Department of Health Care Services
State of California—Health and Human Services Agency

Statewide Transition Plan for Compliance with Home and Community Based Settings Rules

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Background

<u>1915(c) Waivers</u>
The federal government authorized the "Medicaid 1915(c) Home and Community-Based Services (HCBS) Waiver program" under Section 2176 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). It is codified in section 1915(c) of the Social Security Act. The original legislative intent of the HCBS Waiver program was to slow the growth of Medicaid (Medi-Cal in California) spending by providing services in less expensive settings. In order to contain costs, the federal legislation limited waiver services to individuals who would be institutionalized if the services were not provided. However, the costs of those waiver services cannot be higher than what they would cost in an institutional setting.

The law permitted states to waive certain Medicaid program requirements and in doing so, deviate from Medicaid requirements, such as providing services only in certain geographic areas ("waive statewideness"). The HCBS Waiver program also allowed states flexibility to offer different types of services to individuals with chronic disabilities. Prior to this, with the origin of Medicaid in 1965, individuals could only receive comprehensive long-term care in institutional settings.

The initial waiver application is approved by the Centers for Medicare & Medicaid Services (CMS) for three years with additional renewal applications needing to be approved every five years. The waiver can be designed for a variety of targeted diagnosis-based groups including individuals who are elderly, and those who have physical, developmental, or mental health disabilities, or other chronic conditions such as Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS). The waiver can be designed to offer a variety of services including case management, personal attendant services, adult day health care services, habilitation services, day treatment services, psychosocial rehabilitation services, mental health services, and other services specifically requested by the state. 1915(c) HCBS waivers have subsequently become mechanisms for many states, including California, to provide Medicaid-funded community-based, long-term care services and supports to eligible individuals.

Throughout the Statewide Transition Plan (STP), recipients of HCBS will be referred to as individuals receiving services, which includes all Medi-Cal eligible beneficiaries, participants, consumers, etc., who are enrolled in any of the HCBS programs.

<u>1915(i) State Plan Program</u>
Starting January 1, 2007, the Deficit Reduction Act of 2005 (DRA) gave states a new option to provide HCBS through their State Plans. Once approved by CMS, State Plans do not need to be renewed nor are they subject to some of the same requirements of waivers. Under this option, states set their own eligibility or needs-based criteria for providing HCBS. States are allowed to establish functional criteria in relation to certain services. The DRA provision eliminated the skilled need requirement and allowed states to cover Medicaid beneficiaries who have incomes no greater than 150 percent of the federal poverty level and who satisfy the needs-based criteria. The Patient Protection and Affordable Care Act of 2010 created several amendments including the elimination of

enrollment ceilings, a requirement that services must be provided statewide, and other enrollment changes.

1915(k) Community First Choice (CFC) State Plan Program
CFC services are provided in the individual's receiving services private residence (see Private Residence Presumed to be in Compliance section below). The provision of community-based services and supports are the most integrated setting appropriate to the individuals' needs without regard to age, type or nature of the disability, the severity of the disability, or the form of home and community-based services and supports that the individual requires in order to lead an independent life.

By being in the community and self-directing care, the individual is able to control their environment to the maximum extent consistent with their capabilities and needs. 1915(k) individuals receiving services have the ability to be active in their community and are able to seek employment by utilizing any available resources. These resources could be their CFC provider or their local community that they reside in.

CFC individuals select their residential setting of a home or abode of their own choosing. The CFC individual chooses who their provider will be and that the services will be provided in the home of the individual or a residential setting, such as an apartment where the individual pays rent through a landlord/occupant agreement, or if the individual is living in a home owned by their family. Settings in which CFC services may be provided are unlicensed, private residences. CFC services are not provided in licensed Community Care Facilities (CCF), a Community Care Licensing term for licensed residential facilities.

Community-Based Adult Services (CBAS) 1115 Waiver
See **Attachment I** – Draft Community-Based Adult Services (CBAS) Home and Community-Based (HCB) Settings Transition Plan (Draft CBAS Transition Plan)

New Home and Community-Based Setting Requirements
In January 2014, CMS announced it had finalized important rules that affect HCBS waiver programs, and 1915(i) and 1915(k) State Plan programs provided through Medicaid/Medi-Cal, and subsequently published regulations in the Federal Register on January 16, 2014. The rules became effective 60 days from publication, or March 17, 2014. These final regulations are CMS 2249-F and CMS 2296-F.

Prior to the Final Rule, home and community-based (HCB) setting requirements were based on location, geography, or physical characteristics. The Final Rules define HCB settings as more process and outcome-oriented, guided by the individual's receiving services person-centered service plan by:

1. The setting is integrated in and supporting 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.

2. The setting is selected by the individual from among various 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.

3. Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.

4. Optimizes, but does regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, the physical environment, and with whom to interact.

5. Facilitates individual choice regarding services and supports, and who provides them.

For Medicaid/Medi-Cal provider-owned or controlled HCB residential settings, the provider must offer:

- The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord-tenant laws do not apply, the State must ensure that a lease, residency agreement, or another form of the written agreement will be in place for each individuals receiving services and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law.
- Each individual has privacy in their sleeping or living unit including lockable doors by the individual, with only appropriate staff having keys to doors; individuals sharing units have a choice of roommates in that setting, and individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals have the freedom and support to control their own schedules, activities, and have access to food at any time.
- Individuals are able to have visitors of their choosing at any time.
- The setting is physically accessible to the individual.

Any modification(s) of the additional requirements 6 – 9 can only be made in provider-owned or controlled residential settings and on an individual basis, supported by a specific and individually assessed need and justified in the person-centered service plan. Documentation of all the following is required:

- Identification of a specific and individualized assessed need.
- The positive interventions and supports used prior to any modification(s) to the person-centered plan.
- Less intrusive methods of meeting the need that has been tried but did not work. A clear description of the condition(s) that is directly proportionate to the specific assessed need.

- Review of regulations and data to measure the ongoing effectiveness of the modification(s).
- Established time limits for periodic reviews to determine if the modification(s) is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

HCBS Programs in California Affected by the Final Rule

California's HCBS programs, which are the focus of this Statewide Transition Plan (STP) are either directly administered or overseen by the Department of Health Care Services (DHCS) as the single state agency for Medicaid/Medi-Cal. However, several of the HCBS waivers and the 1915(i) State Plan program are administered jointly by DHCS and the State or local entity with program responsibility. Administrative teams comprised of employees from the State department/entity with program responsibility exist at DHCS, the California Department of Public Health (CDPH), the Department of Developmental Services (DDS), the California Department of Aging (CDA), and the San Francisco Department of Public Health (SFDPH). The SFDPH Community Living Support Benefit (SFCLSB) Waiver ended in 2017.

Existing 1915(c) HCBS Waivers, and the corresponding State department/entity with program responsibility, are as follows:

1. MSSP Waiver (0141), CDA, Long Term Care & Aging Services
2. HIV/AIDS Waiver (0183), CDPH, Office of AIDS
3. DD Waiver (0336), DDS, Community Services
4. ALW (0431), DHCS, Long-Term Care Division
5. HCB Alternatives Waiver (0139), DHCS, Long-Term Care Division

The existing 1915(i) State Plan Amendment (SPA) is administered by DDS and utilizes the same provider types as the HCBS Waiver for Persons with Developmental Disabilities (DD Waiver).

<u>California's HCBS 1915(c), 1915(k), 1115 Waiver – CBAS Program, and 1915(i) State Plan Program</u>
California currently has an approved 1915(i) State Plan program that allows the State to access federal financial participation for services provided to individuals with developmental disabilities who do not meet the institutional level-of-care criteria required for participation in the DD Waiver, which is described in greater detail below. California currently administers the following seven 1915(c) HCBS Waivers:

Note: Bold text indicates the HCB settings in which services are provided.

Multipurpose Senior Services Program (MSSP) Waiver. The objective of this program is to provide opportunities for frail older adults to maintain their independence and dignity in community settings by preventing or delaying avoidable nursing facility placement. 38 MSSP sites perform care management, which is the cornerstone of this waiver and

involves an individual assessment; person-centered care planning; service arrangement, delivery, and monitoring; and coordinating the use of existing community resources. The waiver was renewed effective July 1, 2019, for five years, through June 30, 2024.

MSSP Waiver provider types include all of the following:

- **Adult Day Program**
- Building Contractor or Handyman/Private Nonprofit or Proprietary Agency
- **Congregate Meals Site**
- Home Health Agency
- Licensed/Certified Professionals
- Private Nonprofit or Proprietary Agency
- Registered Nurse
- Social, Legal, and Health Specialists
- Social Worker Care Manager
- Title III (Older Americans Act)
- Translators/Interpreters
- Transportation Providers

HIV/AIDS Waiver. The purpose of this waiver is to allow persons of all ages with mid- to late-stage HIV/AIDS to remain in their homes through a continuum of care designed to stabilize and maintain an optimal level of health, improve quality of life, and provide an alternative to institutional care in hospitals or nursing facilities. Services include, but are not limited to, enhanced care management, homemaker and attendant care services, nutritional counseling and supplements, psychotherapy, and non-emergency medical transportation. The current waiver was approved on January 1, 2017, for five years, through December 31, 2022.

HIV/AIDS Waiver provider types include all of the following:

- Building Contractor or Handyman
- Clinical Psychologist
- Specialized Medical Supplies
- Non-Emergency Transportation
- Foster Parent
- Home Health Agency
- Home Health Aide
- Homemaker
- Licensed Clinical Social Worker
- Licensed Vocational Nurse
- Local Pharmacy or Vendor
- Marriage and Family Therapist
- Master's Degree Nurse; Psychiatric and Mental Health Clinical Nurse Specialist or Psychiatric and Mental Health Nurse Practitioner
- Private Nonprofit or Proprietary Agency
- Registered Dietician
- Registered Nurse

- Social Work Case Manager
- Waiver Agency with Exception Approved by CDPH/Office of Aids
- **Foster Family Homes (Specialized**

HCBS Waiver for Persons with Developmental Disabilities (DD Waiver). The purpose of this waiver is to serve individuals of all ages in their own homes and community settings as an alternative to placement in hospitals, nursing facilities, or intermediate care facilities for persons with developmental disabilities (ICF/DD). Community-based services for individuals with developmental disabilities are provided through a statewide system of 21 private non-profit corporations known as Regional Centers. Regional Centers provide fixed points of contact in the community for persons with developmental disabilities and their families. The DD Waiver has been in operation since 1982 to assist in funding services for individuals who live in the community and who meet the ICF/DD level-of-care requirement. DD Waiver individuals receiving services live in the setting of their choice, such as with their families, in their own homes or apartments, or in licensed settings. The proposed effective date of the current waiver application is October 1, 2017, for five years, through September 30, 2022.

DD Waiver provider types include all of the following:

- Adaptive Skills Trainer
- **Adult Residential Facility (CCF)**
- **Adult Residential Facility for Persons with Special Health Care Needs (CCF)**
- Associate Behavior Analyst
- Behavior Analyst
- Behavior Management Consultant
- Behavioral Technician/Para- professional
- Building Contractor or Handyman
- Camping Services
- Certified Family Home; Foster Family Home
- Child Day Care Facility; Child Day Care Center; Family Child Care Home
- Client/Parent Support Behavior Intervention Training
- Clinical Psychologist
- Contractor
- Creative Arts Program
- Crisis Intervention Facility
- Crisis Team – Evaluation and Behavioral Intervention
- Day-Type Services (**Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community- Based Training Provider Socialization Training Program; Community Integration Training Program; Community Activities Support Service**)
- Dentist
- Dental Hygienist
- Dietitian; Nutritionist
- Dispensing Optician
- Driver Trainer

- Durable Medical Equipment Provider
- Facilitators
- **Family Home Agency: Adult Family Home/Family Teaching Home**
- Financial Management Services Provider
- **Group Home**
- Hearing and Audiology Facilities
- Home Health Agency
- Home Health Aide
- Independent Living Program
- Independent Living Specialist
- Individual (Landlord, Property Management)
- Individual or Family Training Provider
- In-Home Day Program
- Licensed Clinical Social Worker
- Licensed Psychiatric Technician
- Licensed Vocational Nurse
- Marriage Family Therapist
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Orthotic Technician
- Parenting Support Services Provider
- Personal Assistant
- Personal Emergency Response Systems Provider
- Physical Therapist
- Physical Therapy Assistant
- Physician/Surgeon
- Psychiatrist
- Psychologist
- Public Transit Authority
- Public Utility Agency, Retail and Merchandise Company, Health and Safety Agency,
- Moving Company
- Registered Nurse
- **Residential Care Facility for the Elderly (CCF)**
- **Residential Facility – Out of State (CCF)**
- Respite Agency
- **Small Family Home**
- Social Recreation Program
- Special Olympics Trainer
- Speech Pathologist
- Sports Club, e.g., YMCA, Community Parks, and Recreation Program; Community-Based Recreation Program
- **Supported Employment (Group Services)**
- Supported Living Provider
- Translator/Interpreter
- Transportation Provider

- Vehicle Modification and Adaptations
- **Work Activity Program**

Assisted Living Waiver (ALW). This waiver offers eligible seniors and persons with disabilities age 21 and over the choice of residing in either a licensed Residential Care Facility for the Elderly or independent Publicly Subsidized Housing (PSH) private residences with Home Health Agency services as alternatives to long-term institutional placement. The majority of Publicly Subsidized Housing (PSH) units serve low-income applicants, while a percentage of units are designated for ALW individuals. The goal of the ALW is to facilitate nursing facility transition back into community settings or prevent skilled nursing admissions for individuals receiving services with an imminent need for nursing facility placement. Thirty-one care coordination agencies serving fifteen counties independently maintain wait lists. Individuals receiving services on the ALW living in the PSH are able to access waiver services through a provider other than the enrolled Home Health Agency (HHA) provider on-site, if desired. The State has completed a systemic assessment, which included a review of program manuals (policies and procedures), licensing documentation, lease agreements, and consent for treatment documentation to ensure that all ten (10) characteristics of the Final Rule are being implemented. A summary of applicable statutes and regulations can be found in **Appendix B** of the STP. The following are examples of evidence that was found to align with the Final Rules:

- Documentation on individuals receiving services and provider assessments, timeliness of actions, and Individual Service Plans (ISP).
- Staff training logs.
- Residents HHA survey.
- Verification of services delivered.

Please note, the San Francisco Community Living Support Benefit (SFCLSB) Waiver ended in 2017 and all individuals receiving services from the SFCLSB Waiver were given the opportunity to transition to the ALW. The current waiver was approved on March 1, 2019, for five years, through February 28, 2024. ALW provider types include the following:

- Care Coordination Agency
- **Home Health Agency in Public Subsidized Housing**
- **Residential Care Facility for the Elderly**
- **Adult Residential Facility**

Home and Community-Based Alternatives (HCB Alternatives) Waiver (previously titled Nursing Facility/Acute Hospital Waiver). This waiver offers services in the home to Medi-Cal individuals with long-term medical conditions, who meet the acute hospital, adult subacute, pediatric subacute, intermediate care facility for the developmentally disabled – continuous nursing care and Nursing Facility A/B levels of care with the option of returning and/or remaining in their home or home-like setting in the community in lieu of institutionalization. The current HCB Alternatives Waiver was approved on January 1, 2017, for five years, through December 31, 2022. HCB Alternatives Waiver provider types include all of the following:

- Behavioral Therapist
- Durable Medical Equipment Provider
- Employment Agency
- **Congregate Living Health Facility**
- Home Health Agency
- Home Health Aide
- In-Home Support Services Public Authority
- **Intermediate Care Facility for the Developmentally Disabled – Continuous Nursing Care** (LTC facility prior to March 2022)
- Licensed Clinical Social Worker
- Licensed Psychologist
- Licensed Vocational Nurse
- Marriage Family Therapist
- Non-Profit or Proprietary Agency
- Personal Care Agency
- Private Nonprofit or Proprietary Agency
- Professional Corporation
- Registered Nurse
- Waiver Personal Care Services Provider

The IHO Waiver sunset on December 31, 2019. All individuals receiving IHO Waiver services were transitioned to the HCBA Waiver before the end date of December 31, 2019. Upon transition to the HCBA Waiver, individuals who previously received IHO Waiver services maintained relationships with existing providers and continued to receive WPCS services previously authorized under the IHO Waiver.

The PPC Waiver ended effective December 31, 2018, and individuals receiving services were transitioned to Managed Care Plans or Fee-for-Service delivery systems. DHCS educated individuals receiving services about the expansion of Pediatric Palliative Care services through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services program. DHCS then implemented a 60-day transition plan that included a warm hand-off of Palliative Care Services beneficiaries to Managed Care or Fee-for-Service delivery systems, which facilitated the continuity of care among beneficiaries. The warm handoff is a transfer of care between two members of the health care team, where the handoff occurs in front of the patient and family. This transparent handoff of care allows patients and families to hear what is said and engages patients and families in communication, giving them the opportunity to clarify or correct information or ask questions about their care.

1915(k) Community First Choice (CFC) – In-Home Supportive Services (IHSS). The goal of the IHSS program is to allow individuals receiving services to live safely in their private residence and avoid the need for out-of-home care. Services are provided in the individuals' private residence. This could be a house, apartment, or the home of a relative. The individuals' private residence is the only setting in which CFC – IHSS may be provided. Individuals receiving services residing in a licensed, provider-owned/controlled residential setting may not receive CFC- IHSS services.

1915(k) CFC services include:

- Personal care services like dressing, bathing, feeding, toileting
- Paramedical services like helping with injections, wound care, colostomy, and catheter care under the direction of a licensed medical professional
- House cleaning
- Cooking
- Shopping
- Laundry
- Accompaniment to and from medical appointments

1115 Community-Based Adult Services Program (CBAS). See **Attachment I** of the STP for details.

Settings Presumed to Be in Compliance

CMS issued home and community-based (HCB) settings regulations that define HCB settings based on individual experience and outcomes with the purpose of maximizing the opportunities for individuals receiving Medicaid HCB services to receive those services in integrated settings. In formulating a plan to implement these regulations, California has determined that the following types of non-provider owned or controlled private residential settings qualify as HCB settings:

1. Private residences owned, leased, or rented by the individuals receiving services, a relative of the individual receiving services, a conservator, or any other individual legally authorized to represent the individual receiving services.

2. Private residences may take a variety of forms provided they still afford individuals receiving services with access to the community as required by the new HCBS definitions. A private residence may be a single-family home, apartment, rental unit, or any other space in the greater community.

3. Private residences where the individual receiving services pays for part or all of the lease costs with the assistance of federal, State, or local funding. Examples include:
    - Affordable Housing Apartment Complexes are funded by a combination of Low-Income Tax Housing Credits, California State Housing and Bond initiatives, Housing and Urban Development, City and County local and federal funds, and bank financing, where residential eligibility is income-based.
    - Housing and Urban Development (HUD) Section 8 Housing Choice Vouchers, which can be used to pay for housing anywhere that accepts vouchers. This includes the Medi-Cal partnership with the Housing Authority of the City of Los Angeles (HACLA), for section 8 vouchers for Medi-Cal seniors residing in skilled nursing facilities (SNFs) who would like to return to the community. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.

- HUD Non-Elderly Disabled Vouchers, which can be used by disabled individuals to live in any residence of their choice that accepts these vouchers. These vouchers do not require that the residences are limited to disabled residents. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
- HUD Shelter Plus Care and Continuum of Care Vouchers issued to people experiencing homelessness. This program provides case management supportive services to the homeless but does not require the residence to be restricted to the homeless. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
- HUD Section 811 Project Rental Assistance Demonstration Program. For this program, no more than 25% of the units can be set-aside for 811 tenants, which results in a mix of tenant types. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
- Veterans Affairs Supportive Housing vouchers issued to homeless veterans and disabled veterans to help them pay for housing.
- Veteran Housing and Homeless Prevention Program, which acquires, constructs, rehabilitates and preserves affordable multi-family housing for veterans and their families.
- HUD Section 202 Senior Housing rent subsidies for very low-income households with at least one person who is at least 62 years old.
- LA Department of Health, Housing for Health, rental subsidies and supportive services for persons who are homeless, for use in a variety of community-based housing options such as non-profit owned supportive housing with units dedicated to serving homeless individuals and/or families, long term leases of privately owned buildings, and scattered-site housing units rented from private landlords.
    - The supportive housing provider, Housing for Health, is an agency that assists homeless individuals to find private housing. If the individual qualifies for HCBS, the Waiver program would enroll, and case manage the individual to determine the necessary services to be provided in their home. Housing for Health does not provide HCBS. The State does not track the average length of stay in private residences, only length of stay on Waivers.

Consistent with CMS' HCB settings rules, California presumes that these non-provider-owned or controlled private residential home settings qualify as HCB settings. The individuals receiving services realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings. The State presumes these settings do not isolate the individual receiving services from the broader community and do not have the characteristics of an institution. These settings do not control the personal resources of the individual receiving services or utilize interventions or restrictions that exist in institutional settings.

Notably, California law governs all of these private residences and included provisions that require these residences to meet the minimum qualifications for HCB settings. These

statutory limitations demonstrate the legislative recognition of the unequal bargaining power historically typifying residential landlord-tenant relationships. The codes help prevent the unknowing signing away of valuable rights by tenants who may not fully understand the rental agreement. (See Jaramillo v. JH Real Estate Partners, Inc. (2003) 111 CA4th 394, 402-403.) An individual receiving services living in these settings have a legally enforceable agreement for the housing which ensures the individual's receiving services rights of privacy, dignity, and respect, freedom from coercion and restraint.

See Attachment VIII: Residential Rental Agreement Guidelines

Other Residential Settings

The State presumes private residences meet the HCB settings requirements and are deemed in compliance. If services are not HCBS funded, then they are not considered HCBS services therefore setting types that are not identified above, are presumed compliant, including private homes in which the individual receives services from an unrelated caregiver who is also the homeowner. The State will not disallow settings with disability-friendly and supporting amenities and programmatic aspects. The Final Rule states that disability-specific housing and congregate settings are permissible and that there is no singular definition of home-and-community based. HCBS recipients will be able to choose from all residential settings, including those designed specifically for HCBS recipients that meet the HCB Settings requirements by March 2023.

California's Statewide Transition Plan

This STP identifies the framework and strategy for achieving and maintaining compliance with the federal requirements for HCB settings in California. The STP and related information can be found at:
http://www.dhcs.ca.gov/services/ltc/Pages/HCBSStatewideTransitionPlan.aspx.

California's HCBS waiver and 1915(i) State Plan program differ significantly in the populations they serve, their size and complexities, and their statutory and regulatory structures, among other differences. The largest and most complex is the DD Waiver and the 1915(i) State Plan program, where the programs serve approximately 130,000 individuals receiving services in the provision of a vast array of residential and nonresidential services that are separately licensed and/or regulated. Participation in the DD Waiver is not required to access the State's full array of available developmental services. Providers are not separately identified for DD Waiver or 1915(i) State Plan program purposes; therefore, all providers potentially utilized for HCBS must be in compliance with the HCB setting requirements. For the developmental services system over 300,000 individuals receiving services, are potentially affected by the new requirements.

This STP identifies at a high level the commitments and requirements that each of the eight HCBS waivers, 1915(i) and 1915(k) State Plan programs, and 1115 waiver will meet. The specific approach and details of each program's transition process will reflect the input and guidance of the particular program's stakeholders, and the unique structure and organization of the program itself. The complexity of each task will vary significantly across

programs.

Resources to address and implement the many changes necessary to be in compliance with the regulations are and will continue to be limited. When resources are needed, they must be raised and vetted through the annual legislative budget process, which only allows for new resources prospectively, typically in the upcoming state budget year. Therefore, careful thought and analysis must go into every aspect of implementation in an effort to achieve compliance as cost-effectively as possible. Since program systems and processes have long been established in California, standard processes will be considered for modification to bring about and ensure ongoing compliance, such as revising existing monitoring and oversight protocols to incorporate the regulatory requirements, utilizing available data, such as the National Core Indicator (NCI) and expanding existing complaint and appeal processes to allow for individuals receiving services and/or provider due process when disputes arise.

Stakeholder Input

To achieve compliance, California will strongly emphasize inclusive stakeholder processes that analyze and guide implementation. Essential involvement will come from individuals receiving services. Their input concerning how they experience community inclusion and freedom of choice will be critical for system changes and implementation strategies. Also essential is provider input. Providers are the backbone of the system, ensuring that services and choices are available to individuals receiving services. How the regulations are implemented may affect the viability of providers as sustainable businesses. Stakeholder processes will also include entities and experts who are impacted by or are knowledgeable about, the various topics, particularly, the California Department of Social Services as the licensing agency (Community Care Licensing [CCL]) for many of the HCB settings.

As the State continues this process, stakeholder input will evolve over time as implementation phases progress, as described below. With the stakeholder input, specificity will be added, and/or modifications will be made to the various components identified in the STP.

The Following is a summary of California’s efforts to elicit stakeholder input and subsequent comments received to date on the STP. Please note: The Draft CBAS Transition Plan details a separate stakeholder engagement process.

DHCS posted the first STP draft to the DHCS website on September 19, 2014, followed by a 30-day stakeholder input period, and the second STP draft on November 7, 2014, followed by another 30-day stakeholder input period. In addition, DHCS posted general public interest notices about impending public comment periods and meetings regarding the development of the STP in the California Regulatory Notice Register on March 3, 2014, and April 25, 2014. The Register is available in print at public libraries as well as other public places. DHCS also posted a general public interest notice to inform stakeholders of a conference call on July 13, 2015, to discuss the revisions made to the STP, as well as to discuss comments received on the On-Site Assessment Tools and Provider Self-Survey

Tools. Other notices were sent by the individual departments with responsibility for specific waivers, e.g., CDPH communicated directly with HIV/AIDS Waiver stakeholders; CDA with MSSP sites and CBAS centers; and DDS with Regional Centers.

DHCS received CMS feedback on the previously submitted STP on November 16, 2015. The letter can be found at: https://www.medicaid.gov/medicaid/hcbs/downloads/ca/ca-cmia.pdf. CMS hosted a series of conference calls with the State to discuss CMS feedback and clarify the STP requirements outlined in the letter. The STP draft, which addresses CMS' requirements, was posted to the DHCS website on August 29, 2016, for public review and input. DHCS published a notice in the California Register on August 26, 2016, informing the public of a 30-day STP public comment period. Public comment was analyzed and incorporated into the STP and is summarized in Appendix A. DHCS also hosted a stakeholder conference call on September 27, 2016, to discuss revisions to the STP and respond to questions or concerns.

Settings identified as heightened scrutiny after the completion of onsite assessments and documentation reviews and were determined as meeting the requirements of HCBS settings and did not have the qualities of an institution or have the effect of isolating are being compiled into a heightened scrutiny evidentiary packet. In this packet, the State will include all information evidencing how the site overcomes the presumption of having institutional qualities and describe how the setting meets each HCBS settings requirement. The state posted a summary of compliance for each heightened scrutiny setting for public review and comment and issued a notice for tribal consultation. The state sent a tribal consultation notification thirty (30) days in advance of the opening of the public comment period on May 14, 2021. The public comment was posted on June 13, 2021 for a minimum of thirty (30) days.

Implementation of the HCB Setting Requirements

The following is a description of the various phases of implementation that California has undertaken and will continue to undertake to achieve compliance with the HCB setting requirements. California will move forward concurrently with many of the components listed below. As described previously, the details of implementation will vary significantly across the HCBS Waiver, 1915(i) and 1915(k) SPAs, and 1115 Waiver programs and be integrally guided by stakeholders. As remedial strategies are solidified, actions and timelines will be identified to track progress against objectives based on resources available.

Consistent with the above, additional State resources must be requested via the State legislative and budget processes. To ensure awareness of these needs, staff from the California Department of Finance and the State Legislature are invited to attend ongoing stakeholder meetings.

<u>Education, Outreach, and Training</u>
As an important early step, information and education on the requirements of the HCB setting requirements and the regulations generally have been provided to State departments/entities, individuals receiving services and families, care-coordination agencies, regional centers, providers, advocacy groups, and other interested stakeholders

throughout the State on a continuous and ongoing basis. California has used website postings, conference calls, webinars, and public hearings as methods for getting information about the Final Rules widely disbursed. Additionally, all affected parties will be informed of the ongoing methods for providing input, being involved, and staying informed as implementation progresses. Ongoing communication methods will be developed with stakeholder input.

Recognizing ongoing education and training is critical to settings' achieving and maintaining compliance, the State has developed and conducted in-person, virtual, and web-based trainings directed at individuals, families, providers, and other stakeholders. Trainings included a focus on the key processes and essential goals of the Final Rule and how the services and settings must support individuals to achieve autonomy, personal goals, exercise choice, and live the life they most desire, fully integrated into their community. The State has also held several Q&A sessions throughout the remediation process.

Trainings included the following topics.

1. Overview of the HCBS Settings Final Rule (Final Rule) (DHCS, DDS)
2. Remediation Work Plan Strategies and Solutions: Practical Steps to Achieving Setting Compliance (DHCS)
3. Strategies and Solutions for Successfully Guiding Providers to Compliance for CCA's (DHCS)
4. Question and Answer session for Congregate Living Health Facilities' (DHCS)
5. HCBS Final Rule and How it is Supported by Person-Centered Planning (DDS)
6. HCBS Final Rule Self-Assessment Training (DDS)
7. Strategies for Providing Services in Alignment with the Final Rule (DDS)
8. Continuing Person-Centered Engagement in Challenging Times (DDS)
9. A Person-Centered Approach to Risk (DDS)

DDS created an informational handout for individuals receiving services and families, as well as service providers, highlighting what the final rule is and who it applies to. DDS maintains general FAQs, as well as FAQS related to individuals served and their families as well as service providers. Additionally, with the support of DDS, a group of service providers worked with collaboratively together with their regional center to create an HCBS Workbook as a free resource for individuals and families and other service providers to learn about the HCBS Final Rule and what it means to live well in the community. All DDS trainings and additional resources can be found here: https://www.dds.ca.gov/initiatives/cms-hcbs-regulations/training-information//

DHCS will coordinate with sister departments to produce and disseminate additional outreach and educational materials as needed to continuously update and provide information to the public.

California is utilizing several methods for communicating information about the HCBS rules and how the state's transition plan assures their effective implementation. Major efforts include:

- Developing and widely disseminating general informational fliers to individuals receiving services and their families, providers, managed care plans, regional centers, and other care coordination agencies, as well as the broader communities where individuals receiving services live and the general public.
- Conducting webinars and face-to-face or online training sessions specifically tailored to individuals receiving services and their families, providers, and care coordination agencies.
- Regularly posting and updating informational documents and FAQs about the HCBS rules on department websites.
- Seeking ongoing input from stakeholder groups convened by the several departments.
- Providing program policy and operational instructions through official correspondence, provider bulletins, and regulatory changes.

The initial rollout of these education and outreach activities took place through the fourth quarter of 2018. As various aspects of HCBS implementation continued and will proceed through 2022, California will continuously update and disseminate information through department websites, official correspondence, advocacy groups, and HCBS Advisory Committees. Feedback and comments from the various stakeholders will validate the efficacy of the state's outreach and training strategy.

<u>Systemic Assessment of Statutes, Regulations, Policies and Other Requirements</u>

DHCS and the State departments/entities responsible for operating each HCBS Waiver, 1915(i) and 1915(k) State Plan programs, and 1115 Waiver reviewed and analyzed the applicable statutes, regulations, and policies governing residential and nonresidential HCB settings to determine the extent to which they comply with federal regulations. Departments requested stakeholder participation for input into the systemic assessment process to determine whether each standard is in compliance, out of compliance, or whether the standard is silent on the federal requirement. Beginning early in 2015 the State engaged assistance from stakeholders who are required to adhere daily to California law, program regulations, and program policies.

Each department convened stakeholders via webinar, teleconference, and/or face-to-face meetings, and encouraged stakeholder input either directly during the meetings, by email, USPS mail, and telephone. Stakeholder involvement in the review and analysis of statutes, regulations, and policies varies by program. For example, the sheer number of residential and non-residential HCB settings available to persons with developmental disabilities through the HCBS waiver and State Plan benefits required an extensive process to consider, deliberate, and validate existing State standards and policies.

The initial draft systemic assessment process was completed July 1, 2015, and the following incorporation of public input was finalized August 6, 2015. To address issues CMS identified in the systemic assessment in its letter dated November 16, 2015, the State reexamined its findings. During a series of meetings among the State departments, and as a result of discussions with CMS teams, updates have been made to the August 6, 2015 version. The State completed additional systemic assessment revisions on June 30, 2017. The revised systemic assessment indicates where specific programs will take action to

bring their statutes, regulations, and policy documents in conformance with the federal requirements. Given the amount of time required to effect statutory or regulatory changes in California, programs will develop and implement any needed changes by December 2021.

A revised summary of results including hyperlinks to applicable statutes, regulations, policies, and other source documents can be found in **Appendix B**. Please note that the systemic assessment is an indication of compliance but does not preclude settings from further compliance determination processes, such as Provider Self-Surveys, Beneficiary Self-Surveys, and On-Site Assessments.

Compliance Determination Process for HCB Settings

The State departments/entities will be responsible for ensuring the appropriate provision of HCBS by all providers that serve or may serve Medi-Cal individuals. California's assessment of HCBS providers will involve several distinct sets of activities that will feed into one another. All of these activities require large amounts of data in the planning stages and will produce similar amounts of data needed for ongoing operations, program reporting to state management and CMS, and evaluation and program improvement. Some of the initial types and sources of data include individual eligibility files, provider certification, and payment files, program administration files, sampling, selection criteria, and validation protocols.

The following is the listing of HCB settings that have been assessed [see page numbers below] through the systemic assessment process for inclusion in the compliance determination process:

- Adult Day Program [Pg. 58]
- Adult Family Home/Family Teaching Home [Pg. 64]
- Adult Residential Facility - Assisted Living Waiver [Pg. 86]
- Adult Residential Facility; Adult Residential Facility for Persons with Special Health Care Needs; Residential Care Facility for the Elderly; Group Home; Small Family Home – HCBS Waiver for Californians with Developmental Disabilities and 1915(i) State Plan [Pg. 98]
- Certified Family Home; Foster Family Home [Pg. 116]
- Child Day Care Facility; Child Day Care Center; Family Child Care Home [Pg. 132]
- Community-Based Adult Services [See Attachment I - Community-Based Adult Services Program Transition Plan – Appendix V]
- Congregate Living Health Facility [Pg. 141]
- Congregate Meal Site [Pg. 151]
- Day-Type Services (Activity Center, Adult Day Care Facility, Adult Development Center, [Pg. 157]
- Residential Care Facility for the Chronically Ill [Pg. 170]
- Residential Care Facility for the Elderly - Assisted Living Waiver [Pg. 189]
- Supported Employment (Group Services) [Pg. 201]
- Work Activity Program [Pg. 214]

Self-Assessment Process

The first set of activities centers around provider self-surveys of their existing operations compared to the new requirements in the federal regulations. DHCS and State departments developed an agency-wide core Provider Self-Survey Tool that was modified for each waiver population and utilized by the CBAS, MSSP, and DDS programs. The Residential and non-Residential Provider Self-Survey Tools are found in **Attachment IV** and **V**, respectively. The core survey tool was modified, including guidance and instructions, to address specific provider types and programs. For example, CDA modified the Provider Self-Survey Tool (Assessment Tool) to reflect language specific to CBAS and familiar to CBAS providers such as changing “setting” to “center” and “individual” to “participant.” Please see the Draft CBAS Transition Plan for more information. DDS also updated language in the self-survey (self-assessment) to be more specific and familiar to the population served. DDS did not use a separate tool for residential and non-residential providers; however, residential providers were required to complete additional questions pertaining to federal requirements 6-10. As a result, the general questions asked of a provider were inclusive of all provider-types, and questions within each federal requirement were broken down further, utilizing CMS exploratory questions.

Additionally, California hosted training webinars on the provider self-survey process and expectations and posted follow-up information on program websites. DDS contracted with Public Consulting Group, Inc. (PCG) to provide a series of trainings on the Self-Assessment upon release of the online self-assessment in February 2020. This training focused on the expectations for completing the assessment and walked through the intent of the questions, discussing strategies to ensure input from individuals served were included. The training was recorded and made available on the DDS website. The survey distribution and training processes began in the third quarter of 2017 and continued through the third quarter of 2020 (See Attachment VII - Statewide Transition Plan Milestones and Timeline for a detailed timeline).

Depending on provider type, providers had up to 60 days to complete and return their self-surveys. In the case of the DDS self-assessment, providers were given two extensions to complete the assessment as a result of California’s Proclamation of a State of Emergency dated March 4, 2020, in response to the COVID-19 health crisis. Programs followed up with providers with reminder emails and phone calls, providing technical assistance and further training as needed. The outcome for not completing and returning the Provider Self-Survey varies by provider type. Some settings that fail to complete and return the Provider Self-Survey will be subject to an on-site assessment. Other settings such as CBAS require the Provider Self-Assessment to be completed as part of the certification renewal process and failure to do so could result in their not being re-certified, please refer to the Draft CBAS Transition Plan for more information. Provider self-surveys for the MSSP program concluded in the fourth quarter of 2018. Provider self-surveys for the CBAS are integrated with other information required in preparation for their biennial certification visits on an ongoing basis. See Attachment VII - Statewide Transition Plan Milestones and Timeline for a detailed timeline.

Program staff, care coordination agencies, and regional centers analyzed returned self-surveys and determined their initial level of compliance with the Final Rule. As appropriate,

departments reviewed returned Provider Self-Surveys to validate results and promote consistency in determinations. Providers whose self-surveys did not indicate that they fully meet the criteria were asked to complete a remediation work plan to identify strategies the setting will employ to achieve compliance. Those needing corrective action through technical assistance (e.g., documenting procedures, staff training on the new requirements, reiterating rights and responsibilities to individuals receiving services and their representatives, etc.) will be monitored by program staff, care coordination agencies, and regional centers. Those needing more extensive corrective action may be scheduled for on-site assessments.

DDS Self-Assessment Summary

Providers of regional center services designed specifically for groups of individuals with developmental disabilities were required to complete an online self-assessment to measure their level of compliance with the Final Rule. The self-assessment was available through an online platform developed by a contracted company, OIG Compliance Now. Providers designated a representative to complete the self-assessment and were required to complete it in conjunction with individuals receiving services and/or family members of an individual served, as well as support staff and other stakeholders, as necessary. The assessment collected information on how and from whom providers obtained information regarding current service provision. DDS announced the self-assessment process in a letter to regional centers on January 23, 2020, and providers had until August 31, 2020, to complete it.

Please note, DDS removed the service-types Child Day Care Facility, Child Day Care Center, and Family Child Care Homes from the list of providers requiring assessment since these services are not designed specifically for individuals with disabilities nor do they group individuals with disabilities for the provision of services.

At the onset of the self-assessment, DDS identified 8,787 HCBS providers that required self-assessment. Of those providers, 80% completed a self-assessment. After completion of the self-assessments, each setting was assigned a level of compliance. Depending on how providers answered their Self-Assessment, they may have been categorized in more than one level of compliance.

1. Reporting to Meet: Providers reporting to meet is defined as providers self-reporting to meet all federal requirements. 67% of providers were found to be in this category.
2. Reporting to Not / Partially Meet: Providers reporting to not meet / partially meet is defined as providers self-reporting to not meet at least one of the federal requirements. 33% of providers were found to be in this category.
3. Heightened Scrutiny: Defined as the number of providers responding on the self-assessment that they may meet certain characteristics that would have an effect of isolating individuals receiving services from the broader community and require additional review. 20% of providers were found to be in this category. These settings will be validated through desk review and virtual site visits as needed.

Input from Individuals Receiving Services

Secondly, as part of the provider assessment process across all settings, surveys of

individuals receiving services pose non-threatening questions to effectively elicit individuals' receiving services thoughts and feelings about the HCBS they receive, their ability to actively participate in life decision making, and any problems they encounter. Individuals receiving services survey instruments also need to be tailored to the several different types of populations receiving HCBS—the elderly; or persons with developmental disabilities, cognitive impairments, or mental illness; the physically disabled. The individuals receiving services surveys include questions reflecting all aspects of the HCBS settings criteria. In addition, the CBAS individuals receiving services survey includes questions for each of the HCB settings requirements for non-residential settings, including a question about the physical accessibility of the center which DHCS, DDS, and CDA decided to ask both non-residential and residential settings.

Conducting individual surveys will take many different forms through the second quarter of 2021. HCBS programs will continue to conduct a combination of face-to-face interviews, interviews over video platforms, or electronic surveys as appropriate to maintain individuals' health and safety amidst COVID-19, with individuals receiving services or their authorized representatives as often as possible. For example, HCBS programs that use periodic recertification of individual's eligibility or reassessment of the need for services may add the core questions to their recertification or reassessment processes. Programs that make site visits either on-site or virtual to HCBS providers or individuals receiving services in homes may interview individuals during these visits. Complaint investigations will include the opportunity to ascertain how individuals receiving services see their ability to access community resources.

Since many individuals receive HCBS from more than one provider, the focus will be on the HCBS provider(s) with which the individual receiving services resides or spends a significant amount of time with (i.e., 4 hours) on a regular basis. Individuals receiving services input can be linked to identified providers through each program's system for storing provider information. CBAS interviews individuals receiving services during the on-site certification survey and are able to link the individuals receiving services interviewed with their respective centers.

In addition to corroborating information garnered from provider self-surveys and on-site assessments, individuals receiving services input will play an essential role in quality assurance and program improvement efforts. Its impact is felt in the scope and duration of HCBS that programs offer, the types and qualifications of providers used, and how services are financed.

Site Assessment Process

Site assessments are the litmus test for ascertaining provider compliance with the federal settings requirements. These assessments will confirm compliance or identify areas for remediation. DHCS and State departments have developed an agency-wide core Site Assessment Tool, for use in the Site Assessments of HCB settings. The Residential and non-Residential Site Assessment Tools are found in **Attachment II** and **III**, respectively. The core assessment tool includes questions that relate to each new federal requirement that will be used to determine if the HCB setting meets or does not meet the required

federal rule. The core assessment tool may be modified to address specific provider types, including guidance and instructions, and will become the assessment tools utilized by the appropriate State departments/entities administering the program.

The responsibility for ensuring the completion of Site Assessments rests with the State Department/entity responsible for the program as specified under "HCBS Programs in California Affected by the Final Rules" section of this document.

There are HCBS providers which may serve individuals receiving services from several different HCBS programs. To ensure consistency and avoid duplication of effort, the program which has primary responsibility for monitoring and oversight of the providers will conduct any necessary site assessments. Other programs may rely on the findings of the responsible agency as to the providers' compliance with the federal requirements.

Like the analysis of provider self-surveys, site assessments were used to determine if a specific provider is in compliance with the federal settings requirements or needs to implement corrective action to achieve compliance. Following the completion of the site assessment, the written results of each Site Assessment are forwarded to the setting with specific information regarding improvements that will be required for the setting to come into compliance with the federal requirements and a timeline for completion. Remedial actions will be developed to include timelines, milestones, and a description of the monitoring process to ensure timelines and milestones are met. Follow-up of the compliance issues will be the responsibility of the administering State department/entity. Completed assessments, including documentation of any required follow-up actions as a result of the Site Assessments, will be maintained by the appropriate department. The State will continuously provide technical assistance to providers through the final stages of remediation. The training will ensure that providers understand the Final Rule. The following types of technical assistance are offered to HCBS providers:

- Statewide webinars that provide detailed guidance on the Final Rules, specifically related to integration, individual choice, and autonomy.
- Examples of impactful initiatives undertaken by other providers that fully comply with the Final Rule.
- One-on-one assistance for providers with identified needs in specific areas of the Final Rule.

The following is a count of settings to be assessed through the site assessments, by program:

Multipurpose Senior Services Program: Total settings = 15 with 100% validation.
Adult Day Program – 14
Congregate Meal Sites – 1

MSSP Waiver Program-Specific Assessment and Remediation Process

The California Department of Aging (CDA) conducts 100% on-site provider assessments as part of the biennial utilization review (UR) process. When the COVID-19 public health emergency (PHE) necessitated a transition to a remote monitoring process, provider

assessments were conducted remotely when possible. Most Adult Day Program and Congregate Meal Services ceased during this time; however, as services begin to resume, provider self-assessment surveys conducted via Survey Monkey will be used in lieu of on-site assessments.

Questions from the On-Site Assessment, Non-Residential HCBS Settings Tool were incorporated into the already established MSSP UR Tool. Federal Requirement Categories six, seven, eight, and nine were not included as they are not applicable to non-residential settings. On-site assessments took place during normal operating hours. The interview of facility staff included enrollment and assessment procedures, daily activities, and schedules. On-site assessments included but were not limited to a review of:

- Documented observation of the setting, including a tour of all participant accessible areas.
- Individuals receiving services' person-centered service plans.
- Provider policies, procedures, transportation information, and handbooks.
- Resources and referral sources to other community services available.
- Application forms, participant rights documents, etc.

Also, during the UR process, MSSP sites complete a Pre-UR Questionnaire that includes a question to verify any purchase of Adult Day Programs and Congregate Meal Site services by MSSP sites, and request participant contact and primary language information in order for CDA to conduct participant surveys. All MSSP individuals receiving services that received Adult Day Program and/or Congregate Meal Services are mailed a participant survey containing the non-residential HCBS settings questions. Each survey is linked to the individuals receiving services' respective MSSP site/Adult Day Program/Congregate Meal site as applicable.

Each provider was assigned to one of five compliance categories:

1. Compliant: In full compliance with the Final Rule and does not need any modification. Ten (10) providers were found to be in this category.
2. Needs modification (Remediation): Can become compliant with some modification. One (1) provider was found to be in this category. The MSSP site was not actively purchasing services from this provider and they were advised to not utilize the provider until compliance could be demonstrated.
3. Heightened Scrutiny: (1) Settings that are in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. (2) Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and (3) any other setting that has the effect of isolating individuals receiving Medicaid home and community-based services from the broader community. Zero (0) providers were found to be in this category.
4. Not Compliant: Does not exhibit the characteristics of being a home and community-based setting and cannot overcome the presumption of institutional. Zero (0) providers were found to be in this category.
5. Not yet assessed: Due to the COVID-19 PHE, on-site assessments have not been completed. Three (3) providers have not had an on-site assessment completed due

to their respective URs falling during the COVID-19 PHE.

If an Adult Day Program or a Congregate Meal Site is found to be non-compliant, that provider will be given sixty days to come into compliance. If the provider fails to comply within this time period, the MSSP site will be notified and a Notice of Action will be sent to the Waiver Participant(s), informing them that their current provider will no longer be available; that another provider will need to be selected. The MSSP site will work with the participant(s) to find another suitable provider within sixty days, or as soon as possible, to prevent interruptions in service.

Community-Based Adult Services Program:
CBAS Centers - 265 with 100% validation.

CBAS Program-Specific Assessment and Remediation Process
Please see the Draft CBAS Transition Plan.

Assisted Living Waiver:
Total settings = 259 with 100% validation.
Residential Care Facility for the Elderly - 240
Adult Residential Facility - 19 settings

HCB Alternatives Waiver:
Congregate Living Health Facility – 42 settings

ALW and HCBA Waiver Program-Specific Assessment and Remediation Process

The Department of Health Care Services (DHCS) contracted with Public Consulting Group (PCG) to conduct on-site assessments in 2019. DHCS identified three hundred fifty-one (351) HCBS providers that required on-site assessments. Fifty (50) providers were removed due to various reasons including providers closing, but not dis-enrolling from the Medi-Cal program. The total number of providers assessed was three hundred and one (301).

An assessment tool was developed from CMS exploratory questions and was used to assess each setting, to determine the current level of compliance with the Final Rule. On-site assessments took place during normal operating hours. Facility staff was interviewed about daily activities and living. Photographs were taken as evidence. On-site assessments included but were not limited to a review of:

- Documented observation of the setting.
- Individuals Person-centered plan.
- Provider policies, procedures, transportation information, and handbooks.
- Staff training schedules.
- Lease agreement templates, participant rights documents, etc.
- Assessment of building, and location, including accessibility for individuals.

After completing the on-site assessments, each site was assigned to one of three compliance categories:

1. **Compliant:** In full compliance with the Final Rule and does not need any modification. Zero (0) providers were found to be in this category.
2. **Needs modification (Remediation):** Can become compliant with modification(s). Fifty-three (53) providers were found to be in this category.
3. **Heightened Scrutiny:** Two hundred thirty-three (233) providers were found to be in this category.

- Settings that are in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment.
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and
- Any other settings that have the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving Medicaid HCBS.

4. **Not Compliant:** Does not exhibit the characteristics of being home and community-based setting and cannot overcome the presumption of institutional. Fifteen (15) providers were found to be in this category.

Please note, all settings regardless of compliance level will be given the opportunity to provide evidence of compliance through the Remediation Work Plan (RWP) and receive remediation support.

ALW and HCBA Waiver Program-Specific Remediation Work Plans (RWP)
Remediation Work Plans (RWP) outline the State's findings resulting from the onsite review of the specific setting and actions required for the provider to achieve compliance. The RWP will include a designated area for the Corrective Action Plan (CAP), where the providers uploaded photograph evidence and described their process for ensuring compliance with the Final Rule. Additionally, providers received a timeline for ensuring compliance that included due dates for DHCS review, heightened scrutiny, and the HCBS compliance deadline set forth by CMS. Providers had forty-five (45) calendar days from the receipt of the RWP that was sent November 13, 2021, to complete the plan with proposed remedial actions and return it to the State. Once received, the State had forty-five (45) calendar days to review the completed RWP, and return it to the provider for additional information, or accept the plan. Once the provider received the approval of its RWP, the setting should begin the implementation of the plan. Some compliance actions are limited in scope and can be corrected in a short time frame while others may involve a larger organizational or systemic change requiring more time to complete, i.e., a provider who needs to install locks in a single setting requires substantially less time to accomplish than a provider who is required to develop/implement a new policy or change in business practice and train staff to implement. Settings that have been identified for heightened scrutiny but have successfully implemented remediation strategies by July 1, 2021, will not be submitted to CMS for review. Settings submitted to CMS are settings that the state believes will overcome any institutional characteristics and can comply with the federal

setting criteria. Providers will have until March 17, 2023, to complete the implementation of activities required to demonstrate compliance with the setting criteria.

The State recognizes that providers may need to create alternate plans to help individuals have a Home and Community Based living experience during the “stay at home order” in response to the Coronavirus disease 2019 (COVID-19) Public Health Emergency. During this time, providers must continue to offer a choice where possible, including a choice of activities at home, time of activities, and choice of food. Providers should describe current COVID-19 community integration practices in the remediation work plan, examples include access to devices with video capabilities for online classes or participation of individuals in interactive webinars, etc. In addition, providers should include a post-COVID-19 community integration plan, so the State can accurately capture evidence for community integration. When communities begin to open, providers must allow individual choice in the participation of socially distanced non-essential community events and activities. Individuals should be supported in making healthy and safe informed choices to return to community participation.

DD Waiver and 1915i State Plan

Residential – Total settings = 6,363; sample size is 363

- Adult Family Home – 1,209
- Family Teaching Home - 14
- Adult Residential Facility/Adult Residential Facilities for Persons with Special Health Care Needs - 4773
- Certified Family Home/Foster Family Home/Small Family Home - 146
- Group Home - 134
- Residential Care Facility for the Elderly - 87

Day-Type Services – Total settings = 1,891; sample size is 320

- Activity Center - 139
- Adult Day Care Facility - 37
- Adult Development Center - 638
- Behavior Management Program - 344
- Community-Based Training Provider - 3
- Socialization Training Program - 124
- Community Integration Training Program – 488
- Community Activities Support Service – 118

Supported Employment (Group Services) – Total Settings = 150; sample size is 109

Work Activity Programs – Total settings = 107; sample size is 84

The State recognizes the need for reasonable and sound methodology(ies) early in the assessment design and implementation process. Given stakeholder comments on the need for a vendor to perform these functions.

DDS contracted with Public Consulting Group (PCG) to conduct a statistically valid sample of site assessments, represented above. As the self-assessment process was not complete until August 2020, amidst the State of Emergency in response to COVID-19, DDS and PCG will be conducting the site-assessments virtually. DDS remains committed to the integrity of the visit being done virtually, assuring privacy to providers and individuals served, and completing all part of the site assessment the same as would be done in-person or on-site. The site assessment tool captures both how the setting operates and what an individual's experience looks like while receiving services. The site assessment tool contains questions consistent with CMS guidance and exploratory questions and aligns with the provider self-assessment questions. The virtual approach will utilize both observational questions and individual experience questions as part of the assessment process. For Supported Employment (Group Services), not every virtual site assessment will be able to be completed on-site without disrupting the individual's work time or duties. When this is the case, the assessor relies on the answers of the provider, as well as the collecting input from the individual interview to accurately assess the setting for compliance with the federal requirements. Additionally, ongoing monitoring follow-up will include assuring isolation is not occurring and assure integration is present. The virtual site assessment process for DDS began in November 2020 and will continue through June 2021. Prior to the start of the site-assessments, DDS obtained feedback from stakeholders and self-advocate groups on the virtual assessment process.

After completing either the self-assessment or the virtual site assessment, each provider will be assigned to one of three compliance categories:

1. Compliant: In full compliance with the Final Rule and does not need any modification.
2. Needs modification (Remediation): Not fully compliant but can become compliant with modification(s).
3. Heightened Scrutiny.

Remediation plans for providers will be developed based on the outcomes of the self-assessment or the virtual site assessment. The plan will include a designated area for the provider to describe what they will do to become compliant with that specific requirement. Providers will receive a timeline for ensuring compliance that includes due dates to return completed remediation plans, due dates for approval of the plans, and the overall HCBS compliance deadline set forth by CMS. Many settings have already begun transition efforts, but some actions to come into compliance with the Final Rule will take more effort and guidance to complete. DDS will give training and technical assistance to all stakeholders (regional centers, providers, direct staff, individuals and family members) to assist in understanding what changes can be made to successfully meet compliance within remediation timelines. Of greatest importance is the involvement of individuals while providers make changes to their services. Individual input will be gathered and included as a part of the remediation plans. Providers will have until March 17, 2023, to complete the implementation of activities required to demonstrate compliance with the setting criteria.

<u>Heightened Scrutiny Process</u>

The State must identify settings that are presumed to have institutional qualities. These

settings include those that are in a publicly or privately-owned facility that provides inpatient institutional treatment; are on the grounds of, or immediately adjacent to, a public institution; or settings that have the effect of isolating individuals receiving Medi-Cal funded HCBS services from the broader community.

Settings that may have the effect of isolating individuals receiving services are settings designed to provide individuals with multiple types of services and activities on-site, including housing, day services, medical, behavioral, and therapeutic services, and/or social and recreational activities. These settings provide little or no interaction with the broader community and use interventions or restrictions similar to those used in institutional settings. The State has identified specific characteristics of settings that tend to isolate through stakeholder engagement and the site assessment process.
Using all the methods detailed above, the State will identify any settings meeting the criteria for heightened scrutiny and work with the setting to submit evidence to the State to demonstrate how they have the qualities of HCBS. The State will then review and submit to CMS if the setting is believed to overcome the institutional presumption.

The evidence will focus on the qualities of the setting and how it is integrated into and supports full access to the community. Specific evidence to be submitted may include:

1. Licensure requirements or other state regulations that clearly distinguish a presumed institutional setting from licensure or regulations of institutions;
2. Provider qualifications for staff employed in the setting that indicate training or certification for HCBS, and that demonstrate the staff is trained specifically for HCBS in a manner consistent with the HCB setting requirements;
3. Procedures that indicate support for activities in the greater community according to the individual's preferences and interests; and
4. Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided when desired by the individual receiving services.

The State's heightened scrutiny review process will consist of:

- A review of evidence provided by the setting;
- A review of the setting's policies and services;
- An on-site visit and an assessment of the physical characteristics;
- A review of policies and procedures governing person-centered plan development and implementation;
- Provider interviews and observations;
- Collection of evidence to submit to CMS in order to overcome the institutional presumption.

The State will determine, using input from the public, individuals receiving services, stakeholders, and providers whether it believes the setting overcomes the institutional presumption. The evidence required to overcome institutional presumptions must be submitted to the State within forty-five (45) days of its identification for the heightened scrutiny process. The State will review the evidence, follow up with the providers to request

missing documentation, and complete a compliance determination.

The State will work with settings when necessary, to develop remediation strategies and timelines specific to each setting to achieve full compliance with the Final Rule. In the event that a setting cannot achieve compliance with the HCB settings rule, the transition of individuals receiving services will be conducted as described under the STP section "Changes in Services or Providers for Individuals receiving services".

After sites have been identified for heightened scrutiny and evidentiary packages have been received from the provider, DHCS will complete a heightened scrutiny summary for each identified setting. The summary will include exploratory questions or criteria, which help reviewers summarize in a uniform way, why the setting meets all of the requirements of an HCBS setting as outlined in the Final Rule. If the exploratory questions in the summary find that a setting has implemented remediation strategies and now meets all criteria, then the setting will be sent to CMS for heightened scrutiny review with all justifying evidence. In addition, the state will post the heightened scrutiny summary for public review, comment, and issue a notice for tribal consultation.

Changes in Individuals' Services or Providers

Currently, California's HCBS programs have policies and procedures, which allow for changes in individuals' services or providers. These changes may occur due to several factors including:

- Changes in an individual's need for specific types or intensity of services
- The individual receiving services selection of different service options available to meet needs
- The individual's receiving services dissatisfaction with a provider's services or personnel
- Changes in a provider's staffing, hours of operation, or location
- Provider closure
- Provider withdrawal or suspension from the Medi-Cal program

Written notification to the individual receiving services and the provider is given at least thirty (30) calendar days in advance of the effective date of the change, identifying the specific reason(s) for the change. This notification also informs the individual receiving services of their right to a fair hearing under Medi-Cal, including Aid Paid Pending if timely requested.

The initial steps in addressing the impending change include reviewing the individual's receiving services person-centered service plan; reevaluating the goals and objectives, needs, preferences, and choices of the individual receiving services; and identifying the options available. The person-centered service plan meeting would include the individual receiving services and his/her choice of individuals including, but not limited to, involved family members, conservators, authorized representatives, advocates, the care management agency or regional center coordinator, and provider staff who know the

individual receiving services well. Additionally, this meeting will include a discussion of: available settings, services, support, and environmental design that will support the individual's mobility and ability to participate in activities. Discussion of the setting's services and support will ensure that individuals have a choice to receive services in a non-disability setting.

When one of California's HCBS programs determines that a setting is not in compliance with the HCB settings requirements, the first order of business is the setting's development of a workable remediation plan to come into full compliance with the Final Rule over a reasonable timeframe. However, if the provider owned and operated residence or day program provider cannot come into compliance with the Final Rule by March 17, 2023, the program will initiate its policies and procedures to transition, if possible, affected individuals receiving services to compliant settings so they can continue to receive federally funded HCBS.

ALW and HCBA Waiver Program-

Specific Process for Relocation of Individuals receiving services the State has not yet determined the actual number of individuals receiving services who may be affected by the relocations, it is estimated that one hundred nine (109) individuals receiving services will be affected, but the final number will be determined as provider remediation plans are submitted, reviewed, and validated. The State will develop remedial actions to bring settings into compliance with the new requirements, including the relocation of individuals receiving services, at the discretion of the individual receiving services, their legal guardian or representative, and if no other viable remedial actions are possible. The relocation of individuals receiving services will include reasonable notice and other due processes to individuals receiving services and providers. If a provider chooses to no longer participate in the ALW or HCBA waiver, individuals receiving services will be given free choice and informed of the option to stay in the setting but must seek alternate funding.

Communication Timeline to Individuals Receiving Services

The State will provide reasonable notice to all individuals receiving services and will inform individuals receiving services if their provider is unable to become compliant or is failing to make satisfactory progress towards remediation before the required 30-day period. DHCS will mail notices to individuals receiving services residing in sites that will not or cannot become compliant well before March 17, 2023.

Once an individual receives the relocation notice, a transition plan will be developed by the Care Coordination Agency or Waiver Agency, as part of the person-centered planning process involving the individual's chosen circle of support. The transition process will ensure that the individual, their family, and other individuals chosen through the person-centered planning process, are given the opportunity, information, and the support to make an informed choice of an alternate HCB setting. The individual will be able to choose a setting that aligns with the HCB settings requirements, meets the individual assessed needs and that critical services/supports are in place in advance of the individual's transition. 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. When choosing provider-owned and operated residences, individuals receiving services have the opportunity to explore integrated living options that match their identified service and support needs and choices. Considerations may include:

- Exploring the variety and types of community living options currently available (e.g., non-disability settings, supported living, small group homes, family home agencies)
- Proximity to services in the community
- Employment opportunities
- Needed medical services

Individuals receiving services may choose from an array of settings that deliver services; one of these settings is their own home, which is a non-disability-specific setting. California’s wide variety of in-home services meets the CMS expectation of a choice of a non-disability specific residential setting and helps build capacity in those settings. The Multipurpose Senior Services Program (MSSP) services include but are not limited to: care management; adult day care; minor home repair/maintenance; supplemental in-home chore, personal care, and protective supervision services; respite services; transportation services; counseling and therapeutic services; meal services; and communication services. The Community Based Adult Services (CBAS) Program is an alternative to institutional care for Medi-Cal individuals receiving services who can live at home with the aid of appropriate health, rehabilitative, personal care, and social services. The In-Home Supportive Services (IHSS) program provides in-home assistance to eligible aged, blind and disabled individuals as an alternative to out-of-home care and enables recipients to remain safely in their own homes.

Under the Final Rule, settings must provide opportunities for community integration. Community experiences include activities intended to instruct the person in daily living 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. Community experiences also include activities and support to accomplish individual goals or learning areas including recreation and specific training or leisure activities. Each activity is then adapted according to the individual’s needs.

Until California completes the process of assessing provider settings and determines appropriate remediation plans, it cannot estimate the number of individuals that may need to be transitioned eventually to other settings.

In the case of DDS, individuals have options to further individualize their services by participating in the Self-Determination Program. This program provides individuals and their families with more freedom, control, and responsibility in choosing services and supports to help them meet objectives in their person-centered service plan. This option is available statewide beginning July 2021 to individuals in California receiving regional center services, regardless of their eligibility in the waiver.

Milestones and Timeline

In order to illustrate the variety of compliance determination activities the State has performed or will perform; California has developed comprehensive milestones and timeline documents for stakeholders to reference. It provides a convenient view of the milestone activities described in detail throughout the STP, and their associated timelines for completion (**see Attachment VII**).

Role of Person-Centered Planning

Even though the implementation of the federal regulations regarding the person-centered service planning process is not technically part of this STP, person-centered service planning is inextricably linked to the HCB setting requirements. The State Department/entity responsible for program administration will use a stakeholder process to evaluate the role of person-centered service planning as it relates to determining compliance with the federal regulations, assessing individuals receiving services satisfaction with the setting options, and other possible community integration issues. Strategies may be developed to utilize information from the person-centered service planning process to improve service delivery under federal regulations.

Public comment supports the idea of the State's understanding regarding home-like and community integration within a persons' individual plan of care and basic civil right. DHCS believes the community is not the mere physical presence of other buildings and people. It includes a safe and purposeful environment where individuals have needed support and safety, and the greatest freedom to live productive, connected lives according to their own desires.

The person-centered service plan documents the individual's receiving services choice of settings and services based on the needs and preferences of the individual. The State will take into account the options provided and choice of the individuals receiving services or their parent or legal guardian when determining HCB settings compliance, thus keeping the end goal of optimizing autonomy, independence, and individuals receiving services choice in mind. The State is committed to participating in all opportunities to enhance person-centered HCBS and increasing monitoring, oversight, and enforcement of person-centered service planning. Person-centered service planning activities will be performed outside the purview of the STP.

The State will ensure through STP activities and ongoing monitoring and oversight that the person-centered service plan documents individuals receiving services choice, needs, preferences, and goals.

Any modification to the HCBS setting requirements must be documented and supported by the person-centered service plan and will only be made on an individual basis. For example, certain HCBS individuals receiving services will have a documented need to reside in a setting utilizing delayed egress and/or secured perimeters. State statutes and regulations clearly identify the policies and procedures for implementing such interventions[1].

[1] Health and Safety Code Section 1584; 17 CCR 56068 – 56074, 56101, 56620 – 56625; 22 CCR 87705

<u>Appeal Processes</u>
As the State assesses HCBS settings for compliance with the Final Rule, providers and individuals receiving services will have an opportunity to appeal compliance determinations made that result in loss of funding for providers or loss of service and/or individuals receiving services relocation of residence. In addition to the appeals and grievance policies that exist for each individual program and department, providers and individuals receiving services may utilize existing state processes to file an appeal. There are two distinct processes that providers and individuals receiving services may use to file appeals with the State.

Provider Appeals
In the event that a setting is determined non-compliant and cannot or will not address issues of non-compliance through remediation, the provider has the option of filing an appeal through the Office of Administrative Hearings and Appeals (OAHA). OAHA is an independent hearing office created by DHCS to provide an appeals process for enrolled Medi-Cal providers to dispute actions taken by the Department. Providers looking to file an appeal related to HCBS setting compliance can find more information at http://www.dhcs.ca.gov/formsandpubs/laws/Pages/The-Office-of-Administrative-Hearings-and-Appeals.aspx

Individual Appeals
Individuals receiving services looking to dispute an HCBS setting determination by the State resulting in a loss of services and/or unwanted relocation of residence may file an appeal through the Medi- Cal Fair Hearing process. For more information regarding the Fair Hearing process, individuals receiving services may visit http://www.dhcs.ca.gov/services/medi-cal/Pages/Medi- CalFairHearing.aspx.

<u>Compliance Monitoring</u>
Each HCBS Waiver and 1915(i) State Plan program, in consultation with stakeholders, will use the self-surveys, On-Site Assessments and/or other data collection methods, to develop remedial strategies and monitor progress toward compliance with the federal regulations. All State-level and individual-setting level remedial actions will be completed no later than March 17, 2023.

Monitoring and Oversight Process

In keeping with state laws and regulations, and CMS -approved Waiver and State Plan commitments, California's HCBS programs currently conduct periodic reviews of their care-management entities, providers, and residences of program individuals. Prior to the implementation of the Final Rule, HCBS programs were required to conduct site visits to monitor and assess federal assurance compliance. Among the activities conducted during these on-site visits are individuals receiving services record reviews, individuals receiving services and staff interviews, home visits, person-centered plan review, and special incidents review.

In order to assess current settings with the Final Rule, the State has expanded its current processes to include activities that will ensure ongoing compliance with the Final Rule, and

remediation strategies to achieve compliance in the event a setting does not meet the HCB criteria. The state has developed an at-a-glance view of California's monitoring and oversight process demonstrating each program's approach to on-site assessments and compliance with the Final Rule (see **Attachment VI – Setting Assessment Process**).

DHCS' monitoring process consists of activities that include, but are not limited to, the following:

DD Waiver and 1915i State Plan

To ensure settings' ongoing compliance with the Final Rule, DDS will incorporate ongoing reviews into the existing monitoring process. Currently, collaborative reviews of regional centers are conducted every two years. Each review has three phases: pre-review, on-site review, and post review.

- **Pre-review** activities include regional center notification, regional center self-assessment tool distribution, and selection of the statistically valid sample of Waiver individuals receiving services.
- The **onsite review** includes a review of consumer records at the regional center, residential facilities, and day programs; interviews with Waiver individuals receiving services, regional center service coordinators, clinical services staff, and quality assurance staff; interviews with service providers and direct support staff; program/facility reviews; and a review of special incident reports.
- The **post review** includes report development of the review that delineates areas that regional centers need to address and review of a plan of action from the regional center.

Within each phase, DDS will incorporate questions into the standard review protocol that monitors the ongoing compliance of each HCBS characteristic. The regional center, Community Care Facilities (CCF), and day program consumer records will be reviewed for all individuals receiving services in the sample. Additional notes on the ongoing monitoring process are below:

- An attempt will be made to interview all individuals receiving services in the sample.
- Participation in the interview is voluntary.
- Interviews will include questions about the individual experience with supports and services received.
- All reviews will include interviews with regional center service coordinators, clinical staff, and quality assurance staff.
- Interviews are also conducted with service providers and direct support staff.
- A physical inspection is conducted at CCFs and day programs.
- Special incident reports will be reviewed for compliance with reporting and follow-up requirements.

The regional center will work directly with the site to immediately remediate any areas identified as no longer in alignment with the Final Rule. Regional center staff has received various training on the Final Rule throughout the assessment process, as well as training in person-centered planning and thinking. Each regional center has an HCBS Program

Evaluator, or HCBS specialist, who assists providers with compliance activities as well as works to ensure other staff at their regional center have knowledge of the Final Rule and its impact on service delivery.

ALW and HCBA Waiver Program- Specific Monitoring

The Department of Health Care Services (DHCS) is the single state Medicaid Agency responsible for the administration and monitoring of the Assisted Living Waiver (ALW) within California (the State). DHCS through the Integrated Systems of Care Division (ISCD) ensures ALW individuals receiving services' health and safety needs are continuously met, monitored, and safeguarded. These assurances are reflected through annual monitoring and oversight reviews (audits) of ALW providers. DHCS conducts Quality Assurance (QA) on-site reviews of the Residential Care Facilities for the Elderly (RCFE), Adult Residential Facilities (ARFs), Home Health Agencies (HHA) in the Public Subsidized Housing (PSH) setting, and Care Coordination Agencies (CCA) providing ALW services. DHCS conducts QA on-site reviews and follows up with providers to address deficiencies. DHCS' monitoring process consists of activities that include, but are not limited to, the following:

- A sampling of participant service case files
- DHCS will use the remediation work plan to verify that the provider has addressed identified deficiencies.
- RCFE/ARF/HHA adherence to general requirements of the ALW
- Face-to-face interviews with individuals receiving services regarding satisfaction with services.

DHCS is also responsible for the administration and monitoring of the Home and Community-Based Alternatives (HCBA) Waiver within California. DHCS ensures HCBA Waiver individuals receiving services' health and welfare needs are continuously met, monitored, and safeguarded. Monitoring activities include provider qualification screening, home visits, HCBA Waiver service utilization reviews, data collection, and onsite compliance audits. In addition, DHCS will use the remediation work plan to verify that the provider has addressed all identified deficiencies. The data sources used in these activities comprise custom databases; including, Medi-Cal's Case Management Information System (CMIS); Service, Utilization, Review, Guidance & Evaluation (SURGE) system; Event/Issue Reports; and the California Medicaid Management Information System (CA-MMIS). The tools and resources used to gather this data include but are not limited to, the following:

- the Quality Management Case Record Review Tool,
- the Menu of Health Services (MOHS)
- Provider Visit Reports

Plan Updates and CMS Reporting

During the implementation period, progress on this STP will be continuously monitored and reported to CMS, as needed.

Settings Presumed Compliant

HCB Settings will be determined compliant through existing monitoring and oversight

practices if the individual's person-centered service plan addresses their unique needs and the required setting characteristics. If it is discovered through the course of normal reviews that an individual's person-centered service plan does not address an individual's unique needs for HCB Setting qualities and a setting is non-compliant, individuals receiving services will have access to: 1) compliant settings, 2) settings of their choice and 3) not lose federally funded HCBS while waiting for compliant settings; via standard corrective action processes which typically last 60 days but are no longer than 90 days. Only when a setting, including a private residence, does not fully demonstrate HCB Settings remediation on the 90th day will an individual have to choose between:

1. Remaining in a non-compliant setting and loss of HCBS with referrals to other services, or
2. Relocating to a compliant setting with continuity of HCBS. Relocation to a complaint setting may take an additional 90 days in which case, an individual receiving services will continue to have access to HCBS.

Individuals living in these settings or utilizing the described subsidies or vouchers to pay for rent in non-provider owned and controlled dwellings, personally select their homes that include non-disability specific settings and options for a private unit in a residential community setting. The individual decides whether to share a room with a person of their choice. Residents in these settings who are receiving HCB services are treated with the same respect and dignity as persons not receiving HCB services. The settings do not restrict the individual receiving services from interaction with other non-disabled people or other persons with disabilities in the broader community. These settings do not restrict the individual's receiving services independence in making life choices. The settings do not restrict the individual's receiving services choice of HCB services and supports or who can provide those services.

Appendix A – Stakeholder Input

The State initially submitted a draft STP for public comment on December 19, 2014, followed by a second draft for public comment submitted July 1, 2015. On August 14, 2015, the State submitted its STP for CMS review, which included a summary of public comment and state responses. To review public comment and state responses on the previous STP submission, please visit:
http://www.dhcs.ca.gov/services/ltc/Documents/STP_Final%20August%2014%202015.p df

August 29, 2016, revised STP incorporates stakeholder input from previous STP versions, and addresses CMS feedback received November 16, 2015. The letter can be found at https://www.medicaid.gov/medicaid/hcbs/downloads/ca/ca-cmia.pdf

DHCS posted the revised STP draft to the DHCS website on August 29, 2016, followed by a 30-day stakeholder input period. DHCS published a notice in the California Register on August 26, 2016, informing the public of the 30-day STP public comment period. DHCS also hosted a webinar on September 27, 3016, to discuss changes made to the STP and the CBAS Transition Plan. For reference, the public notice is included on page 52 of the STP. The public notice includes the STP website URL, mailing address, and email so that stakeholders may contact DHCS with any questions, or to request a hard copy of the STP. Additionally, the STP website includes all STP Attachments and indicates that stakeholders may contact DHCS with any questions or to request a hard copy of the STP.

More than 80 members, providers, advocates, and other stakeholders participated in the stakeholder calls combined. DHCS established a dedicated email box to receive stakeholder input. DHCS received 81 emails of stakeholder input and two mailed letters.

Approximately 60% of stakeholder input was received directly from members and their families, 15% was received from providers, and 25% from advocates. We received valuable feedback during this stakeholder input process and have summarized these comments in the following pages. California believes it has captured the intent of comments received in the summary below; however, the original content of all stakeholder comments will be posted on the DHCS STP website for public viewing.
Stakeholder Input on Revised Draft STP Posted August 29, 2016 (Bold text indicates frequently received comments.)

As an overview of comments received, individuals receiving services and their family members were most concerned with the choice of homes and programs, including disability-specific and congregate housing. They fear the STP will violate the Americans with Disabilities Act by reducing or eliminating desired housing and program options. Advocates have concerns about the STPs assessment of private residences and that the assessment process is unclear. Advocates also assert that the State must redouble its education and outreach efforts and provide funding for remediation activities. Providers have commented that the STP must be implemented in a uniform manner.

State Response Reference Key:
No action to be taken; outside of STP purview.
Comment logged for continuous consideration through the transition process.

Language in the Statewide Transition Plan has been added or modified due to stakeholder input.

Compliance determination will be made once the Provider Self-Survey, Beneficiary Self-Survey, and On-Site Assessment have been completed.
The State will continue its education and outreach to meet the needs of agencies, stakeholders, and beneficiaries as the Statewide Transition Plan is implemented.

Consumer and Family:
The following comments received are outside of the purview of the STP. No modifications were made to the STP as a result of these comments.
(1) Where will individuals with a developmental disability, who are aging out of schools, live and how will they care for when their parents are gone?

(1) Housing in CA is outrageously expensive – especially for those with DD receiving SSI as their primary source of funds.

(1) Presently, over 6,000 persons with autism are turning 18 each year – less than 10% are finding homes in the community. Without adequate staff support for DD/autistic adults with significant behaviors, the goals and focus of the community-based, person-centered programs will not come anywhere near even minimal fulfillment.

The following comments received have been taken into consideration as the State has developed its STP and future STP activities; however, the comments, while valid, did not result in modifications to the STP. These comments were statements made for the State's consideration but do not affect the contents of the STP.

We urge you to consider the needs of individuals like our son who do not do anything that involves sitting, does not watch TV or use the computer, and for whom the group home model is not workable to meet his needs. Communities with a focus on outdoor physical work are not institutions and serve the needs of many individuals like our son.

(2) All monitoring and oversight should ensure the safety of those with developmental disabilities and freedom of choice based on personal outcomes and reasonable costs.

(2) Agencies sometimes issue a document purporting to be an interpretive rule, but which in fact creates new law, rights, or obligations. Indeed, as the notice and comment rulemaking process has become more onerous over time, agencies have a strong incentive to avoid the burdens of rulemaking if possible. If an agency issues a policy or guidance a document that amounts to legislation without going through notice and comment rulemaking, the agency's action may be vacated. A legislative rule promulgated without proper notice and comment rulemaking is "procedurally invalid."

(2) Prohibiting autism-friendly housing or subjecting it to "heightened scrutiny" is disability discrimination.

(2) I implore you to consider carefully how you proceed with the STP. We need ALL options to be available. We need more help, not more restrictions. The situation is desperate. We are aging, and our kids will be never be independent.

(2) In fact, for some people, co-living and working with many people of like-minds is the best way to help them integrate with others, to nurture their emotional well-being, their sense of connection and belonging. The state has the authority to draw its own conclusion as to whether a setting can become compliant with modifications, whether it must undergo heightened scrutiny, or whether it is not and cannot become compliant as if deemed institutional in nature. CMS has inappropriately singled out these two settings among the thousands of homes providing residences for developmentally disabled adults in California.

(2) CMS has not placed a limit on the number of DD persons who can occupy a setting. On page 2967 of the rule, CMS also stated that “we do not believe there is a maximum number beneath which we could determine with certainty that the setting would meet the requirements of HCB settings.” The focus should be on the experience of the individual in the setting.

(2) Living in a setting with others of the same disabilities does NOT limit integration and interaction with a larger community of non-disabled citizens.

(2) People with disabilities vary greatly in their needs and preferences. There must not be a “one size fits all” approach to housing options.

The following comments received have been taking into consideration as the State has developed its STP and future STP activities. Furthermore, the state has made modifications to the STP as a result of these comments, as identified below.

(2) (3) CMS issued a subsequent Informational Bulletin entitled "Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community" which conflicts with the original intent of CMS which was derived from years of public comment. In the event of conflict between the Final Rule and this Bulletin, the Final Rule should be followed first and foremost as they have legal standing.

State Response: The STP identifies the process for determining institution-like qualities and the circumstances that lead to a setting having the effect of isolating [Pg. 28]. The STP agrees the Final Rule should be followed while also taking into account the subsequent guidance issued by CMS.

(2) (3) The sentence that reads “dwellings are not limited to or designed specifically for people with disabilities” does not make any logical sense. First, it implies that someone with DD cannot choose to live with other DD persons. And second, it suggests that homes cannot be designed for people with DD. Neither of these is legal or desirable. DD individuals can choose to live with any number of DD persons as they choose – especially in private, non-licensed residences. The language, as written, violates ADA regulations.

State Response: This language was removed from the STP [Pg. 28].

(2) (3) The notion that disability-specific settings are undesirable is directly contrary to the new CMS rules. As mentioned earlier, CMS intentionally removed this limiting language in Page 2973-74 of the rules by stating “we have revised the rule to remove the term ‘‘disability-specific housing complex’’.

State Response: The STP does not indicate disability-specific settings are undesirable. Settings will be assessed as described in the STP, and settings that have the effect of isolating will be closely reviewed for heightened scrutiny consideration.

(2) (3) The second paragraph under the Heighted Scrutiny is language that is NOT contained in the new rules and is contrary to the intent of the rules. This language comes directly from the subsequent CMS Informational Bulletin entitled "Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community". It violates the language of the approved regulations and, therefore, should be null and void. The public also had no opportunity to comment on this guidance which is rule-making in disguise.

State Response: The STP has been revised to describe characteristics of settings that tend to isolate [Pg. 28], and the State does not believe the STP contradicts the language of the approved regulation.

(2) (3) The implication that a housing model that is 100% occupied or designed for individuals with developmental disabilities is subject to further review, scrutiny or does not fall under the automatic presumption is troubling at best, likely illegal, and contradicts CMS’ own rules. Simply put, a setting that is occupied by 100% of residents with disabilities is entitled to the same presumption of HCBS compliance that a setting that is occupied by 75% of residents with disabilities. Moreover, the current language promotes the indefensible assumption that living with individuals without disabilities is superior to the alternative. Please eliminate the language under Heightened Scrutiny that comes from the CMS Informational Bulletin “Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community.” The public has had no opportunity to comment on this and it violates the language of the earlier approved regulations.

State Response: The STP has been revised to describe characteristics of settings that tend to isolate [Pg. 28], and the State does not believe the STP contradicts the language of the approved regulation. The State does not believe that disability specific housing is inferior to non-disability specific housing; however, all settings will be assessed for compliance with the Final Rule, and settings that have the effect of isolating individuals from the broader community will be carefully reviewed.

(2) (3) (4) If DD member wants to live with his peers and they are offered access to the community to the extent they desire, I believe HCBS should support and encourage this and not limit choice. It seems a grave potential injustice to suggest that if a person with I/DD chooses to live with, work or socialize with others with I/DD they would be denied access to needed support services under HCBS implementation.

State Response: The STP has been revised to describe characteristics of settings that

tend to isolate [Pg. 28], and the State does not believe the STP contradicts the language of the approved regulation. The State has no intention of limiting choice for individuals; however, the State will identify settings that tend to isolate through the compliance determination process. If a setting affords the individual access to the broader community to the same extent as non-HCBS individuals, the State will make a determination by considering this and all other characteristics of the setting.

(2) (3) (4) Allow Private residences of all sizes and types, including homes, condos, apartments, shared living, and rural options such as farms. This is very important to our community of families facing the housing dilemma.

State Response: The STP clearly defines private residences and the State's presumption of HCB Settings compliance [Pg. 13]. The STP also indicates that settings owned by an unrelated caregiver [Pg. 18] will be assessed as a residential setting, rather than a private residence presumed to be in compliance.

(2) (3) (4) Although we want to limit 'institutionalizations', options should be phrased to emphasize goals – access to community, access to friends and family, opportunities for choice versus trying to specify exclusions. One person's view of limits may be exactly what another chooses and/or needs for safety and/or health reasons. Living in a setting with others of the same disabilities does NOT limit integration and interaction with a larger community of non-disabled citizens. And, indeed may enhance interaction by providing a site for interaction and safe base within a larger, integrated community.

State Response: The State agrees with the commenter. The STP describes the process for assessing settings for HCB Setting compliance and does not exclude settings that may serve residents with similar disabilities.

The following comments have been logged for continuous consideration throughout the transition process. Furthermore, these comments are statements regarding compliance determinations. The STP describes the compliance determination process [Pg. 22], and will not make determination of HCB Setting compliance until the assessment process is concluded.

(2) (4) Limitations regarding how "integrated" the program is to the community and who is allowed to participate in a program will eliminate resources and prevent people from being able to make actual choices. Housing options designed for certain groups results in more efficient coordination, greater choice of quality providers and a reduction in overall costs.

(2) (4) According to the new HCBS rules, states have sole jurisdiction in determining which settings are submitted for heightened scrutiny. In that letter, CMS went to extreme and unauthorized lengths to direct DHCS to examine 2 specific settings for heightened scrutiny (FYI – one name was wrong and the other setting does not even exist yet). Also, these settings would be deemed private residences anyway and receive no HCBS funds whatsoever. By asking for scrutiny of 2 specific settings, CMS has overstepped its jurisdiction and undermined the authority that CMS has given the DHCS to identify and assess settings for compliance. The state has the authority to draw its own conclusion as to whether a setting

can become compliant with modifications, whether it must undergo heightened scrutiny, or

(2) (4) DD individuals should not be shamed if they opt to live with others who have DD in private residences. The language as written promotes an ableist ideal that living with non- DD peers is superior to having housemates with DD.

(2) (4) Disability-specific design is precisely what many DD persons require “as appropriate to their needs.” Design items might be for safety or a mere matter of convenience to allow DD persons to live the most-unrestricted lives. This might be secure access gates for safety or something as simple as additional soundproofing for individuals with sensory processing issues. All DD persons are entitled to reasonable accommodations from a landlord under ADA in any event.

(2) (4) HCBS regulations must not presume that living with non-disabled people is always preferable to living with other people with disabilities. This must be a matter of choice and of finding the optimal way to meet an individual’s needs. For example, there must not be an automatic assumption that living alone in a city is preferable to living communally on a farm or rural setting with others who have developmental or other disabilities. By the same token, those individuals who prefer to live in a neurotypical setting must be given the full support they need to do so successfully.

(2) (4) DHCS should also be mindful that it lacks legal authority to require private residential landlords who are not HCBS providers to submit information to DHCS or CMS regarding their tenants, their property or their business operations. All inquiries regarding qualities of one's private residence and whether his or her private home “supports access” to the community must be made at the level of the developmentally disabled individual’s person-centered plan. DHCS has no jurisdiction to impose this inquiry a priori on private residences.

The following comments have been logged for continuous consideration throughout the transition process. Furthermore, the state will continue its education and outreach to meet the needs of agencies, stakeholders, and members as the STP is implemented. The State is committed, as indicated throughout the STP, to continue its outreach and education efforts as necessary.

(2) (5) Regarding Person-Centered Planning – As a general comment, California should consider developing a standardized form for the IPP. In the DDS system, regional centers all have different formats which makes it difficult for DD consumers who transfer between regions.

(2) (5) Regarding Stakeholder Input, California needs to ensure that voices of California residents and consumers are used exclusively in revising and implementing the STP. Unfortunately, there is a small but vocal group of professional advocates, lobbying firms and non-state residents that often inject their opinions and agendas without knowing the laws of California or the needs of its DD persons. Many do not have offices in California and most certainly do not speak for the more-challenged end of the DD spectrum.

(5) Need increased funding and more highly skilled supported living options. Concerns about

writing into IPP that there are health and safety reasons to override some of the HCBS voluntary and choice requirements; must be specific to circumstance and setting.

STP should clarify how conservators can decide what the choice of an individual will be and what is still left up to that individual in choosing housing or services. Need more general public education and understanding.

(4) More residential and non-residential settings needed. Must expand provider and privately controlled residential options. CMS has no authority to conducted system-wide inspections of private residences or impose heightened scrutiny on those homes. Assessment of compliance must be made through person-centered plan, not by unauthorized private property review.

State Response: The State will conduct its setting assessments based on the processes described in the STP and pursuant to Federal requirements.

(4) (5) Regional Centers must implement the STP uniformly. Who comprises heightened scrutiny review committee? Is there an advocate who represents the DD consumer? HCB Setting criteria and assessments should not be based on physical characteristics, such as population density of waiver recipients or proximity to other services. HCB settings should be individually assessed for quality based on feedback from the member.

State Response: The State will conduct its setting assessments based on the processes described in the STP and pursuant to Federal requirements. The state will solicit public comment as well as conduct member surveys.

The following comments are statements regarding compliance determinations. The state will conduct the compliance determination process, as described in the STP [Pg. 22], before any determinations are made.

It violates ADA Sections 35.130(a), (b) and (g). CMS cannot deny HCBS services to a DD individual solely because the other person with whom they associate (either in residential or employment setting) has a DD.

(4) DD consumers need a spectrum of services and one size does not fill all. Attaching labels and or stigmas to types of settings often results in the individual needs of a consumer not being met. The term "appropriate to their needs" should be kept in the forefront of all decisions.

(4) California should NOT create barricades to living solutions with language that limits choices

(4) No two persons are alike and each setting must be examined through the lens of the individual's choices and needs. “Community” means different things to different people.

(4) The Americans with Disabilities Act protects my daughter. CMS may NOT withhold HCBS funding to her merely because she has chosen to live with other women with autism. This

violates ADA in multiple ways.

(4) My young adult son, who has cerebral palsy and other DD, needs and wants to be part of a community that includes his friends, many of whom also have DD. His choices should not be restricted in order for him to have access to services that are essential for his survival. He and his friends want to live together and share a home base from which to explore the wider community. Please don't restrict his choices by forbidding community-building out of a fear of institutions.

(4) Under 1915(k) Community First Choice (CFC) State Plan Program, CFC members select their residential setting. If this choice is one that includes living with others who share the same disability, so be it as it is the member's choice.

(4) Adult Residential Facilities (CCF) are currently included in the list of DD Waiver providers and should continue to be an option, past March 28, 2017. Living in a setting with others of the same disabilities does NOT limit integration and interaction with a larger community of non-disabled citizens.

Available solutions must include:
Center-based programs addressing the often intensive needs adults with autism Group homes of varying sizes and structures to address a broad spectrum of support needs Private residences of all sizes and types, including homes, condos, apartments, shared living, and rural options such as farms.

Residential options that include intentionally autism-friendly and supportive elements, including safety and recreational and space amenities, must be made available, as may be required by individual needs. Just because a property has intentionally disability-friendly amenities does not render it "institutional."

(4) Policies and regulations that cater to "higher-functioning" people with DD risk preventing other people from living and receiving services in settings that are best for them. Furthermore, when a conserved person with DD does not have full ability to express preferences, the STP must acknowledge the power of a conservator "to fix the residence or specific dwelling of the limited conservatee."

(4) (5) Parents would like to band together with friends to buy land and build homes to give children a rural environment in which to flourish. Does the STP exclude this type of arrangement?
State Response: The STP does not exclude any non-institutional setting. If settings meet the characteristics of the Final Rule, they will be deemed compliant and will be considered an HCB setting. All settings will be assessed as described in the STP compliance determination process [Pg. 22].

Advocates:

Transition Plan should include from Project-Based to Tenant-Based (Section 8 Voucher) Programs. Baby boomers should live close to their children/relatives/friends.

State Response: Housing options are discussed in the STP [Pg. 14]. The State does not dictate proximity of social support network, since this is outside of the purview of the STP.

The following comments have been logged for continuous consideration throughout the transition process; however, the comments did not result in modifications to the STP.

Choice does not justify non-compliant setting. Not “restricting” access to community does not mean supporting full access.

(2) CHOICES made through the person centered planning process on behalf of every regional centers client while, at the same time setting arbitrary program limitations regarding how “integrated” the program is to the community and who is allowed to participate in a program or activity will seriously limit or eliminate resources and prevent people from being allowed to make actual CHOICES.

(2) We absolutely support and advocate integration of persons with developmental disabilities into our communities. This transition plan, based upon what appears to be either a naive attempt at forced integration or a means to reduce CMS costs for CMS funded waiver services that can be denied based on arbitrary location and individuals receiving services is ridiculous.

(2) Completing needed changes to laws and regulations governing settings included in the DD Waiver during the 4th Quarter of 2018 is too late to expect full compliance by March 2019. This is particularly true for allowing lockable interior doors as local Fire Marshalls will need to adapt to this change.
State Response: CMS has granted states an additional three years for HCB Setting compliance. The State has revised its proposed STP timeline accordingly.

(2) Person Centered Planning processes need revision to comply with federal rules.

(2) We recommend that the state clearly define and establish standards for PCP as it relates to broader concepts of person-centered care.

(2) We recommend that the state finalize and implement the UA [Universal Assessment] to identify LTSS needs and help inform the PCP process in accordance with W&I Code section 14186.36(b)-(i).

(2) (3) (4) (5) Providers need financial support to ensure that services will be available to consumers consistent with individual choice in integrated settings. State needs to set rules and guiding principles for sorting out questions related to settings under the CMS regulations, including what is compliant and what is not. More specific timetable and appeals processes. A functional review of current decision making and case management systems to assure members and family choices and person centered plans are conducted properly and used to guide decisions. Need clarity on who is “deemed” compliant currently. Placing additional

restrictions of licensing on providers would be inconsistent and unproductive in ensuring consumers are safe and adequately supported in the community. CCL, with authority to promulgate and enforce regulations, is a critical player in the state coming into compliance. DSS and DOR must work hand in hand with DDS to ensure compliance by 2019. Regarding Private Residences Presumed compliant, STP should expand section to include non-residential programs presumed to be in compliance. The State must begin now to commit the necessary resources through the state budget process to fund the structural and programmatic changes that will be required for compliance by 2019, across all affected programs. Current STP timeline does not provide sufficient time to modify programs. STP inconsistent with Provider and On-Site assessments: Pg. 22 states all settings will receive surveys, Attachment VI pg. 8 says statistically valid sample. California is behind on education and outreach. Providers lack understanding of individual rights and privacy.

State Response: The comment has been logged for continuous consideration. The STP describes the State's process for setting assessments and compliance determinations. The State does not intend to add additional licensing restrictions, rather, an assessment of state standards demonstrates a high level of compliance on a systemic level. In the event state standards are silent, partially compliant, or conflicting, the state will modify rules and regulations to come into compliance, or issue policy directives to enforce the Final Rule.

(2) (4) STP ignores ICFDD residents receiving adult day services. Plan should identify a process to ensure that every individual who receives HCBS lives in an HCB compliant setting.

State Response: The STP describes the State's process for assessing residential and non-residential settings for HCB Setting compliance. ICF/DD settings will be considered Long-Term Care facilities prior to the end of the transition period, and will not be under the purview of the STP. However, settings in which individuals receive HCBS, including residential and non-residential settings, will be assessed per the compliance determination process [Pg. 22].

(2) (4) In an effort to integrate there seems to be a bias against those with disabilities when "community" is defined in such a way as to exclude communities of the disabled. Universities separate students from graduate students, fraternities from sororities, etc. Yet the disabled individuals are devalued as a community and are punished with the loss of services if housing and community is built to accommodate them. Eliminate restrictions upon housing which meets the needs of any particular group by removing the language which defines private housing as that which is not designed for or limited to people with disabilities. Stop defining "people from the community" as only those who are not disabled, as if they are the most appropriate members of our society and the disabled are not. Define private housing as simply privately owned property without restrictions and vague language regarding design and integration with "others from the community" as if DD peers are not part of our society or are to be prevented or not counted as appropriate.

State Response: The State will conduct setting assessments as described in the STP [Pg. 22]. The State will assess individual settings for HCB Setting compliance, and will

not presume non-compliance based on the disabilities of the residents.

(2) (4) CMS simply lacks legal authority to regulate private residential property. CMS provides subsidies to states to help them provide services and supports for some of their residents with disabilities. While the states, following CMS rules, may regulate the providers of the services (including group homes, for example), CMS lacks jurisdiction over private residences. This new HCBS mandate is a novel sideways attempt to regulate these homes

State Response: The State has defined private residences in the STP [Pg. 14]. Private residences are presumed compliant but will be monitored for HCB Setting compliance through the State's current monitoring and oversight process. Compliance determinations will be made after the compliance determination process is complete.

(2) (5) Input from families, in addition to members, should be considered when assessing settings. Include training for families and members to understand the transition and purpose of assessment. Develop protocols for protections for members against coercion. Develop communications plan with stakeholders. Training initiative for understanding the transition plan. Training for direct support professionals. Publicly post member assessments and provider progress in remediating during heightened scrutiny.

Incorporate licensing and credentialing information into the decision of on-site assessments. RE: "Changes in Member Services," language should not be prescriptive of who will be in a members' person centered plan meeting. Language should not presume the state will remove a service form a member's individualized program plan. This section should describe the informed choice process instead. Transition Plan should acknowledge that additional incentive funding will be necessary to bring settings into compliance, such as Work Activity Programs.

State Response: The State has logged this comment for continuous consideration throughout the transition process. The setting assessment process will consist of several layers of review. The state will survey providers and validate provider surveys using on-site assessments and member surveys. The State will conduct education and outreach to providers, stakeholders, and members as the State conducts its STP activities, which will include public input as appropriate.

(5) State must take act immediately and proactively to make necessary legislative and regulatory changes; funding commitments; and concrete outreach, education, and assessment efforts.

State Response: The State agrees with this comment and is taking steps, as described in the Systemic Assessment [STP Appendix B], to seek legislative changes to bring settings into compliance on a systemic level. The State will continue its outreach and education throughout the transition process.

Proposed heightened scrutiny process is incomplete and unreasonable. Timeline does not support gathering meaningful data.

State Response: The State has revised the STP to allow additional time for gathering evidence during the heightened scrutiny process [Pg. 29].

(3) State misstates the heightened scrutiny process. States must submit evidence to CMS only for settings it believes overcomes the institutional presumption.

State Response: The State has revised the STP to clarify that only settings the State believes overcome the institutional presumption will go through the heightened scrutiny process [Pg. 28].

(3) STP misstates that all requirements can be modified if need is identified in person centered plan. This only applies to provider owned or controlled settings.

State Response: The State has clarified that modifications of HCB Setting requirements can only be made in provider-owned or controlled settings [Pg. 6 and 54].

(3) The draft STP fails to identify settings that will not pass the heightened scrutiny test and how and what the State intends to do about these settings.

State Response: The STP identifies how it will review settings for heightened scrutiny [Pg. 28], and describes the transition process for individuals receiving services or living in non-compliant settings [Pg. 29].

(3) The State wrongly states that it will automatically pass on information on heightened scrutiny determinations from the provider to CMS.

State Response: The STP indicates that heightened scrutiny will only occur for settings that the State believes may overcome the institutional presumption [Pg. 28].

(3) We repeat the recommendation from the 2015 comments that California follow the lead of other states and make the provider self-survey mandatory.

State Response: The STP indicates that all settings must complete the Provider Self-Survey or be subject to mandatory on-site assessments.

(3) The STP also does not identify any method of validation, which is critical to making the provider self-survey meaningful.

State Response: The STP has been revised to expand on Self-Survey and validation processes [Pg. 25].

(3) The list of who would be present in a person-centered planning meeting is incorrect.

State Response: The STP has been updated to include members' choice of plan meeting participants [Pg. 30].

(3) The State's proposed schedule fails to recognize that many work activity programs may need to be wholly or significantly redesigned or dismantled to come into compliance. Given the approximately 10,000 individuals in Work Activity Programs, the State's proposed statutory and regulatory "alignment." just months before the March 2019 deadline, and without any identified commitment of resources, falls far short of what is needed to produce timely compliance.

State Response: CMS has granted an additional 3 years to the transition period and the STP activities have been updated accordingly. The State also offered funding to settings that anticipate non-compliance issues in order to make necessary adjustments.

(3) (4) STP must identify mechanisms to ensure that every individual who receives HCBS is living in an HCB compliant setting.

State Response: The STP describes the compliance determination process [Pg. 22], and will make determinations only after the compliance determination process is complete. All provider-owned or controlled settings in which an individual lives will be assessed.

(3) The Draft STP misstates the federal rules relating to modification of the standards.

State Response: The State has updated the STP to reflect the Final Rule characteristics verbatim [Pg. 5, 53].

(3) More information is needed about the on-site assessment process and compliance procedures, including the size and composition of "statistically valid samples," the timeframe and protocols for conducting assessments, and the inclusion of presumed institutional settings other than those in proximity to institutions.

State Response: The STP has been revised to include information on the on-site assessment process, as well as sample sizes and timelines for validation [Pgs. 25-30].

The State has failed to identify adequate complaint handling processes.

State Response: The STP identifies compliant/appeal opportunities [Pg. 31].

The State must have a process for ensuring that none of the settings it is presuming to be compliant are actually institutional in nature. For example, there may be private homes purchased to serve as "intentional" settings only for people with disabilities, which isolate HCB consumers from the larger community.

State Response: The STP identifies characteristics of settings that tend to isolate [Pg. 28] and will further specify characteristics of these settings through a stakeholder engagement process.

(4) In addition, the State needs a method by which settings that are presumed to be

compliant are tracked to ensure they remain compliant through the transition and in the future.

State Response: The STP describes the compliance determination process [Pg. 22] and indicates that the State will ensure settings remain compliant through the State's monitoring and oversight activities. [Pg. 13]. Furthermore, settings that are presumed compliant will be reviewed through existing monitoring and oversight activities [Pg. 15].

(4) The State sets forth an incomplete idea of settings that isolate but sets forth very little methodology for identifying those settings.

State Response: The STP offers certain characteristics of settings that tend to isolate, but as stated in the STP, the State will identify specific characteristics through a stakeholder engagement process [Pg. 28].

(4) The draft STP does not identify methods by which the state will find settings that isolate.

State Response: The State will identify settings that tend to isolate through the compliance determination process [Pg. 22] and will continue to develop strategies for identifying isolating settings, as described in the STP [Pg. 28].

(4) We are troubled that the focus will be only on the provider with whom the consumer resides or spends the most time.

State Response: The STP indicates that both residential and non-residential settings must complete a Provider Self-Survey [Pg. 23], and later describes the validation process [Pg. 25].

(4) State fails to acknowledge scope of change needed to bring work activity programs into compliance.

State Response: The State has conducted its systemic assessment of Work Activity Programs and has indicated its approach to modifying state standards to come into compliance [Appendix B]. The State will conduct assessments of Work Activity Programs to determine levels of compliance and necessary remediation.

(4) The STP should clarify the role of Licensing and expand on explanations of how they will support the move to changing the service provision mind-set away from program driven and institutional driven models. STP should clarify steps, sample sizes, and remedial strategies. Adults who participate in HCBS work or day activities but reside in an ICF or other institution must be assessed.

State Response: The State agrees with this comment and has identified remediation strategies in the systemic assessment [Appendix B]. Furthermore, the State has identified total number providers and validation sample sizes in the STP [Pg. 26]. All provider-owned or controlled settings in which the individual lives will be assessed as

described in the STP compliance determination process [Pg. 22].

(4) In its November 16, 2015 letter to California, CMS indicated that the state may presume the compliance of private homes but “the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services…” The draft STP does not address how California will make this assurance for communities comprised entirely of Waiver recipients.

State Response: All provider-owned or controlled settings in which an individual resides will be assessed, as described in the STP compliance determination process [Pg. 22].

The State should identify all the settings that have been determined to possibly need to go through the heightened scrutiny process.

State Response: The State has taken steps to identify potentially institutional settings; however, no determination will be made until the settings are assessed as described in the STP [Pg. 22].

Add link to STP website on front page of DHCS website until March 2019. Person centered planning process is critical when allowing for any health and safety exceptions for an individual. Include need for training on person centered planning for state agencies, contracted entities responsible for eligibility, and people who receive services. Add details regarding heightened scrutiny in the STP. Publicly post heightened scrutiny decisions, corrective actions, and details on what settings will not be considered compliant.

State Response: The State has posted the STP and related information on the DHCS Website: http://www.dhcs.ca.gov/stp. The State believes the STP contains the relevant information related to this comment.

(5) The types of evidence listed in the STP regarding heightened scrutiny do not fully reflect the suggestions in CMS guidance.

State Response: The evidence listed in the STP is a non-exhaustive list. DHCS intends to engage stakeholders regarding the heightened scrutiny process.

Providers:

(1) I know that you are working on the DC Task Force for rate reform and at the same time doing your best to have an approved State Transition Plan which is very difficult to do. The rate structure will need to do away with ratios unless you are dealing specifically in an area of safety and security. This will allow programs the freedom to have clients that can truly choose their setting of choice.

State Response: Comment is outside of purview of STP. No modifications were made to the STP.

RC consumers receive services from different providers. A consumer in a day program might make choices their parents do not honor, and the program cannot implement those choices. More education needed for providers, families, and members. Direct service workers are the real “implementers” of the HCB settings rule. Providers need skilled workers with good communication skills, can document and think critically. More funding needed for better workers.

State Response: Comment is outside of purview of STP. No modifications were made to the STP.

Short time frame to move toward compliance, made shorter due to bureaucracy. Assessment forms use bureaucratic and federal language, which will be a barrier to encourage the community to help in this process. Legislative/regulatory remedial strategies targeted for 4th quarter of 2018 unlikely to be completed before end of transition period.

State Response: The State agrees with this comment and has revised the systemic assessment remediation strategy timeline to align with the additional three transition period years granted by CMS.

(2) We believe it's critical to incentivize creative options to expand and maximize housing resources by honoring individual's choice and autonomy, and not restricting the options of where, how or with whom individuals with developmental disabilities should live.

State Response: The State agrees with this comment and believes the STP does not contradict the intent of the comment.

(2) Please ensure that the regional centers have the flexibility needed, and are willing to use that flexibility in order to help providers make changes necessary for the transition of programs that are not in compliance with the new rule.

State Response: The State offered additional funding to Regional Center providers that anticipate program changes. The State will work with all providers to achieve compliance.

(2) We recommend that the state develop safeguards to ensure members can express opinions and respond to surveys in confidence, without provider involvement.

State Response: Members will be interviewed in person to gather member survey data and will not include setting staff or administrators in this interview.

We recommend that the state clearly define and establish standards for PCP as it relates to broader concepts of person-centered care.

State Response: Each HCBS program has a robust person-centered planning process. While the STP acknowledges the importance of the person-centered planning process, the STP’s purpose is to describe the State’s settings assessment and remediation

process.

There is a lot of confusion around what "provider owned or controlled" means. Please clarify whether “provider” in the STP means a Medicaid/Medicare or Waiver (i.e. DD Waiver) services provider to HCB Services recipients or includes other types of providers. For example, is a private pay service provider who receives no HCBS funding considered “provider” in this context?

State Response: All provider-owned or controlled settings in which an individual resides is subject to the compliance determination process of the STP. The STP identifies provider-owned and controlled settings in the STP [Pg. 22]. Furthermore, an individual receiving services in a setting where the caregiver is unrelated and is the home owner is also considered a provider-owned or controlled setting [Pg. 18].

(3) P. 22, 3rd paragraph – change to 30-60 days to 90-120 days with goal of having self-assessments by 180 days.

State Response: The State revised the STP to indicate up to 60 days to complete self-surveys. The State believes this provides settings sufficient time to complete the surveys.

(5) Please ensure that the regional centers are administering the roll-out of the STP for the transition of the programs not currently in compliance in the same way so that there are not 21 different variations.

State Response: A position was created at all Regional Centers to facilitate the implementation of the STP. While not specifically cited in the STP, the State and its contracted Regional Centers will work together to implement the STP uniformly.

Some jurisdictions and public funding sources encourage and favor universal design to enable aging in place for the elderly and people with disabilities. In fact, some public funding opportunities are contingent upon this design. If the developers must rely on these major public funding sources and implement universal design and set aside a majority of the units for people with developmental disabilities, how is it that individuals with developmental disabilities are to be punished with the loss of funding for much needed services regardless of the outcome of their life experiences?

State Response: The STP states that all provider-owned or controlled settings in which an individual resides will be assessed for HCB Setting Compliance. Compliance determinations will be made after the STP compliance determination process is complete.

The focus should be on whether the dwellings could properly support the individual's need and allow the individual an opportunity to integrate and have access to the greater community. Please remove any restrictive standard that focuses on physical characteristics of a setting.

State Response: The STP states that all provider-owned or controlled settings in which an individual will be assessed for HCB Setting Compliance. Compliance determinations will be made after the STP compliance determination process is complete. The State has not imposed restrictions on settings based on physical characteristics.

We recommend that the state provide additional detail regarding the stakeholder process throughout STP implementation. We believe that stakeholder workgroups/committees provide a useful forum for focused discussion on implementation issue identification and resolution.

State Response: The State agrees with this comment and has committed to stakeholder engagement throughout the STP process.

The STP should include additional information about the opportunities for Waiver participants (self-advocates) and their family members to play an active role in shaping California's response to the HCBS Final Rule. Their voices are crucial to ensuring that service systems not only comply with federal expectations but also provide them with opportunities to pursue individual goals.

State Response: The State agrees with this comment and has a number of workgroups participating in the interpretation and development of the STP.

Evidence of Public Notice
The following public notice was published in the California Register on August 26, 2016, which is distributed to public institutions and subscribers statewide.

FINAL RULES, CMS-2249-F, REQUIRE
HOME AND COMMUNITY – BASED (HCB) SETTING COMPLIANCE
Statewide Transition Plan Resubmission

Purpose:
The California Department of Health Care Services (DHCS) gives notice that the revised Statewide Transition Plan (STP) will be resubmitted to the Centers for Medicaid and Medicare (CMS) in October, 2016, for approval. The Community-Based Adult Services (CBAS) Transition Plan is an attachment to the STP. This revised STP describes California's plan to ensure approved Home and Community-Based Services (HCBS) waivers comply with the new federal HCBS setting rules. DHCS, state partners and stakeholders have updated the STP based on the CMS guidance letter, which can be found at: https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/ca/ca-cmia.pdf.

DHCS invites all interested parties to review the STP, including the CBAS Transition Plan, and provide public input. The public comment period will begin August 29, and end September 29. 2016. Public comments on the STP should be input onto the STP Public Comment Template, which will be available on the DHCS website listed below. The DHCS website will provide a link to the CBAS Transition Plan and the CBAS Plan's Public Comment Template.

Please mail or email public comments using the contact information below. DHCS will review all feedback and incorporate into the STP as appropriate. Public input is essential to the development and implementation of the STP, and will assist the state to achieve approval of the STP and compliance with the HCBS Settings Final Rule.

DHCS will host a statewide conference call in mid-September to discuss the revised STP, milestones and timelines, state strategies for HCBS setting compliance, and any questions or concerns raised by the public. Please check the STP website below for the date, time, call-in number, and agenda.

The STP and public comment template including a link to the CBAS Transition Plan and its public comment template can be found at:
http://www.dhcs.ca.gov/services/ltc/Pages/HCBSStatewideTransitionPlan.aspx

More information about the new federal rules is available at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html.

For Further Information on the STP, contact
STP@dhcs.ca.gov
Department of Health Care Services
Long-Term Care Division
1501 Capitol Avenue, MS 4502
P.O. Box 997437
Sacramento, CA 95899-7413

For additional information on the CBAS Transition Plan, contact
cbascda@aging.ca.gov; (916) 419-7545
California Department of Aging
1300 National Drive, Suite 200
Sacramento, CA 95834

Appendix B - Systemic Assessment Summary

The following is an assessment, by setting type, of the statutes, regulations, policies and other requirements for all HCB settings listed in the “Compliance Determination Process for HCB Settings” section. **Bold** text throughout the systemic assessment indicates directly quoted State standards. Please note that the systemic assessment is an indication of compliance, but does not preclude settings from further compliance determination processes, such as Provider Self-Surveys, Member Surveys, and On-Site Assessments. For reference, the Systemic Assessment is based on the following HCB Setting Requirements:

1. The setting is integrated in and supporting 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.
2. The setting is selected by the individual from among various 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
3. Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. Optimizes, but does regiment, individual initiative, autonomy and independence in making life choices, including, but not limited to, daily activities, physical environment and with whom to interact.
5. Facilitates individual choice regarding services and supports, and who provides them.

For Medicaid/Medi-Cal provider-owned or controlled HCB residential settings, the provider must offer:

6. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
7. Each individual has privacy in their sleeping or living unit including lockable doors by the individual, with only appropriate staff having keys to doors; individuals sharing units have a choice of roommates in that setting; and individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
8. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

9. Individuals are able to have visitors of their choosing at any time.
10. The setting is physically accessible to the individual.

Any modification(s) of the additional requirements 6 – 9 can only be made in provider-owned or controlled residential settings and on an individual basis, supported by a specific and individually assessed need and justified in the person-centered service plan. Documentation of all of the following is required:

- Identification of a specific and individualized assessed need.
- The positive interventions and supports used prior to any modification(s) to the person-centered plan.
- Less intrusive methods of meeting the need that have been tried but did not work.
- A clear description of the condition(s) that is directly proportionate to the specific assessed need.
- Review of regulations and data to measure the ongoing effectiveness of the modification(s).
- Established time limits for periodic reviews to determine if the modification(s) is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

The Systemic Assessment will include the requirement above as “HCBS Settings Requirements” number 11, and will be referred to as: Person-centered service plan justification and required documentation for modification(s) of the additional requirements.

Please note:

- Intermediate Care Facilities for the Developmentally Disabled Continuous Nursing (ICF/DD-CN) will be long-term care facilities prior to March 2022.
- In the DD Waiver, Social Recreation Program is a service provided in the community, and not in a setting. Residential Care Facility – Out of State is not included in the Systemic Assessment because, as stated in the DD Waiver, “the State uses the same standards as in-state residential facilities.”

While all of the settings assessed through California’s Systemic Assessment are either licensed facilities that must adhere to all licensing requirements, or to other State laws and regulations as identified in the Systemic Assessment, certain programs also require the setting to become Medi-Cal Providers. In order to become a Medi-Cal Provider, the provider must sign the Medi- Cal Provider Agreement. One of the requirements of the Medi-Cal Provider Agreement includes the following requirement: “Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid Providers.” This Medi-Cal Provider Agreement requirement would contractually obligate the setting to adhere to the characteristics of 42 CFR 441.301(c)(4). However, the State intends to send all HCBS Medi-Cal providers that are subject to the STP a supplemental agreement form that will reinforce this requirement of the Medi-Cal Provider Agreement, and will clearly identify the HCB Settings Final Rule characteristics for which they are responsible. The Programs in which providers have signed the Medi-Cal Provider Agreement include: HCB Alternatives

Waiver, Pediatric Palliative Care Waiver, Assisted Living Waiver, and HIV/AIDS Waiver. The Settings within these Waivers include: Congregate Living Health Facility, Adult Residential Facility, Residential Care Facility for the Elderly, and Residential Care Facility for the Chronically Ill.

Please note: In spite of the Medi-Cal Provider Agreement requirement that settings must adhere to all federal laws and regulations governing and regulating Medicaid Providers, the State's systemic assessments will also focus on California Licensing requirements and applicable laws and regulations. Where State standards are silent or partially compliant, the systemic assessment will still identify remediation strategies, in addition to the supplemental provider agreement to be sent to all HCBS Medi-Cal providers to be signed and returned to the State, where appropriate.

1915(k), 1915(c)

HCBS Waiver IHO

Settings 1915(k)

Settings

The setting utilized for these programs are the members' private residence; therefore, the state presumes the settings meet the requirements of the HCB Settings Final Rule. The following demonstrates the State standards ensuring the provision of services occurs in a private residence. These State standards do not preclude the state from ongoing monitoring of HCB Setting compliance, as well as health and safety, within private residences.

1915(k) Community First Choice Option (CFCO) requirements follow the In-Home Supportive Services (IHSS) State standards, as described in CDSS' State Hearings Division 610-0, which states that CFCO is a part of the IHSS Program.

CDSS All County Letter (ACL) 16-78 requires the applicant to sign the IHSS Program Health Care Certification Form, which
states that "IHSS is a program intended to enable aged, blind, and disabled individuals who are most at risk of being placed in Out-of-home care to remain safely in their own home by providing domestic/related and personal care services."

In the CDSS Manual, SOCIAL SERVICES STANDARDS 30-755 SERVICE PROGRAM NO. 7: The IHSS Program definition states "The IHSS Program provides assistance to those eligible aged, blind and disabled individuals who are unable to remain safely in their own homes without assistance. IHSS is an alternative to out-of-home care." Own Home is defined as "the place in which an individual chooses to reside. An Individual's 'own home' does not include an acute care hospital, skilled nursing facility, intermediate care facility, community care facility, or board and care facility. A person receiving an SSI/SSP payment for nonmedical out-of-home living arrangement is not considered to be living in his/her home."

Furthermore, related to CFCO, SPA 13-007 explains the following:

The Individualized Back-up and Risk Assessment process is a multi-faceted process that all recipients, and their social workers, complete to assess risks and determine the best back-up for each recipient during the initial and annual face-to-face visits as administrative activities of the CFCO program. This process includes the following components, and is accomplished through discussion and negotiation between the parties involved (including any individuals the recipient chooses):

- Program Assessment – During the program assessment, specific risks are identified based on an individual's personal care and domestic and related service needs. Once these needs are identified, the social worker reviews service options with the individuals, and authorizes services that will help the individual stay safely in their home. In addition to program specific areas, additional risk areas are discussed, such as issues around living arrangements (i.e. alone or with others, etc.), evacuation/environmental factors, and communications abilities. •
- Referrals – Appropriate referrals are processed to other government public assistance programs or community service agencies when social workers identify recipients' needs that are outside the scope of the CFCO program. These service referrals assist in supplementing CFCO benefits to help recipients remain safely in their own homes and communities.

ACL 16-78 states that "IHSS recipients are required to submit a certification form (SOC 873), completed by a Licensed Health Care Professional (LHCP) which states a recipient needs IHSS to '…enable the individual to remain safely in his/her home.'"

Lastly, W&I Code § 12300 states:

(d) Personal care services are available if these services are provided in the individual's home and other locations as may be authorized by the director. Among the locations that may be authorized by the director under this paragraph is the recipient's place of employment if all of the following conditions are met:

(1) The personal care services are limited to those that are currently authorized for an individual in the individual's home and those services are to be utilized by the individual at the individual's place of employment to enable the recipient to obtain, retain, or return to work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, workplace services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.; ADA) or other legal entitlements or third-party obligations.

(2) The provision of personal care services at the individual's place of employment shall be authorized only to the extent that the total hours utilized at the workplace are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with an individual's

employment.

(e) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

(f) Please note, the AIDS waiver was determined not to be subject to STP, due to the addition of the Appendix C-5 Social Security Act regarding home and community-based setting requirements. Appendix C-5 section C-2-c is non-applicable, as RCFIs are not listed under qualified providers and are not providing any waiver services. None of the waiver services are provided in a setting that is provider owned and operated. As Appendix C-5 is not applicable, Section A attachment #2-plan is also not applicable and is to be removed.

MSSP Provider Setting Type – Adult Day Program

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	Title 22 of the California Code of Regulations (22 CCR) 22 CCR § 82072(a) **Each client shall have personal rights which include, but are not limited to, the following: (5) To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisor of his/her choice.** **(A) Attendance at religious services, in or outside of the day program, shall be on a completely voluntary basis.** **(6) To leave or depart the day program at any time.** 22 CCR § 82077(a) **Information and referral services shall be available to the clients and their families.** (b) **The adult day program shall establish linkages with other community agencies and instructions to staff to coordinate services.** 22 CCR § 82079(a)(1-5) State licensing requires the setting **provide opportunities for, and encourage participation in activities, including but not limited to: Activities that require group interaction; Daily living**	Compliant	N/A

		skills, Including social skills and opportunities to learn about the community; Physical activities; Leisure time to pursue personal interests; Education through special instruction and projects. Adult Day Programs accept private pay/health plan participants in addition to Medi-Cal members; therefore, the same degree of access exists.		
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	22 CCR § 82079(e) **Activities shall be designed to meet the client's specific needs and interests, as determined by the Needs and Services Plan.** Should an individual indicate a desire to pursue employment, the setting is required to provide the opportunity. While licensing requirements support the individual's needs and interests, which may include employment, the standards do not specify competitive integrated settings.	Partial Compliance	MSSP Sites will update provider contracts with ADP's to include the requirements of 42 CFR 441.301(c)(4). Completion Fourth Quarter 2021.
1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.	State standards are silent regarding controlling personal resources.	Silent	MSSP Sites will update provider contracts with ADP's to include the requirements of 42 CFR 441.301(c)(4). Completion Fourth Quarter 2021.

1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	22 CCR § 82068.2(f)(4)(C) within the needs and service plan, the setting must have **An individual activity plan designed to meet the needs of the client for psychosocial and recreational activities.** Additionally, (D) the setting must make **Recommendations for referrals to other service providers and therapy which the adult day program will coordinate.** 22 CCR § 82072(a)(5) **To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisor of his/her choice.** 22 CCR § 82077(a) **Information and referral services shall be available to the clients and their families.** (b) **The adult day program shall establish linkages with other community agencies and instructions to staff to coordinate services.** The setting must facilitate community engagement or services in the community depending on the needs and preferences of the individual. 22 CCR § 82079(a)(1-5) State licensing requires the setting **provide opportunities for, and encourage participation in activities, including but not limited to: Activities that require group interaction; Daily living**	Compliant	N/A

		skills, including social skills and opportunities to learn about the community; Physical activities; Leisure time to pursue personal interests; Education through special instruction and projects.		
2	The setting is 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.	22 CCR § 82068(c) the admission agreement must **be dated and signed, acknowledging the contents of the document, by the client and the client's representative and the licensee.** This requirement demonstrates the choice of setting and services provided by the setting. (e) **The licensee shall retain in the client's file the original of the initial admission agreements and all subsequent modifications.** While choice of setting is a licensing requirement, state standards do not address offering individuals a choice of non- disability specific settings.	Partial Compliance	MSSP Sites will update provider contracts with ADP's to include the requirements of 42 CFR 441.301(c)(4). Completion Fourth Quarter 2021.
3a	The setting ensures an individual's rights of privacy;	22 CCR § 82044(b)(1) requires that should the licensing agency elect to interview clients, the setting **shall ensure that provisions are made for private interviews with any clients.** 22 CCR § 82077.4(b)(7) the setting must ensure **privacy when care is provided** for individuals with incontinence.	Compliant	N/A

3b	The setting ensures an individual's rights of dignity;	22 CCR § 82072(a)(1) the setting shall ensure the individual is **accorded dignity in his/her personal relationships with staff and other persons.**	Compliant	N/A
3c	The setting ensures an individual's rights of respect;	22 CCR § 82072(a)(2) **To be accorded safe, healthful and comfortable accommodations, furnishings and equipment to meet his/her needs.** While "rights of respect" is not explicitly stated, 22 CCR § 82072 (a)(2) essentially requires the individual is treated and cared for with respect	Partial Compliance	MSSP Sites will update provider contracts with ADP's to include the requirements of 42 CFR 441.301(c)(4). Completion Fourth Quarter 2021.
3d	The setting ensures an individual's freedom from coercion and restraint.	22 CCR § 82072(a)(3) **To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature, including but not limited to: interference with the daily living functions, including eating, sleeping, or toileting; or withholding of shelter, clothing, medication, or aids to physical functioning.** (6) **To leave or depart the day program at any time.** (7) **Not to be locked in any room, building, or day program site.**	Compliant	N/A

4	The setting optimizes, but does 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.	22 CCR § 82068.2(f)(4)(C) within the needs and service plan, the setting must have **An individual activity plan designed to meet the needs of the client for psychosocial and recreational activities.** Additionally, (D) the setting must make **Recommendations for referrals to other service providers and therapy which the adult day program will coordinate.** Individuals have the choice of services and supports, which are optimized by the setting. Individuals are ensured independence in making choices. 22 CCR § 82079(a)(1-5) State licensing requires the setting **provide opportunities for, and encourage participation in activities, including but not limited to: Activities that require group interaction; Daily living skills, including social skills and opportunities to learn about the community; Physical activities; Leisure time to pursue personal interests; Education through special instruction and projects.** 22 CCR § 82072(a) **Each client shall have personal rights which include, but are not limited to, the following: (5) To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisor of his/her choice.**	Compliant	N/A

		(A) Attendance at religious services, in or outside of the day program, shall be on a completely voluntary basis. **(6) To leave or depart the day program at any time**		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	22 CCR § 82022(c)(4)(A) In the setting's plan of operation, the setting must make staffing adjustments in order to provide the proposed services. **This may include increased staffing, hiring staff with additional or different qualifications, utilizing licensed professionals as consultants, or hiring licensed professionals.** Should an individual prefer a specific staff person, or staff person other than the current provider, the facility must make staffing adjustments to accommodate the individual. 22 CCR § 82065(a) requires the setting to employ staff **competent to provide the services necessary to meet individual client needs and shall, at all times, be employed in numbers necessary to meet such needs.** This licensing requirement ensures that the facility meets the needs of the individual, and should the individual need or desire certain staff to provide services, the setting must employ an adequate number of staff to meet such		

		needs. 22 CCR § 82068(a) the setting must **complete and maintain an individual written admission agreement with each client**. (b) **Admission agreements must specify** (1) **Basic services** and (2) **Available optional services.** 22 CCR § 82068.2(f)(4)(C) within the needs and service plan, the setting must have **An individual activity plan designed to meet the needs of the client for psychosocial and recreational activities.** Additionally, (D) the setting must make **Recommendations for referrals to other service providers and therapy which the adult day program will coordinate.** 22 CCR § 82077(a) **Information and referral services shall be available to the clients and their families.** (b) **The adult day program shall establish linkages with other community agencies and instructions to staff to coordinate services.** 22 CCR § 82079(a)(1-5) State licensing requires the setting **provide opportunities for, and encourage participation in activities, including but not limited to: Activities that require group interaction; Daily living**		

		skills, including…social skills…and opportunities to learn about the community; Physical activities; Leisure time to pursue personal interests; Education through special instruction and projects. 22 CCR § 82087.3(b) **A space shall be provided for clients not actively participating in the planned activity programs.**		

DDS Provider Setting Type – Adult Family Home; Family Teaching Home

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Adult Family Homes and Family Teaching Homes monitored by Family Home Agencies (FHA) have both Welfare and Institutions Code (WIC) and Title 17 the California Code of Regulations (17 CCR) language promoting opportunities for integration in, access to, and participation in all aspects of the community. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community...** Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …These include **promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home**	Compliant	

		communities, **the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation** WIC § 4502(a)(b)(1-3, 5-7, & 10) (a) Persons with developmental disabilities have the **same legal rights and responsibilities** guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. An otherwise qualified person by reason of having a developmental disability shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives public funds. (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(1)**A right to treatment and habilitation services and supports in the **least restrictive environment.** Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the **most independent, productive, and normal lives possible.** **(2)**…To the maximum extent possible, treatment, services, and **supports shall be provided in natural community settings.**		

		(3)A right to participate in an appropriate program of publicly supported education, regardless of degree of disability. **(5)A right to religious freedom and practice.** **(6)A right to social interaction and participation in community activities.** **(7)**A right to physical exercise and recreational opportunities. **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, **as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.**		

		WIC § 4689.1(1)(e)(8)(D) (Specific to Adult Family Homes and Family Teaching Homes) (e) For purposes of ensuring that regional centers may secure high quality services that **provide supports in natural settings and promote inclusion and meaningful participation in community life for adults with developmental disabilities,…** (8) The department and regional center's monitoring and evaluation of the family home agency (FHA) and approved homes, which shall be designed to ensure that services do all of the following: **(D) Maximize the consumer's opportunities to have choices in where he or she lives, works, and socializes.** 17 CCR § 56084(b)(6)(D) Program Design Requirements (Specific to Adult Family Homes and Family Teaching Homes) (b)(6) A proposed training plan which addresses the initial and ongoing training needs for FHA staff and the family home. The training plan shall include, but not be limited to, the following topics: **(D) Fostering consumer participation in, and integration into, the community**		
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same	(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, **the way they spend their time, including**		

	degree of access as individuals not receiving Medicaid HCBS;	**education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4689.1(e)(8)(D) (Specific to Adult Family Homes and Family Teaching Homes) (e)(8) The department and regional center's monitoring and evaluation of the family home agency and approved homes, which shall be designed to ensure that services do all of the following: **(e)(8)(D) Maximize the consumer's opportunities to have choices in where he or she lives, works, and socializes.** WIC § 4646.5(a)(4) (a) The planning process for the individual program plan described in Section 4646 shall include all of the following: **(4) When developing an individual program plan for a transition age youth or working age adult, the planning team shall consider the Employment First Policy described in Chapter 14 (commencing with Section 4868).** With the Employment First Policy, the State is committed to providing opportunities for individuals with developmental disabilities to seek employment and engage in work in integrated settings. WIC § 4851(o) **"Integrated work" means the engagement of an employee with a disability in work**		

		in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons		
1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.	**Justification:** The state believes it is compliant with this requirement. Language in Title 17 promotes an individual's right to control their own resources. 17 CCR § 56091(d) Consumer Funds and Property (Specific to Adult Family Homes and Family Teaching Homes) **The family home provider shall provide access to the consumer's cash resources when requested by the consumer or the consumer's authorized representative, if applicable.**	Compliant	
1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes an individual's right to engage in community life and make choices in their own lives including participation in community activities and events. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental	Compliant	

		disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community...** Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age… …These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements.** WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation** WIC § 4689.1(e)(8)(D) (Specific to Adult Family Homes and Family Teaching Homes) (e) For purposes of ensuring that regional centers may secure high quality services		

		that **provide supports in natural settings and promote inclusion and meaningful participation in community life** for adults with developmental disabilities, the department shall promulgate regulations for family home agencies, family teaching homes, and family homes that shall include, but not be limited to, standards and requirements related to all of the following: (8) The department and regional center's monitoring and evaluation of the family home agency and approved homes, which shall be designed to ensure that services do all of the following: **(D) Maximize the consumer's opportunities to have choices in where he or she lives, works, and socializes.**		
2	The setting is 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.		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

3a	The setting ensures an individual's rights of privacy;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to privacy. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.	Compliant	
3b	The setting ensures an individual's rights of dignity;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to dignity. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.	Compliant	
3c	The setting ensures an individual's rights of respect;	**Justification:** The State believes it is compliant with this requirement. Language in Title 17 and WIC emphasizes that choices made by the individual shall be respected.	Compliant	

		17 CCR § 56084(a)(1)(4) Program Design Requirements (Specific to Adult Family Homes and Family Teaching Homes) (a) The program design shall detail how the FHA will achieve and monitor the following outcomes: **(1) That the consumer will live in a family home where he/she will receive respect and support and involvement in the normal routines of family life;** (4) That the FHA and the family home will provide services and supports which will respect the consumer's personal and cultural preferences and values WIC § 4502.1 The right of individuals with developmental disabilities to make choices in their own lives requires that **all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers**		
3d	The setting ensures an individual's freedom from coercion and restraint.	**Justification:** The State believes it is compliant with this requirement. Language in Title 17 and WIC addresses an individual's right to be free from coercion and restraint. 17 CCR § 56089(c) Prohibited Interventions and Treatment (Specific to Adult Family Homes and Family Teaching Homes) **(c) A consumer who resides in a family**	Compliant	

		home shall be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, **coercion**, threat, mental abuse, **restraint** or other actions of a punitive nature… WIC § 4502(b)(8) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(8) A right to be free from harm, including unnecessary physical restraint**, or isolation, excessive medication, abuse, or neglect.		
4	The setting optimizes, but does 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.	**Justification:** The State believes it is compliant with this requirement. Language in WIC indicates that services and supports should enable individuals to make choices regarding their daily lives. WIC § 4501 **…An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person** with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community... Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of	Compliant	

		everyday living available to people without disabilities of the same age… …These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. **In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live**… WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives**, **including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4512(b) …The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. **The determination**		

		shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision **of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual** and the family, where appropriate, as well as promoting community integration, **independent**, productive, and normal lives, and stable and healthy environments. WIC § 4689.1(e)(8)(B) (Specific to Adult Family Homes and Family Teaching Homes) Assist the consumer in understanding and exercising his or her individual rights		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	**on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family**, where appropriate, as well	Compliant	

		as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of **services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer**,… **(b)** The individual program plan is developed through a process of individualized needs determination. **The individual with developmental disabilities** and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, **shall have the opportunity to actively participate in the development of the plan.** **(d)** Individual program plans shall be prepared jointly by the planning team. **Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer** or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting. 17 CCR § 56084(a)(2)(7) Program Design		

		Requirements (Specific to Adult Family Homes and Family Teaching Homes) (a) The program design shall detail how the FHA will achieve and monitor the following outcomes: **(2)** That the FHA and the family home will **provide services and supports which will be consistent with the consumer's needs and preferences for services and supports** as specified in the consumer's IPP. **(7) That the FHA will ensure that services and supports which are chosen by the consumer and provided by the FHA will be satisfactory to the consumer, or the consumer's authorized representative, if applicable.** 17 CCR § 56090(a)(e) Referral for Service (Specific to Adult Family Homes and Family Teaching Homes) **(a) When the consumer and the consumer's authorized representative, if applicable, has expressed an interest in the services and supports provided by an FHA**, the regional center shall coordinate with the FHA for a meeting between the FHA, the consumer and/or the consumer's authorized representative, if applicable. **(e) When the consumer has made a decision to reside in the family home**, the FHA shall execute a residence agreement		

For Medi-Cal Provider-owned or controlled HCB residential settings, the provider must offer:				
6	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For setting in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	**Justification:** The State believes that it is partially compliant with this requirement. Language in Title 17 states that an admissions agreement must be completed by the regional center and the individual. 17 CCR § 56019(c)(1)(A)(C) Consumer Admission) **Each regional center shall develop a written admission agreement which shall be completed for each consumer.**) **The admission agreement shall include statements certifying that:** • **No objection has been made to admission of the consumer to the facility;**) **(C) The consumer has a continuing right, which will be honored by all facility staff, to choose where he/she will live.**	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

7a	Each individual has privacy in their sleeping or living unit including lockable doors by the individual, with only appropriate staff having keys to doors;	**Silent:** • Privacy in living unit. • Lockable doors, with only appropriate staff having keys to doors.	Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to individuals having privacy in sleeping or living unit and lockable doors, with only appropriate staff having keys to doors. Completion fourth quarter 2022.
7b	Individuals sharing units have a choice of roommates in that setting;	**Silent:** Choice of roommates.	Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to individuals having choice of roommates. Completion fourth quarter 2022.
7c	Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement**.**	**Silent:** Freedom to decorate and furnish sleeping units.	Silent	The State will seek to modify statute and/or regulations as appropriate to align with the

				federal requirement related to individuals having the freedom to decorate and furnish sleeping units. Completion fourth quarter 2022.
8a	Individuals have the freedom and support to control their own schedules and activities;	**Justification:** The State believes it is compliant with this requirement. Language in WIC indicates that individuals should be provided with opportunities for decision-making in their daily lives. WIC § 4501 …**An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person** with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community... **In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives**… WIC § 4502(b)(6 & 10) **(6) A right to social interaction and participation in community activities.** **(10) A right to make choices in their own lives, including, but not limited to,**	Compliant	

		where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation. WIC § 4502.1 **The right of individuals with developmental disabilities to make choices in their own lives** requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. **Those public or private agencies shall provide consumers with opportunities to exercise decision- making skills in any aspect of day-to-day living** and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice		
8b	Individuals have access to food at any time.	**Justification**: The State believes that it is compliant with this requirement. According to Title 22, providers are to ensure that individuals have at least three meals per day, as well as snacks and additional food. 22 CCR § 89376(a)(1)(b) Food Service **(a) The caregiver shall provide or ensure at least three nutritious meals per day, have between-meal snacks available, provide food as necessary**, and meet any special dietary needs documented in the written plan identifying		

		the specific needs and services of the "child," unless the physician of a "child" advises otherwise. (1) The quantity and quality of food available to household members shall be equally available to a "child." (b) A "child" shall be invited to participate in all household meals.		
9	Individuals are able to have visitors of their choosing at any time.	**Justification:** The State believes it is partially compliant with this requirement. Language in Title 22 indicates that individuals have the right to have visitors of their choosing unless prohibited by authorized representatives for the child. **Silent:** At any time. 22 CCR § 89372(a)(3)(C) Personal Rights **(a) The caregiver shall ensure that each "child" is accorded the personal rights specified in WIC § 16001.9. In addition, the caregiver shall ensure that each "child" is accorded the following personal rights:** **(3) Provided the rights of others are not infringed upon, to have visitors that include:** **(C) Other visitors, unless prohibited by court order or by the authorized representative for the "child".**	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to individuals having visitors at any time. Completion fourth quarter 2022.

10	The setting is physically accessible to the individual.	**Justification:** The State believes that it is partially compliant with this requirement. In accordance with WIC, each individual program plan, which outlines services and supports, is developed with a specific focus on personal needs. Language in Title 22 also addresses areas of potential hazard and indicates that those spaces should be free of obstacles. **Silent:** All areas of the setting are accessible to the individual. Title 22 focuses on certain areas of the setting being physically accessible. WIC § 4646(b) The individual program plan is developed through a process of individualized needs determination… 22 CCR § 80087(a)(b)(1)(c) – Buildings & Grounds **(a) The facility shall be clean, safe, sanitary and in good repair at all times for the safety and well-being of clients, employees and visitors.** (b)All clients shall be protected against hazards within the facility through provision of the following: a. Protective devices including but not limited to nonslip material on rugs. (c) **(c) All outdoor and indoor passageways, stairways, inclines, ramps, open porches and other**	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to full physical accessibility of the setting to the individual. Completion fourth quarter 2022.

		areas of potential hazard shall be kept free of obstruction.		
11	Person-centered service plan justification and required documentation for modification(s) of the additional requirements.		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to any modifications of the additional conditions. Completion fourth quarter 2022.

DDS Provider Setting Type – Child Day Care Facility; Child Day Care Center; Family Child Care Home

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes opportunities for integration in, access to, and participation in all aspects of the community. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community...** Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …These include **promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program**	Compliant	

		planning and implementation… WIC § 4502(a)(b)(1-3, 5-7, & 10) (a) Persons with developmental disabilities have the **same legal rights and responsibilities** guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. An otherwise qualified person by reason of having a developmental disability shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives public funds. (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(1)** A right to treatment and habilitation services and supports in the **least restrictive environment.** Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the **most independent, productive, and normal lives possible.** **(2)**…To the maximum extent possible, treatment, services, and **supports shall be provided in natural community settings.** **(3) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.** (5) **A right to religious freedom and**		

		practice. (6) **A right to social interaction and participation in community activities.** (7) **A right to physical exercise and recreational opportunities.** **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, **as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.**		
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same	The State believes that this requirement is not applicable to these setting types (Child Day Care Facility, Child Day Care Center, and Family Child Care Home). However, to the extent a transition age youths' needs	N/A	N/A

	degree of access as individuals not receiving Medicaid HCBS;	and/or preferences change, and employment is desired, the planning team shall consider the State's Employment First Policy described in Chapter 14 (commencing with WIC § 4868).		
1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.
1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes an individual's right to engage in community life and to make life choices. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community**... Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …These include **promoting opportunities**	Compliant	

		for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation**		
2	The setting is 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,		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

	resources available for room and board.			
3a	The setting ensures an individual's rights of privacy;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to privacy. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.	Compliant	
3b		**Justification:** The State believes it is compliant with this requirement. Language in WIC and Title 22 addresses an individual's right to dignity. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care**. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings. 22 CCR § 101223(a)(1) Personal Rights **To be accorded dignity in his/her personal relationships with staff and other persons**.	Compliant	

3c	The setting ensures an individual's rights of respect;	**Justification:** The State believes it is partially compliant with this requirement. Language in WIC emphasizes that choices made by the individual shall be respected. WIC § 4502.1 The right of individuals with developmental disabilities to make choices in their own lives requires that **all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers**…	Partial Compliance	to the setting ensuring an individual's right of respect. Completion fourth quarter 2022.
3d	The setting ensures an individual's freedom from coercion and restraint.	**Justification:** The State believes it does not fully meet this requirement. 22 CCR § 101223(a)(3)(6)(7) Personal Rights (Specific to Child Day Care Centers) **(3) To be free from** corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, **coercion**, threat, mental (6) abuse or other actions of a punitive nature Not to be locked in any room, building or center premises by day or night. (7) Not to be placed in any **restraining device**. 22 CCR § 102423(a)(4) Personal Rights (Specific to Family Child Care Homes)	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

		To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, **coercion**, threat, mental abuse, or other actions of a punitive nature… **Partially Compliant:** WIC § 4502(b)(8) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(8) A right to be free from harm, including unnecessary physical restraint**, or isolation, excessive medication, abuse, or neglect.…		
4	The setting optimizes, but does 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.	These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. **In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live**… WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own**	Compliant	

		lives, **including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their takes into account the needs and preferences of the individual** and the family, where appropriate, as well as promoting community integration, **independent**, productive, and normal lives, and stable and healthy environments**time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4512(b) The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. **The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants**, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision **of services and supports by the**		

		regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, **independent**, productive, and normal lives, and stable and healthy environments.		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	**<u>Justification:</u>** The State believes that it is partially compliant with this requirement. Language in WIC identifies the individual's right to make choices pertaining to his/her own life, including program planning and implementation. WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4512(b) …The determination of which services and supports are necessary for each consumer shall be made through the individual		

		program plan process. **The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants**, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. WIC § 4646(a)(b)(d) **(a)** "…to ensure that the individual program plan and provision of **services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family**, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of **services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer**,…" **(b)** The individual program plan is developed through a process of individualized needs determination. **The individual with developmental disabilities** and, where appropriate, his or her parents, legal guardian or conservator,		

		or authorized representative, **shall have the opportunity to actively participate in the development of the plan.** **(d)** Individual program plans shall be prepared jointly by the planning team. **Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer** or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.		

DHCS Provider Setting Type – Congregate Living Health Facility (CLHF)

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	Health and Safety Code (H&S) H&S § 1250(i)(1) **"Congregate living health facility" means a residential home…**and (5) **A congregate living health facility shall have a noninstitutional, homelike environment.** H&S § 1267.13(c) require the **Facilities shall be in a homelike residential setting.** 22 CCR § 72527(a)(7) ensures that the resident **be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen…and recommend changes in policies and services to Facility staff and/or outside representatives of the patient's choice.** The facility must assist the resident as a citizen of the community and facilitate access to representatives within the community. 22 CCR § 72315(e) **Each patient shall be encouraged and/or assisted to achieve and maintain the highest level of self-care and independence.**		

		22 CCR § 72381(a) **Patients shall be encouraged to participate in activities planned to meet their individual needs. An activity program shall have a written, planned schedule of social and other purposeful independent or group activities. The program shall be designed to make life more meaningful, to stimulate and support physical and mental capabilities to the fullest extent, to enable the patient to maintain the highest attainable social, physical and emotional functioning…**(b) **The activity program shall consist of individual, small and large group activities which are designed to meet the needs and interests of each patient and which include, but are not limited to:** (1) **Social activities.** (2**) Indoor and out-of- doors activities, which may include supervised daily walks.** (3) **Activities away from the facility.** (4**) Religious programs.** (5) **Opportunity for patient involvement for planning and implementation of the activity program.** **(6) Creative activities.** (7) **Educational activities.** (8) **Exercise activities.** (c) **Activities shall be available on a daily basis.** (d) **The activity leader, at a minimum, shall: Develop and maintain contacts with community agencies and organizations**		
1b	The setting includes opportunities to seek employment and work in	CLHF in the HCBA Waiver have signed the Medi-Cal Provider Agreement, which requires the setting to adhere to all	Compliant	N/A

	competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	federal laws and regulations governing the Medicaid Program. This Medi-Cal Provider Agreement requirement would contractually obligate the setting to adhere to the characteristics of 42 CFR 441.301(c)(4). (i) The setting is integrated in and supports 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. California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities. j) **A right to make choices in their own lives, including,** but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, **employment**, and leisure, the pursuit of their personal future, and program planning and implementation.		
1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.	22 CCR § 72527(a)(8) the Patient's Bill of Rights ensures that the resident can **manage personal financial affairs.** (15) Ensures that the resident **retain and use personal clothing and possessions.**	Compliant	N/A

1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	22 CCR § 72527(a)(14) **To meet with others and participate in activities of social, religious and community groups.** 22 CCR § 72381(a) **Patients shall be encouraged to participate in activities planned to meet their individual needs. The program shall be designed to make life more meaningful, to stimulate and support physical and mental capabilities to the fullest extent, to enable the patient to maintain the highest attainable social, physical and emotional functioning…**(b) **The activity program shall consist of individual, small and large group activities which are designed to meet the needs and interests of each patient and which include, but are not limited to:** (1) **Social activities.** (2**) Indoor and out-of- doors activities, which may include supervised daily walks.** (3) **Activities away from the facility.** (d) **The activity leader, at a minimum, shall:** (7) **Develop and maintain contacts with community agencies and organizations.**	Compliant	N/A
2	The setting is 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	HCBA Waiver: for participants receiving services in CLHFs, the Waiver Agency or DHCS must determine that the setting is appropriate to the individual's need for independence, choice, autonomy, privacy and community integration. **The person-centered process is always used to choose the services and settings and**	Compliant	N/A

	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.	**determine if the setting is appropriate to meet the individual's needs and choices and that the setting was selected by the participant from various other settings offered, including a non-disability specific setting**... Waiver Agencies provide Comprehensive Care Management Waiver services to assist Waiver participants with the location of appropriate HCB settings, development of a person-centered care plan, **identification of available Waiver providers, and continuous management of Waiver and other Medicaid care services. Appropriate HCB settings include the participant's private home and congregate living health facilities (CLHFs)**. 22 CCR § 72527(a) **Written patient care policies and procedures shall be established and implemented to ensure that patient related goals and facility objectives are achieved.** 22 CCR § 72527. Patients' Rights Patients shall have the right: (1) To be fully informed, as evidenced by the patient's written acknowledgement prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct. (2) **To be fully informed, prior to or at the time of admission and during stay, of services available in the facility** and of related charges, including any charges for services		

		not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act. **(3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care including the identification of medical, nursing and psychosocial needs and the planning of related services. (4) To consent to or to refuse any treatment or procedure or participation in experimental research.**		
3a	The setting ensures an individual's rights of privacy;	H&S § 1267.13(c) **Facilities shall provide sufficient space for comfortable living accommodations and privacy for residents, staff, and others who may reside in the facility.** 22 CCR § 72527(a)(10) **To be assured confidential treatment of financial and health records and to approve or refuse their release.** (a) (20) **To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.** 22 CCR § 72315(l) **Each patient shall be provided visual privacy during treatments and personal care**	Compliant	N/A
3b	The setting ensures an individual's rights of dignity;	22 CCR § 72315(b) **Each patient shall be treated as individual with dignity and respect and shall not be subjected to verbal or physical abuse of any kind.** (e) **Each patient shall be provided care**	Complaint	N/A

		which shows evidence of good personal hygiene, including care of the skin, shampooing and grooming of hair, oral hygiene, shaving or beard trimming, cleaning and cutting of fingernails and toenails. The patient shall be free of offensive odors.		
3c	The setting ensures an individual’s rights of respect;	22 CCR § 72527 Patients’ Bill of Rights (a)(10) **to be free from mental and physical abuse,**(12) **To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment And in care of personal needs** 22 CCR § 72315(b) **Each patient shall be treated as individual with dignity and respect and shall not be subjected to verbal or physical abuse of any kind.** (e) **Each patient shall be provided care which shows evidence of good personal hygiene, including care of the skin, shampooing and grooming of hair, oral hygiene, shaving or beard trimming, cleaning and cutting of fingernails and toenails. The patient shall be free of offensive odors.**	Compliant	N/A
3d	The setting ensures an individual’s freedom from coercion and restraint	22 CCR § 72527 Patients’ Bill of Rights (a)(7) **To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to Facility staff and/or outside representatives of the**	Compliant	N/A

		patient's choice, free from restraint, interference, coercion, discrimination or reprisal. (9) To be free from mental and physical abuse.		
4	The setting optimizes, but does 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.	22 CCR § 72527(a)(1) **To be fully informed, as evidenced by the patients written acknowledgment prior to or at the time of admission and during stay, or these rights and of all rules and regulations governing patient conduct.** (5) **To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure.** (7) **To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to Facility staff and/or outside representatives of the patient's choice.** (8) **To manage personal financial affairs.** (14) **To meet with others and participate in activities of social, religious and community groups.** (21) **To have reasonable access to telephones and to make and receive confidential calls.** 22 CCR § 72315(e) **Each patient shall be encouraged and/or assisted to achieve and maintain the highest level of self-care and independence.**	Compliant	N/A

		22 CCR § 72527(a)(7) ensures that the resident **be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen…and recommend changes in policies and services to Facility staff and/or outside representatives of the patient's choice.** 22 CCR § 72381(a) **Patients shall be encouraged to participate in activities planned to meet their individual needs... The program shall be designed to make life more meaningful, to stimulate and support physical and mental capabilities to the fullest extent, to enable the patient to maintain the highest attainable social, physical and emotional functioning but not necessarily to correct or remedy a disability.** (b) **The activity program shall consist of individual, small and large group activities which are designed to meet the needs and interests of each patient and which include, but are not limited to:** (1) **Social activities.** (2) **Indoor and out-of- doors activities, which may include supervised daily walks.** (3) **Activities away from the facility.**		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	22 CCR § 72527(a)(7) ensures that the resident **be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen…and recommend changes in policies and services to Facility staff**	Compliant	N/A

		and/or outside representatives of the patient's choice. (3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care including the identification of medical, nursing and psychosocial needs and the planning of related services. 22 CCR § 72311(A) **Identification of care needs based upon an initial written and continuing assessment of the patient's needs…** (B) **Development of an individual, written patient care plan which indicates the care to be given, the objectives to be accomplished and the professional discipline responsible for each element of care.** 22 CCR § 72528.**The disclosure of the material information and obtaining informed consent shall be the responsibility of the licensed healthcare practitioner who, acting within the scope of his or her professional licensure, performs or orders the procedure or treatment for which informed consent is required.** California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities. Part 483 Requirements for States and Long-Term		

		Care Facilities d) Free choice. **The resident has the right to-- (1) Choose a personal attending physician.** (5) The facility must-- (i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of-- (A) **The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;** HCBA Waiver: HCBA Waiver participants or their legal representative **have the opportunity to select and dismiss licensed and unlicensed care providers** who under the direction of the participant or legal representative can provide waiver services as described in Appendix C of this application. **The ability for the participant to select, dismiss, and direct the services of their individual waiver providers supports the participant's: Freedom of choice in the provider of waiver services; Flexibility in scheduling the services to meet the participant's medically necessary care needs; Continuity of care; and ability to direct the services that meet the participant's medically necessary care needs.**		
6	The unit or dwelling is a specific physical place that	H&S § 1599 **It is the intent of the Legislature in enacting this chapter to**	Compliant	N/A

	can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants under the landlord/tenant law of the State, county, city, or other designated entity. For setting in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	**expressly set forth fundamental human rights which all patients shall be entitled to in a skilled nursing, intermediate care facility, or hospice facility as defined in** Section 1250**, and to ensure that patients in such facilities are advised of their fundamental rights and the obligations of the facility.** 22 CCR § 72516(a) **The licensee shall use the California Standard Admission Agreement for Skilled Nursing and Intermediate Care Facilities** 22 CCR §72527 Patients' Bill of Rights (1) **To be fully informed, as evidenced by the patients written acknowledgment prior to or at the time of admission and during stay, or these rights and of all rules and regulations governing patient conduct.** HCBA Waiver: **All CLHF residents sign a legally enforceable lease agreement with the residential setting provider.**		
7a	Each individual has privacy in their sleeping or living unit including lockable doors by the individual, with only	H&S § 1267.13(c) **Facilities shall provide sufficient space for comfortable living accommodations and privacy for residents, staff, and others who may reside in the facility.**	Compliant	N/A

	appropriate staff having keys to doors;	22 CCR § 72527 Patients' Bill of Rights (a)(20) **To be allowed privacy for visits with family, friends, clergy, social workers, or for professional or business purposes.** HCBA Waiver: h) **residential units are accessible to the individual and have lockable entrance doors with appropriate staff having keys;**		
7b	Individuals sharing units have a choice of roommates in that setting;	22 CCR § 72527(a)(16) **If married, to be assured privacy for visits by the patient's spouse and if both are patients in the Facility, to be permitted to share a room.** HCBA Waiver: D. The residents' individual sleeping quarters will allow sufficient space for safe storage of their property, possessions, control of personal resources, and furnishings and still permit access for the staff to complete their necessary health care functions. Not more than two residents shall share a bedroom with an option for a private unit. **Residents who choose to reside with a roommate will have their choice of a roommates**. 7. Assurance of resident's rights: a) to be treated with respect; b) choose and wear their own clothes; c**) have private space to store personal items; d) have private space to visit with friends and family (if individuals choose to share a residence, visitors are allowed at any time, recognizing the rights of their**	Compliant	

		roommates;)		
7c	Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	22 CCR § 72527(a)(15) **residents are allowed to retain and use personal clothing and possessions as space permits.**	Compliant	N/A

8a	Individuals have the freedom and support to control their own schedules and activities.	H&S § 1599.1(d) **residents have the right to activity programs to meet their needs and interest.** 22 CCR § 72335 For food service, (4) **Table service shall be provided for all patients who can and wish to eat at a table.** 22 CCR § 72379 **An activity program means a program which is staffed and equipped to encourage the participation of each patient, to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities.** 22 CCR § 72381(a) **Patients shall be encouraged to participate in activities planned to meet their individual needs. An activity program shall have a written, planned schedule of social and other purposeful independent or group activities. The program shall be designed to make life more meaningful, to stimulate and support physical and mental capabilities to the fullest extent, to enable the patient to maintain the highest attainable social, physical and emotional functioning but not necessarily to correct or remedy a disability.** (b) **The activity program shall consist of individual, small and large group activities which are designed to meet the needs and interests of each**	Compliant	N/A

		patient and which include, but are not limited to: (1) **Social activities.** (2**) Indoor and out-of- doors activities, which may include supervised daily walks.** (3) **Activities away from the facility.** (4**) Religious programs.** (5) **Opportunity for patient involvement for planning and implementation of the activity program.** (6) **Creative activities.** (7) **Educational activities.** (8) **Exercise activities.** (c) **Activities shall be available on a daily basis.** (d) **The activity leader, at a minimum, shall:** (3) **Coordinate the activity schedule with other patient services.** (7) **Develop and maintain contacts with community agencies and organizations.** **The HCBA Waiver:** Residents are free to have visitors and engage in community outings as desired with the help of family, volunteers and/or staff. 5. **Residents' opportunity to make decisions on their day-to-day activities**, including visitors and when and what to eat, in their home and in the community 7. Assurance of resident's rights: a) to be treated with respect; b) choose and wear their own clothes; c) have private space to store personal items; d) have private space to visit with friends and family (if individuals choose to share a residence, visitors are allowed at any time, recognizing the rights of their roommates;) e) use the		

		telephone with privacy; f) **choose how and with whom to spend free time**; and g) **individuals can schedule and take part in community activities of their choice.**		

8b	Individuals have access to food at any time.	22 CCR § 72315(h) **Each patient shall be provided with good nutrition and with necessary fluids for hydration.** 22 CCR § 72335(1) **Not less than 3 meals shall be served daily and with not more than a 14-hour span between the last meal and the first meal of the following day.** (2) **Between-meal feeding shall be provided as required by the diet order. Bedtime nourishments shall be offered to all patients unless contraindicated.** HCBA Waiver requirements: The resident also has the **right to maintain access to food and controlling their own schedules.** 4. **Residents must have access to a kitchen area at all times.** 5. Residents' opportunity to make decisions on their day-to-day activities, including visitors and **when and what to eat**, in their home and in the community.	Compliant	N/A
9	Individuals are able to have visitors of their choosing at any time.	22 CCR § 72527(a)(18) **To have visits from members of the clergy at any time.** (19) **To have visits from persons of the patient's choosing at any time if the patient is critically ill.** HCBA waiver requirements 7. **Assurance of resident's rights:** a) to be treated with respect; b) choose and wear their own clothes; c) have private space to store personal items; d) have private space to visit with friends and family (if individuals choose to share a residence, **visitors are allowed at**	Compliant	N/A

		any time, recognizing the rights of their roommates;).		
10	The setting is physically accessible to the individual.	22 CCR § 72635 requires that **Corridors shall be equipped with firmly secured handrails.** HCBA Waiver, in order to ensure the health and safety of the Waiver participant, the physical plant of the CLHF s**hall conform to the H&S Code section 1267.13 including: B) The facility shall provide sufficient space to allow for the comfort, autonomy, dignity and privacy of each resident and adequate space for the staff to complete their tasks. C. Common areas in addition to the space allotted for the residents' sleeping quarters, shall be provided in sufficient quantity to promote the socialization and recreational activities of the residents in a homelike and communal manner. D. The residents' individual sleeping quarters will allow sufficient space for safe storage of their property, possessions, control of personal resources, and furnishings and still permit access for the staff to complete their necessary health care functions. Not more than two residents shall share a bedroom with an option for a private unit. Residents who choose to reside with a roommate will have their choice of a roommates. E. Bathrooms of sufficient space and quantity shall**	Compliant	N/A

		be provided to allow for the hygiene and personal needs of each resident and the ability of the staff to render care without spatial limitations or compromise. No bathroom shall be accessed only through a resident's bedroom. F. The setting will be maintained in good repair and shall provide a safe, clean, and healthy environment at all times. All persons shall be protected from hazards throughout the premises. The setting will be physically accessible		
11	Person-centered service plan justification and required documentation for modification(s) of the additional requirements.	HCBA Waiver: **Modifications to the POT are made only with approval of the participant and/or his or her legal representative/legally responsible adult and the participant's current primary care physician.** **The use of physical restraints 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: A. Identify a specific and individualized assessed need. B. Document the positive interventions and supports used prior to any modifications to the person-centered service plan. C. Document less intrusive methods of meeting the need that have been tried but did not work. D. Include a clear description of the condition that is directly proportionate to the specific**	Compliant	N/A

		assessed need. E. Include a regular collection and review of data to measure the ongoing effectiveness of the modification. F. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. G. Include informed consent of the individual. H. Include an assurance that interventions and supports will cause no harm to the individual.		

MSSP Provider Setting Type – Congregate Meal Sites

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	**To be an eligible congregate meal site, the site must be open to the public.** (45 CFR §1321.53(b)(3)) (CDA Terms and Conditions Exhibit A. Article1 (20)(a)) **A comprehensive and coordinated community based system described in paragraph (a) of this section shall:** (1) **Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;** (2) **Provide a range of options;** (3) **Assure that these options are readily accessible to all older persons: The independent, semi-dependent and totally dependent, no matter what their income.** (Older Americans Act (OAA) Title III, 45 CFR §1321.53(b))	Compliant	N/A
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	N/A. Congregate meal sites do not address employment opportunities.	N/A	N/A

1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.	**Participants are not means tested. Participants are given the opportunity to make voluntary contributions and services are not denied for failure to contribute towards the cost of services.** (OAA § 315(b)(3 & 4)) (CDA Terms and Conditions Exhibit A. Article1 (20) (a))	Compliant	N/A
1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	**The congregate meal sites provide nutrition services including: meals, nutrition and health promotion education, health promotion programs, nutrition risk screening, and opportunities for socialization.** (22 CCR § 7632.3) (OAA § 330(c)(2) and OAA § 331(c)(3)) (42§ U.S.C. 3030e) WIC § 9103.1(a) **requires all older adults have equal access to programs and services provided through the Older Americans Act in each PSA regardless of physical or mental disabilities, language barriers cultural or social isolation.** **A comprehensive and coordinated community based system described in paragraph (a) of this section shall…** **(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;** (Older Americans Act (OAA) Title III, 45 CFR §1321.53(b))	Compliant	N/A

2	The setting is 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.	Planning and Service Areas (PSA) may offer a variety of congregate meal settings, ranging from Senior Centers, churches, Community Centers to restaurants. **Meals are provided in a setting in as close proximity to the majority of eligible older individuals' residences as feasible.** OAA § 339.(2)(E) **In accordance with 42 CFR § 431.151, a participant may select any willing and qualified provider to furnish Waiver services.** (MSSP Waiver Section 6 Additional Requirements, Section E.) **The Waiver Participant is involved in the development of the care plan and has a choice in service selection.** (MSSP Waiver Appendix D-1, d. Service Development Process).	Compliant	N/A
3a	The setting ensures an individual's rights of privacy;	**The nutrition services provider shall ensure that information about or obtained from a participant's records, shall be maintained in a confidential manner according to subsection 7500(b) of this division.** (22 CCR § 7636.7(d)) **Service providers shall not disclose any information about an older individual, or obtained from an older individual in a form that identifies that person, without the written consent of the individual or his/her legal representative. Records**	Compliant	N/A

		with client names, addresses and phone numbers shall: **1. Be available only to authorized service staff assisting the individual** **2. Remain in a secure, locked file or secure area to protect confidentiality of the records.** **3. Be removed from data or information used for reporting and planning purposes and from data or information made available to the public unless the consent of the older individual has been obtained.** (22 CCR § 7500(b))		
3b	The setting ensures an individual's rights of dignity;	**The congregate meals sites are part of a coordinated and comprehensive community based system that is designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.** (45 CFR § 1321.53(b)(3)) **Congregate meal sites must comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.** 42 U.S.C. § 12101 et seq. CDA Terms and Conditions Exhibit D. Article II. (C)(4)	Compliant	N/A
3c	The setting ensures an individual's rights of respect;	**The congregate meals sites are part of a coordinated and comprehensive community based system that is**	Compliant	N/A

		designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible. (45 CFR § 1321.53(b)(3)) **Menus are planned for a minimum of 4 weeks. To facilitate the participants' choice of meals the menus are posted in a location easily seen by participants at each congregate meals site. The menus must be legible and easy to read in the language of the majority of the participants. Menus must reflect cultural and ethnic dietary needs of participants when feasible and appropriate.** 22 CCR § 7638.5(d)		
3d	The setting ensures an individual's freedom from coercion and restraint.	**Voluntary Contributions shall be allowed and may be solicited for congregate nutrition services if the method of solicitation is non-coercive.** OAA § 315(b)(1) **When it is known or reasonably suspected that a program participant has been the victim of abuse, report the abuse to the authorities in accordance with Section 15630, Welfare and Institutions Code.** 22 CCR § 7636.1(b)(9)	Compliant	N/A
4	The setting optimizes, but does not regiment, individual initiative, autonomy, and	**Participants have the choice to attend or not attend a congregate meal site based on the menu choices.**	Compliant	N/A

	independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.	**The congregate meals sites are part of a coordinated and comprehensive community based system that is designed to assist older persons in leading independent, meaningful and dignified lives in the own homes and communities as long as possible.** (45 CFR § 1321.53(b)(3)) **A comprehensive and coordinated community based system described in paragraph (a) of this section shall…** **(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;** **(OAA Title III,** 45 CFR §1321.53(b)**)** **Menus are planned for a minimum of 4 weeks. To facilitate the participants' choice of meals the menus are posted in a location easily seen by participants at each congregate meals site. The menus must be legible and easy to read in the language of the majority of the participants. Menus must reflect cultural and ethnic dietary needs of participants when feasible and appropriate.** (22 CCR § 7638.5(d)) **Meals follow the provisions of "Offer versus Serve," as found in** 7 CFR § 226.20(q)**. Congregate meal participants may be permitted to decline items due**		

		to preference of medical reasons. (22 CCR § 7636.9(a)(4))		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	**Menus are planned for a minimum of 4 weeks. To facilitate the participants' choice of meals the menus are posted in a location easily seen by participants at each congregate meals site. The menus must be legible and easy to read in the language of the majority of the participants. And they must reflect cultural and ethnic dietary needs of participants when feasible and appropriate.** (22 CCR § 7638.5(d)) **Meals follow the provisions of "Offer versus Serve," as found in** 7 CFR § 226.20(q)**. Congregate meal participants may be permitted to decline items due to preference of medical reasons.** (22 CCR § 7636.9(a)(4)) **In accordance with** 42 CFR § 431.151**, a participant may select any willing and qualified provider to furnish waiver services included in the service plan unless the State has received approval to limit the number of providers under the provisions of §1915(b) or another provision of the Act.** (MSSP Waiver Section 6 Additional Requirements, Section E.) **The waiver participant is involved in the**	Compliant	N/A

		development of the care plan and has a choice in service selection. (MSSP Waiver Appendix D-1, d. Service Development Process)		

DDS Provider Setting Type (Day Type Services) – Activity Center; Adult Day Care Facility; Adult Development Center; Behavior Management Program; Community-Based Training Provider; Socialization Training Program; Community Integration Training Program; Community Activities Support Service

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes opportunities for integration in, access to, and participation in all aspects of the community. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community...** Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …These include **promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, the way in which they**	Compliant	

		spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation… WIC § 4502(a)(b)(1-3, 5-7, & 10) (a) Persons with developmental disabilities have the **same legal rights and responsibilities** guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. An otherwise qualified person by reason of having a developmental disability shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives public funds. (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(1)** A right to treatment and habilitation services and supports in the **least restrictive environment.** Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the **most independent, productive, and normal lives possible.** Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or		

		supports. (2) …To the maximum extent possible, treatment, services, and **supports shall be provided in natural community settings.** (3) **A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.** (5) **A right to religious freedom and practice.** (6) **A right to social interaction and participation in community activities.** (7) **A right to physical exercise and recreational opportunities.** **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where		

		appropriate, **as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.**		
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Language in WIC provides opportunities for individuals to seek and obtain competitive/integrated employment. Additionally, California's Employment First Policy identifies strategies to increase employment for individuals with developmental disabilities. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community**... Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: (10) A right to make choices in their own	Compliant	

		lives, including, but not limited to, where and with whom they live, their relationships with people in their community, **the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4646.5(a)(4) (a) The planning process for the individual program plan described in **Section 4646** shall include all of the following: **(b) When developing an individual program plan for a transition age youth or working age adult, the planning team shall consider the Employment First Policy described in Chapter 14 (commencing with Section 4868).** With the Employment First Policy, the State is committed to providing opportunities for individuals with developmental disabilities to seek employment and engage in work in integrated settings. WIC § 4851(o) **"Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that**		

		individuals without disabilities in comparable positions interact with other persons. WIC § 4688.21(a)(b)(1)(B)(7)(c)(2)(3) The Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; **have opportunities to further the development or maintenance of employment and volunteer activities;** direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. **To further these goals, a consumer may choose a tailored day service or vouchered** (a) **community-based training service, in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program. (b)(1)(B) Encourage opportunities to further the development or maintenance of employment**, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's (b) ability to lead an integrated and inclusive life. (c) (1) A vouchered community-based training service is defined as a consumer-directed service that **assists the consumer in the development of skills required for community integrated employment** or participation in volunteer activities, or both, and the assistance necessary for the		

		consumer to secure employment or volunteer positions or pursue secondary education.		
1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.
1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes an individual's right to make choices in his/her life including participation in community life. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community**... Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …**These include promoting opportunities for individuals with**	Compliant	

		developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.**		
2	The setting is 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,		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

	resources available for room and board.			
3a	The setting ensures an individual's rights of privacy;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to privacy. WIC § 4502(b)(2) (1)It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care**. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.	Compliant	
3b	The setting ensures an individual's rights of dignity;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to dignity. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings	Compliant	
3c	The setting ensures an individual's rights of respect;	**Justification:** The State believes it is partially compliant with this requirement. Language in WIC	Partial Compliance	The State will seek to modify statute and/or regulations

		emphasizes that choices made by the individual shall be respected. WIC § 4502.1 The right of individuals with developmental disabilities to make choices in their own lives requires that **all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers**…		as appropriate to align with the federal requirement related to the setting ensuring an individual's right of respect. Completion fourth quarter 2022.
3d	The setting ensures an individual's freedom from coercion and restraint.	**Justification:** The State believes it does not fully meet this requirement. 22 CCR § 82072(a)(3) Personal Rights **(Specific to Licensed Settings)** **(a)(3) To be free from** corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, **coercion**, threat, mental abuse, or other actions of a punitive nature… **Silent:** Freedom from coercion (in Non-Licensed Settings). **Partially Compliant:** WIC § 4502(b)(8) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

		limited to, the following: **(8) A right to be free from harm, including unnecessary physical restraint**, or isolation, excessive medication, abuse, or neglect.		
4	The setting optimizes, but does 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.	**Justification:** The State believes it is compliant with this requirement. Language in WIC and Title 22 indicates that services and supports should enable individuals to make choices regarding their daily lives. WIC § 4501 …**An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person** with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age… …These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. **In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives**…	Compliant	

		WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives**, **including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4512(b) …The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. **The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants**, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision **of services and supports by the**		

		regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, **independent**, productive, and normal lives, and stable and healthy environments. WIC § 4688.21(a)(A)(B)(2)(A)(B)(c)(1)(A) (a) The Legislature places a high priority on **opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs**; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. To further these goals, a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program. **(A)**Include an individualized service design, as determined through the individual program plan (IPP) and approved by the regional center, that **maximizes the consumer's individualized choices and needs.** This service design may include, but may not		

		be limited to, the following: **(B)**Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life. (2) The type and amount of tailored day service shall be determined through the IPP process, pursuant to Section 4646. The IPP shall contain, but not be limited to, the following: **(A)A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met.** **(B)**The type and amount of services and staffing needed to meet the consumer's individualized choices and needs, and unique health and safety and other needs. (c) (1) A vouchered community-based training service is defined as a consumer-directed service that assists the consumer in the development of skills required for community integrated employment or participation in volunteer activities, or both, and the assistance necessary for the consumer to secure employment or volunteer positions or pursue secondary education. (A) A detailed description of the consumer's individualized choices and		

		needs and how these choices and needs will be met. 22 CCR § 80072(a)(6) (Specific to Community Care Facilities) (a) Except for children's residential facilities, each client shall have personal rights which include, but are not limited to, the following: **(6) To leave or depart the facility at any time.**		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	**Justification:** The State believes that it is partially compliant with this requirement. Language in WIC identifies an individual's right to make choices pertaining to his/her own life, including program planning and implementation. WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4512(b) …The determination of which services and	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement that the individual is provided choice regarding services, supports, and providers. Completion fourth quarter 2022.

		supports are necessary for each consumer shall be made through the individual program plan process. **The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants**, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a)(b)(d) **(a)** It is the intent of the Legislature to ensure that the individual program plan and provision of **services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family**, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of **services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer**, and reflect the cost-effective use of public resources.		

		(b) The individual program plan is developed through a process of individualized needs determination. **The individual with developmental disabilities** and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, **shall have the opportunity to actively participate in the development of the plan.** **(d)** Individual program plans shall be prepared jointly by the planning team. **Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer** or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting. WIC § 4688.21(a)(A)(ii)(B) **(a)** The Legislature places a high priority on opportunities for adults with developmental disabilities **to choose and customize day services to meet their individualized needs;** have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; **and increase their ability to lead integrated and inclusive lives.** To		

		further these goals, **a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program.** **(A)** Include an individualized service design, as determined through the individual program plan (IPP) and approved by the regional center, that **maximizes the consumer's individualized choices and needs**. This service design may include, but may not be limited to, the following: (ii) Flexibility in the duration and intensity of services to meet the consumer's individualized needs. (B) Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life		

DHCS Provider Setting Type – Residential Care Facility for the Elderly – Assisted Living Waiver

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	22 CCR § 87219(a) **Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in planned activities.** (c) the setting **shall arrange for utilization of available community resources through contact with organizations and volunteers to promote resident participation in community-centered activities…** (1-4) **Attendance at the place of worship of the resident's choice; service activities for the community; community events; community organized group activities.**	Compliant	N/A
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	Residential Provider Verification (42 CFR § 441.301(c) (4)) and 441.301(c)(4)(F). Prior to enrollment or continued enrollment as a provider for Home and Community-based Services (HCBS), applicants/providers must complete the disclosure that ensure compliance with the new HCB Setting Final Rule. By signing this, the provider agrees that they are in compliance with the Federal requirements, and provide evidence of compliance, consisting of: 1. A copy of the facility's license/certification/registration/other.	Compliant	RCFEs in the ALW have signed the Medi-Cal Provider Agreement, which requires the setting to adhere to all federal laws and regulations governing the Medicaid Program. The State issued a Home and Community Based

		2. A copy of any brochures or publicly-available information regarding the facility. 3. A copy of standard lease agreement used or other similar residential agreements detailing required tenant/ landlord requirements as applicable through California's Consumer Affairs. 4. A copy of the settings policies and procedures or onsite manual with pages earmarked identifying compliance with each federal characteristic. 5. Any other documentation to fully support an applicant's/provider's responses to the Federal Characteristics.		Setting Characteristics Provider Attestation, which is signed by applicant/providers, and reinforces this requirement and clearly indicates the requirements of 42 CFR 441.301(c)(4). Completion fourth quarter 2018.
1c	The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS	H&S § 1569.269(a)(29) ensures the residents have the right **To manage their financial affairs.** (30) **To keep, have access to, and use their own personal possessions, including toilet articles, and to keep and be allowed to spend their own money** 22 CCR § 87468 (12) **To wear his/her own clothes; to keep and use his/her own personal possessions, including his/her toilet articles; and to keep and be allowed to spend his/her own money.**	Compliant	N/A
1d	The setting includes opportunities to engage in community life, and receive services in the	22 CCR § 87219 (c) the setting **shall arrange for utilization of available community resources through contact with organizations and volunteers to**	Compliant	N/A

	community, to the same degree of access as individuals not receiving Medicaid HCBS.	**promote resident participation in community- centered activities…** (1-4) **Attendance at the place of worship of the resident's choice; service activities for the community; community events; community organized group activities.**		
2	The setting is 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.	22 CCR § 87462 **The facility shall obtain sufficient information about each person's likes and dislikes and interests and activities, to determine if the living arrangements in the facility will be satisfactory.** 22 CCR § 87457 **Prior to admission, the prospective resident…shall be interviewed by the licensee.** (1) **Sufficient information about the facility and its services shall be provided to enable all persons involved in the placement to make an informed decision regarding admission.** 22 CCR § 87464(e)(2) **An extra charge to the resident shall be allowed for a private room if a double room is made available but the resident prefers a private room, provided the arrangement is documented in the admissions agreement.** 22 CCR § 87505 **Each facility shall document in writing the findings of the pre-admission appraisal**, which is included in the admissions agreement. (c) **Admission agreements shall be signed**	Compliant	N/A

		and dated, acknowledging the contents of the document, by the resident or the resident's representative, if any, and the licensee or the licensee's designated representative. 22 CCR § 87507(d) **The licensee shall retain in the resident's file the original signed and dated admission agreement and all subsequent signed and dated modifications.** Waiver Language: Appendix C-2 c. ii. Facilities participating as ALW HCBS settings are required to have the following qualities: The setting is selected by the individual from among all available alternatives and is identified in the person- centered service plan. 22 CCR *§ 74695* Home health agencies participating in the Medicare and/or Medi-Cal program shall meet applicable federal requirements. 22 CCR *§ 74735* **(a)** The agency shall establish and maintain for each patient accepted for care a health record which shall include the following information: **(3)** Plan of treatment, plan of care, or plan for personal care services in its entirety as specified in Section 74697. **(8)** Documentation that a list of patient rights has been made		

		available to each patient, patient's representative, or next of kin.		
3a	The setting ensures an individual's rights of privacy;	H&S § 1569.269(a)(2) ensures the residents have the right **To be granted a reasonable level of personal privacy in accommodations, medical treatment, personal care and assistance, visits, communications, telephone conversations, use of the Internet, and meetings of resident and family groups.** 22 CCR § 87307(a) **The facility shall be large enough to provide comfortable living accommodations and privacy for the residents.** (a) (2) Regarding resident bedrooms, (B) **No room commonly used for other purposes shall be used as a sleeping room for any resident**; (C) **No bedroom of a resident shall be used as a passageway to another room, bath or toilet.** 22 CCR § 87307(c) **Individual privacy shall be provided in all toilet, bath and shower areas.** **22 CCR** *§ 74731 (i)(1)* **(1)** The home health agency shall protect patients from unnecessary intrusion into their private lives by safeguarding the health information entrusted to them.(i)**(2)** The agency shall assure conformance with current acceptable professional standards	Compliant	N/A

		and follow state laws that may be more prescriptive.		
3b	The setting ensures an individual's rights of dignity;	22 CCR § 87219(a)(1) Residents' personal rights: **To be accorded dignity in his/her personal relationships with staff, residents, and other persons.** **22 CCR** *§ 74693* To the extent that services are provided and the patient's condition makes it appropriate, preventive, treatment, rehabilitative and maintenance services for patients for whom the agency accepts responsibility shall be provided by the agency or through it under arrangements with other qualified providers of service.	Compliant	N/A
3c	The setting ensures an individual's rights of respect;	22 CCR § 87219(a)(1) Residents' personal rights: **To be accorded dignity in his/her personal relationships with staff, residents, and other persons.** (9) **To have communications to the facility from his/her family and responsible persons answered promptly and appropriately.** H&S § 1569.269(a)(4) ensures the residents have the right **To be encouraged and assisted in exercising their rights as citizens and as residents of the facility. Residents shall be free from interference, coercion, discrimination, and retaliation in exercising their rights.** The intent and result of these State standards ensure the resident is treated with	Compliant	N/A

		respect. **22 CCR** *§ 74743* **(a)** Notice of rights. **(1)** The home health agency must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.**(2)** The home health agency must maintain documentation showing that it has complied with the requirements of this section.**(b)** Exercise of rights and respect for property and person: **(1)** The patient has the right to exercise his or her rights as a patient of the home health agency.		
3d	The setting ensures an individual's freedom from coercion and restraint.	22 CCR § 87219(a)(3) Residents' personal rights: **To be free from corporal or unusual punishment, humiliation, intimidation, mental abuse, or other actions of a punitive nature, such as withholding of monetary allowances or interfering with daily living functions such as eating or sleeping patterns or elimination.** (6) **To leave or depart the facility at any time and to not be locked into any room, building, or on facility premises by day or night** H&S § 1569.269(a)(10) ensures the residents have the rights **To be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and verbal, mental, physical, or sexual abuse.** (11) **To present grievances and recommend**	Compliant	N/A

		changes in policies, procedures, and services to the staff of the facility, the facility's management and governing authority, and to any other person without restraint, coercion, discrimination, reprisal, or other retaliatory actions. The licensee shall take prompt actions to respond to resident's grievances.		
4	The setting optimizes, but does 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.	H&S § 1569.269(a)(8) ensures the residents have the rights **To make choices concerning their daily life in the facility. (16) To reasonable accommodation of individual needs and preferences in all aspects of life in the facility.** 22 CCR § 87219(a) **Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in planned activities. The activities made available shall include** (2) **Daily living skills/activities which foster and maintain independent functioning.** (6) **Provision for free time so residents may engage in activities of their choosing.** (b) **Residents served shall be encouraged to contribute to the planning, preparation, conduct, clean-up and critique of the planned activities** 22 CCR § 87467(a) **Prior to, or within two**	Compliant	N/A

		weeks of the resident's admission, the licensee shall arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, and any other appropriate parties, to prepare a written record of the care the resident will receive in the facility, and the resident's preferences regarding the services provided at the facility.		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	H&S § 1569.269(a)(9) ensures the residents have the rights **To fully participate in planning their care, including the right to attend and participate in meetings or communications regarding the care and services to be provided…and to involve persons of their choice in the planning process. The licensee shall provide necessary information and support to ensure that residents direct the process to the maximum extent possible, and are enabled to make informed decisions and choices.** (20) **To select their own physicians, pharmacies, privately paid personal assistants, hospice agency, and health care providers, in a manner that is consistent with the resident's contract of admission or other rules of the facility, and in accordance with this act.** 22 CCR § 87219(b) **Residents served shall be encouraged to contribute to**	Compliant	N/A

		the planning, preparation, conduct, clean-up and critique of the planned activities 22 CCR § 87462 Pre admission policy requires **The facility shall obtain sufficient information about each person's likes and dislikes and interests and activities, to determine if the living arrangements in the facility will be satisfactory, and to suggest the program of activities in which the individual may wish to participate.** 22 CCR § 87464(d) **…the facility shall be responsible for meeting the resident's needs as identified in the pre-admission appraisal…and providing the other basic services specified below, either directly or through outside resources.** 22 CCR § 87464(a) **The services provided by the facility shall be conducted so as to continue and promote, to the extent possible, independence and self-direction for all persons accepted for care. Such persons shall be encouraged to participate as fully as their conditions permit in daily living activities both in the facility and in the community.** 22 CCR § 87467(a) **Prior to, or within two weeks of the resident's admission, the licensee shall arrange a meeting**		

		with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, and any other appropriate parties, to prepare a written record of the care the resident will receive in the facility, and the resident's preferences regarding the services provided at the facility. Residents are given the opportunity to determine their preferences for the services provided at the facility, and who provides them. 22 CCR *§ 74697* A written plan of treatment (or plan of care for home health agencies participating in the Medicare and/or Medi-Cal program) shall be established for each patient whose care requires medical orders. 22 CCR *§ 74697* **(5)** In compliance with applicable federal requirements for a plan of care when the home health agency participates in the Medicare and/or Medi-Cal program.		
For Medi-Cal Provider-owned or controlled HCB residential settings, the provider must offer:				
6	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by	22 CCR § 87224 defines the setting's Eviction Procedures. 22 CCR § 87456(a)(4) The setting must **Execute the admissions agreement.**	Partial Compliance	RCFEs in the ALW have signed the Medi-Cal Provider Agreement, which

	the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants under the landlord/tenant law of the State, county, city, or other designated entity. For setting in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	22 CCR § 87457(b) **No person shall be admitted without his/her consent and agreement, or that of his/her responsible person, if any.** 22 CCR § 87507(c) **Admission agreements shall be signed and dated, acknowledging the contents of the document, by the resident or the resident's representative, if any.** Residential Provider Verification (42 CFR § 441.301(c) (4)) and 441.301(c)(4)(F). Prior to enrollment or continued enrollment as a provider for Home and Community-based Services (HCBS), applicants/providers must complete the disclosure that ensure compliance with the new HCB Setting Final Rule. By signing this, the provider agrees that they are in compliance with the Federal requirements, and provide evidence of compliance, consisting of: 1. A copy of the facility's license/certification/registration/other. 2. A copy of any brochures or publicly-available information regarding the facility. 3. A copy of standard lease agreement used or other similar residential agreements detailing required tenant/ landlord requirements as applicable through		requires the setting to adhere to all federal laws and regulations governing the Medicaid Program. The State issued a Home and Community Based Setting Characteristics Provider Attestation, which is signed by applicant/providers, and reinforces this requirement and clearly indicates the requirements of 42 CFR 441.301(c)(4) and 441.301(c)(4)(F), modifications of the additional requirements. Completed 2018.

		California's Consumer Affairs. 4. A copy of the settings policies and procedures or onsite manual with pages earmarked identifying compliance with each federal characteristic. 5. Any other documentation to fully support an applicant's/provider's responses to the Federal Characteristics.		
7a	Each individual has privacy in their sleeping or living unit including lockable doors by the individual, with only appropriate staff having keys to doors;	22 CCR § 87307(a) **The facility shall be large enough to provide comfortable living accommodations and privacy for the residents, staff, and others who may reside in the facility.** (a) (2) (B-D) **No room commonly used for other purposes shall be used as a sleeping room for any resident; No bedroom of a resident shall be used as a passageway to another room, bath or toilet; Not more than two residents shall sleep in a bedroom.** State standards ensure the residents' privacy throughout the facility; however, state standards do not address lockable doors with appropriate staff having keys. 22 CCR *§ 74743* **(3)** The patient has a right to have his or her property treated with respect.	Compliant	RCFEs in the ALW have signed the Medi-Cal Provider Agreement, which requires the setting to adhere to all federal laws and regulations governing the Medicaid Program. The State issued a Home and Community Based Setting Characteristics Provider Attestation, which is signed by applicant/providers, and reinforces this requirement

		Residential Provider Verification (42 CFR § 441.301(c) (4)) and 441.301(c)(4)(F). Prior to enrollment or continued enrollment as a provider for Home and Community-based Services (HCBS), applicants/providers must complete the disclosure that ensures compliance with the new HCB Setting Final Rule. By signing this, the provider agrees that they are in compliance with the Federal requirements, and provide evidence of compliance, consisting of: 1. A copy of the facility's license/certification/registration/other. 2. A copy of any brochures or publicly available information regarding the facility. 3. A copy of standard lease agreement used or other similar residential agreements detailing required tenant/ landlord requirements as applicable through California's Consumer Affairs. 4. A copy of the settings policies and procedures or onsite manual with pages earmarked identifying compliance with each federal characteristic. 5. Any other documentation to fully support an applicant's/provider's responses to the Federal Characteristics.		and clearly indicates the requirements of 42 CFR 441.301(c)(4) and 441.301(c)(4)(F), modifications of the additional requirements. Completed fourth quarter 2018.

7b	Individuals sharing units have a choice of roommates in that setting;	H&S § 1569.269(a)(17) ensures the residents have the right **To reasonable accommodation of resident preferences concerning room and roommate choices.**	Compliant	N/A
7c	Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Residential Provider Verification (42 CFR § 441.301(c) (4)) and 441.301(c)(4)(F). Prior to enrollment or continued enrollment as a provider for Home and Community-based Services (HCBS), applicants/providers must complete the disclosure that ensures compliance with the new HCB Setting Final Rule. By signing this, the provider agrees that they are in compliance with the Federal requirements, and provide evidence of compliance, consisting of: 1. A copy of the facility's license/certification/registration/other. 2. A copy of any brochures or publicly-available information regarding the facility. 3. A copy of standard lease agreement used or other similar residential agreements detailing required tenant/ landlord requirements as applicable through California's Consumer Affairs. 4. A copy of the settings policies and procedures or onsite manual with pages earmarked identifying compliance with each federal characteristic. 5. Any other documentation to fully support	Compliant	RCFEs in the ALW have signed the Medi-Cal Provider Agreement, which requires the setting to adhere to all federal laws and regulations governing the Medicaid Program. The State issued a Home and Community Based Setting Characteristics Provider Attestation, which is signed by applicant/providers, and reinforces this requirement and clearly indicates the requirements of 42 CFR 441.301(c)(4) and 441.301(c)(4)(F), modifications of

		an applicant's/provider's responses to the Federal Characteristics.		the additional requirements. Completed 2018.
8b	Individuals have access to food at any time.	**contact with organizations and volunteers to promote resident participation in community- centered activities…** (1-4) **Attendance at the place of worship of the resident's choice; service activities for the community; community events; community organized group activities.** 22 CCR § 87462 Pre admission policy requires **The facility shall obtain sufficient information about each person's likes and dislikes and interests and activities, to determine if the living arrangements in the facility will be satisfactory, and to suggest the program of activities in which the individual may wish to participate.** 22 CCR § 87464(a) **The services provided by the facility shall be conducted so as to continue and promote, to the extent possible, independence and self-direction for all persons accepted for care. Such persons shall be encouraged to participate as fully as their conditions permit in daily living activities both in the facility and in the community.** **22 CCR** *§ 74743* **(c)** Right to be informed	Compliant	N/A

		and to participate in planning care and treatment. **(1)** The patient has the right to be informed, in advance about the care to be furnished, and of any changes in the care to be furnished. **(A)** The home health agency shall advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.**(B)** The home health agency shall advise the patient in advance of any change in the plan of treatment or plan of care, or plan for personal care services, before the change is made.**(2)** The patient has the right to participate in the planning of the care. **(A)** The home health agency must advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.		
9	Individuals are able to have visitors of their choosing at any time.	H&S § 1569.269(a)(24) ensures the residents have the right **To consent to have relatives and other individuals of the resident's choosing visit during reasonable hours, privately and without prior notice.** 22 CCR § 87468(a)(11) **To have his/her visitors, including ombudspersons and advocacy representatives permitted to visit privately during reasonable hours and without prior notice.** Residential Provider Verification (42 CFR §	Compliant	RCFEs in the ALW have signed the Medi-Cal Provider Agreement, which requires the setting to adhere to all federal laws and regulations governing the Medicaid Program. The State issued a Home and Community Based

		441.301(c) (4)) and 441.301(c)(4)(F). Prior to enrollment or continued enrollment as a provider for Home and Community-based Services (HCBS), applicants/providers must complete the disclosure that ensures compliance with the new HCB Setting Final Rule. By signing this, the provider agrees that they are in compliance with the Federal requirements, and provide evidence of compliance, consisting of: 1. A copy of the facility's license/certification/registration/other. 2. A copy of any brochures or publicly-available information regarding the facility. 3. A copy of standard lease agreement used or other similar residential agreements detailing required tenant/ landlord requirements as applicable through California's Consumer Affairs. 4. A copy of the settings policies and procedures or onsite manual with pages earmarked identifying compliance with each federal characteristic. 5. Any other documentation to fully support an applicant's/providers responses to the Federal Characteristics.		Setting Characteristics Provider Attestation, which is signed by applicant/providers, and reinforces this requirement and clearly indicates the requirementsof 42 CFR 441.301(c)(4) and 441.301(c)(4)(F), modifications of the additional requirements. Completed 2018.
10	The setting is physically accessible to the individual.	22 CCR § 87219(h) **Facilities shall provide sufficient space to accommodate both indoor and outdoor activities.** (2) **Outdoor activity areas**	Compliant	N/A

		which are easily accessible to residents and protected from traffic. 22 CCR § 87307(d)(4) **Stairways, inclines, ramps and open porches and areas of potential hazard to residents with poor balance or eyesight shall be made inaccessible to residents unless equipped with sturdy hand railings and unless well-lighted.** (6) **All**		

DDS Provider Setting Type – Supported Employment (Group Services)

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes opportunities for integration in, access to, and participation in all aspects of the community, and the requirement that this service may only be provided at an integrated worksite. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community...** Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …These include **promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal**	Compliant	

		future, and program planning and implementation… WIC § 4502(a)(b)(1-3, 5-7, & 10) (a) Persons with developmental disabilities have the **same legal rights and responsibilities** guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. An otherwise qualified person by reason of having a developmental disability shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives public funds. (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(1)** A right to treatment and habilitation services and supports in the **least restrictive environment.** Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the **most independent, productive, and normal lives possible.** Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports. **(2)** …To the maximum extent possible, treatment, services, and **supports shall**		

		be provided in natural community settings. **(3) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.**A right to religious freedom and practice. **(5)A right to social interaction and participation in community activities.** **A right to physical exercise and recreational opportunities.** **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, **as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.**		

		WIC § 4851(n-o) (n)"Supported employment" means **paid work that is integrated in the community** for individuals with developmental disabilities. **(o)"Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons.**		
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Language in WIC provides opportunities for individuals receiving this service to seek and obtain competitive integrated employment. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community**... Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people**	Compliant	

		without disabilities of the same age… WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: (10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, **the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** **WIC § 4851(n-o)** (n)"Supported employment" means **paid work that is integrated in the community** for individuals with developmental disabilities. **"Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons.**		
1c	The setting includes opportunities to control personal resources to the		Silent	The State will seek to modify statute and/or regulations

	same degree of access as individuals not receiving Medicaid HCBS.			as appropriate to align with the federal requirement. Completion fourth quarter 2022.
1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	**Justification:** The State believes it is compliant with this requirement. Language in WIC promotes an individual's right to make choices in his/her life including participation in community life and the requirement that this service may only be provided at an integrated worksite. **WIC § 4501** …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community**... Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** …**These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities**, **including supported living and other appropriate community living**	Compliant	

		arrangements. WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4851(n-o) **(n) "Supported employment" means paid work that is integrated in the community for individuals with developmental disabilities.** **(o) "Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons.**		

2	The setting is 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.		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.
3a	The setting ensures an individual's rights of privacy;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to privacy. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care**. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.	Compliant	
3b	The setting ensures an individual's rights of dignity;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to	Compliant	

		dignity. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.		
3c	The setting ensures an individual's rights of respect;	**Justification:** The State believes it is partially compliant with this requirement. Language in WIC emphasizes that choices made by the individual shall be respected. WIC § 4502.1 The right of individuals with developmental disabilities to make choices in their own lives requires that **all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers**…	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to the setting ensuring an individual's right of respect. Completion fourth quarter 2022.
3d	The setting ensures an individual's freedom from coercion and restraint.	**Justification:** The State believes it does not fully meet this requirement. **Silent:** Freedom from coercion. **Partially Compliant:**	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement.

		WIC § 4502(b)(8) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(8) A right to be free from harm, including unnecessary physical restraint**, or isolation, excessive medication, abuse, or neglect		Completion fourth quarter 2022.
4	The setting optimizes, but does 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.	**families, when appropriate, should participate in decisions affecting their own lives**… WIC § 4502 (b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives**, **including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** WIC § 4512(b) …The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. **The determination shall be made on the basis of the needs**	Compliant	

		and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a) It is the intent of the Legislature to ensure that the individual program plan and provision **of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual** and the family, where appropriate, as well as promoting community integration, **independent**, productive, and normal lives, and stable and healthy environments		
5	The setting facilitates individual choice regarding services and supports, and who provides them.	**preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants**, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a)(b)(d)	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement that the individual is provided choice regarding services, supports, and

		(a) It is the intent of the Legislature to ensure that the individual program plan and provision of **services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family**, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of **services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer**, and reflect the cost-effective use of public resources. **(b)** The individual program plan is developed through a process of individualized needs determination. **The individual with developmental disabilities** and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, **shall have the opportunity to actively participate in the development of the plan.**		providers. Completion fourth quarter 2022.

DDS Provider Setting Type – Work Activity Program

#	HCBS SETTINGS REQUIREMENTS	EVIDENCE	COMPLIANCE LEVEL	REMEDIATION STRATEGIES AND TIMELINE
1a	The setting is integrated in, and supports full access to the greater community, to the same degree of access as individuals not receiving Medicaid HCBS;	**Conflicting:** WIC § 4851(e) (e) “Work activity program” includes, but is not limited to, sheltered workshops or work activity centers, or community-based work activity programs certified pursuant to subdivision(f) or accredited by CARF, the Rehabilitation Accreditation Commission.	Conflicting	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to integration and support of full access to the community. Completion fourth quarter 2022.
1b	The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS;	**Justification:** The State believes it is compliant with this requirement. Language in WIC provides opportunities for individuals to seek and obtain employment. Language in Title 17 requires the assessment of individuals for competitive integrated employment. Additionally, California’s Employment First Policy identifies strategies to increase employment for individuals with developmental disabilities. WIC § 4501 …An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, **regardless of age or degree of disability, and at each stage of life and to support their integration into the**	Compliant	

		mainstream life of the community... Services and supports should be available to enable persons with developmental disabilities to **approximate the pattern of everyday living available to people without disabilities of the same age…** WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10)** A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, **the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.** 17 CCR § 58840(a) Referrals to the Department of Rehabilitation **(a) Work Activity Programs shall at least once annually assess the service needs of each consumer served** by the program to identify any consumers for whom vocational rehabilitation program services provided by the Department of Rehabilitation would be appropriate, provided the program **shall inform the regional center at any time when a consumer expresses an interest in securing employment outside the Work Activity Program, or presents as an appropriate candidate for referral to the**		

		Department of Rehabilitation. WIC § 4646.5(a)(4) (a) The planning process for the individual program plan described in Section 4646 shall include all of the following: **(4) When developing an individual program plan for a transition age youth or working age adult, the planning team shall consider the Employment First Policy described in Chapter 14 (commencing with Section 4868).** With the Employment First Policy, the State is committed to providing opportunities for individuals with developmental disabilities to seek employment and engage in work in integrated settings. WIC § 4851(o) **"Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons.**		
1c	The setting includes opportunities to control personal resources to the		Silent	The State will seek to modify statute and/or regulations

	same degree of access as individuals not receiving Medicaid HCBS.			as appropriate to align with the federal requirement. Completion fourth quarter 2022.
1d	The setting includes opportunities to engage in community life, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	**Conflicting:** WIC § 4851(e) (e) "Work activity program" includes, but is not limited to, sheltered workshops or work activity centers, or community-based work activity programs certified pursuant to subdivision (f) or accredited by CARF, the Rehabilitation Accreditation Commission.	Conflicting	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to an individual's opportunity to control his/her personal resources to the same degree of access as individuals not receiving Medicaid HCBS. Completion fourth quarter 2022.
2	The setting is 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		Silent	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

	plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.			
3a	The setting ensures an individual's rights of privacy;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to privacy. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.	Compliant	
3b	The setting ensures an individual's rights of dignity;	**Justification:** The State believes it is compliant with this requirement. Language in WIC addresses an individual's right to dignity. WIC § 4502(b)(2) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(2) A right to dignity, privacy, and humane care.** To the maximum extent possible, treatment, services, and supports shall be provided in natural community	Compliant	

		settings.		
3c	The setting ensures an individual's rights of respect;	**<u>Justification:</u>** The State believes it is partially compliant with this requirement. Language in WIC emphasizes that choices made by the individual shall be respected WIC § 4502.1.The right of individuals with developmental disabilities to make choices in their own lives requires that **all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers**.	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to the setting ensuring an individual's right of respect. Completion fourth quarter 2022.
3d	The setting ensures an individual's freedom from coercion and restraint.	**<u>Justification:</u>** The State believes it does not fully meet this requirement. **Silent:** Freedom from coercion. **Partially Compliant:** WIC § 4502(b)(8) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(8) A right to be free from harm, including unnecessary physical restraint**, or isolation, excessive medication, abuse, or neglect.	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement. Completion fourth quarter 2022.

4	The setting optimizes, but does 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.	**Conflicting:** WIC § 4862(a) (a) The length of a work activity program day shall not be less than five hours, excluding the lunch period.	Conflicting	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement related to the optimization of a setting without regimentation in regards to an individual's life choices. Completion fourth quarter 2022.
5	The setting facilitates individual choice regarding services and supports, and who provides them.	**Justification:** The State believes that it is partially compliant with this requirement. Language in WIC identifies an individual's right to make choices pertaining to his/her own life, including program planning and implementation. WIC § 4502(b)(10) (b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: **(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.**	Partial Compliance	The State will seek to modify statute and/or regulations as appropriate to align with the federal requirement that the individual is provided choice regarding services, supports, and providers. Completion fourth quarter 2022.

		WIC § 4512(b) …The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. **The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants**, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option... WIC § 4646(a)(b)(d) **(a)** It is the intent of the Legislature to ensure that the individual program plan and provision of **services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family**, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of **services to consumers and their families be effective in meeting the**		

		goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. **(b)** The individual program plan is developed through a process of individualized needs determination. **The individual with developmental disabilities** and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, **shall have the opportunity to actively participate in the development of the plan.** **(d)** Individual program plans shall be prepared jointly by the planning team. **Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.**		