HCBS FINAL REGULATIONS 42 CFR Part 441: QUESTIONS AND ANSWERS REGARDING HOME AND COMMUNITY-BASED SETTINGS

Public Notice and Comments

1. **Question:** What is the public comment process associated with the state's statewide transition plan to bring settings in 1915(c) waivers and 1915(i) state plan benefits into compliance with Home and Community-Based (HCB) settings requirements?

   Answer: The regulations require that states provide, at a minimum, a 30-day public notice and comment period on transition plans. At least two forms of public notice must be provided, along with at least two ways for the public to provide input. The state must make the complete transition plan available for review by the public, including individuals being served and individuals eligible to be served by the program. A minimum expectation is that the document be available at the state's Medicaid website, which should meet requirements for access by people with disabilities, and through an alternative method for those without internet access.

   There are many ways states can solicit public input. They can, for example, seek comments through a website, mail, telephone conferences, and at meetings, such as town halls. The state must consider the comments it receives and, as appropriate, modify the transition plan to account for public comment. In the final submission of the transition plan to CMS, the regulations direct states to include a summary of the public input and the state's response to the public input. Please note that if the state receives comments containing individually identifiable information or health data, the state's summary must comply with all laws and rules related to privacy, such as requirements of the Health Insurance Portability and Accountability Act (HIPAA). Further, when the state submits its transition plan to CMS, it must post the complete transition plan with a summary of comments online and provide a URL to CMS. Additionally, states are strongly encouraged to describe their process for ensuring ongoing transparency and input from stakeholders on the implementation of the transition plan.

   For more details pertaining to the statewide transition plan to achieve compliance with the HCBS final rule settings requirements, please visit: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Statewide-Transition-Plan-Toolkit-.pdf.

2. **Question:** What is the process for soliciting public notice for a waiver-specific transition plan?

   Answer: For 1915(c) Home and Community-Based Services (HCBS) waivers and 1915(i) State Plan Amendments (SPAs) or renewals, the state must give public notice and receive public comment for at least 30 days prior to submission of the transition plan. States should also review waiver-specific transition plans in the context of the broader statewide transition plan to ensure consistency. The state must also provide public notice and solicit public input on the waiver or SPA.

3. Do states need to provide public notice for new 1915(c) waivers and 1915(i) State Plan Programs?

   Although new 1915(c) waivers and 1915(i) State Plan Amendments (SPA)s will not have transition plans because they are required to be compliant with the HCB settings requirements at the time of approval, states must give public notice of the new waiver and/or SPA and at least a 30-day public input period prior to submitting to CMS.

4. **Question:** What is acceptable evidence of public notice and input for both waiver-specific and statewide transition plans?

   Answer: The state must issue two statements of public notice and input procedures. Two statements of public notice means using two different methods of notifying the public of the opportunity to comment. There are many ways to solicit public input, such as inviting comments via email at a designated online site, seeking written comments, hosting a meeting(s) and conducting town halls. States must submit to CMS evidence that it has provided timely public notice of the opportunity to comment on its transition plan. Acceptable evidence could include dated copies of letters, emails, newspaper announcements, and web postings. It should be noted that meeting with representative groups only and/or discussing/providing information on the transition plan without providing the transition plan itself to the public will not fulfill the public notice/input process requirements.

5. **Question:** Would tribal notification count as one of the required public notices for a 1915(c) waiver renewal, HCBS state plan amendment process or statewide transition plan?

   Answer: No, the tribal notification is intended to reach a more targeted group of stakeholders than general public notice. The public notice and comment requirement is in addition to the tribal notification requirements.

6. **Question:** What would CMS consider an appropriate summary of the comments received in a waiver-specific renewal or state plan amendment or statewide transition plan?

   Answer: The summary of comments submitted to CMS should include a list of comments; multiple comments that convey the same meaning should be consolidated. Where possible, there should be an indication of how many people made each comment, whether it led to a change in the transition plan or not, and if not, the reason for not incorporating a change. The state is not required to provide the names and affiliations of the commenters. If there is a transition plan change due to the comment, that change should be referenced to the comment (in the summary in the transition plan document).

7. **Question:** If a state modifies its waiver or state plan amendment or its statewide transition plan based on public comment prior to submitting to CMS, is the state required to issue a second public notice of the opportunity to comment on the transition plan?

   Answer: No. The state would reconcile the public comments, incorporating public input as appropriate, post the final transition document for public transparency, and submit the transition plan to CMS. States should provide an explanation regarding any public comments or requested changes not addressed in the submitted transition plan in the summary of public input.

8. **Question:** When are states required to submit an approved waiver-specific or statewide transition plan for public comment?

   Answer: If a state submits to CMS a modification to an approved transition plan which contains substantive changes, such as additional assessment findings, changes in existing milestones or the creation of new milestones, the state must follow the process for public notice and input.

Home and Community-Based (HCB) Settings – General

1. **Question:** Can states set higher standards or more restrictive requirements for HCB settings than those found in the regulation?

   Answer: Yes. The regulations set the floor for requirements, but states may elect to set more stringent requirements for what constitutes an acceptable HCB setting.

2. **Question:** Will all HCB settings be expected to comply with Americans with Disability Act (ADA) guidelines for accessibility, even if they are already accessible to the individuals living there?

   Answer: The regulation requires that the setting must be accessible to the individuals living there. This HCBS regulation does not affect obligations under the ADA. For specific requirements of the ADA, we recommend you contact the Department of Justice Civil Rights Division. Contact information is available at: http://www.justice.gov/crt/contact/.

3. **Question:** Does the HCB setting requirement apply to an enrollee's private home or the relative's home in which an enrollee resides?

   Answer: The regulations allow states to presume the enrollee's private home or the relative's home in which the enrollee resides meet the requirements of HCB settings. We note that person-centered planning remains an important protection to assure that individuals have opportunities for full access to the greater community to the same degree as individuals not receiving Medicaid HCBS when they live in their own or a relative's private home. While a private home may afford the individual a home-like setting, the person-centered plan and provision of appropriate services that support access to the greater community are critical components to ensure community integration, especially for an individual with limited social skills.

4. **Question:** Is there a minimum number of residential settings that must be offered to an individual?

   Answer: There is no minimum number of options, but an individual must be able to select among setting options that include non-disability-specific settings and an option for a private unit in a residential setting. The individual's person-centered plan should document options and different types of settings considered by the individual during the person-centered planning process, based on the individual's needs, preferences, and for residential settings, resources available for room and board.

5. **Question:** Does the "control personal resources" requirement restrict the opportunity of individuals with representative payees to participate in Home and Community-Based Services (HCBS) waivers?

   Answer: No, this requirement does not restrict participation for individuals with representative payees from participating in HCBS waivers. Additionally, individuals with other types of fiduciaries, such as conservators, guardians, trustees, etc. are not precluded from participation in HCBS waivers.

6. **Question:** What is the meaning of "non-disability-specific settings"? Does this requirement mean that the options must include settings in which other individuals with similar disabilities do not reside or receive services and support?

   Answer: "Non-disability-specific", in the context of this regulation means that among the options available, the individual must have the option to select a setting that is not limited to people with the same or similar types of disabilities. This could include services based out of a private home or a provider-controlled setting that includes people with and without disabilities. People may receive services with other people who have either the same or similar disabilities, but must have the option to be served in a setting that is not exclusive to people with the same or similar disabilities.

7. **Question:** What is the meaning of a "private unit in a residential setting?" Does this mean that an individual must be afforded the option of a private bedroom regardless of the individual's financial resources to pay for room and board?

   Answer: The state offering HCBS in residential settings under 1915(c), (i) and (k) must make available the option to receive services in a private unit in a residential setting; however, it may be in the individual's own or family home. The regulatory requirement acknowledges that an individual may need to share a room due to the financial means available to pay for room and board or may choose to share a room for other reasons. However, when a room is shared, the individual should have a choice in arranging for a roommate.

8. **Question:** Are there circumstances under which staff or caregivers may or may not enter an individual's bedroom when the door is locked and the individual is in the bedroom?

   Answer: Individuals should be afforded the same respect and dignity as a person not receiving home and community-based services. In an urgent or emergency situation, it may be appropriate for someone providing services to enter an individual's locked room. The person-centered planning process and plan should address the circumstances in which this might happen.

9. **Question:** What does CMS consider a public institution? Is a privately owned nursing facility a public setting?

   Answer: For purposes of this regulation, a public institution is an inpatient facility that is financed and operated by a county, state, municipality, or other unit of government. A privately owned nursing facility is not a public institution.

10. **Question:** If the state cannot meet the requirements of the regulation, can the state modify or get a waiver of the requirements?

    Answer: While we do not intend to modify or waive the HCB settings requirements or other provisions of the final regulation, the regulation provides for a statewide transition plan that allows time for the state to comply with the requirements. The maximum time for compliance is five (5) years after the effective date of the final regulation, which was March 17, 2014. In addition, if a setting does not meet HCB standards, Medicaid payments might be available under other state plan authorities such as described at 42 CFR §440.167 (Personal Care) or 42 CFR §440.140 (Nursing Facility).

11. **Question:** Can a state "grandfather" existing sites under the Home and Community-Based settings standard?

    Answer: No, a state cannot choose to continue to provide Home and Community-Based Services in non-compliant settings under a "grandfathering" approach. The final regulations allow states up to five years to bring their HCBS programs into compliance with the HCB settings requirements, pursuant to a transition plan that will be reviewed publicly and approved by CMS. The transition plan could include, for example, requiring existing providers to modify programs as needed to comport with HCB settings standards or assisting individuals to relocate to compliant settings.

12. **Question:** When a provider agency purchases and owns all of its homes, are these group homes considered to be a private setting or a public one?

    Answer: Unless the provider agency is an entity of the state, county, municipality, or other unit of government, its homes would be considered private settings. However, any home owned or leased by a provider must adhere to the additional requirements described in § 42 CFR 441.301(c)(4) and 441.530 (a)(1)(vi).

13. **Question:** Can you provide more general guidance about how rural providers will be treated because their geography can already be unintentionally "isolating?"

    Answer: Individuals receiving HCBS in rural communities must have the same opportunity for community integration as do people without disabilities in that community. Additionally, individuals who express a preference through their person-centered plan for residential or day services that facilitate interaction with other non-disabled people in the broader community must be supported in a manner that encourages such integration.

HCB Settings – Residential

Please also refer to "Exploratory Questions to Assist States in Assessment of Residential Home and Community-Based Service (HCBS) Settings" found 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

1. **Question:** Are settings on the grounds of or adjacent to "private" institutions considered not to be home and community-based (HCB)?

   Answer: It depends. Settings that are on the grounds of or adjacent to a private institution are not automatically presumed to have the characteristics of an institution. However, if the setting isolates the individual from the broader community or otherwise has the characteristics of an institution or fails to meet the characteristics of a home and community-based setting, the setting would not be considered to be compliant with the regulation. States will need to assure that these settings fully comply with the requirements of § 42 CFR section 441.301, 441.530 and 441.710 to qualify for Medicaid reimbursement under 1915(c), (i), or (k) as noted in the transition plan. A state's assessment of settings that isolate should be informed by the public comments received prior to submission of the transition plan. Also, states may elect to adopt more stringent settings characteristics that would not allow a setting to be on the grounds of a private institution. For further information on this topic, please refer to http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Settings-that-isolate.pdf.

2. **Question:** Must the individual be given a key to his or her bedroom door and be permitted to carry it outside the residence? What types of staff or caregivers would not be considered appropriate to have keys to an individual's bedroom?

   Answer: Individuals should have access to their homes at all times unless appropriate limitations have been determined and justified in the person-centered plan consistent with § 42 CFR section 442.301(c)(4) and 441.530 (a)(1)(vi)(F) that outlines the process for modifying any of the condition's required for the individual's assessed need. The staff person(s) allowed to have keys to an individual's room should be determined by the provider and participant and should be documented in the person-centered plan. The provision of keys to anyone other than the residents of the setting should be limited to those individuals and circumstances identified and for the purposes described in the person-centered planning process.

3. **Question:** Does the term "living unit" mean that the individual should have a key to the residence as well as his or her bedroom?

   Answer: Yes. It is expected that individuals would have keys to the residences in which they live. If there are circumstances that would prevent an individual from having a key to the residence, these should be discussed during the person-centered planning process and described and documented in the person-centered plan. If, as indicated in the person-centered plan, an individual will not have a key to the residence, the individual should still have full access to the residence and methods to make this possible should be included in the plan.

4. **Question:** How would an individual's choice of roommate be documented?

   Answer: The individual's choice of roommate must be documented in the person-centered plan. The person-centered plan documents how choice was provided to and exercised by the individual. Conflicts should be addressed if they occur and mediation strategies should be available to address concerns.

5. **Question:** Do the Home and Community-Based (HCB) setting requirements address the number of individuals living in a residential HCB setting?

   Answer: No. While size may impact the ability or likelihood of a setting to meet the HCB settings requirements, the regulation does not specify size. Even a very small residential setting may have policies that restrict individual access to things such as food and telephone use that would not be consistent with HCB requirements, while facilities that serve a larger number of individuals may have structured their system in a manner that comports with the qualities required. The HCBS rule defines the minimum qualities for a HCB setting as experienced by the individual; states may set a higher threshold for HCB settings than required by the regulation, including the option to establish size restrictions and limitations.

6. **Question:** What is the consequence if an individual receiving residential HCBS does not consent to a necessary modification of the conditions related to home and community-based settings required in a provider-owned and controlled setting (§ 42 CFR section 441.301(4)(v)(A-F) such as restrictions to privacy in a sleeping or living unit or access to food? Can the individual be permitted to remain in the residential setting without the modification?

   Answer: An individual must provide informed consent prior to a necessary modification of conditions related to home and community-based settings being implemented, and providers cannot modify these conditions without such consent. Any modification must be based on an individual's assessed need and directly proportional to that specific assessed need. The state and provider must use the person-centered planning process, and alternative strategies that allow the individual the fullest self-determination and

independence. If an individual continues to reside in the setting without the necessary modification in place, the state is still responsible for assuring the individual's health and welfare and implementation of services consistent with the person-centered plan. The state would therefore need to determine if it could assure the health and welfare of the individual if he or she continues to reside in the setting without the modification. Additionally, there may be state laws that apply to the individual's rights under landlord/tenancy laws or residency agreements.

HCB Settings – Non-Residential

Please also refer to "Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service (HCBS) Settings" found 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

1. **Question:** Are settings on the grounds of or adjacent to "private" institutions considered not to be home and community-based (HCB)?

   Answer: It depends. Settings that are on the grounds of or adjacent to a private institution are not automatically presumed to have the characteristics of an institution. However, if the setting isolates the individual from the broader community or otherwise has the characteristics of an institution or fails to meet the characteristics of a home and community-based setting, the setting would not be considered to be compliant with the regulation. States will need to assure that these settings fully comply with the requirements of 42 CFR section 441.301, 441.530 and 441.710 to qualify for Medicaid reimbursement under 1915(c), (i), or (k). A state's assessment of settings that isolate should be informed by the public comments received prior to submission of the transition plan. Also, states may elect to adopt more stringent settings characteristics that would not allow a setting to be on the grounds of a private institution. For further information on this topic, please refer to http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Settings-that-isolate.pdf

2. **Question:** Could you direct me, please, to where I would look to find the necessary documentation requirements for providing staffing ratios for pre-vocational services in a sheltered workshop?

   Answer: CMS does not determine staffing ratios for HCBS programs. States sometimes include these ratios in their license and/or regulation guidelines.

3. **Question:** Will CMS provide service-specific settings "definitions" to distinguish between settings that do and do not create barriers to the community?

   Answer: CMS does not intend to issue service-specific guidance at this time; however, we will continue to respond to questions from stakeholders and offer technical assistance to states.

4. **Question:** Does the regulation prohibit facility-based or site-based settings?

   Answer: No. The regulation requires that all settings, including facility- or site-based settings, must demonstrate the qualities of HCB settings, ensure the individual's experience is HCB and not institutional in nature, and does not isolate the individual from the broader community. In particular, if the setting is designed specifically for people with disabilities, and/or individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them, the setting may be isolating unless the setting facilitates people going out into the broader community. We note, however, that states have flexibility in determining whether or when to offer HCBS in facility-based or site-based settings, as the regulation only establishes a floor for federal participation. Please see guidance on settings that isolate 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

5. **Question:** Do the regulations prohibit individuals from receiving pre-vocational services in a facility-based setting such as a sheltered workshop?

   Answer: No. The federal regulations require that all HCB settings must support full access of individuals receiving Medicaid HCBS to the greater community, including facilitating opportunities to seek employment in competitive 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. Therefore, a state could allow pre-vocational services delivered in facility-based settings that encourage interaction with the general public (for example, through interaction with customers in a retail setting). We note, however, that pre-vocational services may be furnished in a variety of locations in the community and are not limited to facility-based or site-based settings, and that states have flexibility in determining whether and when to use facility-based settings. All settings must have the characteristics of HCB settings, not be institutional in nature and not have the effect of isolating individuals from the broader community. Please see the CMS Informational Bulletin on Employment Services found at: http://www.medicaid.gov/federal-policy-guidance/downloads/CIB-09-16-2011.pdf.

6. Question: Will CMS allow dementia-specific adult day care centers?

Answer: The HCBS regulations do not prohibit disability-specific settings; as with all settings in which HCBS are provided or in which individuals receiving HCBS reside, the setting must meet the requirements of the regulation, such as ensuring the setting chosen by the individual is integrated in and supports full access of individuals receiving Medicaid HCBS to, the greater community, that individual's rights of privacy, dignity and respect and freedom from coercion and restraint are respected, etc. Please note that states may adopt more stringent requirements for HCB settings, as the federal regulations only establish a floor. For further information please refer to "Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service (HCBS) Settings. 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

7. Question: Can a day service that has both HCBS waiver participants and Intermediate Care Facility (ICF) residents provide Medicaid-covered HCBS in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)?

Answer: If the service is rendered by the ICF/IID, it is institutional and cannot be covered by HCBS. If, however, the service is provided by a licensed day service operated separately from the ICF/IID but in the same building, it will be presumed to have institutional characteristics. If the state believes that the setting meets the HCB settings requirements and does not have the characteristics of an institution, the state can follow the process to provide evidence and demonstrate that the setting can or will comply with the HCB setting requirements of the regulations. Other parties can submit information to CMS regarding whether the setting has the qualities of HCB settings or of an institution. If the Secretary, through this heightened scrutiny, determines that the setting does comply with the HCB settings requirements and does not have the qualities of an institution, the service can be covered under the HCBS waiver. If the state does not submit evidence or a transition plan to bring the setting into compliance, the presumption stands and the state can claim for federal matching funds for services in those settings presumed not to be HCBS only for the period contained in the approved transition plan.

8. **Question:** Does the HCBS rule prohibit adult day care and day treatment services in a facility that is in a hospital or a nursing home?

Answer: Yes, unless the evidence submitted by the state demonstrates that the setting does have the qualities of a HCB setting and does not have the qualities of an institutional setting. Any HCB setting (residential or non-residential) located in the

building of any public or private institution, or on the grounds of a public institution, is presumed to have the characteristics of an institution and therefore does not qualify as a home or community based setting. Note that if the setting is presumed to not be home and community-based under the standards established in the regulation, but the state believes it has the qualities of home and community-based settings and not the qualities of an institution, the state can submit evidence of such, and CMS may determine that the setting is home and community based. If the state instead submits a transition plan to either bring such settings into compliance or transfer people to a setting that meets HCB settings requirements, the state may claim for federal matching funds during the approved transition period while implementing the plan. For further information on settings that isolate, please refer to http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Settings-that-isolate.pdf.

9. Question: If a state determines that a current HCB setting is not compliant with the new regulation, does it have to stop providing services in that setting immediately?

Answer: No. If a state determines that HCBS are currently being provided in settings that do not provide opportunities for participants to seek employment and work in competitive settings, engage in community life, control personal resources, and access the community to the same degree of access as individuals not receiving Medicaid HCBS, or if individuals receiving HCBS are not residing in settings that meet the HCB settings requirements, the state has until March 2019 to bring its HCBS programs into compliance with the rule, consistent with its State Transition Plan. States can claim for federal matching funds for these services during the transition period.

HCB Settings – Restrictions

1. **Question:** Does the right to freedom from restraint prohibit locked doors or doors with alarms for individuals who are incapable of protecting themselves unsupervised in the community and/or who have documented histories of wandering?

   Answer: In a provider-owned or controlled residential setting, states must ensure that any necessary modification of the requirements specifying the rights of individuals receiving services is based on individually assessed need and justified and documented in the person-centered plan as described in § 42 CFR section 441.301(c)(4)(vi)(F). In other settings, the individual must be afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint. The person-centered service plan must

reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies.

2. **Question:** What, if any, restrictions on an individual's choice of roommates, visitors or with whom to interact (e.g., when there is documented history of abuse or exploitation by another individual) are permissible?

   Answer: An individual's rights, including but not limited to roommates, visitors, or with whom to interact, must be addressed as part of the person-centered planning process and documented in the person-centered plan. Any restrictions on individual choice must be focused on the health and welfare of the individual and the consideration of risk mitigation strategies. The restriction, if it is determined necessary and appropriate in accordance with the specifications in the rule, must be documented in the person-centered plan, and the individual must provide informed consent for the restriction.

3. **Question:** During the person-centered process, what is the measure of whether a past intervention or method has or has not worked to meet an individual's assessed needs? Must strategies have been tried over a certain period of time? Must there be a certain number of incidents to demonstrate that the intervention or method did not meet the individual's assessed need?

   Answer: CMS has not established a uniform federal standard for measuring the effectiveness of past interventions. Each individual is unique, so considerations for each individual's person-centered plan will be different, including the appropriate use of interventions. The person-centered planning team must consider what is a reasonable amount of time (e.g., week, month) to evaluate the effectiveness of an intervention, based on the individual circumstances, as well as weigh the risk, success and amount of time given for a response. Data related to the utilization of positive interventions and supports, as well as less intrusive methods of addressing the need, must be collected and documented prior to making or amending any modification. The person-centered planning team may need assistance from specific experts, such as a behaviorist or behavior specialist, to aid in the person-centered planning process (e.g., behavior analysis, crisis intervention plan). These considerations should be documented in the person-centered plan to support the determination of an intervention's effectiveness. A modification must be reviewed on a regular basis and should never become a "standing order" without time limitations. In addition, the person-centered plan must be finalized and agreed to in writing, based on the informed consent of the individual. It is therefore vital to include the individual in this process, solicit the individual's view of the benefits or success of an intervention and consider together an appropriate course of action.

4. **Question:** During the person-centered planning process, may the effectiveness of prior positive interventions and less intrusive methods for meeting assessed needs be

considered from previous settings in order to develop the individual's service plan, or must the methods have been tried and have failed in the current setting?

Answer: Clear documentation of past interventions and positive reinforcement may be used initially at the time of an individual's transition from one setting to another. The new setting itself might make a significant difference as to whether restriction that might have been in place in a prior setting are necessary. If a person moves between settings (e.g., from a large residential setting into a small apartment or group home), the individual's response to the modification currently being used or even the new setting without the modification may or may not be comparable. The person-centered planning team must convene to amend the individual's plan, considering the context of the new setting, and not assume that modifications made in a prior setting necessarily apply but rather evaluate to see if they do. These types of considerations facilitate discussion on what is reasonable for an individual and must be reflected and agreed to in writing by the individual, in the person-centered plan.

5. **Question:** How will settings that are not hospitals, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, or institutes for mental disease be deemed to have "the effect of isolating individuals receiving Medicaid HCBS from the broader community" and thus come before the Secretary for a determination as to whether they have the characteristics of an institutional or home and community-based setting? Will this only be done on receipt of complaints from individuals, guardians, advocates, etc.?

   Answer: Guidance that describes what constitutes a setting that serves to isolate can be found 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. A state's assessment of which settings isolate individuals should be informed by public comments prior to submission of the transition plan to CMS. Settings that serve to isolate individuals receiving Medicaid HCBS from the broader community will not meet the HCB settings requirements. States may elect, through an approved transition plan, to use the transition period to modify those settings to comply with the requirements, or to transfer individuals to a compliant HCB setting. Medicaid reimbursement for HCBS will continue during the transition period as the state implements the plan.