (2) The applicant is requesting the services listed on the proposed IICP submitted with the application.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>:</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>



Section 6 (published February 25, 2016).  “Each resident shall have the freedom and support to control his or her own schedules and activities and have access to food at any time.”	
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**Federal Requirement:** In provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. Additionally, the state program modules specifically require that providers use leases that are compliant with state eviction laws. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p><b>BPHC:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016)</p> <p>“The tenant’s housing is not contingent on the person participating in any mental health or addiction services. The member has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the state...”</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** In provider-owned or controlled residential settings, each individual has privacy in their sleeping or living unit.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul> <p><b>BPHC:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>:          Section 4 and Section 12 (published February 25, 2016).</p> <p>“Each resident has the right to privacy in his or her sleeping or living unit.”</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** In provider-owned or controlled residential settings, units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(a)(6)</a></p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"><li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li><li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li><li>• The individual controls his or her own schedule, including access to food at any time.</li><li>• The individual can have visitors at any time.</li><li>• The setting is physically accessible.</li></ul> <p><b>BPHC:</b> <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>“Each resident has the right to units having lockable entrance doors, with only appropriate staff having keys to doors.”</p>	<p>required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p> <p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** In provider-owned or controlled residential settings individuals sharing units have a choice of roommates.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(a)(6)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>
<p><a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>“When sharing living units, each resident has a choice of roommates.”</p>	<p>ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>
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**Federal Requirement:** In provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(a)(6)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>



<p><a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>“Each resident has the freedom to furnish and decorate his or her sleeping or living units.”</p>	<p>Fully Complies –All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals have the freedom and support to control their schedules and activities, and have access to food any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>The individual has a lease or other legally enforceable</li> </ul>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>agreement providing similar protections.</p> <ul style="list-style-type: none"> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul> <p><b>BPHC:</b>  <a href="#">IC 12-8-6.5-5;</a></p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module:</a> Section 4 and Section 12 (published February 25, 2016).</p> <p>“Each resident shall have the freedom and support to control his or her own schedules and activities and have access to food at any time.”</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, individuals are able to have visitors of their choosing at any time.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5;</a></p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an</p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016)</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul> <p><b>BPHC:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016).</p> <p>Each resident is able to have visitors of his or her choosing at any time.</p>	<p>language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p> <p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based” settings. In the program modules, providers are specifically required to implement the requirements in the federal rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>	<p>No remediation is required.</p>	<p>N/A</p>
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**Federal Requirement:** In provider-owned or controlled residential and non-residential settings, the setting is physically accessible to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 2 and Section 6 (published February 25, 2016).</p> <p>There are additional requirements for provider-owned or -controlled home and community-based residential settings. These requirements include:</p> <ul style="list-style-type: none"> <li>• The individual has a lease or other legally enforceable agreement providing similar protections.</li> <li>• The individual has privacy in his or her unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</li> <li>• The individual controls his or her own schedule, including access to food at any time.</li> <li>• The individual can have visitors at any time.</li> <li>• The setting is physically accessible.</li> </ul>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based settings.” In the program modules, providers are specifically required to implement the requirements in the federal rule. The provider module language should be considered evidence of the agency’s interpretation of its regulation, and given deference over any other possible interpretations.</p>	<p>No remediation is required.</p>	<p>N/A</p>
<p><b>BPHC:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p>	<p>Fully Complies – All settings in which AMHH or BPHC services are provided are required to be “home and community based settings.” In the program modules, providers are specifically required to implement the requirements in the federal</p>	<p>No remediation is required.</p>	<p>N/A</p>

<p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module</a>: Section 4 and Section 12 (published February 25, 2016)</p> <p>“The setting is physically accessible to each resident.”</p>	<p>rule. If the regulatory language is considered ambiguous, the provider module may be used as evidence of the agency’s intended interpretation.</p>
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**Federal Requirement:** Any modifications of the additional conditions for provider-owned and controlled residential settings must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

1. Identify a specific and individualized need.
2. Document the positive interventions and supports used prior to any modifications to the person-centered plan.
3. Document less intrusive methods of meeting the need that have been tried but did not work.
4. Include a clear description of the condition that is directly proportionate to the specific need addressed.
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Include the informed consent of the individual.
8. Include an assurance that interventions and supports will cause no harm to the individual.

Applicable Indiana Regulation	Compliance with HCBS Settings Final Rule:	Remediation Activity	Timeline
<p><b>AMHH:</b>  <a href="#">IC 12-8-6.5-5</a>;</p> <p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.6 Section 4(6)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Adult Mental Health Habilitation Provider Module</a>: Section 6 (published February 25, 2016)</p> <p>Any modification of the resident’s rights must be supported by a specific assessed need and documented in the person-centered IICP.</p>	<p>Compliant – The state regulation requires all settings in which AMHH services are provided be HCBS compliant. The policy module explains that compliance includes documentation of modifications according to the person-centered IICP process in compliance with HCBS requirements.</p>	<p>No remediation required.</p>	<p>N/A</p>
<p><b>BPHC:</b>  <a href="#">IC 12-8-6.5-5</a>;</p>	<p>Compliant – The state regulation requires all settings in which BPHC</p>	<p>No remediation required.</p>	<p>N/A</p>

<p>The Secretary may adopt rules under <a href="#">IC 4-22-2</a> to implement this chapter and the State Medicaid program.</p> <p><a href="#">405 IAC 5-21.8 Section 4(4)(A)</a></p> <p>“The applicant either: (A) resides in a community-based setting that is not an institutional setting; or (B) will be discharged from an institutional setting back to a community-based setting.”</p> <p><a href="#">Behavioral and Primary Healthcare Coordination Services Provider Module:</a></p> <p>Section 4 (published February 25, 2016)</p> <p>Any modification of the resident’s rights must be supported by a specific assessed need and documented in the person-centered treatment plan, IICP.</p>	<p>services are provided be HCBS compliant. The policy module explains that compliance includes documentation of modifications according to the person-centered IICP process in compliance with HCBS requirements.</p>		
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### SECTION 3: SITE SPECIFIC ASSESSMENT

Since the initial 2014 STP was published and submitted, DMHA’s experience has grown with regard to the implementation, operation, monitoring, and oversight of the AMHH and BPHC programs. DMHA’s understanding of the federal HCBS Final Rule and its impact on the adult 1915(i) State Plan benefit programs has evolved, as well. These changes, along with a CMS request for additional information, created the need for a revised DMHA-A plan to conduct site-specific assessments for settings affected by the HCBS final rule. DMHA implemented separate site-specific assessment plans for POCO residential settings, non-POCO residential settings, other non-residential settings, and POCO non-residential settings.

Previous versions of the STP reported numbers of settings and compliance status based on estimates and known data at the time of submission to CMS. This version contains data as of April 26, 2022, reflecting DMHA’s ongoing site-specific identification, assessment, and compliance determination program. Language in this section was also updated to indicate that site-specific assessments and compliance determinations are ongoing as providers identify new settings to be assessed.

#### Number of Residential Settings That Fall into Each HCBS Compliance Category

The number of identified residential settings in Indiana where members are enrolled in AMHH or BPHC experiences some variability, often from day to day. CMHCs continue to identify or acquire new POCO residential settings, while “retiring” or otherwise discontinuing to operate others. Below is a summary table of identified residential settings for AMHH and BPHC enrolled members in Indiana as of April 26, 2022.

Summary of Identified Residential Settings for AMHH/BPHC Enrollees in Indiana (as of April 26, 2022)					
	Total Number Identified	Fully Compliant	Needs Modifications	Unable to Comply	Assessment in Progress
POCO Residential Setting	194	190	4	0	0
POCO Non-Residential Setting	193	193	0	0	0
Private/Independent Home	2,988	Private/Independent Homes are presumed to be fully compliant with the federal HCBS final rule.			



## Methodology and Milestones for Site-Specific Assessments: POCO Residential Settings

As of December 2017, DMHA recognized settings under the authority of the DA and DDRS are also POCO settings. Settings are under the authority of DA and/or DDRS are maintained separately from the total HCBS POCO residential settings. All identified POCO residential settings are assessed for preliminary compliance with the federal HCBS Final Rule by provider self-assessment, and the provider self-reports validated by a follow-up cross-walked resident survey. All CMHC POCO residential settings are screened by DMHA for institutional qualities by DMHA desk audit. After screening for qualities of an institution and completion of the validation crosswalk, each identified CMHC POCO residential setting is preliminarily assigned to one of three HCBS compliance categories (Fully Compliant, Needs Modifications, and Potential Presumed Institutional). The majority of preliminary compliance designations were communicated to providers between May 27, 2016, and June 22, 2016. For settings identified and assessed since then, preliminary compliance designations are communicated to providers within seven calendar days of DMHA receiving all required assessment data (provider self-assessments and resident surveys).

A comprehensive provider self-assessment tool was developed by DMHA, using the CMS “Exploratory Questions to Assist States in Assessment of Residential Settings” document from the Settings Requirements Compliance Toolkit on the [medicaid.gov](https://www.medicaid.gov) HCBS website. The self-assessment tool was made available to agency staff at each of the then 25 CMHCs via an open-source [online data collection service](https://www.surveymonkey.com/r/GJ5BFVJ) via SurveyMonkey® found at <https://www.surveymonkey.com/r/GJ5BFVJ>. CMHCs were instructed to complete one self-assessment for each of their POCO residential settings, regardless of whether there are any members enrolled in AMHH or BPHC currently residing there. Each of the then 25 CMHCs, who are the exclusive providers of AMHH and BMHC services, responded to the self-assessment survey (100 percent response rate). 164 settings were initially identified statewide (that number has grown to 209), and features of those settings as they pertain to HCBS requirements were reported. The majority of provider self-assessments were completed between September 2015, and June 2016, but providers must submit self-assessments on additional POCO residential settings as those settings are identified or acquired.

A resident survey was developed by DMHA which closely mirrors the items on the provider self-assessment tool, but worded in a way intended to capture the resident’s experience living in the POCO residential setting. On February 2, 2016, an electronic communication (e-mail) was sent to the 25 CMHC providers with detailed instructions regarding the administration of the resident survey. The instructions stated explicitly that residents were to complete the survey without input from provider staff. An [on-line survey tool](https://www.surveymonkey.com/r/9MCPNWC) was accessible by agency staff at each of the then 25 CMHCs in Indiana via SurveyMonkey® found at <https://www.surveymonkey.com/r/9MCPNWC>. Each CMHC was required to facilitate the opportunity for every resident living in each of the CMHC’s POCO residential settings to complete and return the survey to DMHA during the availability period. Each CMHC was also required to ensure that residents have the means and opportunity to complete the resident survey in private, either electronically or by printed hard copy. Surveys were completed and submitted electronically, or printed and distributed to residents along with envelopes marked “HCBS Resident Survey - 1915(i) State Evaluation Team.” A survey drop box was made available as a collection point at each POCO residential setting, and also at each CMHC clinic location. Providers batched and sent the anonymous survey envelopes to DMHA. Resident survey responses, whether submitted electronically or by hard copy, were reviewed and tabulated only by DMHA staff. The majority of resident surveys were distributed and returned between February and June 2016, but resident surveys must be completed and submitted, as new POCO residential settings are identified or acquired.

Validation of the provider self-assessment occurs by cross-walking the resident survey responses with the provider self-assessments. The responses from both the provider self-assessment data and resident surveys are sorted into ten compliance categories, which relate directly to each of the required qualities of home and community-based settings and the additional conditions for POCO residential settings. The majority of the validation crosswalks were completed by June 22, 2016, and DMHA continues to validate data from newly identified POCO residential settings as they are reported and assessed.

For newly added residential settings that have had no prior occupancy, a stepped assessment approach will be utilized to ensure for the incorporation of resident feedback. In this situation, providers will submit the self-assessment first, and the resident surveys will be obtained after residents have lived in the setting for 30 days. Responses will be reviewed and settings will be determined to be preliminarily fully compliant, or needs modification. If fully compliant, a site visit will be conducted within 30 days which includes resident interviews to validate the information provided in documentation. If needing modification, DMHA will establish a Setting Action Plan (SAP) with the CMHC to support remediation and work towards full compliance. CMHC’s will have up to 90 days to fulfill a SAP. This time is abbreviated due to HCBS recipients already occupying the setting. Once the SAP is completed, a site visit will occur with resident interviews. If a setting is not able to be remediated to meet the standards of the Final Rule, the Member Transition process will be pursued.

All settings are assessed for HCBS eligibility. When a CMHC contacts DMHA they want to add a setting, the same assessment process that was completed for the purposes of the STP is used to assess the additional setting. For POCO Non-Residential and POCO Residential settings, the setting cannot be used for HCBS purposes until the assessment process is complete and the setting meets HCBS Final Rule eligibility. If the setting is a POCO that is a new build or brand new to the CMHC that has not had previous occupancy, we have that modified approach we were approved to use that allows current HCBS recipients to live at the setting while the setting is being assessed. This approach allows for obtaining resident feedback after 30 days of occupancy. If for some reason the setting cannot meet eligibility, we would need to invoke the Member Transition Plan (MTP) process. For NON POCO settings, we assess the setting while the HCBS recipient lives at the setting and again, use the MTP process if the setting does not meet eligibility.

CMS expressed concern about CMHCs being involved in the distribution and collection of resident surveys at POCO residential settings. The resident survey contains specific instructions for provider agencies that CMHC staff are not to complete surveys for residents. Residents are given the option of completing surveys on paper and sealing them in envelopes, for forwarding to DMHA. As of December 13, 2016, 85 percent of the approximately 1230 resident survey responses received were on paper, meaning that DMHA had the opportunity to physically view those surveys. Skipped questions, various writing implements used, handwritten comments, handwriting differences, and other features observed in the paper surveys served to confidently establish that the surveys were completed by residents, not providers. In addition, based on analysis of provider and resident survey responses, the SET determined that only one out of 164 initially identified POCO residential sites was deemed “Fully Compliant.” The remaining 163 sites were deemed “Needs Modifications.” based largely upon discrepancies between provider and resident responses (both hand written and electronically submitted) as to whether a requirement of the federal HCBS Final Rule was met at the setting. DMHA considers this variation in responses between the provider and resident surveys to validate that resident surveys were completed without the input or influence of providers.

After DMHA staff analyzed the responses and assigned compliance categories (see below), DMHA communicated these designations to the providers and requested written responses detailing the provider’s plan for compliance activity. Additionally, DMHA conducted technical assistance calls with each provider in order to review the designation reports and compliance plan. Much of the corrective action only requires provider policy modification. Sites that only require policy modifications will receive desk audits of the provider’s program leases, resident agreements, program modules and other relevant documents in order to ensure compliance. Sites that require physical changes, such as installing locks on doors or posting updated policies, will receive a site visit to verify physical changes have been made, prior to March 17, 2019.

### *Current Compliance Designations for POCO Residential Settings*

As of April 26, 2022, the number of POCO residential settings in each compliance status is:

**FULLY COMPLIANT – 190**  
**NEEDS MODIFICATIONS – 4**  
**ASSESSMENT IN PROGRESS – 0**  
**UNABLE TO FULLY COMPLY – 0**

A status of “Fully Compliant” is based on the following criteria:

1. There are no qualities of the setting that render it presumptively institutional, as defined in 42 CFR 441.710 (a)(2)(v), AND
2. The provider self-assessment and the resident survey(s) were in agreement that one or more of the ten required qualities of POCO residential settings specified in 42 CFR 441.705(a)(1)(i-vi) are present at the setting, AND
3. For those required qualities of POCO residential settings specified in 42 CFR 441.705(a)(1)(i-vi) that were initially assessed as not being present at the setting, the provider has submitted and completed an HCBS Setting Action Plan (described below under “Remediation Action Plans”) to bring the setting into compliance with those requirements.

A status of “Needs Modifications” is based on the following criteria:

1. There are no qualities of the setting that render it presumptively institutional, as defined in 42 CFR 441.710 (a)(2)(v), AND
2. The provider self-assessment and the resident survey(s) were not in agreement that each of the ten required qualities of POCO residential settings specified in 42 CFR 441.705(a)(1)(i-vi) are present at the setting, AND
3. The provider has not yet submitted, or has submitted but not yet completed, an HCBS Setting Action Plan (described below under “Remediation Action Plans”) to bring the setting into compliance with those required qualities of POCO residential settings specified in 42 CFR 441.705(a)(1)(i-vi) that were initially assessed as not being present at the setting.

A status of “Unable to Fully Comply” is based on the following criteria:

For those required qualities of POCO residential settings specified in 42 CFR 441.705(a)(1)(i-vi) that were initially assessed as not being present at the setting, the provider determined that pursuing HCBS compliance is not feasible at this time. In most settings that are not able to be fully compliant, there have been limited HCBS clients that have utilized this setting creating minimal hardships for any future HCBS clients. There are additional HCBS compliant setting options for members to choose among.

1. For those providers that determine not to pursue compliance, a Member Transition Attestation form and a Member Transition Plan are required to be completed and returned to DMHA. The Member Transition Attestation form is completed by the provider attesting to their understanding that home and community-based services can no longer be provided at these settings nor are clients eligible for HCBS services that reside in non-compliant settings. In addition, Member Transition Plans are required to be completed with the client and their treatment team, in order for clients to make an informed choice if they want to remain at the non-compliant setting, subsequently ending their BPHC service eligibility or move to a compliant HCBS setting, maintaining their BPHC service eligibility.

A status of “Assessment in Progress” means that DMHA has not received all data (provider self-assessment, resident surveys, or both) from the setting, and is unable to make a compliance designation.

DMHA anticipates that most, if not all, of the remaining three POCO residential settings currently designated “Needs Modifications” will successfully complete their HCBS Setting Action Plans and be re-designated as “Fully Compliant.” Settings designated “Fully Compliant” will begin to be validated on-site by the DMHA 1915(i) State Evaluation Team (SET) during scheduled ongoing annual QA/QI site visits.

### **Methodology and Milestones for Site-Specific Assessments: Non-POCO Residential Settings**

In the previous STP, Non-POCO residential settings referred to settings that were not owned, controlled and/or operated by a DMHA certified CMHC. For clarification, a non-POCO setting refers to settings not owned, controlled or operated by a HCBS provider. DMHA developed a process to ensure all settings that have HCBS clients are assessed to ensure they are compliant with the HCBS Final Rule. When an AMHH/BPHC application is submitted to DARMHA and selects Non-POCO residential setting, the provider is required to complete a non-POCO Residential Setting assessment worksheet that identifies who is responsible for assessing the setting as well as questions that assess the compliance with the HCBS Final Rule. The provider is required to submit the worksheet to DMHA no later than 30 calendar days from submission of the AMHH/BPHC application. The assessment worksheet assesses compliance with the HCBS Final Rule. In addition, the SET will conduct an onsite visit for any newly identified non-POCO setting including resident interviews. The SET will maintain the same process for providing final setting compliance determinations as the POCO settings follow.

In addition, DMHA updated the DMHA developed HCBS Residential Setting Screening Tool (RSST) to allow for the provider to identify the setting's assessment status and who is responsible for the assessment. The updated RSST will increase DMHA's ability to track newly identified non-POCO residential settings. Initially, 35 non-POCO residential settings were identified as of December 13, 2016. After further research, DMHA determined that only 12 of the 35 identified settings are confirmed as Non-POCO residential settings while the others were either private/independent homes or under the responsibility of DA or DDRS. Examples of a Non-POCO residential setting includes but not limited to: room and board facilities and sober living environments.

An attestation on the application must be checked, indicating: a) the RSST has been completed with the member, and b) the member was provided an HCBS information pamphlet, before the application may be submitted (all AMHH and BPHC applications are submitted electronically). The consumer-signed and dated screening tool must be maintained in the member's medical record. To ensure the accuracy and completeness of the HCBS settings compliance attestations, review of the signed and dated RSST in randomly selected member clinical charts will be performed by the 1915(i) SET during on-site reviews (not less than annually) of provider agencies for QA/QI monitoring. Providers are also required to update and maintain new RSST each time a member moves to a new address.

The AMHH and BPHC application validates the address entered on the application is an identified residential setting. The DMHA SET team collaborated with the Data Assessment and Registry Mental Health and Addiction (DARMHA) team to upload all identified residential setting addresses into system. In DARMHA, when an application cannot be identified, a red "x" will appear on the application next to "POCO Address" under the "Applicant Information" section. This feature will allow the DMHA SET to identify new residential settings and if necessary, initiate the appropriate remediation process.

The provider agency and member completing the application are required to select from the following list of community-based residential setting descriptions and provide a description of the setting selected

- Homeless
- Private/Independent Home
- A non-POCO residential setting
- A POCO residential setting
- A non-CMHC POCO residential setting
- Potential Presumed Institutional

### **Methodology and Milestones for Site-Specific Assessments: POCO Non-Residential Settings**

Provider owned, controlled, or operated (POCO) non-residential settings in which HCBS services are or are expected to be provided (for example, CMHC outpatient clinics, community rooms, etc.) are identified and assessed by provider self-report. The majority of these settings were identified and assessed between May 17, 2016, and June 27, 2016. The providers must continue to identify and submit self-assessments on previously unidentified POCO non-residential settings.

A combined identification and provider self-assessment tool was developed by DMHA, using the CMS "Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Services (HCBS) Settings" document from the Settings Requirements Compliance Toolkit on the [medicaid.gov](http://medicaid.gov) HCBS website. The self-assessment tool was made available to each of the then 25 CMHCs via an open-source online data collection service via SurveyMonkey® between May 17, 2016, and June 27, 2016. CMHCs were instructed to complete one self-assessment for each of the non-residential, non-institutional settings in which they deliver, or expect to deliver, AMHH and BPHC services. Based on the results of the provider self-assessment, each of the identified settings was preliminarily designated "Fully Compliant," "Needs Modifications," or

“Potential Presumed Institutional.” The preliminary compliance designations were made by DMHA and the majority of findings were communicated to providers by July 15, 2016. For settings identified and assessed since then, preliminary compliance designations are communicated to providers within seven calendar days of DMHA receiving the provider self-assessment.

As of December 12, 2019, 192 POCO non-residential settings have been identified and assessed statewide. DMHA conducts onsite visits to validate the accuracy of the provider self-assessment survey data to be conducted throughout the transition period. Along with onsite visits, the provider is required to complete an Ongoing Assessment tool for each setting to review compliance with the HCBS requirements. The provider is required to return the completed DMHA-developed Ongoing Assessment within three business days to DMHA. For all POCO non-residential, non-institutional settings which are not fully compliant with the federal HCBS Final Rule, according to the provider self-report, DMHA will initiate the remediation process.

#### *Current Compliance Designations for POCO Non-residential Settings*

As of April 26, 2022, the number of POCO non-residential settings in each compliance status is:

**FULLY COMPLIANT – 193**  
**NEEDS MODIFICATIONS – 0**  
**Unable to Fully Comply – 0**

A status of “Fully Compliant” is based on the following criteria:

1. There are no qualities of the setting that render it presumptively institutional, as defined in 42 CFR 441.710(a)(2)(v), AND
2. The provider self-assessment indicates that all five of the required qualities of an eligible home and community-based setting specified in 42 CFR 441.705(a)(1)(i-v) are present at the setting, OR
3. For those required qualities of an eligible home and community-based setting specified in 42 CFR 441.705(a)(1)(i-v) that were initially assessed as not being present at the setting, the provider has submitted and completed an HCBS Setting Action Plan (described below under “Remediation Action Plans”) to bring the setting into compliance with those requirements.

A status of “Needs Modifications” is based on the following criteria:

1. There are no qualities of the setting that render it presumptively institutional, as defined in 42 CFR 441.710(a)(2)(v), AND
2. The provider self-assessment indicates that one or more of the five required qualities of an eligible home and community-based setting specified in 42 CFR 441.705(a)(1)(i-v) are not present at the setting, AND the provider has not yet submitted, or has submitted but not yet completed, an HCBS Setting Action Plan (described below under “Remediation Action Plans”) to bring the setting into compliance with those required qualities of an eligible home and community-based setting specified in 42 CFR 441.705(a)(1)(i-v) are were initially assessed as not being present at the setting.

#### **Remediation Strategies**

The original version of this STP contained tables describing proposed remediation activities and timelines for each of the previously identified DMHA-certified residential facilities and the AMHH Adult Day Service. As with the assessment plans, a need for developing a revised remediation strategy and timelines became evident since the initial version of this STP was submitted in December 2014.

As of December 13, 2016, preliminary compliance designations for POCO settings that were preliminarily assessed to belong to an HCBS compliance category associated with a need for remediation (“Needs Modifications” and “Potential Presumed Institutional”) have been communicated to providers for 228 identified POCO residential settings and all 194 identified POCO non-residential settings. Non-CMHC POCO settings and Non-POCO residential settings which may not be fully compliant with federal HCBS requirements began to be identified April 1, 2016, and is an ongoing process. DMHA has determined the best course of action for assessing non-CMHC POCO settings is to work in conjunction with the provider as well DA and/or DDRS to facilitate how the settings will be assessed. If the setting is non-CMHC POCO setting, then DA and/or DDRS will assess the setting and monitor HCBS compliance. If the setting is non-POCO residential setting, then the CMHC will work with the SOA (Setting Operating Authority) using a Non-POCO residential setting assessment worksheet.



Proposed remedial actions for all identified settings are both member-specific and site-specific, based on the type of setting and the preliminary compliance designations made by DMHA following collection of all data from providers and members. For all settings identified as requiring remediation, an action plan specifying required remediation activities and establishing a timetable for completion of required remediation actions will be developed by the responsible provider agency/CMHC, in partnership between DMHA and members enrolled in HCBS programs, their families/friends, guardians, and other persons chosen by the member.

#### *Non-POCO Residential Settings Identified as Non-HCBS Compliant*

As of December 12, 2019, the number of Non-POCO residential settings in each compliance status is:

**FULLY COMPLIANT – 19**  
**NEEDS MODIFICATIONS – 0**  
**Unable to Fully Comply – 6**

Non-POCO residential settings which are not fully compliant with federal HCBS guidelines began to be identified April 1, 2016, using the screening and assessment process embedded in the AMHH and BPHC application process.

The remediation plan for non-POCO residential settings is similar to the remediation plan for POCO residential settings. DMHA will inform the provider of a member residing in a non-POCO residential setting of that setting's designation as not fully compliant with federal HCBS requirements within 15 calendar days of the DMHA determination. The notification will identify areas of non-compliance with federal HCBS requirements as reported on the AMHH or BPHC application and specify required actions of the CMHC to be completed within 45 calendar days from date of notification. The required actions will include:

- Notification of affected members
- Notification of the owner, landlord, property management company, or other party responsible for the setting (the Setting Operating Authority, or SOA) of the determination that the setting is not fully compliant with federal HCBS guidelines
- Conduct an on-site assessment and meeting with the SOA and member
- Ascertain and report to DMHA the SOA's decision to remediate or accept the non-compliant designation, and submit either the SOA's HCBS Setting Action Plan or a Member Transition Plan

Within seven calendar days of the DMHA notification, the CMHC is required to notify the member and the SOA of the determination that the setting is not fully compliant with federal HCBS guidelines. Within 45 calendar days of the DMHA notification of a non-compliant non-POCO residential setting, the CMHC will facilitate an on-site meeting with the member(s) and the SOA. The purpose of this meeting is to:

- Conduct an on-site assessment of the setting and assess the status of all identified non-compliant areas and update the setting assessment if needed.
- Determine whether there are clinical needs that support no remediation necessary (must document it in the member's care plan), and update the setting assessment if needed.
- Educate (verbally and in writing) the SOA and member about HCBS requirements, importance of remediation, and consequences if not remediated. If the setting is remediated to full compliance, the member may continue to receive HCBS while living in the setting. If the setting is not remediated and brought into full compliance with HCBS standards, the member must decide whether they will relocate to a HCBS compliant living setting and continue receiving HCBS, or remain in the HCBS non-compliant setting and no longer receive HCBS.
- Ascertain and report to DMHA the SOA's decision to remediate or accept the non-compliant designation.
- If the SOA agrees to take remedial action to bring the setting into full HCBS compliance, the CMHC will collaborate with the member and SOA to develop the SOA's HCBS Setting Action Plan.

The completed SOA's HCBS Setting Action Plan must specify the identified areas of non-compliance, the activities the SOA will complete to remediate the areas of non-compliance, who is responsible for completing each remedial action, and a timeline for completion to bring the setting into full HCBS compliance. Required remediation actions are expected to be completed within 180 calendar days of the date the CMHC submits the Setting Action Plan to DMHA. A one-time extension for the SOA's HCBS Setting Action Plan may be requested if there is clear documentation of extenuating circumstances which prohibit the plan from being completed within the designated timeframe. The SOA's HCBS Setting Action Plan will be submitted to DMHA within 45 calendar days of DMHA notification of noncompliance. DMHA will review the submitted plan and provide



technical assistance as needed. The CMHC is responsible for reporting monthly to DMHA on the SOA efforts and progress toward meeting the milestones and timelines established in the plan.

If an SOA elects not to complete remediation at a setting, the responsible provider agency must notify in writing both DMHA and affected members at the setting within seven calendar days of the decision. Upon receipt of notification from the provider agency that remediation will not be undertaken, DMHA will designate the setting “Unable to Fully Comply.” The provider agency, together with the member and their family/guardian/caretaker, must complete and submit to DMHA a Member Transition Plan for each affected member at the setting within 30 calendar days of the date the provider agency notified DMHA of the SOA’s intention not to pursue remediation.

If an SOA does not complete remediation by the end of the designated timeframe (including any granted extensions), the SOA’s HCBS Setting Action Plan will end and DMHA will designate the setting “Unable to Fully Comply.” DMHA will notify the responsible provider agency of the designation within seven calendar days of the expiration of the SOA HCBS Setting Action plan. The provider agency, together with the member and their family/guardian/caretaker, must complete and submit to DMHA a Member Transition Plan for each affected member at the setting within 30 calendar days of the date the provider agency was notified by DMHA that the setting was designated “Unable to Fully Comply.”

### *Appeal Process*

A Community Mental Health Center (CMHC) can decide to remove a POCO setting from providing HCBS services for multiple reasons. The appeal process allows for the residents of the setting to voice a grievance of this decision and submit an appeal to the CMHC. The following procedure identifies the timeline that an appeal needs to be submitted to your CMHC. Complete the CMHC’s appeal/grievance document and submit to the CMHC as directed.

1. Within 15 days of being notified the setting is closing/no longer an eligible HCBS setting, residents can submit an appeal/grievance to the identified CMHC grievance procedure staff.
2. In 30 days of receipt of the appeal, the grievance procedure staff will review the appeal and any new evidence submitted by resident/family in support of keeping the setting open/compliant with HCBS.
3. Within 15 days of review, the grievance procedure staff submits final decision to the resident regarding the setting in question.

### *Oversight of Remediation Activities and Milestones*

DMHA will assess and monitor remediation activities and milestones through monthly provider reports, desk reviews, and site visits by the DMHA 1915(i) SET during scheduled QA/QI visits beginning in SFY2017. Per the 1915(i) State Plan benefit, DMHA is required to conduct at least annual on-site quality assurance/quality improvement (QA/QI) visits with each approved provider of AMHH and BPHC services, in order to ensure that standards for those programs are being met. DMHA is incorporating assessment of HCBS compliance into these scheduled QA/QI visits, to ensure and monitor ongoing compliance of these programs with the federal HCBS Final Rule. DMHA and a provider agency may schedule technical assistance specifically to address HCBS compliance at applicable settings. In November 2016, DMHA provided an onsite training on the HCBS modifications process to assist providers and further clarify the HCBS Final Settings Rule. Each community mental health center (CMHC), as the exclusive provider of 1915(i) adult services, is required to participate in an on-site review of their AMHH and BPHC programs at least annually or more frequently as determined by the DMHA 1915(i) SET. Integrating HCBS compliance monitoring includes:

1. Physical assessment of POCO residential settings. DMHA completed the physical remediation validation in October 2018, which included 64 onsite visits to POCO residential settings. The on-site assessment will include verification of physical HCBS setting requirements and interview(s) with residents, to ensure their living and treatment experience incorporates the rights, freedoms, protections, and choices specified by HCBS requirements.
2. Physical assessment of POCO non-residential settings. DMHA completed the physical remediation validation in October 2018, which including 25 onsite visits to POCO non-residential settings. The on-site assessment will include verification of physical HCBS setting requirements and interview(s) with members present at the setting, to ensure their service experience incorporates the rights, freedoms, protections, and choices specified by HCBS requirements. Priority will be placed on assessing provider-operated non-residential settings where the AMHH Adult Day Service is delivered.
3. Physical assessment of non-POCO residential settings. Beginning July 2018, during each scheduled CMHC QA/QI site visit, at least one non-POCO residential setting will be visited by the SET. The on-site assessment will include

verification of physical HCBS setting requirements and interview(s) with members present at the setting, to ensure their service experience incorporates the rights, freedoms, protections, and choices specified by HCBS requirements.

4. Clinical documentation review. During each scheduled CMHC QA/QI site visit, verification of residential setting will be assessed, and the signed HCBS Residential Setting Screening Tool (RSST) will be viewed. In addition, for those individuals residing in a residential setting, the RSST now contains the 10 HCBS regulations that the client will have to answer. If a client answers 'No' to one of the requirements, the form is sent in to DMHA and further investigation will be conducted with the CMHC.

### Remediation Action Plans

Two types of action plans are used by DMHA and provider agencies to identify, monitor, and document completion of required remediation for HCBS settings: an HCBS Setting Action Plan (SAP) and a Member Transition Plan (MTP).

**HCBS SAP:** Settings which are not fully HCBS compliant, but the operating authority has agreed to complete modifications in order to bring the setting into full compliance, must submit an HCBS SAP. DMHA will provide an HCBS SAP template to the CMHC providing AMHH/BPHC services at that setting, to be used by the provider agency to address areas of non-compliance at that setting. DMHA requires that all remediation must be completed within 180 days of the agency receiving their Preliminary Compliance Designation (PCD) report. A one-time extension for the HCBS SAP may be requested if there is clear documentation of extenuating circumstances which prohibit the plan from being completed within the designated timeframe. All documentation that addresses the non-compliant findings must be submitted to DMHA for review no later than the end of the 180 day remediation period. Examples of supporting documentation includes but is not limited to: a lease/residency agreement, resident handbooks, and agency operating policies. Once that documentation is received and reviewed by DMHA, the setting will receive an updated designation. The sooner the documentation is completed and returned for review, the sooner the final compliance designation will be determined.

The CMHC must collaborate with the affected residents and their families/guardians/caregivers to complete the HCBS SAP (coordinating with non-CMHC operating authorities, as needed), with information that details the activities the CMHC/operating authority will complete to remediate the areas of non-compliance and bring the setting into full HCBS compliance, specifies the person or party/parties responsible for implementing the modifications, and establishes a timeline for completion of all required modifications. Completed HCBS SAPs have been submitted by all 25 (now 24) CMHCs. As described in the section titled Methodology and Milestones for Site-Specific Assessment: POCO Residential Settings (p. 142), DMHA uses desk reviews, technical assistance calls, and site visits to verify completion of the SAPs. Each CMHC has received a technical assistance call to review the SAP. Sites that require only policy changes are reviewed by desk review to ensure policy changes are compliant with the federal rule. Settings requiring physical changes, such as locks on doors, are receive a site visit.

**MTP:** MTPs are required for all individuals receiving HCBS services residing in a setting that has received a final designation of non-HCBS compliant. A MTP must include a) a plan to transition to a compliant HCBS setting or b) for members that choose to discontinue HCBS services and remain in a non-compliant HCBS setting. MTPs assist members and providers in identifying, exploring, and deciding what changes must be made as a result of HCBS compliance implementation, particularly with regard to continuation of HCBS and/or potential relocation from the member's current residence. In these cases, a MTP will be developed by the responsible provider agency, collaboratively with the member and the member's family/guardian/caretaker. The member's decision to discontinue receiving HCBS and continue to live at the HCBS non-compliant residential setting, or to relocate to an HCBS-compliant residential setting, must be documented in the MTP.

As part of the MTP process, the provider is required to complete a MTP Attestation. This attestation confirms the provider understands that residents of non-compliant HCBS settings are no longer eligible to participate in Medicaid HCBS programs. As of December 12, 2019, 14 members required a MTP. Three settings are still working towards compliance. Six members chose to remain in the non-compliant HCBS setting, and the other six members chose to relocate to a compliant HCBS setting. The six member's MTPs have expired and all moved to their new homes which are HCBS compliant.

In response to a comment received during the public comment period, individuals for whom a MTP is required will be provided contact information for advocacy groups. The local community mental health center provides each client with the client's rights and grievance policy at the time of intake. Also, phone numbers are posted if any client needs to provide an anonymous complaint to Indiana's advocacy groups. The MTP must be submitted to DMHA for review no later than 30 calendar days following notification to the member that the residential setting will not become HCBS compliant.

*Transition Option – Relocation:* For members who opt to move to a fully compliant setting in order to continue to receive HCBS, the provider is required to assist the member in identifying other possible living setting options that are HCBS compliant and available to the member. DMHA requires such options must include “non-disability specific” settings. The provider agency, member, and their family/guardian/caretakers will collaborate to determine the soonest possible/practical move date for the member. Transition from the current living setting must occur no later than 180 calendar days from the onset of the MTP. A one-time extension for the HCBS MTP may be requested if there is clear documentation of extenuating circumstances which prohibit the plan from being completed within the designated timeframe. With the original compliance date of March 2019, MTPs were required to be completed by September 1, 2018, to ensure all POCO settings received their final compliance designation by the deadline. CMHCs were able to complete the MTP to meet the September 1, 2018 deadline.

*Transition Option – Discontinue Participation in HCBS:* For members who choose to continue to live in an HCBS non-compliant setting and opt to discontinue participation in HCBS, the provider is required to assist the member in identifying and exploring other treatment options that may meet their needs. Transition from HCBS participation must occur no later than 180 days from the onset of the MTP. A one-time extension for the HCBS MTP may be requested if there is clear documentation of extenuating circumstances which prohibit the plan from being completed within the designated timeframe. With the original compliance date of March 2019, MTPs were required to be completed by September 1, 2018 to ensure all POCO settings received their final compliance designation. CMHCs were able to complete the MTP to meet the September 1, 2018 deadline. A member will remain eligible for HCBS only while their MTP is in effect. If the member continues to live in an HCBS non-compliant setting beyond the end date of their MTP, the SET will end the member’s program eligibility status in AMHH and/or BPHC HCBS programs. The member may re-apply for AMHH and/or BPHC eligibility determination at any time, however if not living in an HCBS compliant setting, eligibility and service authorization will be denied.

Ongoing, as CMHCs assess if settings will remain in compliance with HCBS Final Rule, there will be no deadline by which a final compliance determination is made by DMHA. When a setting is determined to not meet HCBS compliance requirements, the member must be notified within 10 days of the decision that a transition must occur. Any new MTP must be completed within 180 days unless there extenuating circumstances as described above.

### *Presumed Institutional Settings*

DMHA issued Preliminary Compliance Designation (PCD) reports to the responsible CMHCs of each POCO residential setting, informing the CMHC of the setting’s designation as “Potential Presumed Institutional.” There are three qualities of a setting that can determine if the setting is institutional:

- Setting is in a publicly or privately operated facility that provides inpatient institutional treatment,
- Setting is in a building on the grounds of, or adjacent to, a public institution, and/or
- Setting has an effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

The majority of these notifications were made by June 22, 2016; for those settings identified and assessed after that date, DMHA issues PCD reports within seven calendar days of receiving all required data on the setting (provider self-assessment and resident surveys). On-site visits were conducted at each setting between July 1, 2016, and December 7, 2016, and the results communicated to all providers by December 15, 2016.

Between July 1, 2016 and December 7, 2016, DMHA conducted on-site assessments at each of the 56 settings. The purpose of the on-site assessment was two-fold: (1) to establish whether the setting does in fact have qualities of an institution, and (2) if so, to determine whether DMHA will submit evidence to CMS for heightened scrutiny, in an attempt to have the setting deemed home and community-based. The table below contains the results of the on-site assessments.

All identified POCO settings (residential and non-residential) have been validated via onsite visits and/or desk audits using provider and member surveys. DMHA staff enters the physical address for each identified POCO (residential and non-residential) and non-POCO residential setting into MapQuest, Google Maps, or another Internet open-source mapping and satellite imaging service to identify if the setting has institutional qualities for Prong 1 and/or 2. The locations are cross-referenced with the street addresses of known publicly or privately operated facilities that provide inpatient institutional treatment, and proximity to other residences, businesses, public transportation services, and other community features is assessed. If a setting is found to potentially have one or more qualities of an institution, then that setting is preliminarily designated “Potential Presumed Institutional.”

If the identified setting does not have institutional qualities, based on the findings from the on-site assessment, the setting will be determined not institutional and reassigned to either the “Fully Compliant” or “Needs Modifications” categories (and, if required, referred for remediation). If the identified setting does have institutional qualities, based on the findings from the on-site assessment, the setting will be designated “Presumed Institutional” and one of the following remediation plans will be implemented.

As of February 2019, 13 POCO settings were designated “Presumed Institutional.” Whether a setting has qualities of an institution is an independent determination from the compliance status of a setting (either “Fully Compliant” or “Needs Modifications”). As shown in Table 1, these 13 sites are a subset of the total number of identified POCO settings (four of the 228 POCO residential settings, and nine of the 194 POCO non-residential settings).

As of February 2019, DMHA removed the four POCO residential settings from being considered HCBS compliant while the remaining 14 HSEP are with OMPP for review and discussion. DMHA Adult 1915(i) program used guidance from CMS on documentation that would be of assistance to determine the setting is home and community based.

On March 28, 2019, CMS provided additional clarification regarding what qualifies a setting to meet the definition of isolation as it pertains to Prong 3. The determination of isolation should include not only the location of the setting but the client’s perception of isolation and the settings ability and/or plan to ensure clients have access to the greater community. With this new guidance DMHA Adult has removed the four recently identified Prong 3 POCO residential settings.

Table 1 - Summary of Potential Presumed Institutional Settings

<b>Summary of “Potential Presumed Institutional” Site Visit Determinations (as of April 12, 2019)</b>		
	POCO Residential Setting	POCO Non-Residential Setting
Number Identified as “Potential Presumed Institutional”	41	15
Number Determined “Not Institutional”	33	6
Number Determined “Presumed Institutional”	0	8
<b>Number of Prong 1 Settings</b> The setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment	0	8
<b>Number of Prong 2 Settings</b> The setting is in a building on the grounds of, or immediately adjacent to, a public institution	0	0
<b>Number of Prong 3 Settings</b> The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS	0	0
Number of “Presumed Institutional” Settings to be Referred to CMS for Heightened Scrutiny	0	7
Number of Settings in “Assessment/Decision Pending” Status	0	0

For those settings preliminarily designated “Potential Presumed Institutional,” information about the compliance status is also communicated to providers via the Preliminary Compliance Designation Report (PCDR), so that those settings could complete any required remediation to become fully compliant with the federal HCBS final rule. DMHA anticipates that all of the “Presumed Institutional” settings referred for heightened scrutiny will ultimately be deemed home and community-based.

## SECTION 4: HEIGHTENED SCRUTINY (HS) PROCESS

### *Identification of Sites for Heightened Scrutiny*

At the time of the Preliminary Compliance Determination report, the setting was evaluated for institutional qualities. When a setting is designated as Potential Presumed Institutional, an additional onsite visit is conducted with the provider. During the second onsite visit, DMHA tours the setting and conducts staff and resident interviews to determine the setting's level of integration into the community. DMHA developed an additional assessment that further evaluates the presence of the characteristics of each prong to clarify if institutional qualities are present. If the setting is institutional, DMHA designates the setting as Presumed Institutional. At that time, DMHA determines if the setting could overcome the presumption of institutional by reviewing the institutional qualities that make up each prong. When DMHA designates the setting as Presumed Institutional, the provider receives notification from DMHA of the new designation. Once DMHA notifies the provider, the provider notifies DMHA their decision whether to pursue the heightened scrutiny process or opt out of providing HCBS services.

### *Heightened Scrutiny Evidence Packets (HSEP)*

DMHA is responsible for assessing all POCO residential and non-residential settings and non-POCO residential settings that may have institutional qualities and does not employ any additional workgroups to complete the assessments. Using CMS guidance, DMHA provides guidelines on what information the provider can submit in their heightened scrutiny packets to support the setting is home and community-based. These guidelines are also the factors that DMHA uses to assess if the setting can overcome the presumption of institutional and therefore, be submitted to CMS. The HSEP includes information from the provider (as detailed below) as well as a final report which includes a compilation of onsite staff and member interviews and provider and resident survey results. Once the heightened scrutiny packets are compiled, they are submitted to OMPP for review. If DMHA has concerns with feedback/revisions, a meeting will be scheduled with OMPP to address the concerns and come to a consensus ensuring the intent of the HCBS final rule is upheld. Once approved by OMPP, the packets will be submitted for the public comment period. Any comments during the public comment period will be addressed and revisions will be applied, if applicable. OMPP is responsible for making the final determination to send a setting's HSEP to CMS for final review.

The criteria to determine if a setting can overcome the presumption of having institutional qualities and be a candidate for heightened scrutiny, is based on the specific prong criteria. DMHA works with the provider to compile the following evidence to support that the setting meets the requirements for the HCBS Final Rule. Evidence packets for heightened scrutiny will seek to establish that the setting does not have qualities of an institution, and does have qualities of a home or community-based setting.

The DMHA developed HSEP template organizes the supporting documentation acquired from the provider and the information the SET obtained via interviews and onsite visits. The HSEP cannot be more than 10 pages long including any embedded documentation. The document is divided into five sections:

- Description of reason for submission of HSEP and evidence included in the document
- Evidence Overcoming the Presumption of Institutionalism
- Evidence that the setting is fully compliant with HCBS Settings Final Rule
- Conclusion
- Supporting Documents

Based on the type of HCBS setting, the HSEP is tailored to focus on demonstrating the presumed institutional setting has qualities of a home and community-based setting.

For POCO residential settings, the HSEP includes:

- Provider agency self-assessment of the setting
- Member experience surveys from residents at the setting
- DMHA preliminary screening for qualities of an institution
- Presumed Institutional site visit member interview summary
- DMHA review of the Setting Action Plan (SAP) for the setting, which addresses remediation activities being undertaken by the provider agency to bring setting into compliance
- Statement of the community perception of the setting
- DMHA review of applicable provider agency and setting operating policies and procedures



- Comments/Responses from the public comment period

For POCO non-residential settings, the HSEP includes:

- Provider agency self-assessment of the setting
- Evidence that setting complies with requirements of POCO settings
- DMHA preliminary screening for qualities of an institution
- DMHA review of the Setting Action Plan (SAP) for the setting, which addresses remediation activities being undertaken by the provider agency to bring setting into compliance
- Statement of the community perception of the setting
- DMHA review of applicable provider agency and setting operating policies and procedures
- DMHA site visit to the setting
- Comments/Responses from the public comment period

In addition to the general HSEP template, Prong 1 and Prong 2 requires additional evidence to support the setting is home and community-based:

- Documentation identifying the lack of financial interconnectedness between the inpatient and outpatient facilities
- Clarification the setting staff are separated between the inpatient and outpatient setting
- Methods by which services and activities are provide to the client supports community integration
- Pictures of the site and other demonstrable evidence
- Provider qualifications for HCBS staff

In addition to the general HSEP template, Prong 3 requires additional evidence to support the setting is home and community-based:

- Resources available to client to ensure they have access to the community similar to those not enrolled in HCBS services, *i.e.* local transportation; staff provided transportation
- Map to identify proximity to/scope of interactions with community settings
- Providers describe methods by which services and activities provided to the client support community integration
- Details of proximity to public transport or other transportation strategies to facilitate integration
- Documentation in the person-centered treatment plan that individual's preferences and interests are being met
- Evidence that the individual chose the setting from among setting options, including non-disability specific setting

Suggested documents (if space allows):

- Licensure requirements or other state regulations
- Residential housing or zoning requirements
- Copies of lease agreements/resident agreements
- Organization charts

### *Review and Submission of the HSEP*

The DMHA Heightened Scrutiny team is comprised of 4 1915(i) specialists who are all responsible for determining whether an identified site can overcome the presumption of institutionalization. The team is led by the Deputy Director of DMHA and the 1915(i) Program Director. After DMHA develops and reviews the HSEP, completed packet is submitted to the CMHC to provide feedback. Based on the division's evidence and recommendation and the outcome of public comment, OMPP makes the final determination of which packets are submitted to CMS for heightened scrutiny. Once the HSEP is approved by OMPP, the packets will be submitted for statewide public comment. Any comments receiving during the public comment period will be taken into consideration and revisions will be applied to the STP, if applicable. DMHA will include those comments into the STP as well as DMHA's responses to those comments.

### **Site-Specific Remediation Methodology and Milestones**

*Settings Designated "Unable to Fully Comply" With HCBS Settings Requirements*



DMHA has designated 33 settings affected by the federal HCBS Final Rule as “Unable to Fully Comply.” The designation of a setting as “Unable to Fully Comply” will only be made under one of the following four scenarios:

1. A setting designated as “Needs Modifications” opts not to complete remediation
2. A setting designated as “Needs Modifications” fails to complete required remediation by the timeframe specified in the HCBS Setting Action Plan
3. A setting is designated “Presumed Institutional” and DMHA opts not to submit evidence for heightened scrutiny
4. A setting designated “Presumed Institutional” for which CMS, after reviewing the evidence submitted for heightened scrutiny, determines that the setting is not home or community-based

For those settings designated “Unable to Fully Comply,” DMHA will notify the responsible CMHC within seven calendar days of the date of designation. The responsible CMHC must notify all affected residents at the setting of the designation, and collaborate with those members and their family/guardians/caretakers, to develop and submit a Member Transition Plan within 30 calendar days of the date the CMHC was notified of the “Unable to Fully Comply” designation.

#### *POCO Residential Settings Designated as “Needs Modifications”*

DMHA issued Preliminary Compliance Designation (PCD) reports to the responsible CMHC of each identified POCO residential setting, informing the CMHC of the setting’s designation as “Needs Modifications” to become fully compliant with federal HCBS requirements. The majority of these notifications were made by June 22, 2016; for those settings identified and assessed after that date, DMHA issues PCD reports within seven calendar days of receiving all required data on the setting (provider self-assessment and resident surveys). The notification identifies areas of non-compliance with federal HCBS requirements (as indicated by the validated site-specific assessment) and specifies required actions of the CMHC to be completed within 30 calendar days from date of notification. The actions required to be completed within 30 calendar days of notification include: notification of affected members, decision to remediate or accept non-compliant designation, and submit either an HCBS Setting Action Plan or a Member Transition Plan.

The CMHC must notify affected residents (those currently enrolled in and receiving AMHH/BPHC services) that the setting has been determined not to be fully compliant with the HCBS final rule within seven calendar days from the date of DMHA notification. Following the notification, the CMHC will decide whether to implement modifications to bring the setting into full compliance, or to accept the designation of the setting as HCBS non-compliant, and notify the affected member(s) of the decision. Providers who choose to perform modifications to bring the setting into full compliance will complete and submit an HCBS Setting Action Plan. DMHA will review the submitted plan and provide technical assistance as needed. Verification will occur through desk audits for those sites requiring policy modifications and site visits for those sites requiring physical modifications.

If a provider agency elects not to complete remediation at a setting, the agency must notify in writing both DMHA and affected members at the setting within seven calendar days of the decision. Upon receipt of notification by the provider agency that remediation will not be undertaken, DMHA will designate the setting “Unable to Fully Comply.” The provider agency, together with the member and their family/guardian/caretaker, must complete and submit to DMHA a Member Transition Plan for each affected member at the setting within 30 calendar days of the date the provider agency notified DMHA of their intention not to pursue remediation.

If a provider agency does not complete remediation by the end of the designated timeframe (including any granted extensions), the HCBS Setting Action Plan will end and DMHA will designate the setting “Unable to Fully Comply.” DMHA will notify the provider agency of the designation within seven calendar days of the expiration of the HCBS Setting Action Plan. The provider agency, together with the member and their family/guardian/caretaker, must complete and submit to DMHA a Member Transition Plan for each affected member at the setting within 30 calendar days of the date the provider agency was notified by DMHA that the setting was designated “Unable to Fully Comply.”

#### **Ongoing Monitoring of Settings**

Ongoing monitoring of and compliance with HCBS requirements beyond the March 2019 implementation deadline will be facilitated by continuing the on-going requirement for an HCBS Residential Setting Screening Tool (RSST) to be completed in conjunction with all AMHH/BPHC applications and by integrating HCBS compliance activities with required 1915(i) quality assurance/quality improvement (QA/QI) on-site assessments. The SET team is comprised of 4 1915(i) specialists responsible for monitoring settings. Providers are tasked with assessing private homes and ensuring access to the greater community. They will report this to the SET via the RSST. In February 2016, DMHA provided a live training for completing the RSST. In April 2016, DMHA provided another follow up training via a provider conference call. In November 2016, DMHA provided an onsite training on the HCBS modifications process to assist providers and further clarify the HCBS Final Settings Rule.

Each community mental health center (CMHC), as the exclusive provider of 1915(i) adult services, is required to participate in an on-site review of their AMHH and BPHC programs at least annually or more frequently as determined by the DMHA 1915(i) SET. Integrating HCBS compliance monitoring includes:

- Physical assessment of POCO residential settings. Beginning in July 2016, during each scheduled CMHC QA/QI site visit, at least one randomly selected POCO residential setting will be visited by the SET. The on-site assessment will include verification of physical HCBS setting requirements and interview(s) with residents, to ensure their living and treatment experience incorporates the rights, freedoms, protections, and choices specified by HCBS requirements.
- Physical assessment of POCO non-residential settings. Beginning in July 2016, during each scheduled CMHC QA/QI site visit, at least one POCO non-residential setting will be visited by the SET. The on-site assessment will include verification of physical HCBS setting requirements and interview(s) with members present at the setting, to ensure their service experience incorporates the rights, freedoms, protections, and choices specified by HCBS requirements. Priority will be placed on assessing provider-operated non-residential settings where the AMHH Adult Day Service is delivered.

Beginning March 1, 2019, DMHA will begin the on-going monitoring plan for POCO residential and non-residential settings and non-POCO residential settings. Each State Fiscal Year (July 1- June 30), CMHCs will be required to submit any changes to HCBS policies/procedures within 30 business days of DMHA request.

The DMHA has updated the Residential Setting Screening Tool (RSST) to include the CMS “Exploratory Questions to Assist States in Assessment of Residential Settings” to ensure ongoing compliance of the HCBS setting requirements. This RSST must be completed by the applicant and the provider prior to submission of every AMHH/BPHC application. The verification of the completed RSST is included in the annual QA/QI process for each provider. DMHA will notify the responsible provider that a corrective action plan will be required to be completed and submitted within 30 days for any non-compliant responses that were not based on an individualized assessed need and written into the person-centered service plan. In addition, if the applicant answers “No” to any of the exploratory questions, the RSST must be provided to DMHA within 15 days of completion.

Annual provider trainings will be scheduled to address changes in policies, procedures, and the monitoring process of the HCBS rules. Based on each provider’s specific QA/QI results, DMHA will conduct further remediation activities as needed to ensure the health and welfare of the member.

## SECTION 5: KEY STAKEHOLDERS AND OUTREACH

DMHA is working in partnership with members and advocates, providers and other stakeholders to create a sustainable, person-driven long-term support system in which people with mental illness have choice, control and access to a full array of quality services that assure optimal outcomes, such as independence, health and quality of life.

The programs and partnerships contained in this section are aimed at achieving a system that is:

- **Person-driven:** affords people with disabilities and/or chronic illness the opportunity to decide where and with whom they live, to have control over the services they receive and who provides the services, to work and earn money, and to include friends and supports to help them participate in community life.
- **Inclusive:** The system encourages and supports people to live where they want to live with access to a full array of quality services and supports in the community.
- **Effective and Accountable:** The system offers high quality services that improve quality of life. Accountability and responsibility is shared between public and private partners and includes personal accountability and planning for long-term care needs, including greater use and awareness of private sources of funding.
- **Sustainable and Efficient:** The system achieves economy and efficiency by coordinating and managing a package of services paid that are appropriate for the beneficiary and paid for by the appropriate party.
- **Coordinated and Transparent:** The system coordinates services from various funding streams to provide a coordinated, seamless package of supports, and makes effective use of health information technology to provide transparent information to members, providers and payers.
- **Culturally Competent:** The system provides accessible information and services that take into account people's cultural and linguistic needs.

In preparation for the transition plan, DMHA hosted three regional provider trainings in which state staff shared information pertaining to the comprehensive state plan. Since November of 2013, DMHA has shared the proposed HCBS requirements and their impact on providers of AMHH and BPHC services through webinars, technical assistance, and conference calls. Ongoing, DMHA will provide information about the HCBS State Transition Plan to and see feedback from providers, members, and stakeholder groups such as: DMHA's Mental Health and Addiction Planning and Advisory Council, NAMI, Key Consumers, Indiana Council of CMHCs, and Mental Health America of Indiana. DMHA will seek input from key stakeholders and work with them to assure members are aware of the transition plan and methods in which they can provide feedback and comments. DMHA will also continue these collaborations and partnerships with members and advocates, providers and other stakeholders beyond March, 2020, to ensure on-going communication and compliance with the HCBS settings rules.

## PUBLIC INPUT

Indiana's version 9 (resubmission) Statewide Transition Plan was open for public comment for **30 days, January 15, 2020, through February 14, 2020**. The comment period allowed all HCBS members, potential members, providers and other stakeholders an opportunity to provide input to the plan.

Version 9 of the Statewide Transition Plan and related materials are available at FSSA's [Home and Community-Based Services Final Rule website](#). Indiana provided public notice in print and electronic form through the Indiana Register, print articles in newsletters disseminated by advocacy groups and trade organizations, newsletters and list serves. Paper copies were available in all local Division of Family Resources (DFR) offices and upon request. Written comments were received by email via [HCBSrulecomments@fssa.in.gov](mailto:HCBSrulecomments@fssa.in.gov), or by mail to:

### State of Indiana

#### FSSA/OMPP

Attn: HCBS Final Rule – BreAnn Teague, Senior Manager, Program Development

402 W. Washington St., Rm. W374 MS-07

Indianapolis, IN 46204-2739

All comments were tracked and summarized by FSSA. The summary of comments follows, by division, in addition to a summary of modifications made in response to the public comments. The division summary provides the page number where revisions or new content are located (in this document) and division responses appear in **bold**. In cases where the State's determination differs from public comment, the additional evidence and rationale the State used to confirm the determination is included.

All versions of Indiana's Statewide Transition Plan are posted online and available for review for the duration of the transition period. A PDF of prior year public comments are posted on Indiana's Statewide Transition Plan website under the [Public Comments<sup>4</sup>](#) section.

<sup>4</sup> Prior public comments are located at URL

[https://www.in.gov/fssa/da/files/STP\\_Prior-Year\\_Public\\_Comments\\_2020.pdf](https://www.in.gov/fssa/da/files/STP_Prior-Year_Public_Comments_2020.pdf)

**PUBLIC INPUT**  
**OFFICE OF MEDICAID POLICY AND PLANNING (OMPP)**  
**Administrative Authority for Indiana Medicaid HCBS**

**SUMMARY:**

The Office of Medicaid Policy and Planning (OMPP) solicited comments on the Statewide Transition Plan as it applies to administration of the Statewide Transition Plan (STP). The comments resulted in no changes to this portion of the STP.

**PUBLIC COMMENTS:**

**PUBLIC INPUT**  
**DIVISION OF AGING (DA)**  
**HCBS Programs**  
**Aged and Disabled (A&D) Waiver – 1915(c)**  
**Traumatic Brain Injury (TBI) Waiver – 1915(c)**

**SUMMARY:**

The Division of Aging (DA) solicited comments on the Statewide Transition Plan as it applies to the two 1915(c) programs; the Aged and Disabled (A&D) Waiver and the Traumatic Brain Injury (TBI) Waiver. The comments resulted in no changes to this portion of the STP.

**PUBLIC COMMENTS:**



**DIVISION OF DISABILITY AND REHABILITATIVE SERVICES (DDRS)**  
**HCBS Programs**  
**Community Integration and Habilitation (CIH) Waiver – 1915(c)**  
**Family Supports Waiver (FSW) – 1915(c)**

**SUMMARY:**

The Division of Disability and Rehabilitative Services (DDRS) solicited comments on the Statewide Transition Plan as it applies to the two 1915(c) programs; Community Integration and Habilitation (CIH) and Family Support Waiver (FSW). The comments resulted in no changes to this portion of the STP.

**PUBLIC COMMENTS:**

**DIVISION OF MENTAL HEALTH AND ADDICTION - YOUTH (DMHA-Y)**  
**HCBS Programs**  
**Child Mental Health Wraparound (CMHW) – 1915(i)**

**SUMMARY:**

The Division of Mental Health and Addiction (DMHA) solicited comments on the Statewide Transition Plan as it applies to the 1915(i) Child Mental Health Wraparound (CMHW) program. The comments resulted in no changes to this portion of the STP.

**PUBLIC COMMENTS:**

**DIVISION OF MENTAL HEALTH AND ADDICTION – ADULT (DMHA-A)  
HCBS Programs  
Behavioral and Primary Healthcare Coordination (BPHC) – 1915(i)  
Adult Mental Health Habilitation (AMHH) – 1915(i)**

**SUMMARY:**

The Division of Mental Health and Addiction (DMHA) solicited comments on the Statewide Transition Plan as it applies to two adult 1915(i) programs; the Adult Mental Health Habilitation (AMHH) and Behavioral and Primary Healthcare Coordination (BPHC) programs. The comments resulted in no changes to this portion of the STP.

**PUBLIC COMMENTS:**

## TABLE OF ACRONYMS

Activities of Daily Living	ADL
Adult Day Services	ADS
Adult Family Care	AFC
Adult Mental Health Habilitation	AMHH
Aged and Disabled	A&D
Alternative Family Homes for Adults	AFA
Assisted Living	AL
Behavioral and Primary Healthcare Coordination	BPHC
Bureau of Developmental Disabilities Services	BDDS
Bureau of Quality Improvement Services	BQIS
Centers for Medicare and Medicaid Services	CMS
Child Mental Health Wraparound	CMHW
Community Integration and Habilitation	CIH
Community Mental Health Center	CMHC
Direct Service Provider	DSP
Division of Aging	DA
Division of Disability and Rehabilitative Services	DDRS
Division of Mental Health and Addiction	DMHA
Family and Social Services Administration	FSSA
Family Supports Waiver	FSW
Home and Community-Based Services	HCBS
Indiana Administrative Code	IAC
Indiana Department of Child Services	DCS
Indiana Disability Rights	IDR
Indiana Institute on Disability and Community	IIDC
Indiana State Department of Health	ISDH
Individual Experience Survey	IES
Individual Support Team	IST
Individualized Support Plan	ISP
Individuals with Intellectual Disabilities/Developmental Disabilities	IID/DD

Institution for Mental Diseases	IMD
Intermediate Care Facility for Individuals with Intellectual Disabilities/Development Disabilities	ICF/IID
Memorandum of Understanding	MOU
Mental Health and Addiction Planning and Advisory Council	MHAPAC
Mental Illness	MI
National Core Indicators	NCI
National Alliance on Mental Illness	NAMI
Nursing Facility	NF
Office of General Counsel	OGC
Office of Medicaid Policy and Planning	OMPP
Participant-Centered Compliance Review	PCCR
Person Centered Monitoring Tool	PCMT
Person Centered Plan	PCP
Preliminary Compliance Designation	PCD
Provider Compliance Reviews	PCR
Provider Owned, Controlled or Operated	POCO
Psychiatric Residential Treatment Facility	PRTF
Public Consulting Group	PCG
Quality Assurance/Quality Improvement	QA/QI
Residential Care Facility	RCF
Residential Setting Screening Tool	RSST
Semi-Independent Living Facilities	SILP
Serious Emotional Disturbance	SED
Setting Operating Authority	SOA
State Evaluation Team	SET
Statewide Transition Plan	STP
Structured Day Program	SDP
Structured Family Caregiving	SFC
Supervised Group Living	SGL
Supported Employment	SE

System of Care	SOC
Transitional Residential Living Facility	TRS
Traumatic Brain Injury	TBI