

GEORGIA HEALTH POLICY CENTER



Georgia Home and Community Based Services (HCBS) Transition Plan: Compliance Review of State Regulations And HCBS Program Policies

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Executive Summary

Background

As a result of the 2014 CMS final rule on Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers (codified at 42 C.F.R. § 441.301 and reprinted in the Appendix to this report), five Georgia waiver programs must come into compliance with the new requirements. Those waivers are: the Community Care Services Program (CCSP), Comprehensive Supports Waiver Programs (COMP), Independent Care Waiver Program (ICWP), New Options Waiver (NOW), and Service Options Using Resources in a Community Environment (SOURCE). Three individualized transition plans have been created for ICWP, NOW/COMP, and CCSP/SOURCE (Elderly & Disabled Waiver Programs).

In addition to the evaluation and remediation of current HCBS providers, the individualized waiver transition plans require the identification, compliance review/assessment, and, if applicable, revision of state policies relevant to the federal HCBS setting requirements. In order to carry out this task, certain Georgia HCBS Settings Task Force (Task Force) members, led by the Georgia Department of Community Health's (DCH) Policy Unit, were charged with identifying, reviewing, and making recommendations for the relevant state policies for each of the five waiver programs. The Task Force chose to focus this work on the parts of the new rule that address person-centered planning which are found at 42 C.F.R. § 441.301 (c)(1)-(3) (see Appendix for full text). These recommendations were summarized in a previous report.

DCH is also responsible for updating its policies to ensure compliance with the settings portions of the federal rule, found at 42 C.F.R. § 441.301 (c)(4)-(5) (see Appendix for full text). DCH enlisted the Georgia Health Policy Center to conduct a compliance review, comparing the policies for each of their waiver programs and state regulations with the requirements of the federal rule. This report contains the results of that work. In order to make our findings more easily understood, we have provided crosswalk charts for each of the five waiver programs, as well as applicable state regulations for HCBS. We have included in the charts recommendations for bringing these policies and regulations into compliance with the new federal rule settings requirements. Additionally, this report contains a "Supplemental Discussion" section, which aims to clarify areas of potential concern related to 42 C.F.R. § 441.301 (c)(4)-(5) compliance. **Please note that our recommendations are not to be considered legal advice; rather, we have identified areas of potential conflict with the new federal rules that DCH should investigate further with the help of their legal staff.**

Overview of Findings

The majority of Georgia's current HCBS manuals and related regulations are not in conflict with the new federal settings rule. Only a few areas will require changes, pending approval from DCH legal. In addition, there are several areas that will be updated to meet the requirements of the federal rule for additional clarification, in order to better reflect the intent and language of the rule.

One manual section and three sections of regulations are potentially in conflict with parts of the federal settings rule. The CCSP Alternative Living Services manual §§ 1203.1 and 1253.1 provides for the scheduling of meals and snacks and is written in such a way that it could deny residents the right to have access to food at any time. The regulations for Adult Day Centers allow them to be co-located with licensed long-term care facilities (Ga. Comp. R. & Regs. r. 111-8-1-.10); however, 42 C.F.R. § 441.301 (c)(5)(v) prohibits the co-location of HCBS with institutional care facilities. Similarly, the regulations for Personal Care Homes allow a facility to be certified for the care of patients with dementia (Ga. Comp. R. & Regs. r. 111-8-62-.19(11)); however, the settings rule specifies that an institution for mental diseases is not a home and community-based setting (42 C.F.R. § 441.301 (c)(5)(ii)). These two discrepancies could subject some facilities to the heightened scrutiny requirements of the rule (42 C.F.R. § 441.301 (c)(5)(v)). Finally, the regulations for Home Health Agencies do not give the patient a role in their treatment plan or choice of provider (Ga. R. & Regs. r. 111-8-31-.06), in conflict with the settings rule (42 C.F.R. § 441.301 (c)(4)(v)).

The most common areas that require clarification involve landlord / tenant law protections, access to food, and access to visitors. The federal settings rule requires that residential agreements contain the same protections as those provided in applicable landlord / tenant law (42 C.F.R. § 441.301 (c)(4)(vi)(A)). Although most of the residential agreement provisions in the HCBS manuals and regulations provide some protections for residents they are not the same as those provided under landlord / tenant law. Therefore, these sections need to be updated to reflect that residents have all the rights that they would have under Georgia law for landlords and tenants. The settings rule also requires that residents have access to food and visitors at any time (42 C.F.R. § 441.301 (c)(vi)(C) & (D)). However, current policies specify times that food must be provided and “mutual agreed upon times” for visitors. These provisions do not go far enough and need to be updated to reflect that food must be available and visitors allowed “at any time.” Other areas that need to be updated involve access to employment opportunities, lockable doors, choice of roommates, and procedures for exceptions to the settings requirements when necessary. These are noted in the crosswalk tables contained in this report (pp. 27-98).

Finally, some policies could be updated to better mirror the language of the federal settings rule in terms of community integration (42 C.F.R. § 441.301 (c)(4)(i)), choice of setting and appropriate documentation (441.301 (c)(4)(ii)), autonomy and independence (441.301 (c)(4)(iv)), and choice of services and supports (441.301 (c)(4)(v)). The manual and regulation sections that need updating are noted on the crosswalks. Other necessary changes are also noted.

Community Care Services Program (CCSP)

The most relevant Georgia state CCSP policies related to the HCBS setting requirements can be found in the following DCH provider manuals:

- Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500,
- Part II – Chapters 600 to 1000, Policies and Procedures for CCSP General Services
- Part II – Chapter 1100, Policies and Procedures for CCSP Adult Day Health Services
- Part II – Chapter 1200, Policies and Procedures for CCSP Alternative Living Services
- Part II – Chapter 1400, Policies and Procedures for CCSP Personal Support Services
- Part II – Chapter 1900, Policies and Procedures for CCSP Skilled Nursing Services by Private Home Care Providers
- CCSP Care Coordination Manual

The “Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500” (Part I Manual) covers general requirements of participation for all Medicaid providers, including, but not specific to, CCSP providers. It should be noted that we did not find any Part I manual sections directly pertaining to the federal rule as it related to the CCSP program.

The majority of CCSP policy is contained within “Part II - Chapters 600 to 1000, Policies and Procedures for CCSP General Services” (CCSP General Services Manual). This manual describes policies and procedures applying to all CCSP service providers. This manual includes detailed information about: program structure and administration, conditions of provider participation, corrective action information, admissions, member rights, provider evaluation of member needs, scope of services, staffing, environmental safety, program evaluation, Medicaid eligibility, and conditions of payment and reimbursement.

“Part II – Chapter 1100, Policies and Procedures for CCSP Adult Day Health Services” (CCSP ADH Manual) is specifically for adult day health services providers, and describes program basics, covered services, member profile, provider licensure, provider requirements (physical environment, hours of operation, levels of service, service components, supervision, clinical records, infection control, equipment, member rights notification, and program evaluation), staffing qualifications and responsibilities, and reimbursement methodology.

“Part II – Chapter 1200, Policies and Procedures for CCSP Alternative Living Services” (CCSP ALS Manual) is for CCSP providers of alternative living services (group and family models) and describes program basics and services, licensure, member service requirements (including physical environment, hours of operation, supervision of member care, clinical records, disaster/emergency preparedness, medications, food, member funds, visitation and leave, rooms, member rights, and program evaluation), staffing qualifications and requirements, and reimbursement methodology.

“Part II – Chapter 1400, Policies and Procedures for CCSP Personal Support Services” (CCSP Personal Support Services Manual) describes personal support services, licensure, provider requirements (such as supervision of care, emergency procedures, meals, medication, member

rights, and program evaluation), staff qualifications and responsibilities, reimbursement methodology, and consumer direction.

“Part II – Chapter 1900, Policies and Procedures for CCSP Skilled Nursing Services by Private Home Care Providers” (CCSP Skilled Nursing Services Manual) includes information on general provider requirements, scope of services, skilled nursing services guidelines, member profile, member service requirements, program evaluation and customer satisfaction, and reimbursement.

The CCSP Care Coordination Manual gives detailed care coordination instructions to CCSP providers on such topics as administrative organization, referrals, assessments, ongoing case activities, confidentiality and client protection, etc., as well as describes the underlying policy for each area.

The new federal settings requirements are the most relevant for the CCSP ALS Manual, as alternative living service providers are the only CCSP providers in control of a residential setting. Therefore the entire settings rule at 42 C.F.R. § 441.301 (c)(4)-(5) applies to this provider group and manual. However, many of the other parts of the rule are not specific to operating a setting, and should be observed and supported by all CCSP providers. It is also important that all of the new federal rules are addressed in the CCSP Care Coordination Manual, as the care coordinator plays a key role in ensuring that a member’s services and care planning process reflect state and federal requirements. Additionally, because all CCSP providers must reference the CCSP General Services Manual, it may be another very appropriate location for all of the new federal rules.

Our review of the six aforementioned CCSP manuals against the requirements of the federal settings rule (42 C.F.R. § 441.301 (c)(4)-(5)) found that the large majority of policies contained in the CCSP manuals are not in direct conflict with the federal rule. Many of the manuals contain language that somewhat addresses the federal requirements. However, we found that each manual would benefit from updates, in order to ensure that all of the new requirements are sufficiently addressed. Our recommendations for changes to the various CCSP manuals, both general and specific, are presented in detail in **Table 1** on p. 24 at the end of this report, organized according to specific sections of the federal rule.

Comprehensive Supports Waiver Program (COMP)

The most relevant Georgia state policies for the Comprehensive Supports Waiver Program (COMP) related to the HCBS setting requirements can be found in three DCH and one DBHDD provider manuals:

- Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500,
- Part II – Policies and procedures for New Options Waiver (NOW) and Comprehensive Supports Waiver Program (COMP), Chapters 600 through 1200
- Part III – Policies and procedures for Comprehensive Supports Waiver Program (COMP), Chapters 1300 through 3300, and
- Provider Manual for Community Developmental Disabilities Providers for the Department of Behavioral Health and Developmental Disabilities (DBHDD), Fiscal Year 2016.

The Part I manual covers general requirements of participation for all Medicaid providers, including, but not specific to COMP providers. It should be noted that we did not find any Part I manual sections directly pertaining to the federal rule as it related to the COMP program.

The majority of COMP policy is contained within the Part II and Part III COMP manuals. These manuals describe policies and procedures applying to all COMP service providers. These manuals include detailed information about: program structure and administration, conditions of provider participation, adverse actions information, provider rights, member rights, member eligibility and related procedures, prior approvals, scope of services, and reimbursement requirements.

Additional policy pertaining to COMP is contained within the DBHDD manual listed above. This manual provides policies and procedures for Developmental Disability providers, containing detailed information about: eligibility, service definitions and requirements, service standards, funding requirements, and general policies and procedures. Some of these manuals sections affect the COMP program and are, therefore, included in this review.

Our review of the aforementioned manuals against the requirements of the federal settings rule (42 C.F.R. § 441.301 (c)(4)-(5)) found that the large majority of policies contained in the COMP and DBHDD manuals are not in direct conflict with the federal rule. All three of the manuals contain language that somewhat addresses the federal requirements. However, we found that each manual would benefit from updates, in order to ensure that all of the new requirements are sufficiently addressed. Our recommendations for changes to the various COMP manuals, both general and specific, are presented in detail in **Table 2** on p. 35 at the end of this report, organized according to specific sections of the federal rule.

Independent Care Waiver Program (ICWP)

The most relevant Georgia state policies for the Independent Care Waiver Program (ICWP) related to the HCBS setting requirements can be found in three DCH provider manuals:

- Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500,
- Part II - Chapter 1200¹, Policies and Procedures for Independent Care Waiver Services, Chapters 600 through 1000, and
- Part II - Chapter 1200, Policies and Procedures for Alternative Living Services (ALS), Independent Care Waiver Services.

The “Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500” (Part I Manual) covers general requirements of participation for all Medicaid providers, including, but not specific to ICWP providers. It should be noted that we did not find any Part I manual sections directly pertaining to the federal rule as it related to the COMP program.

The majority of ICWP policy is contained within “Part II - Chapter 1200², Policies and Procedures for Independent Care Waiver Services” (Part II ICWP Manual). This manual describes policies and procedures applying to all ICWP service providers. This manual includes detailed information about: program structure and administration, conditions of provider participation, adverse actions information, provider rights, member rights, member eligibility and related procedures, prior approvals, scope of services, and reimbursement requirements.

Additional ICWP-specific policy is contained within “Part II - Chapter 1200, Policies and Procedures for Alternative Living Services (ALS), Independent Care Waiver Services” (Part II ICWP ALS Manual). This manual provides policies and procedures for ICWP ALS providers, and details general program information, eligibility, description of services, licensure, requirements related to member services, staffing requirements, and reimbursement methodology.

Our review of the aforementioned manuals against the requirements of the federal settings rule (42 C.F.R. § 441.301 (c)(4)-(5)) found that the large majority of policies contained in the ICWP manuals are not in direct conflict with the federal rule. Both of the manuals contain language that somewhat addresses the federal requirements. However, we found that each manual would benefit from updates, in order to ensure that all of the new requirements are sufficiently addressed. Our recommendations for changes to the various ICWP manuals, both general and specific, are presented in detail in **Table 3** on p. 43 at the end of this report, organized according to specific sections of the federal rule.

¹ Despite the title, this manual only contains Chapters 600 through 1000.

² Ibid.

New Options Waiver Program (NOW)

The most relevant Georgia state policies for the New Options Waiver Program (NOW) related to the HCBS setting requirements can be found in three DCH and one DBHDD provider manuals:

- Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500,
- Part II – Policies and procedures for New Options Waiver Program (NOW) General Manual, Chapters 600 through 1200
- Part III – Policies and procedures for New Options Waiver Program (NOW) Program Services, Chapters 1300 through 3300, and
- Provider Manual for Community Developmental Disabilities Providers for the Department of Behavioral Health and Developmental Disabilities (DBHDD), Fiscal Year 2016.

The Part I manual covers general requirements of participation for all Medicaid providers, including, but not specific to NOW providers. It should be noted that we did not find any Part I manual sections directly pertaining to the federal rule as it related to the COMP program.

The majority of NOW policy is contained within the Part II and Part III NOW manuals. These manuals describe policies and procedures applying to all NOW service providers. These manuals include detailed information about: program structure and administration, conditions of provider participation, adverse actions information, provider rights, member rights, member eligibility and related procedures, prior approvals, scope of services, and reimbursement requirements.

Additional policy pertaining to NOW is contained within the DBHDD manual listed above. This manual provides policies and procedures for Developmental Disability providers, containing detailed information about: eligibility, service definitions and requirements, service standards, funding requirements, and general policies and procedures. Some of these manuals sections affect the NOW program and are, therefore, included in this review.

Our review of the aforementioned manuals against the requirements of the federal settings rule (42 CFR § 441.301 (c)(4)-(5)) found that the large majority of policies contained in the NOW and DBHDD manuals are not in direct conflict with the federal rule. All three of the manuals contain language that somewhat addresses the federal requirements. However, we found that each manual would benefit from updates, in order to ensure that all of the new requirements are sufficiently addressed. Our recommendations for changes to the various NOW manuals, both general and specific, are presented in detail in **Table 4** on p. 51 at the end of this report, organized according to specific sections of the federal rule.

Service Options Using Resources in Community Environments (SOURCE)

The most relevant Georgia state policies for Service Options Using Resources in Community Environments (SOURCE) related to the HCBS person-centeredness and setting requirements can be found in two DCH provider manuals:

- Part I - Policies and procedures for Medicaid/Peachcare for Kids, Chapters 100 through 500,
- Part II – Policies and procedures for Service Options Using Resources in Community Environments (SOURCE), Chapters 600 through 1400

The Part I manual covers general requirements of participation for all Medicaid providers, including, but not specific to, SOURCE providers. It should be noted that we did not find any Part I manual sections directly pertaining to the federal rule as it related to the COMP program.

Almost all of SOURCE policy is contained within the Part II SOURCE manual. This manual describes policies and procedures applying to all SOURCE service providers along with detailed information about: program structure and administration, conditions of provider participation, adverse actions information, provider rights, member rights, member eligibility and related procedures, prior approvals, scope of services, and reimbursement requirements.

Our review of the aforementioned manuals against the requirements of the federal settings rule (42 C.F.R. § 441.301 (c)(4)-(5)) found that the large majority of policies contained in the SOURCE manual are not in direct conflict with the federal rule. The manual contains language that somewhat addresses the federal requirements. However, we found that the manual would benefit from updates, in order to ensure that all of the new requirements are sufficiently addressed. Our recommendations for changes to the various SOURCE manuals, both general and specific, are presented in detail in **Table 5** on p. 59 at the end of this report, organized according to specific sections of the federal rule.

State Regulations

In addition to the manuals discussed above, several chapters of state regulations contain rules applicable to various HCBS waiver programs. Therefore, we extended our compliance review to these regulations as well:

- Ga. Comp. R. & Regs. r. 111-8-1, Rules and Regulations for Adult Day Centers,
- Ga. Comp. R. & Regs. r. 111-8-31, Rules and Regulations for Home Health Agencies,
- Ga. Comp. R. & Regs. r. 111-8-62, Rules and Regulations for Personal Care Homes,
- Ga. Comp. R. & Regs. r. 111-8-65, Rules and Regulations for Private Home Care Providers, and
- Ga. Comp. R. & Regs. r. 290-9-37, Rules and Regulations for Community Living Arrangements.

Because these regulations could pertain to more than one waiver program, we have chosen to analyze them separately. We have provided crosswalk charts for each of these state regulations as they relate to the sections of the federal rule contained in 42 C.F.R. § 440.301 (c)(4)-(5). These are shown in **Tables 6-10** at the end of this report, beginning on p. 66. Included in these charts are recommendations for bringing these regulations into compliance with the settings requirements of the new federal rule. Once again, **please note that our recommendations are not to be considered legal advice; rather, we have identified areas of conflict with the new federal rules that DCH should investigate further with the help of their legal staff.**

Supplemental Discussion

This report section aims to clarify areas of potential concern related to 42 C.F.R. § 441.301 (c)(4)-(5) compliance, which were either voiced by Task Force members during the February 12, 2016 monthly meeting, or arose during the compliance review. **As with the other sections of this report, the Supplemental Discussion should not be considered legal advice. DCH should seek advice from internal legal counsel for any areas of HCBS setting rule compliance concern.**

Community Integration

According to 42 C.F.R. § 441.301 (c)(4)(i), an HCBS setting is “integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities...to engage in community life...to the same degree of access as individuals not receiving Medicaid HCBS.” Furthermore, 42 C.F.R. § 441.301 (c)(5)(v) specifies that:

...any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

During our meeting with the HCBS Task Force on February 12, 2016, one of the task force members raised concerns that rural home settings could be out of compliance with these portions of the rule or could be subject to heightened scrutiny based on their isolated physical locations. The task force member gave an example of a home in a rural area that received HCBS funds to take care of several disabled youths. The home is a farmhouse set back from the road with no neighbors for several miles. Because the residents do not have cars and live in a remote rural setting, they are unable to access or engage in “community life,” according to this member. This example deserves further discussion.

CMS has issued some guidance that touches on the community access part of the rule and what makes a setting not able to provide “...the same degree of access [to the community] as individuals not receiving Medicaid HCBS.” CMS recommends that states ask the following questions when determining whether individuals in an HCBS setting have sufficient access to the community:

- Does the individual regularly access the community and is s/he able to describe how s/he accesses the community, who assists in facilitating the activity and where s/he goes?
- Is the individual aware of or does s/he have access to materials to become aware of activities occurring outside of the setting?
- Does the individual shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as the individual chooses?
- Does the individual come and go at any time?

- Does the individual talk about activities occurring outside of the setting?³

Without more information, it is not clear how the rural HCBS site mentioned at the task force meeting would fare with these questions. However, its rural character alone would not be enough to prove non-compliance with the rule or to create a presumption of non-compliance that might require heightened scrutiny. In fact, when the final rules for HCBS settings were issued, CMS stated, “These final regulations establish a more outcome-oriented definition of HCB settings, rather than one based solely on a setting’s location, geography, or physical characteristics.”⁴ In subsequent guidance, CMS gave several examples of residential settings that typically have the effect of isolating individuals from the community. One of those examples was as follows:

Farmstead or disability-specific farm community: These settings are often in rural areas on large parcels of land, with little ability to access the broader community outside the farm. Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals. Individuals typically live in homes only with other people with disabilities and/or staff. Their neighbors are other individuals with disabilities or staff who work with those individuals. Daily activities are typically designed to take place on-site so that an individual generally does not leave the farm to access HCB services or participate in community activities. For example, these settings will often provide on-site a place to receive clinical (medical and/or behavioral health) services, day services, places to shop and attend church services, as well as social activities where individuals on the farm engage with others on the farm, all of whom are receiving Medicaid HCBS. While sometimes people from the broader community may come on-site, people from the farm do not go out into the broader community as part of their daily life. Thus, the setting does not facilitate individuals integrating into the greater community and has characteristics that isolate individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.⁵

The characteristics in this example provided by CMS may or may not be the same as the rural home described at the task force meeting. However, it must be noted that in this example, it is not the rural location of the home that makes it isolated but the fact that community opportunities are denied to the residents. The key to determining whether a particular location meets the community access requirement is whether it provides the same opportunities for community engagement as are normally provided to non-HCBS Medicaid citizens in that community. Those opportunities for community engagement would by nature be different in rural and urban areas, but that does not necessarily mean that a rural setting would be non-compliant. Rural settings, just like any other setting, can meet the requirements of the rule by making sure that their residents have access to opportunities in the community to the same degree as would anyone else. Providing those opportunities in a rural setting may be more difficult than in an urban setting, but it is not impossible to provide residents with community opportunities. To make these points clearer for providers, DCH may wish to include the referenced CMS guidance in its HCBS waiver manuals.

³ CMS. Exploratory Questions to Assist States in Assessment of Residential Settings. Found at www.Medicaid.gov/HCBS

⁴ CMS. Final Rule. 79 F.R. 2948, p. 3011.

⁵ CMS. Guidance on Settings that have the Effect of Isolating Individuals Receiving HCBS from the Broader Community. Found at www.Medicaid.gov/HCBS

One of the ways that an HCBS home in a rural setting could provide opportunities for community engagement is through the availability of transportation. This issue was also raised at the task force meeting when a task force member pointed out that Medicaid Non-Emergency Transportation (NET) only covers transportation from one Medicaid provided service to another. Transportation for recreational or social purposes is not covered by NET. Therefore, it should be noted that the availability of NET services is not enough, by itself, to provide residents with sufficient access to the community. HCBS settings must do more in order to meet the requirements of 42 C.F.R. § 441.301 (c)(4)(i). How much more is not clear, but it should be enough to guarantee residents the same amount of community opportunities as would be available to those in the community who are not receiving Medicaid HCBS.

Local Building and Fire Codes

Several HCBS Task Force members, as well as DCH staff, expressed concerns about possible conflicts between the new federal rules and local building and fire codes. According to 42 C.F.R. § 441.301 (c)(4)(vi):

In a provider owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

...(B) Each individual has privacy in their sleeping or living unit:

- (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- (2) Individuals sharing units have a choice of roommates in that setting.
- (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement....

Task force members and DCH staff were particularly concerned about local building and fire codes that might restrict the number of unrelated individuals living in a dwelling or whether individual units could have locks on their doors. Georgia contains 159 counties and several thousand municipalities; therefore, a thorough review of local building codes was beyond the scope of this report. However, the Building Code of the City of Atlanta provides an example of the types of rules that DCH and the task force might have been worried about. For example, Article II contains the following sections:

23 (g) *Interior Doors*. All interior doors shall fit reasonably well within their frames and all such doors and the hinges and latches thereon shall be maintained in sound condition and workmanlike maintenance and repair.

24 (a) *Required Space in Dwelling Units*. Every dwelling unit shall contain a minimum gross floor area of not less than one hundred fifty (150) square feet for the first occupant, and one hundred (100) square feet for each additional occupant....

24 (b) *Sleeping Room Floor Space*. In every dwelling unit of two or more rooms, every room occupied for sleeping by one occupant...shall contain at least seventy (70) square feet of floor space; and every room occupied for sleeping purposes by more than one occupant shall contain at least fifty (50) square feet of floor space for each occupant thereof.

None of these requirements conflict with the requirements in the new federal rule. The federal rule does not address the size of dwellings or the number of residents that must be allowed. In fact, the federal rule is so general in its requirements for settings that it is very unlikely that any local ordinances will conflict with it. Even if the City of Atlanta had a restriction on the number of unrelated occupants that could be in a residential dwelling, it would not conflict with the new CMS settings rule either, because the rule does not proscribe a minimum or a maximum occupancy limit. Instead, such ordinances often conflict with other federal anti-discrimination laws and face fair housing challenges. Theoretically, the requirement for locks on individual rooms could conflict with a local code that prohibited them; however, such a local rule would be extraordinary as individual room locks are standard on residential dwellings. Additionally, 42 C.F.R. § 441.301 (c)(4)(vi)(B)(1) allows appropriate staff, in addition to residents, to possess door keys. Moreover, 42 C.F.R. § 441.301 (c)(4)(vi)(F) details procedures that can be used when exceptions to the requirements of (c)(4)(vi)(A)-(E) are needed. Therefore, the potential for conflict with local ordinances appears to be minimal.

Access to Food

Another area of the settings rule that concerned HCBS Task Force members, in terms of compliance, was the requirement that members be able to access food at any time. HCBS Task Force members suspected that complying with the federal rule may cause them to become non-compliant with relevant food safety regulations. Furthermore, providers were concerned that it may simply be unmanageable and / or unhygienic to allow members to go into the kitchen and access food at any time.

The federal rule (42 C.F.R. § 441.301(c)(4)(vi)(C)) reads:

(vi) In a provider-owned or controlled residential setting . . . the following additional conditions must be met: . . .

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

Ga. Comp. R. & Regs. r. 111-8-62-.21(4) (Rules and Regulations for Personal Care Homes, Handling of Food) requires that:

(4) Handling of Food. All foods while being stored, prepared and served must be protected from spoilage and contamination and be safe for human consumption. The home must ensure that staff does the following:

(a) Store perishable foods properly, such as but not limited to meat, fish, eggs, dairy products, juices at temperatures that will minimize spoilage, i.e. at or below 41

degrees F.

(b) Thaw frozen foods properly, i.e. in the refrigerator or under cold running water with an unplugged sink.

(c) Provide hot and cold running water and sanitizing agents and ensure that they are used appropriately in the kitchen to clean and sanitize food, hands and utensils as required for safe food preparation.

(d) Prevent cross-contamination of foods via hands, cutting boards or utensils during preparation.

(e) Ensure that hot foods leave the kitchen (e.g. pot, steam table) for serving at or above 140 degrees F. and that cold foods leave the kitchen for serving at or below 41 degrees F.

Additionally, some homes may be subject to the Georgia Department of Public Health's Rules and Regulations, Food Service, Chapter 511-6-1 (Ga. Comp. R. & Regs. r. 111-8-62-.21(5)).

It should be possible for providers to comply with the abovementioned food handling requirements, while also fulfilling the federal requirements. First, while the federal law requires "access to food" at any time, it does not require that members be allowed to go into the kitchen unattended, at any time, and handle food without assistance. It simply requires that if a member would like to eat outside of a regularly scheduled or offered meal or snack time, they are provided with food. Second, if a provider does allow members to "self-serve" in the kitchen, there is nothing in the federal rule preventing a staff member from supervising in order to ensure that food handling requirements are met. Third, the rule does not specify that a member be able to cook or eat whatever they want. However, because of the heavy emphasis the rules place on member choice, it would behoove providers to offer members reasonable food choices. Finally, all requirements contained in 42 C.F.R. § 441.301(c)(4)(vi)(A)-(D), may be adapted to fit individual member needs after taking the appropriate steps required by 42 C.F.R. § 441.301 (c)(4)(vi)(F). For example, if a provider finds that a member's needs are such that he or she requires greater support in determining when and how to access food (i.e. due to Alzheimer's or other dementias), the provider may take steps to justify and document the modification in the member's person-centered service plan. Accordingly, providers may easily achieve compliance with federal food access requirements while maintaining state food safety rules.

Lease Protections

According to 42 C.F.R. § 441.301 (c)(4)(vi)(A):

The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement 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.

Concerns were raised at the task force meeting about this provision and the ability of facilities to meet these requirements. In response to that, DCH asked GHPC to look over their sample lease agreements for compliance and recommend any needed changes.

Georgia Law

The lease agreements that DCH asked GHPC to review do not have termination dates. Therefore, according to Georgia Law, they would most likely be considered tenancies at will (O.C.G.A. § 44-7-6). A tenancy at will can be terminated with notice of 60 days from the landlord or 30 days from the tenant (O.C.G.A. § 44-7-7). However, current Georgia regulations of Personal Care Homes allow for a landlord to give a notice of 30 days prior to terminating a residential agreement (Ga. Comp. R. & Regs. r. 111-8-62-.29(1)). These regulations also allow a patient to be immediately discharged if their condition necessitates nursing home care or if their behavior or condition threatens other patients so long as certain procedures are followed (Ga. Comp. R. & Regs. r. 111-8-62-.28). A different law, the "Remedies for Residents of Personal Care Homes Act", grants tenants of personal care homes the right to file a grievance against or request a hearing regarding their treatment by a Personal Care Home (O.C.G.A. § 31-8-130 et seq.).

Relevant Current Contract Language

Under "Financial Details" Section:

Both the management and the resident understand that this agreement may be terminated by either party, only with a thirty-day written notice. **EXCEPTION:** No notice is required if the resident develops a communicable disease or a change in condition that requires continued nursing care.

REFUND POLICY: If, after notice as agreed upon, the resident is transferred or discharged, prepaid fees will be prorated and refunded to the resident. No refund will be granted in the absence of a thirty day written notice unless subject to the exception above.

Management further agrees to provide a sixty-day written notice prior to a change in fees.

This agreement has been read by and/or fully explained to the resident/surrogate.

By signing below, all parties to this agreement acknowledge that they understand and will abide by the conditions outlined in this document.

Analysis

Our analysis should not be considered legal advice. Any changes to DCH sample contracts should be made in consultation with DCH's legal department only.

Under the federal rule, even in home and community based settings where landlord tenant laws do not apply, the state must make sure that the lease document "provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law." DCH's current sample contract follows Georgia's Personal Care Home regulations, and only requires a notice of 30 days from a landlord (and tenant) before terminating a lease agreement. Georgia landlord tenant law requires a notice of 60 days from the landlord in order to terminate a lease agreement. Because the federal settings rule requires that states defer to their landlord tenant law, we recommend that this part of the sample contract be changed to reflect Georgia landlord tenant law.

The emergency termination “Exception” provision (regarding communicable disease or change in condition) can likely remain, particularly if its occurrence in Georgia / DCH regulations is backed by a federal rule. Additionally, to leave it out would be to ignore the nature of these facilities and their patients, an outcome that CMS likely did not intend.

Last, if residents are able to take action against a Personal Care Home for an unjust eviction through their rights under the “Remedies for Residents of Personal Care Homes Act”, it is important that this be made clear in the lease termination section of the contract. The federal rule requires that residents either have access to the remedies against eviction under state landlord tenant law, or where the law doesn’t apply, may access comparable processes and appeals. If the “Remedies for Residents of Personal Care Homes Act” gives residents a comparable venue for Personal Care Home eviction-related matters, this should be prominently stated in the contract.

Suggested Updated Language

Based on our analysis above, DCH may consider the following new language for this section of the contracts:

Lease Termination / Eviction

Both the management and the resident understand that this agreement may be terminated by either party, with sufficient notice.

- Residents are required to give a thirty-day, written notice in order to terminate this agreement.
- Management is required to give a sixty-day, written notice in order to terminate this agreement.

EXCEPTION: No notice is required if the resident develops a communicable disease or a change in condition that requires continued nursing care.

Residents who believe their rights have been violated by a lease termination may file a grievance or request a hearing in accordance with the Remedies for Residents of Personal Care Homes Act (O.C.G.A. § 31-8-130 et seq.).

Additionally, if state landlord tenant law applies to Personal Care Homes, DCH may add the following sentence:

Additionally, residents have the same responsibilities and protections from eviction that tenants have under Georgia landlord/tenant law (O.C.G.A. Title 44, Chapter 7).

No other changes are recommended at this time. **We reiterate that our analysis and suggested updates are not legal advice, and that any changes to DCH sample contracts be made in consultation with DCH’s legal department only.**

Federal Guidance

Another issue that was raised by DCH during the review process was how to use regulatory guidance issued by CMS regarding the HCBS settings rule. It is common practice for federal agencies to provide guidance in order to further clarify how they desire a rule to be interpreted. CMS has provided various forms of guidance to states for complying with the requirements of the settings rule, which can be found at www.Medicaid.gov/HCBS. Although this guidance does not carry the force of law, it can be used to help states understand how they can more easily comply with the regulations. For example, on the HCBS web page, CMS has provided a Q&A document to guide states through the process of evaluating whether their HCBS facilities meet the settings requirements of the federal rule. One of the Questions and Answers reads as follows, regarding leasing provisions:

Can a residential agreement between the individual and the entity that owns or controls the property have the same protections as a lease?

Yes, however the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and the document provides enforceable protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.⁶

This guidance provides further insight into the requirements of 42 C.F.R. 441.301 (c)(4)(vi)(A) and tells states that a written residential agreement can satisfy the part of the regulation that requires that HCBS residents have the same rights as would be provided under local landlord tenant law, provided that the agreement include information about eviction and appeal rights. The guidance does not require that facilities do this per se, but rather lets them know that this is one possible way to comply with the regulation. Other forms of guidance include letters to state Medicaid directors, flow charts, information bulletins, and FAQs. Another example of guidance is the questions for states to consider when evaluating community access that we referenced above in the section on community integration. These questions help states further evaluate whether facilities are complying with that part of the rule.

We encourage DCH to consult the guidance available when they have doubts about compliance with various portions of the rule. The GHPC Medicaid Policy and Business Team is available to help with locating and interpreting federal guidance as needed.

⁶ CMS. *Home and Community-based Settings Requirements: Questions and Answers*. June 26, 2015. Found at www.Medicaid.gov/HCBS.

Appendix

42 C.F.R. § 441.301 Contents of Request for a Waiver

(a) A request for a waiver under this section must consist of the following:

(1) The assurances required by §441.302 and the supporting documentation required by §441.303.

(2) When applicable, requests for waivers of the requirements of section 1902(a)(1), section 1902(a)(10)(B), or section 1902(a)(10)(C)(i)(III) of the Act, which concern respectively, statewide application of Medicaid, comparability of services, and income and resource rules applicable to medically needy individuals living in the community.

(3) A statement explaining whether the agency will refuse to offer home or community-based services to any beneficiary if the agency can reasonably expect that the cost of the services would exceed the cost of an equivalent level of care provided in—

(i) A hospital (as defined in §440.10 of this chapter);

(ii) A NF (as defined in section 1919(a) of the Act); or

(iii) An ICF/IID (as defined in §440.150 of this chapter), if applicable.

(b) If the agency furnishes home and community-based services, as defined in §440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must—

(1) Provide that the services are furnished—

(i) Under a written person-centered service plan (also called plan of care) that is based on a person-centered approach and is subject to approval by the Medicaid agency.

(ii) Only to beneficiaries who are not inpatients of a hospital, NF, or ICF/IID; and

(iii) Only to beneficiaries who the agency determines would, in the absence of these services, require the Medicaid covered level of care provided in—

(A) A hospital (as defined in §440.10 of this chapter);

(B) A NF (as defined in section 1919(a) of the Act); or

(C) An ICF/IID (as defined in §440.150 of this chapter);

(2) Describe the qualifications of the individual or individuals who will be responsible for developing the individual plan of care;

(3) Describe the group or groups of individuals to whom the services will be offered;

(4) Describe the services to be furnished so that each service is separately defined. Multiple services that are generally considered to be separate services may not be consolidated under a single definition. Commonly accepted terms must be used to describe the service and definitions may not be open ended in scope. CMS will, however, allow combined service definitions (bundling) when this will permit more efficient delivery of services and not compromise either a beneficiary's access to or free choice of providers.

(5) Provide that the documentation requirements regarding individual evaluation, specified in §441.303(c), will be met; and

(6) Be limited to one or more of the following target groups or any subgroup thereof that the State may define:

(i) Aged or disabled, or both.

(ii) Individuals with Intellectual or Developmental Disabilities, or both.

(iii) Mentally ill.

(c) A waiver request under this subpart must include the following—

(1) *Person-centered planning process.* The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative. In addition to being led by the individual receiving services and supports, the person-centered planning process:

(i) Includes people chosen by the individual.

(ii) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.

(iii) Is timely and occurs at times and locations of convenience to the individual.

(iv) Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with §435.905(b) of this chapter.

(v) Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.

(vi) Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.

(vii) Offers informed choices to the individual regarding the services and supports they receive and from whom.

(viii) Includes a method for the individual to request updates to the plan as needed.

(ix) Records the alternative home and community-based settings that were considered by the individual.

(2) *The Person-Centered Service Plan.* The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the State's 1915(c) HCBS waiver, the written plan must:

(i) Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual 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.

(ii) Reflect the individual's strengths and preferences.

(iii) Reflect clinical and support needs as identified through an assessment of functional need.

(iv) Include individually identified goals and desired outcomes.

(v) Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports.

(vi) Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed.

(vii) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with §435.905(b) of this chapter.

(viii) Identify the individual and/or entity responsible for monitoring the plan.

(ix) Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.

(x) Be distributed to the individual and other people involved in the plan.

(xi) Include those services, the purpose or control of which the individual elects to self-direct.

(xii) Prevent the provision of unnecessary or inappropriate services and supports.

(xiii) Document that any modification of the additional conditions, under paragraph (c)(4)(vi)(A) through (D) of this section, 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 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.

(3) *Review of the Person-Centered Service Plan.* The person-centered service plan must be reviewed, and revised upon reassessment of functional need as required by §441.365(e), at least every 12 months, when the individual's circumstances or needs change significantly, or at the request of the individual.

(4) *Home and Community-Based Settings*. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(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.

(ii) 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.

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

(iv) 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.

(v) Facilitates individual choice regarding services and supports, and who provides them.

(vi) In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

(A) 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.

(B) Each individual has privacy in their sleeping or living unit:

(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

(2) Individuals sharing units have a choice of roommates in that setting.

(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.

(E) The setting is physically accessible to the individual.

(F) Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(1) Identify a specific and individualized assessed need.

(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(3) Document less intrusive methods of meeting the need that have been tried but did not work.

(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.

(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(7) Include the informed consent of the individual.

(8) Include an assurance that interventions and supports will cause no harm to the individual.

(5) *Settings that are not Home and Community-Based.* Home and community-based settings do not include the following:

(i) A nursing facility;

(ii) An institution for mental diseases;

(iii) An intermediate care facility for individuals with intellectual disabilities;

(iv) A hospital; or

(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving

Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

(6) Home and Community-Based Settings: Compliance and Transition:

(i) States submitting new and initial waiver requests must provide assurances of compliance with the requirements of this section for home and community-based settings as of the effective date of the waiver.

(ii) CMS will require transition plans for existing section 1915(c) waivers and approved state plans providing home and community-based services under section 1915(i) to achieve compliance with this section, as follows:

(A) For each approved section 1915(c) HCBS waiver subject to renewal or submitted for amendment within one year after the effective date of this regulation, the State must submit a transition plan at the time of the waiver renewal or amendment request that sets forth the actions the State will take to bring the specific waiver into compliance with this section. The waiver approval will be contingent on the inclusion of the transition plan approved by CMS. The transition plan must include all elements required by the Secretary; and within one hundred and twenty days of the submission of the first waiver renewal or amendment request the State must submit a transition plan detailing how the State will operate all section 1915(c) HCBS waivers and any section 1915(i) State plan benefit in accordance with this section. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.

(B) For States that do not have a section 1915(c) HCBS waiver or a section 1915(i) State plan benefit due for renewal or proposed for amendments within one year of the effective date of this regulation, the State must submit a transition plan detailing how the State will operate all section 1915(c) HCBS waivers and any section 1915(i) State plan benefit in accordance with this section. This plan must be submitted no later than one year after the effective date of this regulation. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.

(iii) A State must provide at least a 30-day public notice and comment period regarding the transition plan(s) that the State intends to submit to CMS for review and consideration, as follows:

(A) The State must at a minimum provide two (2) statements of public notice and public input procedures.

(B) The State must ensure the full transition plan(s) is available to the public for public comment.

(C) The State must consider and modify the transition plan, as the State deems appropriate, to account for public comment.

(iv) A State must submit to CMS, with the proposed transition plan:

(A) Evidence of the public notice required.

(B) A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the transition plan based upon those comments.

(v) Upon approval by CMS, the State will begin implementation of the transition plans. The State's failure to submit an approvable transition plan as required by this section and/or to comply with the terms of the approved transition plan may result in compliance actions, including but not limited to deferral/disallowance of Federal Financial Participation.

Tables

Table 1 Federal settings rule cross-walked to CCSP policies

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
§ 441.301(b)(6)(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	CCSP General Services – Ch. 600. Introduction to the Community Care Services Program, §§ 600.3 Authority; 601. Conditions of Participation, 601.1 General Conditions, D. Compliance with Rules and Regulations; 604. Member Assurances, 604.1 CCSP Member Rights and Responsibilities, 606.11 Non-Emergency Transportation Services	Not fully addressed (in 600); Not addressed (in 600.3, 601).	Add Federal Rule language (entire rule or just (i)); 601 could be place to add entire FR; may want to reference FR in 600.3; may want to reference transportation stance in 606.11.
	CCSP ADH – §§ 1101. Description of Adult Day Health Services: “ADH services increase opportunities for individuals to participate in multifaceted activities, including social and cultural activities”. . . (<i>service categories listed</i>); 1103. Provider Requirements Related to Adult Day Health Services, C) Adult Day /Health Services – Mobile; 1103.4 Components of Adult Day Health Services, F) Transportation	Not fully addressed (addresses receiving services in the community, engaging in community life, and access to the greater community).	Add Federal Rule language, and make connection to role of ADH services; address transportation stance.
	CCSP ALS – §§ 1203.1 / 1253.1 Personal Care Services: “D. If a member attends a senior center, the provider informs the member’s care coordinator. If the member wishes/ needs to return to the personal care home, the provider must arrange transportation.”; 1253.2 Family-Model Subcontracting Policy and Procedures	Not fully addressed (addresses transport to senior center could count as engaging in community life).	Add Federal Rule language, and make connection to role of ALS services.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
	CCSP Personal Support - §§ 1400. General: . . . provides Personal Support Services (PSS) to individuals at risk of placement in a nursing facility; 1401. Description of Personal Support Services.	Not fully addressed (addresses receiving services in the community) / not necessarily applicable.	Either add applicable Federal Rule language to manual (connect to how Personal Support Services can help make this happen in the home), or add to General Services and reference.
	CCSP Skilled Nursing – § 1901. Definition and Scope of Services: Skilled nursing services . . . may be provided in . . . member's home, day care center or day treatment facility.	Not fully addressed (addresses receiving services in the community) / not necessarily applicable.	Either add applicable Federal Rule language to manual (connect to how Skilled Nursing can help make this happen in the home), or add to General Services and reference.
	CCSP Care Coordination – Ch. 200: 1982 GA Community Care & Services Act: . . . Assist functionally impaired elderly in living dignified and reasonably independent lives in their own homes or with their families, Establish a continuum of care for such elderly in the least restrictive environment, Maximize use of existing community social and health services to prevent unnecessary placement of individuals in long-term care facilities.	Not fully addressed.	Add entire Federal Rule language (§ 441.301(b)(6)(c)(4)-(5)).
(ii) 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	CCSP General Services – §§ 601. Conditions of Participation, 601.1 General Conditions, R. Accepting Referrals - The provider agency must accept all appropriate referrals from CCSP care coordinators, including members who are currently Medicaid eligible or potentially Medicaid eligible; S. Member Referrals - . . . Care coordinators make referrals to enrolled providers based on member choice, rotation, and availability of CCSP funding; 603. Admissions (no discrimination based on federal law); 604. Member Assurances, 604.1 CCSP Member Rights and Responsibilities -4. The right to a choice of approved service provider(s), 5. The right to accept or refuse services	Not fully addressed (addresses general purpose of CCSP is to allow members to live at home if wanted / possible, care coordinators help facilitate, members make	Add Federal Rule language.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
settings, resources available for room and board.		choices about their care).	
	CCSP ADH	Not applicable.	None.
	CCSP ALS – §§ 1203.10 / 1253.12 Trial Visits, Temporary Absences, Private Rooms and Facility Closings: A. Alternative Living Trial Visits from a Private Residence: Trial visits are arranged to determine if the member’s needs can be met in a personal care home and to determine the appropriateness of placement in the home.(≤ 7 days); 1253.2 Family-Model Subcontracting Policy and Procedures, B. . . The member is given the opportunity to choose the subcontracted personal care home in which he/she wishes to live.	Not fully addressed (though trial visits are important in enabling member selection of setting).	Add Federal Rule language (to this section and in general section of ALS manual).
	CCSP Personal Support	Not applicable.	None.
	CCSP Skilled Nursing	Not applicable.	None.
	CCSP Care Coordination – §§ 620- Initial Assessment, 626 – Client Choice of CCSP Provider	Not fully addressed.	Add Federal Rule language (important, as this manual addresses setting selection and person-centered planning).
(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.	CCSP General Services – §§ 601. Conditions of Participation, 601.1 General Conditions, O. Member Protection Assurance; 602. Corrective Action, 602.1 Corrective Action Requested by the Division of Aging Services, B. Reasons for Removing a Provider From the Rotation List/ Suspending Referrals, 602.4 Adverse Action, B. Reasons to Impose Adverse Action - 7. Failure to Act on Charges of Abuse, Neglect, and/or Exploitation of Members; 604. Member Assurances, 604.1 CCSP Member Rights and Responsibilities; 607.3 Personnel Policies, C. Code of Ethics; Appendix EE	Addressed.	None.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
	CCSP ADH – § 1103.9 Notification of Member Rights/Responsibilities (<i>refers to Section 601.1K of the CCSP General Manual</i>); 1103.10 Program Evaluation and Member Satisfaction – . . . 5) staff respect for member’s rights, choices, privacy, dignity, property and protection from harm and exploitation	Addressed.	None – refers back to general services manual; however, could benefit from greater clarity.
	CCSP ALS – §§ 1203.2 /1253.4 Physical Environment, C. Residential Quality of Group Model; 1203.9 / 1253.11 Member funds; 1253.2 Family-Model Subcontracting Policy and Procedures	Not addressed.	Add Federal Rule language.
	CCSP Personal Support – §§ 1403.6 Notification of Member Rights (<i>refers to Sections 601.1K, 604.1 of the CCSP General Manual, Ga. Comp. R. & Regs. 290-5-54-.12</i>); 1403.7 Program Evaluation and Customer Satisfaction	Addressed.	None – refers back to general services manual; however, could benefit from greater clarity.
	CCSP Skilled Nursing – § 1905 Program Evaluation and Customer Satisfaction (<i>refers to Section 609 of the CCSP General Manual</i>). “A. Customer Satisfaction as indicated by the measurement of: . . . 4. staff respect for member’s rights, choices, privacy, dignity, and property and protection from harm and exploitation”	Not fully addressed.	Could add specific Federal Rule language, and put in more prominent section than § 1905
	CCSP Care Coordination – Client Rights and Responsibilities (form for clients to sign)	Not fully addressed (missing restraint and privacy components).	Add Federal Rule language to form.
(iv) 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.	CCSP General Services – §§ 604. Member Assurances / 604.1 CCSP Member Rights and Responsibilities; 606.15 Service Delivery Hours	Not fully addressed (services).	Add Federal Rule language.
	CCSP ADH – §§ 1103. Provider Requirements Related to Adult Day Health Services / A) Building and Grounds Requirements; 1103.4 Components of Adult Day Health Services / D. Therapeutic Activities . . . involves members to the maximum extent possible in planning, and implementing activities,. . . promotes each member’s self-respect by providing activities that allow for self-expression, personal responsibility and choice. . . ; 1103.10 Program Evaluation and Member Satisfaction – . . . 5) staff respect for member’s rights, choices, privacy, dignity, property and protection from harm and exploitation	Not fully addressed (physical environment; planning activities).	Add Federal Rule language.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
	CCSP ALS – §§ 1203 / 1253. Requirements Related to Member Services, 1203.1 / 1253.1 Personal Care Services – Group-model homes provide the amount of personal care services needed by each member on a schedule that respects the member’s choice (time of day, etc.) . . . ; 1203.4 / 1253.6 Supervision of Member Care / E. Member Education; 1203.2 / 1253.4 Physical Environment; 1203.9 / 1253.11 Member Funds; 1253.2 Family-Model Subcontracting Policy and Procedures; 1203.12 / 1253.14 Program Evaluation and Customer Satisfaction – B. respect for member choice	Not fully addressed (schedule choice; individual initiative with member’s medical / nutritional condition; physical environment; member handling own funds).	Add Federal Rule language.
	CCSP Personal Support – § 1404.3 Personal Support Aides / D. Duties of the Personal Support Aide include: . . . 2. encourage member to make decisions and to remain as independent as possible	Not fully addressed.	Add Federal Rule language.
	CCSP Skilled Nursing – § 1903. Member Profile / A. The member requires skilled nursing intervention/monitoring in the form of: . . . 2. Health education, 3. Teaching . . . medication administration, indications for medication, possible side effects of medication . . . C. The member may need: 1. Nutritional counseling . . .	Not fully addressed (various health education / counseling).	Add Federal Rule language.
	CCSP Care Coordination – §§ 622 – Comprehensive Care Plan, SECTION 620- Initial Assessment, SECTION 601 - Overview	Not addressed.	Add Federal Rule language.
(v) Facilitates individual choice regarding services and supports, and who provides them.	CCSP General Services – §§ 601.1 General Conditions, S. Member Referrals - Care coordinators make referrals to enrolled providers based on member choice . . . ; 604.1 CCSP Member Rights and Responsibilities – A, 4. The right to a choice of approved service provider(s); App. C – Referral System for Use with Multiple CCSP Providers of the Same Service, A. Client is able to choose . . . ;	Addressed	None.
	CCSP ADH – §§ 1103.3 Levels of Service, 1103.4 Components of Adult Day Health Services / D. Therapeutic Activities . . . The activities program: involves members to the maximum extent possible in planning, and implementing activities . . . ; 1103.10 Program Evaluation	Not fully addressed.	Add Federal Rule language (to level of care / placement instrument section; therapeutic activities may not be the

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
	and Member Satisfaction – . . . appropriateness of service to the identified need and choice of the member		right place, as it's just one service).
	CCSP ALS – §§ 1203 / 1253. Requirements Related to Member Services, 1203.1 / 1253.1 Personal Care Services – Group-model homes provide the amount of personal care services needed by each member on a schedule that respects the member's choice (time of day, etc.) . . . ; 1203.12 / 1253.14 Program Evaluation and Customer Satisfaction – B. respect for member choice	Not fully addressed.	Add Federal Rule language.
	CCSP Personal Support – §§ 1403.1 Supervision of the Member's Care / C. Assessment - The Personal Support Service provider agency assesses each member and considers the member's wishes when assigning a staff member who is appropriate in meeting the individual's service needs. In determining appropriate staffing, the provider agency considers: . . . member's requested time for service delivery, member's other requests. If a member requests/needs a service that a provider is unable to deliver, the provider telephones the care coordinator to determine if another provider may be more appropriate to serve the member; 1406 Consumer Directed Option for Personal Support Services - To promote client independence and individual preference . . . PSS clients who are eligible and choose to participate in Consumer-Directed Care will be assigned the tasks and duties of employer and will participate in care planning, service budgeting, selection, employment, and training of the caregiver(s) of choice. . . the client may select a representative to act in his/her behalf. . .	Addressed.	None.
	CCSP Skilled Nursing	Not addressed / not sure if applicable (may not be in scope of skilled nursing provider).	None (for this manual; may be more for care coordinator / personal support providers; skilled nurses provide the services requested by other providers).

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
	CCSP Care Coordination – §§ 322. Service Providers (small piece on Provider Care Plan, with no mention of client involvement); Ch. 600 Care Coordination . . . Collaborating with client to determine service needs, and outcomes; 626. Client Choice of CCSP Provider	Not fully addressed (626 addresses; should be mentioned in other places too).	Add Federal Rule language (to Ch. 600).
§ 441.301(b)(6)(c)(4)(vi) In a provider-owned or controlled residential setting, ⁷ in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	CCSP General Services – §§ 601. Conditions of Participation / 601.1 General Conditions / K. Service Contracts/Agreements - If providers require members to sign a service contract or other binding written agreement before receiving services, the service agreement will be in a format that the member can read and easily understand. The agreement may not require members to waive their legal rights.	Not addressed.	None or add under K. Service contracts / Agreements (since this part of the rule only applies to ALS CCSP providers, DCH may just put in ALS manual, or reference this rule and the ALS section under this contracts section).
	CCSP ALS – §§ 1203.2 / 1253.4 Physical Environment; 1251.1 The Family-Model Program; 1253.2 Family-Model Subcontracting Policy and Procedures	Not addressed.	Add Federal Rule language (somewhere in Ch. 1203 / 1253).

⁷ Alternative Living Services providers are the only relevant CCSP providers for § 441.301(b)(6)(c)(4)(vi) “provider-owned or controlled residential setting[s]”; however, General Services and Care Coordination manuals may also benefit from FR § 441.301(b)(6)(c)(4)(vi)(A)-(F) language updates.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
<p>(B) Each individual has privacy in their sleeping or living unit:</p> <p>(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>(2) Individuals sharing units have a choice of roommates in that setting.</p> <p>(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>CCSP General Services</p>	<p>Not addressed.</p>	<p>None (since this part of the rule only applies to ALS CCSP providers, just put in ALS manual to avoid confusing other providers).</p>
	<p>CCSP ALS – §§ 1203.2 / 1253.4 Physical Environment, C. Residential Quality of Group Model - The home is constructed and arranged to provide a comfortable, home-like environment for the member. The home adequately provides for the health, safety and well-being of the member. The home provides adequate common space which affords privacy for the member, member’s representative, and visitors’ use. 1203.10 / 1253.12 Trial Visits, Temporary Absences, Private Rooms and Facility Closings, E. Private Room, A facility may have private and semi-private rooms. If the member or member’s representative chooses a private room, the provider may charge the difference . . .; 1253.2 Family-Model Subcontracting Policy and Procedures</p>	<p>Not addressed.</p>	<p>Add Federal Rule language.</p>
<p>(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	<p>CCSP General Services – §§ 606.14 Food and Nutrition - Providers must deliver meals that meet the nutritional standards according to the specific program requirements for each service type (see Appendix O of the CCSP General Manual). 606.15 Service Delivery Hours - Providers rendering CCSP services in the member's home must use flexible scheduling to meet the individual member's needs and preferences for service. The provider's RN must be available to provider staff during hours that they deliver services. (See Section 601.1 M of the CCSP General Manual) 606.18 Member Care Plan</p>	<p>Not addressed.</p>	<p>None (since this part of the rule only applies to ALS CCSP providers, just put in ALS manual to avoid confusing other providers).</p>
	<p>CCSP ALS – §§ 1203.1 / 1253.1 Personal Care Services: Subcontractors provide the amount of personal care services needed by each member on a schedule that respects the member’s choice (time of day, etc.) . . .5. Providing meals and snacks, including modified or special diets, and assisting with feeding and monitoring nutritional intake and status;</p>	<p>Conflicts / Not fully addressed (conflicts with food access; somewhat addresses</p>	<p>Make consistent with Federal Rule language.</p>

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
	1203.2 Physical Environment - . . . Should the facility elect to have meals prepared off-site, the facility will have a modified kitchen that includes a microwave, a refrigerator, and clean-up facilities; 1203.3 / 1253.5 Hours of Operation; 1203.4 / 1253.6 Supervision of Member Care (Group Model), A. Accessibility; 1203.8 / 1253.10 Food and Nutritional Requirements – A. A minimum of three regular meals . . . are served daily; Nutritious snacks are to be available and offered to members, at a minimum, each mid afternoon and evening; B. No more than fourteen hours may elapse between the evening and morning meals; 1253.2 Family-Model Subcontracting Policy and Procedures	control of schedule / activities).	
(D) Individuals are able to have visitors of their choosing at any time.	CCSP General Services	Not addressed.	None (since this part of the rule only applies to ALS CCSP providers, just put in ALS manual to avoid confusing other providers).
	CCSP ALS	Not addressed.	Add Federal Rule language.
(E) The setting is physically accessible to the individual.	CCSP General Services	Not addressed.	None (since this part of the rule only applies to ALS CCSP providers, just put in ALS manual to avoid confusing other providers).
	CCSP ALS – § 1203.2 / 1253.4 Physical Environment (<i>refers reader to Rules and Regulations for Personal Care Homes, Chapter 111-8-62</i>); Appendix F . . . Environment accessible for client?; 1253.2 Family-Model Subcontracting Policy and Procedures	Addressed (reference to 111-8-62, which addresses the requirement).	None.
(F) Any modification of the additional conditions, under §	CCSP General Services – §§ 606.17C; 605.2 Provider's Initial Evaluation of the Member, E. Care Plan Changes - If applicable, the provider must	Not fully addressed (addressed, but not	Add specific Federal Rule language (and cross-

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
<p>441.301(c)(4)(vi)(A) through (D), 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:</p> <p>(1) Identify a specific and individualized assessed need.</p> <p>(2) Document the positive interventions and supports used prior to any modifications to the person centered service plan.</p> <p>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>	<p>contact the care coordinator to obtain prior approval of any desired changes in amount, duration, and scope of services in the comprehensive care plan. . . If the provider determines that the services outlined in the comprehensive care plan are not appropriate for the member, the provider notifies the care coordinator immediately. . . G. Member Inappropriate for Services or Declines – If . . . provider determines that the member is inappropriate for service, . . . the provider must immediately telephone the care coordinator during regularly scheduled office hours and/or within 24 hours. The provider must return the referral packet with the Community Care Notification Form (CCNF) to the care coordinator within three business days from the date the provider determines that the member is inappropriate or the member declines services; 605.3 Provider's Reevaluation of the Member – During the reevaluation the provider RN: Reviews the member's problems, approaches to those problems, and identifies responses to the approaches, . . . Communicates problem approaches, updates to care plans and any other pertinent information to appropriate staff caring for a member, Communicates recommendations for changes in the member's total care and sends the CCNF to the care coordinator. NOTE: A provider must secure care coordinator approval prior to changing services. Within 3 business days after receiving verbal approval from the care coordinator, the provider must follow up by sending to the care coordinator a completed CCNF reflecting the agreed upon change(s) in service; 606.1 Care Coordinator; 606.4 Clinical Records (C)(1)(b) MDS-HC V9 and Comprehensive Care Plan which includes . . . ; 606.18 Member Care Plan</p>	<p>specifically for conditions (A)-(D) or with the exact documentation methodology required).</p>	<p>reference to ALS and care coordination manuals).</p>
	<p>CCSP ALS – §§ 1203.1 / 1253.1 Personal Care Services; 1203.4 / 1253.6 Supervision of Member Care; 1203.5 / 1253.7 Clinical Records; 1253.2 Family-Model Subcontracting Policy and Procedures</p>	<p>Not addressed.</p>	<p>Add Federal Rule language.</p>
	<p>CCSP Care Coordination – Ch. 600. Care Coordination, 660. Documentation.</p>	<p>Not addressed.</p>	<p>Add Federal Rule language (§ 441.301(b)(6)(c)(4)</p>

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
			(vi)(A)-(F) to Ch. 600, or 660).
§ 441.301(b)(6)(c)(5) Settings ⁸ that are not Home and Community-Based. Home and community-based settings do not include the following:			
(i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not	CCSP General Services – §§ 600. Introduction to the Community Care Services Program; 600.1 Structure and Administration of the Program; 600.2 Services of the Program; 902. Non-Covered Services; 1005 Member Exclusions	Not fully addressed.	Add specific Federal Rule language to beginning of manual (600).
	CCSP ALS – §§ 1201. Description of Service, 1201.1 Alternative Living Services - Group Model – An ALS-Group Model personal care home is a freestanding residence, non-institutional in character and appearance, and licensed to serve seven (7) to twenty-four (24) members.	Not fully addressed.	Add Federal Rule language.
	CCSP ADH	Not addressed.	Add Federal Rule language.
	CCSP Care Coordination – Ch. 200: 1982 GA Community Care & Services Act: . . . Assist functionally impaired elderly in living dignified and reasonably independent lives in their own homes or with their families, Establish a continuum of care for such elderly in the least restrictive environment, Maximize use of existing community social and health services to prevent unnecessary placement of individuals in long-term care facilities	Not fully addressed.	Add entire Federal Rule language (§ 441.301(b)(6)(c)(4)-(5)).

⁸ Only ALS and ADH providers provide a setting; personal care and skilled nursing providers do not provide the setting, and provide services in whatever setting the member resides in. General Services, ALS, ADH, and Care Coordination manuals may be relevant.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (CCSP)	Compliance Assessment	Remedy / Action Required
have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			

Table 2 Federal settings rule cross-walked to COMP policies

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Part II NOW and COMP Manual § 710.3 Community Integration and Inclusion into the Larger Natural Community; § 1102 (K) "Services, supports, care or treatment approaches support the individual in: Living in the most integrated community setting...."; (K)(2)(h) "Telephone use for incoming and outgoing calls that is accessible and maintained in working order for persons served or supported."; § 1102 Management and Protection of Participant Funds "The personal funds of an individual are managed by the individual and are protected."; § 1212 Supports for Participant Direction	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
	Part III COMP Manual Ch. 1300 Adult Occupational Therapy; Ch. 1600 Behavioral Supports Consultation Services; Ch. 1700 Community Access Services; Ch. 1900 Community Living Support Services; Ch. 2000 Community Residential Alternative Services; Ch. 2200 Financial Support Services; Ch. 2500 Prevocational Services; Ch. 3000 Supported Employment Services; Ch. 3100 Transportation Services; Ch. 3200 Vehicle Adaptation Services; also included in DBHDD Manual Part I	N/A	None, these sections refer to services provided and not the setting.
	DBHDD Manual Part II § 1, Outcomes for Persons Served, C.I.1. "Services, supports, care or treatment approaches support the individual in: ...c. Obtaining quality services in a manner as consistent as possible with community living preferences and priorities, and d. Inclusion and active community integration is supported and evident in documentation."; 2.h. "Telephone use for incoming and outgoing calls that is accessible and maintained in working order for person served or supported."; C.I.8. "There are policies, procedures, and practices for transportation of persons supported...."; D.III.6. Community integration and inclusion into the larger	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
	natural community is supported and evident...."; E.1.b. "Individuals have the right to manage their own funds...."		
(ii) 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.	Part II § 1102 (D) ISP Documents	Does not include setting options	Include language specific to final rule.
	DBHDD Part II § 1, Outcomes for Persons Served, C.I.1. Services, supports, care or treatment approaches support the individual in: a. Living in the most integrated community setting appropriate to the individual's requirement, preferences and level of independence...."; D.II.1.g. "The ISP must list...."	Does not include setting options	Include language specific to final rule.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Part II § 706.2 (E)(1)(f) "Chemical Restraint may never be used under any circumstance."; § 710.1 Respect for the Dignity of the Individual; § 710.2 Human and Civil Rights; § 710.4 Participant Rights and Responsibilities (ii) "The right to be treated with respect and to maintain one's dignity and individuality." (xv) "The right to be free from mental, verbal, sexual and physical abuse, neglect, exploitation, isolation, corporal or unusual punishment, including interference with daily functions of living." (xvi) "The right to be free from chemical or physical restraints."; § 1102 (H) ""The Organization Maintains a System of Information Management that protects Individual Information and that is Secure, Organized, and Confidential"; (K)(2) "....Services are provided in an appropriate environment that is respectful and ensures the privacy of individuals supported or served....."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
	DBHDD Part II § 1, Organizational Practices, C.2. "Areas of risk to persons served and to the organization are identified and monitored based on services, supports, treatments or care offered including, but not limited to: ... d. Individual Rights Violations, e. Practices that limit freedom of choice or movement, ...j. Protection of Health and Human Rights of persons with developmental disabilities"; E.12. "All staff...shall be trained and show evidence of competence in the following:a.iii. Rights and Responsibilities	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
	of Individuals, iv. Requirements for recognizing and mandatory reporting suspected abuse, neglect, or exploitation of any individual....", b.iv. Human Rights and Responsibilities....; Outcomes for Persons Served, A. Individual Rights, Responsibilities, Protections (Critical); B. Behavioral Support Practices (Critical); C.I.7 "Video/Camera monitoring may not be used in the following instances:...."		
(iv) 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.	Part II § 706.2 Additional Considerations in Development of the ISP "....Individuals direct decisions that impact their life....";	Not fully addressed	Include language more specific to the final rule.
	Part III Ch. 1600 Behavioral Supports Consultation Services; Ch. 1800 Community Guide Services; Ch. 1900 Community Living Support Services; Ch. 2000 Community Residential Alternative Services; Ch. 2100 Environmental (only applies to at home settings); Ch. 2800 Specialized Medical Supplies Services; Ch. 3300 Behavioral Support Services; also included in DBHDD Manual Part I	N/A	None, these sections refer to services provided and not the setting.
	DBHDD Part II § 1, Outcomes for Persons Served, A.2. "The organization has policies and promotes practices that: ...d. Emphasize the use of teaching functional communication, functional adaptive skills to increase independence, and using least restrictive interventions that are likely to be effective,...f. Delineates the rights and responsibilities of persons served."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(v) Facilitates individual choice regarding services and supports, and who provides them.	Part II § 601.1 Outcomes for Persons Served "Individualized services, supports, care and treatment determinations are made on the basis of an assessment of needs with the individual and reflect goals of the individual....."; § 706.1 Individualized Service Plan "....The Planning List Administrator, in conjunction with the individual, and his or her family and/or support network develop a written Individual Service Plan that includes the services to be provided, the frequency of services, and the type of provider to deliver the service...."; § 710.4 Participant Rights and Responsibilities (iv) "The right to a choice of approved service provider(s)." (v) "The right to accept or refuse services."; 1102 "Choice of Service Options	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
	and Providers: The ongoing discussion on the range of service options is repeated at the annual review...."; 1201 "The Comprehensive Supports Waiver (COMP) Program promotes personal choice and control over the delivery of waiver services by affording opportunities for participant-direction that are available to participants who live in their own private residence or the home of a family member."; 1209 Eligible Waiver Services; Appendix E COMP Freedom of Choice Form		
	Part III Ch. 2900 Support Coordination Services; Ch. 3400 Nursing Services; also included in DBHDD Manual Part I	Not specified	Include language more specific to final rule: that patient has right to choose his providers and their services,
	DBHDD Part II § 1, Organizational Practices, C.4. "....Reviews include these determinations: ...b. Whether the services are based on assessment and need, c. That individuals have choices...."; Outcomes for Persons Served, C.I.1. Services, supports, care or treatment approaches support the individual in: ...b. Exercising meaningful choices about living environments, providers of services received, the types of supports, and the manner by which services are provided...."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	Part II § 908 Termination of Participant Services Requirements; § 1102 (K)(6) "Residential living support service options...are understood to be the 'Home' of the person supported or served."	Not fully addressed	Add language more specific to final rule, such as that the residential agreement must convey all rights as exist under applicable state and local Landlord/Tenant law.
	Part III § 2002 (8) Relocation of Participant	Not fully addressed	Add language and procedures more specific to the final rule: that the terms of residential

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
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			agreement must be followed.
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Part II § 710.4 Participant Rights and Responsibilities (xi) "The right to have property and residence treated with respect."; § 1102 (K)(2)(d) "Individual's rooms are personalized."; Appendix Q IDD New Site Inspection Checklist "Bedrooms"	Does not address lockable doors or choice of roommates	Include language more specific to the final rule.
	DBHDD Part II § 2, Outcomes for Persons Served, C.I.2.d. "Individual's rooms are personalized."	Does not address lockable doors or choice of roommates	Include language more specific to the final rule.
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Part II § 1102 (K)(4) "Food guidelines are in place...."; Appendix Q IDD New Site Inspection Checklist "Kitchen/Laundry"	Not addressed	Include language more specific to the final rule, especially regarding access to food.
	DBHDD Part II § 1, Outcomes for Persons Served, A.5. "There are no barriers in accessing the services, supports, care and treatment offered by the organization, including but not limited to: ...f. Organizational scheduling and availability...."; C.I.4. "Food Guidelines are in place for safe food consumption and storage...."	Does not address access to food	Include language more specific to the final rule, especially regarding access to food "at any time."

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
(D) Individuals are able to have visitors of their choosing at any time.	Part II Manual	Not addressed	Add language specific to the final rule re: access to visitors.
	DBHDD Part II § 2, Outcomes for Persons Served, A.7. "The organization must have written policies and procedures regarding the visitation rights of individuals,..."; C.I.2.f. "There is sufficient space, equipment, and privacy to accommodate:...g. An area/room for visitation..."	Not addressed	Add language more specific to the final rule re: access to visitors.
(E) The setting is physically accessible to the individual.	Part II § 1102 (K)(2)(c) "The environment is accessible..."; Appendix Q IDD New Site Inspection Checklist	Addressed	None.
	Part III Ch. 2700 Specialized Medical Equipment Services; also included in DBHDD Manual Part I	N/A	None, this section refers to services provided and not the setting
	DBHDD Part II § 1, Outcomes for Persons Served, A.5. "There are no barriers in accessing the services, supports, care and treatment offered by the organization, including but not limited to: ...b. Architectural...."; C.I.2. "...The environment is ...c. Accessible (individuals who need assistance with ambulation shall be provided bedrooms that have access to a ground level exit to the outside or have access to exits with easily negotiable ramps or accessible lifts....)...."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior	Part II § 706.2 E. Behavior Support Practices	Not fully addressed	Include language and procedures specific to final rule.
	DBHDD Part II § 2, Outcomes for Persons Served, A.7.g. "If visitation facilitates/results in problematic behaviors, reasonable restrictions may be ordered and incorporated into the Safety Plan."	Not fully addressed	Include language and procedures specific to final rule.

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
<p>to any modifications to the person centered service plan.</p> <p>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
<p>(i) A nursing facility;</p> <p>(ii) An institution for mental diseases;</p> <p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that</p>	<p>Part II § 701 Eligibility Criteria "....Home and Community-Based services included under the waiver may be provided only to persons who are not inpatients of a hospital, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Intermediate Care Facility for Persons with Intellectual Disability (ICF/ID)...."</p>	Not fully addressed	Include language specific to final rule, esp. (v).

HCBS Federal Setting Requirement § 441.301(b)(6)(c)(4)-(5)	Related State Policy (COMP)	Compliance Assessment	Remedy / Action Required
is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			

NOTES

- 1. Almost all of Ch. 1200 of combined Part II manual is for COMP services provided in a resident's home or a family member's home only. It does not apply to the NOW program or to COMP services delivered in a community setting.
- 2. The Part III manual describes services that are available for home and community based settings. These have been cross walked to their related parts of the federal rule. However, because they are about services and not settings, this is for information purposes only; no changes are needed for most of the Part III manual.
- 3. Appendix B of the Part III manual contains a guide to dealing with difficult behavior issues. It is suggestive only and therefore, has not been cross-walked to the federal rule.
- 4. Part I of the DBHDD Manual is repetitive of the services detailed in the Part III manual and has, therefore, not been cross-walked.

Table 3 Federal settings rule cross-walked to ICWP policies

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Part II ICWP Manual § 604.2 "Abuse, neglect of care or exploitation includes, but is not limited to:....(K) Taking a member's money or property by force, threat, or deceit. (L) Use of member's money or property against the member's wishes or without the member's knowledge."; § 902.1 (4) "...The Case Manager's basic roles are to:...(6) Investigate and/or assist the member in accessing community resources that may assist the member in remaining in the home and community...."; § 902.2 (D) Personal Support Aides (D) Duties include :..."(2) encourage member to make decisions and to remain as independent as possible."; § 902.4 (E) "Specialized medical equipment and supplies includes the following services: (1) Vehicle Adaptations...."; § 902.8 (A) "Providers of behavioral management services provide individualized interventions designed to decrease the traumatic brain injury member's maladaptive behavior, which, if not modified, will decrease the individual's ability to remain in the community."; App B "Member's Rights include:....(11) The right to have property and place of residence treated with respect."; App C ICWP goals: "(2) Participate socially and be connected and involved in community activities of your choice."; App M Non-Emergency Transportation Broker System; App P1 Financial Support Services / Fiscal Intermediary	N/A	None, these sections refer to services provided and not the setting; however, the provisions follow the intent of the federal rule.
	Part II ALS Manual § 1251 (3) "Persons admitted to a home may not be confined to bed and may not require continuous medical or nursing care and treatment."; § 1254.10 (A) "Federal regulations require that the agency responsible for administration of the Alternative Living Services Program protect member funds to ensure that members are allowed to use their money as they wish....(D) Members may handle personal funds. If a member is not capable of managing personal funds, the member may give the money to a representative or legal guardian who assumes financial responsibility for these	Not fully addressed	Add language more specific to federal rule, especially regarding employment opportunities.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
	funds...."; § 1254.15 Member Protection Assurance..."Inappropriate behavior [includes]... Isolating member from member's representative, family, friends, or activities...Taking a member's money or property by force, threat, or deceit..."; § 1255.5 (C)(2) "....Duties that the provider agency or subcontracted Behavioral Specialist may perform in the facility include, but are not limited to: ... Counseling or providing linkages to counseling or other community resources...."		
(ii) 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.	Part II § 1002.3 "Reimbursement is not authorized for....(4) Room and Board...."; App I Freedom of Choice Form; App P Consumer Directed Care Option	N/A	None, although DCH may want to include language more specific to federal rule to make it clear that the member chooses where they want to live to receive the enumerated services.
	ALS § 1254.2 (B) "....The member is given the opportunity to choose the subcontracted personal care home in which he/she wishes to live...." (G) "....Neither the provider agency nor subcontractor may move members from one location to another without the knowledge and approval of the member, member's representative, and case manager...."; § 1254.6 Clinical Records; § 1254.11 Note #2 "Reimbursement from DCH is for personal care services, not for room and board. The Division of Medicaid determines the approved room and board rate for ALS members. Charges for room and board are expenses that are reflected in the admission agreement between the member and subcontractor. The admission agreement includes conditions for refunds of room and board charges for partial month(s) residency in the facility."	Not fully addressed	Add language more specific to federal rule, especially regarding the documentation of a resident's choice of setting.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Part II § 602.1 (L) Member Protection Assurance; § 604.1 (A) "Member rights include:...(2) The right to be treated with respect and to maintain one's dignity and individuality...(3) The right to voice grievances and complaints regarding treatment or care that is furnished, without fear of retaliation, discrimination, coercion, or reprisal....(8) The right to confidential treatment of all information,	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
	<p>including information in the member record....(11) The right to have property and place of residence treated with respect."; § 604.2 Prevention of Member Abuse, Neglect, and Exploitation; § 604.3 Investigating and Reporting Incidents; § 902.1 (4) "...The Case Manager's basic roles are to:....(22) Report any neglect, abuse, theft, drug use or selling to the appropriate agency."; § 902.2 (D) Personal Support Aides (D) Duties include :...(7) monitor members and their environments to address and report issues that impact members' health, safety, or welfare...."; App B "Member's Rights include:....(2) The right to be treated with respect and to maintain one's dignity and individuality, (3)The right to voice grievances and complaints regarding treatment or care that is furnished, without fear of retaliation, discrimination, coercion, or reprisal."</p> <p>ALS § 1254.2 (F) "The Division will not register subcontractors who have had deficiencies which endangered the health, safety, or welfare of members. Examples of such deficiencies include, but are not limited to:...Violations related to care, safety, abuse, neglect, or exploitation of members, Violations of members' rights."; § 1254.14 Member Rights and Responsibilities (same as Part II); § 1254.15 Member Protection Assurance (same as Part II); § 1254.16 (D) "...At a minimum, the provider measures the following to evaluate quality of member care:...support of member dignity and self-respect"; § 1255.3 (B) "...Each personnel record must include the following, at a minimum:...(5) documentation of knowledge of agency's policies related to Member Protection Assurances"; (C) Code of Ethics</p>		
(iv) 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.	Part II § 604.1 (B) "Provider responsibilities include:....(7) The responsibility to maintain a safe home environment and to inform providers of the presence of any safety hazard in the home."; § 701 "Eligible persons are those who at the time of application: ...(D) are cognitively alert and capable of directing their own services...."; § 902.4 (A) "The specialized medical equipment and supplies includes the provision of devices, controls, or appliances, specified in the Individual Plan of Care, which enable members to increase their abilities to perform activities of daily living or to perceive, control, and communicate with	Not fully addressed	Include language more specific to final rule, especially regarding individual choice in with whom to interact.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
	the environment in which they live..."; § 902.5 Environmental Modification; § 902.9 Adult Day Services; App C Goals for ICWP: "(1) Maintain maximum control over daily schedules and decisions."		
	ALS § 1251.1 (A) "Subcontractors provide the amount of personal care services needed by each member on a schedule that respects the member's choice (time of day, etc.) and ensures that member's hygiene and health needs are met...."; § 1254.1 (D) "....Neither the provider agency nor subcontractor can require a member to attend an activity center or any other event the member does not wish to attend."; § 1254.3 (C) "Subcontract homes are constructed and arranged to provide a comfortable, home-like environment for the members. The home adequately provides for the health, safety and well-being of members. The home provides adequate common space which affords privacy for the member, member's representative, and visitors' use."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(v) Facilitates individual choice regarding services and supports, and who provides them.	Part II § 604.1 (a) "Member rights include:...(4) The right of choice of an approved provider....(6) The right to be informed of and participate in preparing the care plan and any changes in the plan."; § 902.1 (3) "Members are free to receive case management services from any ICWP case manager."; § 902.1 (4) "...The Case Manager's basic roles are to:...(4) Provide the member with a list of enrolled service providers and assist the member in utilizing the GMCF Social Worker's resource list, to select an appropriate community support provider....(5) Assist the member in making informed decisions and ensure that the member's choices are respected throughout service delivery....(14) Monitor the delivery of services to assure that services are rendered according to the Individual Care Plan and the member's satisfaction."; App B "Member's Rights include:....(4) The right of choice of an approved provider, (5) The right to accept or refuse services."; App C-1 General Understanding (6)"The member or his/her representative will have the freedom of choice to choose his or her Fiscal Intermediary, an enrolled Medicaid Provider."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
	ALS § 1254.14 Member Rights and Responsibilities (same as Part II)	Addressed	None. Current manual language speaks to rule requirements; DCH may

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
			choose to add further Final Rule specifics.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	Part II Manual	N/A	None, the Part II manual refers to services provided and not the setting.
	ALS § 1254.2 (G) "... Neither the provider agency nor subcontractor may move members from one location to another without the knowledge and approval of the member, member's representative, and case manager....Members must receive a 30 day written notice prior to any relocation...."; § 1254.12 (F) ".... If a subcontractor intends to permanently cease operating the facility, prior to closing the facility, the subcontractor gives a minimum of 30 days written notice of intent to close to the members, members' representatives, the family-model provider agency, the case manager the Georgia Medical Care Foundation, and the Healthcare Facility Regulations Division (HFRD)." § 1254.13 "If a provider requires the member to sign a service/admission agreement or contract, or other binding written agreement before receiving services, the service agreement will be in a format that the member can read and easily understand. The agreement may not require members to waive their legal rights. The service admission Alternative Living Services- Family Model XII-31 January 1, 2016 agreement must include all information required by the Rules and Regulations for Personal Care Homes, Chapter 111-8-62."	Not addressed	Add language and procedures specific to final rule regarding the written agreement and the protections it conveys. Protections should be equivalent of currently applicable Landlord/Tenant laws.
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	Part II Manual	N/A	None, the Part II manual refers to services provided and not the setting.
	ALS § 1254.12 (E) "A home may have private and semi-private rooms. If the member chooses a private room...."; § 1254.14 "Member rights recognized by	Does not address	Add language more specific to federal rule.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
(2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	the provider include:....(11) The right to have property and residence treated with respect."; § 1255.3 (C) Code of Ethics	lockable doors or freedom to decorate one's unit.	
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Part II Manual	N/A	None, the Part II manual refers to services provided and not the setting.
	ALS § 1254.9 Food and Nutritional Requirements	Not addressed	Add language specific to federal rule.
(D) Individuals are able to have visitors of their choosing at any time.	Part II Manual	N/A	None, the Part II manual refers to services provided and not the setting.
	ALS Manual	Not addressed	Add language specific to federal rule.
(E) The setting is physically accessible to the individual.	Part II Manual	N/A	None, the Part II manual refers to services provided and not the setting.
	ALS § 1251 (1) "The home shall admit or retain only ambulatory residents."	Does not address whether the home itself is accessible.	Add language more specific to federal rule regarding the facility itself.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed	Part II Manual	N/A	None, the Part II manual refers to services provided and not the setting.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior to any modifications to the person centered service plan. (3) Document less intrusive methods of meeting the need that have been tried but did not work. (4) Include a clear description of the condition that is directly proportionate to the specific assessed need. (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification. (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. (7) Include the informed consent of the individual. (8) Include an assurance that interventions and supports will cause no harm to the individual.	ALS Manual	Not addressed	Add language specific to federal rule.
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (ICWP)	Compliance Assessment	Remedy / Action Required
(i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.	Part II § 701 "Eligible persons are those who at the time of application: ...(J) [are] currently in an institution or at risk of being placed in an institutional setting."; § 706.1 "Discharge occurs when...(F) Member enters an institution (Nursing Facility, Hospital, etc.)...."	Not clear	Clarify language to show compliance with final rule: that services are not available in institutional settings.
	ALS Manual	Not addressed	Add language specific to federal rule.

Table 4 Federal settings rule cross-walked to NOW policies

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Part II NOW and COMP Manual § 710.3 Community Integration and Inclusion into the Larger Natural Community; § 1102 (K) "Services, supports, care or treatment approaches support the individual in: Living in the most integrated community setting...." (K)(2)(h) "Telephone use for incoming and outgoing calls that is accessible and maintained in working order for persons served or supported."; § 1102 Management and Protection of Participant Funds "The personal funds of an individual are managed by the individual and are protected."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
	Part III NOW Manual Ch. 1300 Adult Occupational Therapy; Part III Ch. 1600 Behavioral Supports Consultation Services; Part III Ch. 1700 Community Access Services; Ch. 1900 Community Living Support Services; Ch. 2100 Financial Support Services; Ch. 2400 Prevocational Services; Ch. 2900 Supported Employment Services; Ch. 3000 Transportation Services; Ch. 3100 Vehicle Adaptation Services; also included in DBHDD Manual Part I	N/A	None; these sections refer to services provided and not the setting.
	DBHDD Manual Part II § 1, Outcomes for Persons Served, C.I.1. Services, supports, care or treatment approaches support the individual in: ...c. Obtaining quality services in a manner as consistent as possible with community living preferences and priorities, and d. Inclusion and active community integration is supported and evident in documentation."; 2.h. "Telephone use for incoming and outgoing calls that is accessible and maintained in working order for person served or supported." C.I.8. "There are policies, procedures, and practices for transportation of persons supported...."; D.III.6. Community integration and inclusion into the larger natural community is supported and evident...."; E.1.b. "Individuals have the right to manage their own funds...."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
(ii) 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.	Part II § 1102 (D) ISP Documents	Does not include setting options	Include language specific to final rule.
	DBHDD Part II § 1, Outcomes for Persons Served, C.I.1. Services, supports, care or treatment approaches support the individual in: a. Living in the most integrated community setting appropriate to the individual's requirement, preferences and level of independence...."; D.II.1.g. "The ISP must list...."	Does not include setting options	Include language specific to final rule.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Part II § 706.2 E (1)(f) "Chemical Restraint may never be used under any circumstance."; § 710.1 Respect for the Dignity of the Individual; 710.2 Human and Civil Rights; § 710.4 Participation Rights and Responsibilities (ii) "The right to be treated with respect and to maintain one's dignity and individuality." (xv) "The right to be free from mental, verbal, sexual and physical abuse, neglect, exploitation, isolation, corporal or unusual punishment, including interference with daily functions of living." (xvi) "The right to be free from chemical or physical restraints."; § 1102 (H) "The Organization Maintains a System of Information Management that Protects Individual Information and that is Secure, Organized, and Confidential"; (K)(2) "....Services are provided in an appropriate environment that is respectful and ensures the privacy of individuals supported or served....";	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
	DBHDD Part II § 1, Organizational Practices, C.2. "Areas of risk to persons served and to the organization are identified and monitored based on services, supports, treatments or care offered including, but not limited to: ... d. Individual Rights Violations, e. Practices that limit freedom of choice or movement, ...j. Protection of Health and Human Rights of persons with developmental disabilities"; E.12. "All staff...shall be trained and show evidence of competence in the following:a.iii. Rights and Responsibilities of Individuals, iv. Requirements for recognizing and mandatory reporting suspected abuse, neglect, or exploitation of any individual....", b.iv. Human	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
	Rights and Responsibilities...; Outcomes for Persons Served, A. Individual Rights, Responsibilities, Protections (Critical); B. Behavioral Support Practices (Critical); C.I.7 "Video/Camera monitoring may not be used in the following instances:...."		
(iv) 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.	Part II § 706.2 Additional Considerations in Development of the ISP "....Individuals direct decisions that impact their life...."	Not fully addressed; too vague.	Include language more specific to the final rule.
	Part III Ch. 1600 Behavioral Supports Consultation Services; Ch. 1800 Community Guide Services; Ch. 1900 Community Living Support Services; Ch. 2000 Environmental Accessibility Adaptation; Ch. 2700 Specialized Medical Supplies Services; Ch. 3200 Behavioral Support Services; also included in DBHDD Manual Part I	N/A	None; these sections refer to services provided and not the setting.
	DBHDD Part II § 1, Outcomes for Persons Served, A.2. "The organization has policies and promotes practices that: ...d. Emphasize the use of teaching functional communication, functional adaptive skills to increase independence, and using least restrictive interventions that are likely to be effective,...f. Delineates the rights and responsibilities of persons served."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(v) Facilitates individual choice regarding services and supports, and who provides them.	Part II § 601.1 Outcomes for Persons Served "Individualized services, supports, care and treatment determinations are made on the basis of an assessment of needs with the individual and reflect goals of the individual....."; § 706.1 Individualized Service Plan "....The Planning List Administrator, in conjunction with the individual, and his or her family and/or support network develop a written Individual Service Plan that includes the services to be provided, the frequency of services, and the type of provider to deliver the service...."; § 710.4 Participant Rights and Responsibilities (iv) "The right to a choice of approved service provider(s)." (v) "The right to accept or refuse services."; § 1102 "Choice of Service Options and Providers: The ongoing discussion on the range of service options is repeated at the annual review....";	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
	Part III Ch. 2800 Support Coordination Services; Ch. 3300 Nursing Services; also included in DBHDD Manual Part I	Not specified	Include language more specific to final rule: that patient has right to choose his provider and their services
	DBHDD Part II § 1, Organizational Practices, C.4. "....Reviews include these determinations: ...b. Whether the services are based on assessment and need, c. That individuals have choices...."; Outcomes for Persons Served, C.I.1. Services, supports, care or treatment approaches support the individual in: ...b. Exercising meaningful choices about living environments, providers of services received, the types of supports, and the manner by which services are provided...."	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	Part II § 908 Termination of Participant Services Requirements; § 1102 (K)(6) "Residential living support service options...are understood to be the 'Home" of the person supported or served."	Not fully addressed; makes no mention of the resident's rights.	Add language more specific to final rule, such as that the residential agreement must convey all rights as exist under applicable state and local Landlord/Tenant law.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
comparable to those provided under the jurisdiction's landlord tenant law			
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Part II § 710.4 Participant Rights and Responsibilities (xi) "The right to have property and residence treated with respect."; § 1102 (K)(2)(d) "Individual's rooms are personalized."; Appendix Q IDD New Site Inspection Checklist "Bedrooms"	Does not address lockable doors or roommates	Include language more specific to the final rule.
	DBHDD Part II § 2, Outcomes for Persons Served, C.I.2.d. "Individual's rooms are personalized."	Does not address lockable doors or roommates	Include language more specific to the final rule.
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	Part II § 1102 (K)(4) "Food guidelines are in place...."; Appendix Q IDD New Site Inspection Checklist "Kitchen/Laundry"	Not addressed	Include language more specific to the final rule, especially regarding access to food.
	DBHDD Part II § 1, Outcomes for Persons Served, A.5. "There are no barriers in accessing the services, supports, care and treatment offered by the organization, including but not limited to: ...f. Organizational scheduling and availability...."; C.I.4. "Food Guidelines are in place for safe food consumption and storage...."	Not fully addressed	Include language more specific to the final rule, especially regarding access to food.
(D) Individuals are able to have visitors of their choosing at any time.	Part II Manual	Not addressed	Add language more specific to the final rule re: access to visitors.
	DBHDD Part II § 2, Outcomes for Persons Served, A.7. "The organization must have written policies and procedures regarding the visitation rights of individuals...."; C.I.2.f. "There is sufficient space, equipment, and privacy to accommodate; g. An area/room for visitation..."	Not addressed	Add language more specific to the final rule re: access to visitors.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
(E) The setting is physically accessible to the individual.	Part II § 1102 (K)(2)(c) "The environment is accessible..."; Appendix Q IDD New Site Inspection Checklist	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.
	Part III Ch. 2600 Specialized Medical Equipment Services; also addressed In DBHDD Manual Part I	N/A	None; these sections refer to services provided and not the setting.
	DBHDD Part II § 1, Outcomes for Persons Served, A.5. "There are no barriers in accessing the services, supports, care and treatment offered by the organization, including but not limited to: ...b. Architectural...."; C.I.2. ...The environment is ...c. Accessible (individuals who need assistance with ambulation shall be provided bedrooms that have access to a ground level exit to the outside or have access to exits with easily negotiable ramps or accessible lifts....)....	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further FR specifics.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior to any modifications to the person centered service plan. (3) Document less intrusive methods of meeting the need that have been tried but did not work.	Part II § 706.2 E. Behavior Support Practices	Not fully addressed	Include language and procedures specific to final rule.
	DBHDD Part II § 2, Outcomes for Persons Served, A.7.g. "If visitation facilitates/results in problematic behaviors, reasonable restrictions may be ordered and incorporated into the Safety Plan."	Not fully addressed	Include language and procedures specific to final rule.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
(4) Include a clear description of the condition that is directly proportionate to the specific assessed need. (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification. (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. (7) Include the informed consent of the individual. (8) Include an assurance that interventions and supports will cause no harm to the individual.			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
(i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any	Part II § 701 Eligibility Criteria "....Home and Community-Based services included under the waiver may be provided only to persons who are not inpatients of a hospital, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Intermediate Care Facility for Persons with Intellectual Disability (ICF/ID)...."	Not fully addressed	Include language specific to final rule, especially regarding (v).

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (NOW)	Compliance Assessment	Remedy / Action Required
other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			

NOTES

- 1. Almost all of Ch. 1200 of combined Part II manual is for COMP services provided in a resident's home or a family member's home only. It does not apply to the NOW program or to COMP services delivered in a community setting.
- 2. The Part III manual describes services that are available for home and community based settings. These have been cross walked to their related parts of the federal rule. However, because they are about services and not settings, this is for information purposes only; no changes are needed for most of the Part III manual.
- 3. Appendix B of the Part III manual contains a guide to dealing with difficult behavior issues. It is suggestive only and therefore, has not been cross-walked to the federal rule.
- 4. Part I of the DBHDD Manual is repetitive of the services detailed in the Part III manual and has, therefore, not been cross-walked.

Table 5 Federal settings rule cross-walked to SOURCE policies

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Part II SOURCE Manual § 903 Program Admission Procedures (3) "Prepare information on Community Supports available to member that may be used to support the patient during their stay in SOURCE or information that can be used to support member at termination (prepare for Discharge at time of enrollment);"; § 1003 Completed Carepaths "....Case managers will review carepath goals during regularly scheduled contacts with the member to ensure that the plan is current and continues to support the member's ability to remain in the community...."; Appendix L Housing Carepath	Not fully addressed; no mention of access to employment opportunities or control of personal resources.	Include language more specific to final rule.
(ii) 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.	Part II Manual	Not addressed	Add language and procedures specific to final rule.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Part II § 606 (B) Compliance. "Applicants must demonstrate maintenance of a satisfactory record of compliance with federal and state laws and regulations, and must not be currently or previously prohibited from participation in any other federal or state healthcare program or have been	Not fully addressed; abuse or similar charges should	Include language more specific to final rule.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
	convicted or assessed fines or penalties for any health related crimes, misconduct, or have a history of multiple deficiencies cited by Utilization Review and/or deficiencies that endanger the health, safety, and welfare of the member."; § 1407 Confidentiality of Member Information; § 1410 HIPAA Regulations; App. D Member Rights and Responsibilities	be specified as a bar to provider enrollment.	
(iv) 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.	Part II § 804 Case Management. "Assessment and periodic reassessment – determines service needs, including activities that focus on needs identification, to determine the need for any medical, educational, social, or other services. Assessments are comprehensive in nature and should address all needs of the individual, including an individual's strengths and preferences, and consider the individual's physical and social environment."; § 902 Assessment; Procedures (f) "While an informal caregiver may assist with answering assessment questions as needed (see above in particular), the potential new member is the primary source of information whenever possible, and is interviewed in person."; § 904 Routine Reevaluations/Reassessments. Procedures (f) "Initiate the development of a new CarePath with input from member/member representative."; § 1001 Carepaths "....Members and informal caregivers, service providers, Primary Care Provider staff, RN's/LPN's and Case Managers, together, implement the Carepath, adjusting the plan when necessary to meet key outcomes and goals....SOURCE promotes member independence, self care and assistance from informal care givers."; § 1301 Scheduled Contact with Members "....Direct contact between members/caregiver and providers or Primary Care Providers also occurs frequently in the model; the Case Manager encourages engagement of the members/caregivers to the fullest extent possible in working toward optimal health and functional status....."; § 1401 Procedures (1) "Case managers will capitalize on self-care capability and informal support whenever feasible..."; Appendix D Member Rights and Responsibilities	Not fully addressed; these manual sections do not say enough about daily activities, physical environment, or individual choice in with whom to interact.	Include language more specific to final rule.
(v) Facilitates individual choice regarding services and supports, and who provides them.	Part II § 801.3 Procedures once "slot" is available for member. (2) "Obtain member signature on the SOURCE Level of Care and Placement Form (Appendix F)."; § 804 Case Management. ".... Assessments are comprehensive	Addressed	None. Current manual language speaks to rule requirements; DCH may

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
	<p>in nature and should address all needs of the individual, including an individual's strengths and preferences, and consider the individual's physical and social environment."; § 902 Assessment; Procedures (g) "The Case Manager or nurse will review the program's operations with the potential member following the assessment, including selection of the site as primary care provider."; (i) "The Case Manager will provide the member/caregiver with the names of participating Primary Care Providers. All members enrolling must select and agree to use a designated Primary Care Provider."; § 906 SOURCE Member External Transfers "....Members transferring to another SOURCE EPCCM provider will be provided informed choice of providers/program prior to request for admission. One method used to secure informed choice is to involve the member, the previous agency/program staff, and the new agency to admit the member via conference call in order that all parties hear the member's choice directly....The member will be educated about services available in SOURCE versus his/her current case management program during the face to face assessment with the SOURCE nurse."; § 1002 Carepath Development and Completion "Carepath development requires that the CM/LPN/RN use information gathered from many sources to produce and maintain a consensus between members/caregivers and Primary Care Providers in order to meet individual and program goals...."; § 1003 Completed Carepaths "Completed SOURCE Carepaths will have understanding and agreement from the member/care giver and the Primary Care Provider staff...."; § 1004 Carepath Formal Review "Case Managers formally review Carepaths each quarter with members and with Primary Care Providers....."; Appendix D Member Rights and Responsibilities</p>		choose to add further FR specifics.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) The unit or dwelling is a specific physical place that can be owned,	Part II § 903 Program Admission Procedures. Process for established members who do not meet continued eligibility at reassessment: "(a) If a	Probably N/A	None. This part of the federal rule only applies

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
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	member no longer meets Level of Care (and does not appeal) or is discharged for any other reason, the site will notify all service providers and end all lines on the service Prior Authorization; (b) Except in cases where member meets immediate discharge criteria (I.E. threatening behavior), the agency should attempt to determine if the member is going to appeal and give the member 30 days before ending the service Prior Authorization...."; § 1405 SOURCE Member Involuntary Discharge; § 1406 Right to Appeal; § 1412 Transfers between SOURCE Case Management Agencies		to residential settings and not case management services.
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Part II Manual	Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings and not case management services.
(C) Individuals have the freedom and support to control their own schedules	Part II Manual	Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings and

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
and activities, and have access to food at any time.			not case management services.
(D) Individuals are able to have visitors of their choosing at any time.	Part II Manual	Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings and not case management services.
(E) The setting is physically accessible to the individual.	Part II Manual	Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings and not case management services.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior to any modifications to the person centered service plan. (3) Document less intrusive methods of meeting the need that have been tried but did not work.	Part II Manual	Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings and not case management services.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
<p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
<p>(i) A nursing facility;</p> <p>(ii) An institution for mental diseases;</p> <p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid</p>	<p>Part II § 701 Exclusions "...Waivers or programs where the member would need to be enrolled as an inpatient or in an institution are excluded from SOURCE...."</p>	<p>Not fully addressed; does not specify the facilities specified in the rule.</p>	<p>Add language and procedures more specific to final rule.</p>

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (SOURCE)	Compliance Assessment	Remedy / Action Required
HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			

Table 6 Federal settings rule cross-walked to Ga. Comp. R. & Regs. r. 111-8-1, Rules and Regulations for Adult Day Centers

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Ga. Comp. R. & Reg. r. 111-8-1-.10 (1)(a) Each center shall have a standard telephone...on the premises which is immediately accessible during the center's hours of operation...."; 111-8-1-.12 (3) Optional Services (a) "Transportation...."; 111-8-1-.20 Transportation (1) "The center may provide transportation and/or assist in arranging transportation services for participants...."	Not fully addressed; only addresses communication and transportation.	Add language more specific to final rule.
(ii) 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.	111-8-1-.15 (7) Participant Agreement	Not addressed	Add language specific to final rule regarding personal choice in setting location and documentation of that decision.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	111-8-1-.10 (4)(c) "Multiple toilets in the same room shall have individual stalls with doors which can be closed."; (5)(b) "Each tub or shower shall be in an individual room or enclosure that provides space for the private use of the bathing fixture...."; 111-8-1-.14 (2) "Prior to hiring, the center shall search the Georgia Nurse Aide Registry to determine if an individual is designated in the registry as having abused, neglected or exploited a resident or consumer	Addressed	None. Current manual language speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
	<p>of a facility....(d) A center shall not utilize a person to provide services who is listed in the Georgia Nurse Aide Registry, another state's Nurse Aide Registry and/or state licensing/certification boards as having abused, neglected or exploited a resident or consumer of a facility or having their license or certification restricted. (e)The center shall not employ nor use as volunteers persons with criminal histories which include the abuse, neglect, or exploitation of any disabled or aging adult."; (3) Training (a) "Work related training for employees shall at a minimum include the following: ... (4) Training in identifying participants who may be victims of elder abuse or self-neglect; (5) Training in participants' rights including the prevention and reporting of suspected abuse, neglect or exploitation; (6) Training in protecting the confidentiality of participant information and records..."; (c) Volunteers "....At a minimum, all volunteers shall receive training in the following: (1) Identifying abuse, neglect and exploitation, and the applicable reporting requirements; and (2) Participant rights."; 111-8-1-.17 Participant Rights; 111-8-1-.23 Reporting Requirements (2) "...the adult day center shall report...(b) Any rape...; (c) Any serious injury...; (d) Any suspected abuse, neglect or exploitation...."</p>		
(iv) 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.	<p>111-8-1-.12 (2) Core Services (b) "Social and leisure activity programming which takes into consideration individual differences in health and functioning, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities and skills;" (c) "Individual and group activities that encourage creativity, social interaction, and physical activity appropriate to each participant's functional status and abilities...." ; 111-8-1-.15 (7) Participant Agreement; 111-8-1-.17 Participant Rights (e) "The right to be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence."; 111-8-1-.17 Participant Rights (f) ".(4) Refuse to participate in treatment, activities or services at the center...."</p>	Not fully addressed; does not say enough about physical environment or individual choice in deciding with whom to interact.	Add language more specific to final rule.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
(v) Facilitates individual choice regarding services and supports, and who provides them.	111-8-1-12 (4) Adult Day Health Services "...centers that provide adult day health services shall provide an ongoing program of therapeutic activities designed to meet, in accordance with the assessment or reassessment, the physical, mental and psychosocial well-being of each participant. The activity program shall be multifaceted and reflect each individual's needs, abilities, and interests...."; (5)(a) "The individual plan of care...shall include the following: ...(2) A review of the participant's functional abilities and disabilities, personal habits, likes and dislikes, medical condition and any other information helpful to developing the plan; (3) A statement of the activities and services the center will provide in order to meet the participant's needs and preferences...."; 111-8-1-15 (7) Participant Agreement; 111-8-1-17 Participant Rights (f) "The right to self-determination within the day care setting, including the opportunity to: (1) Participate in developing one's plan of care;...(4) Refuse to participate in treatment, activities or services at the center...."; 111-8-1-19 Medications (5) "Participants shall have the right to refuse any and all medications...."	Not specific enough about individual choice regarding services and providers.	Add language more specific to final rule.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	111-8-1-08 (1) "...The policies and procedures shall at a minimum include the following: ... (m) A description of the criteria for voluntary and involuntary discharge of a participant from the center, and the time frame for notifying the participant and/or participant's representative prior to an involuntary discharge...."; 111-8-1-22 (2) Discharge "Each participant agreement shall include a written procedure for handling discharge of the participant that complies with these rules...."	Not fully addressed, but probably N/A	None. This part of the federal rule only applies to residential settings.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
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			
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	111-8-1-10 (2) Facilities. "Center facilities shall consist of, but not be limited to, the following: ..." (d) Rest area(s) as needed by the participants...."; (6)(d) "Rest areas shall be furnished with a bed and mattress, recliner, sofa, or chair with back and arm support....(f) Adult day centers co-located within a licensed long-term care facility may not use residents' rooms or furnishings for adult day care participants."	Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings.
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	111-8-1-10 (2) Facilities. "Center facilities shall consist of, but not be limited to, the following: ... (b) Dining Areas; (c) Kitchen areas...."; 111-8-1-12 (2) Core Services (d) "Nutrition, for all centers open for more than four (4) hours per day."; 111-8-1-17 Participant Rights (f) "The right to self-determination within the day care setting, including the opportunity to: (2) Decide whether or not to participate in any given activity;...(4) Refuse to participate in treatment, activities or services at the center...."; 111-8-1-18 Nutrition (1) "All adult day care centers operating for more than four (4) hours a day and/or operating during regularly scheduled mealtimes shall ensure that a nutritious meal is provided to each participant in attendance."; (2) "Snacks and fluids shall be available and offered to meet the participant's nutritional and fluid needs. At a minimum, a mid-morning and mid-afternoon snack shall be offered daily to participants."	Not fully addressed, but probably N/A	None. This part of the federal rule only applies to residential settings.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
(D) Individuals are able to have visitors of their choosing at any time.		Not addressed, but probably N/A	None. This part of the federal rule only applies to residential settings.
(E) The setting is physically accessible to the individual.	111-8-1-.10 (1)(b) "....All centers shall be accessible to and usable by physically disabled individuals and shall meet all applicable regulations for access for the handicapped."; (3) "Each center shall provide sufficient furniture for use by participants, which provide comfort and safety, and are appropriate for an adult population with physical limitations, visual and mobility limitations and cognitive impairments...."; (8)(b) "The outdoor area shall be suitably furnished with seating appropriate to the needs of the participants."; 111-8-1-.15 (1) "Admission. Each adult day center....shall only admit individuals for whom the center can meet the participant's needs."	Probably N/A	None. This part of the federal rule only applies to residential settings.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior to any modifications to the person centered service plan. (3) Document less intrusive methods of meeting the need that have been tried but did not work. (4) Include a clear description of the condition that is directly proportionate to the specific assessed need.	111-8-1-.27 Variances and Waivers	Not fully addressed, but probably N/A	None. This part of the federal rule only applies to residential settings.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
<p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
<p>(i) A nursing facility;</p> <p>(ii) An institution for mental diseases;</p> <p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of</p>	<p>111-8-1.10 (2)(g) "An adult day center may be co-located at a licensed long-term care facility provided that both the center and the long-term care facility are meeting the needs of the adult day participants and the long-term care facility residents, maintaining their required staffing ratios, and respecting the rights of the residents of the long-term care facility to privacy and the quiet enjoyment of their residence."</p>	<p>Conflict</p>	<p>Unless facilities approved under this part of the regulation can pass "heightened scrutiny", they will not comply with the final rule. Therefore, DCH may want to consider changing this policy to more closely follow the language of the final rule.</p>

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-1 Adult Day Centers)	Compliance Assessment	Remedy / Action Required
individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			

Table 7 Federal settings rule cross-walked to Ga. Comp. R. & Regs. r. 111-8-31, Rules and Regulations for Home Health Agencies

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-31 Home Health Agencies)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Ga. Comp. R. & Regs. r. 111-8-31-.06 (k) "'Home Health Services' means those items and services provided to an individual...in a place of temporary or permanent residence used as the individual's home...."	Not directly addressed, but implied because the setting here is the individual's home.	Add language more specific to final rule.
(ii) 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.	111-8-31-.09 (d) Clinical Records	Not addressed	Include language specific to final rule. The individual's choice of setting should be noted in the clinical record as part of the plan of treatment.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	111-8-31 , et. Seq.	Not addressed	Add language and procedures specific to final rule.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-31 Home Health Agencies)	Compliance Assessment	Remedy / Action Required
(iv) 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.	111-8-31-.09 "Patients shall be accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence...."	Addressed by implication	It would be better to include language specific to the final rule.
(v) Facilitates individual choice regarding services and supports, and who provides them.	111-8-31-.06 (u) "'Plan of Treatment' means an individual plan written, signed, and reviewed at least every sixty days by the patient's physician prescribing items and services for the patient's condition."; 111-8-31-.08 (a)(1) "....A registered nurse shall...initiate the plan of treatment....", (c) "The social worker shall...participate in the development of the plan of treatment....", (d)(2) "A home health aide shall be assigned to a particular patient by a registered nurse....."; 111-8-31-.09 "....Care shall follow a written plan of treatment established and periodically reviewed by a physician...."	Conflict: the patient is not given a roll in the plan or the choice of providers.	Add language and procedures specific to final rule: the plan and all services, as well as providers, should be based on the patient's preferences.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	N/A	N/A	This section is not applicable because the setting is a person's private home.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-31 Home Health Agencies)	Compliance Assessment	Remedy / Action Required
document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law			
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(D) Individuals are able to have visitors of their choosing at any time.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(E) The setting is physically accessible to the individual.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must	N/A	N/A	This section is not applicable because the

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-31 Home Health Agencies)	Compliance Assessment	Remedy / Action Required
<p>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:</p> <p>(1) Identify a specific and individualized assessed need.</p> <p>(2) Document the positive interventions and supports used prior to any modifications to the person centered service plan.</p> <p>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			<p>setting is a person's private home.</p>
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-31 Home Health Agencies)	Compliance Assessment	Remedy / Action Required
(i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.	111-8-31-.06 (j) "'Home Health Agency' means: a public, non-profit, or proprietary organization; whether owned by one of more persons or legal entities, which is engaged in providing home health services."	N/A	None; these state regulations apply to services rendered and not the setting.

Table 8 Federal settings rule cross-walked to Ga. Comp. R. & Regs. r. 111-8-62, Rules and Regulations for Personal Care Homes

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-62 Personal Care Homes)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Ga. Comp. R. & Regs. r. 111-8-62-.08 (5) "Each home must have a telephone which ... is accessible to the residents."; 111-8-62-.13 (2)(h) "Exterior doors must be equipped with locks which do not require keys to open them from the inside."; 111-8-62-.16 (1)(e) "...transportation of residents for shopping, recreation, rehabilitation and medical services...must be available either as a basic service or on a reimbursement basis." 111-8-62-.25 Supporting Residents Rights	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(ii) 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.	111-8-62-.17 (8) Resident Needs Assessment & (9) Written Care Plan; 111-8-62-.25 (1)(q) "Each resident has the right to fully participate in the planning of his or her care...."	Not fully addressed; does not mention resident choice of setting.	Add language more specific to final rule: that the care plan and the setting are based on the resident's preferences and not just inclusive of them.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	111-8-62-.07 (3) "The governing body is responsible for implementing policies, procedures and practices in the home that support the core values of dignity, respect, choice, independence and privacy of the residents...."; 111-8-62-.12 (1)(b) "A home must...provide adequately for...Independence, privacy, and dignity of the residents."; 111-8-62-.12 (7) "Toilets, bathtubs and showers must provide for individual privacy."; 111-8-62-.15 (d) "The home	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-62 Personal Care Homes)	Compliance Assessment	Remedy / Action Required
	must not admit or retain persons who require the use of physical or chemical restraints, isolation, or confinement for behavioral control." 111-8-62-.17 (6) A home must not restrict a resident's free access to the common areas of the home...." (7) "A home must not lock the resident into or out of the resident's bedroom or private living space."; 111-8-62-.25 Supporting Residents' Rights		
(iv) 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.	111-8-62-.12 (1)(c) "A home must...provide adequately for...Safe access of all residents with varying degrees of functional impairment to living, dining and activity areas within the home."; 111-8-62-.16 (1)(h) "...House rules must be consistent with residents' rights...."; 111-8-62-.25 Supporting Residents' Rights	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(v) Facilitates individual choice regarding services and supports, and who provides them.	111-8-62-.25 Supporting Residents' Rights, esp. (1)(o) "Each resident has the right to receive or reject medical care, dental care, or other services except as required by law or regulations" & (p) "Each resident has the right to choose and retain the services of a personal physician and any other health care professional or service...."	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	111-8-62-.16 Admission Agreement	Not fully addressed; does not mention resident rights.	Add language more specific to final rule: that the residential agreement must convey all rights as exist under applicable state and local Landlord/Tenant law.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-62 Personal Care Homes)	Compliance Assessment	Remedy / Action Required
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			
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	111-8-62-.12 (6)(d) If the residents specifically chooses in writing to share a private bedroom or living space with another resident of the home, then the resident must be permitted to share the room..."; 111-8-62-.12 (6)(g) "...For bedrooms or private living spaces which have locks on doors, both the occupant and administrator or on-site manager must be provided with keys to assure easy entry and exit."; 111-8-62-.14 (4) "Provision must be made for assisting a resident to personalize the bedroom by allowing the use of his or her own furniture if so desired and mounting or hanging pictures on bedroom walls."; 111-8-62-.25 (1)(d) "Each resident must have the right to enjoy privacy in his or her room; home personnel and others must respect this right by knocking on the door before entering the resident's room." (i) "...Each resident has the right to reasonable safeguards for the protection and security of his or her personal property and possessions brought into the home."	Not fully addressed, although it does imply that resident has choice of roommate.	Include language more specific to final rule regarding roommates, locks, and furnishings.
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	111-8-62-.21 (1) "A minimum of three regularly scheduled, well-balanced meals must be provided seven days a week. There must be no more than 14 hours elapsing between the scheduled evening and morning meals....Food for at least one nutritious snack shall be available and offered each mid-afternoon and evening."; 111-8-62-.25 (1)(c)(2) "Each resident must have the right to...choose activities and schedules consistent with the resident's interests and assessments."	Not fully addressed	Add language more specific to final rule, especially regarding access to food at any time.
(D) Individuals are able to have visitors of their choosing at any time.	111-8-62-.16 (1)(h) "...House rules must include...policies regarding...visitors...."; 111-8-62-.25 (l) "Residents have the right to have	Not clear from this language whether	Include language more specific to final rule: that

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-62 Personal Care Homes)	Compliance Assessment	Remedy / Action Required
	visitors at mutually agreed upon hours. Once the hours are agreed upon, no prior notice is necessary...."	visitors are allowed "at any time."	visitors are allowed "at any time."
(E) The setting is physically accessible to the individual.	111-8-62-.12 (5)(c) "The home must have handrails, grab bars, doorways and corridors which accommodate permitted mobility devices...allow the residents to move about the home freely."; 111-8-62-.12 (6)(g) "Doorways...must be equipped with positively latching hardware which will insure opening of doors by a single motion...."; 111-8-62-.12 (7)(g) "A home serving a person dependent upon a wheelchair...must have at least one bathroom that permits the resident to use all bathroom facilities easily and independently where able."	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior to any modifications to the person centered service plan. (3) Document less intrusive methods of meeting the need that have been tried but did not work.	111-8-62-.18 Requirements for Memory Care Services; 111-8-62-.19 Additional Requirements for Specialized Memory Care Units or Homes; 111-8-62-.24 Resident Files; 111-8-62-.26 Procedures for Change in Resident Condition; 111-8-62-.25 Variance and Waiver	Not addressed	Add language and procedures specific to final rule, especially regarding documentation to be included in the resident's file when an exception to the rules is needed.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-62 Personal Care Homes)	Compliance Assessment	Remedy / Action Required
<p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
<p>(i) A nursing facility;</p> <p>(ii) An institution for mental diseases;</p> <p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid</p>	<p>111-8-62-.06 (7) "A home licensed as a personal care home, but not specifically licensed as an assisted living community, must not provide assisted living care." & (8) "A personal care home must not operate or allow another business to operate on the premises of the licensed home where the business intrudes on the residents' quiet enjoyment and use of the licensed home."; 111-8-62-.19 (11) "No licensed personal care home may provide or hold itself out as providing specialized care for residents with probably Alzheimer's disease or other dementia...unless it meets the additional requirements specified in Rule 111-8-62-.19."</p>	Partly addressed; potential conflict	Add language more specific to final rule. 111-8-62-.19, which allows a home to be for dementia, may subject the facility to "heightened scrutiny" if dementia is interpreted as a mental illness.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-62 Personal Care Homes)	Compliance Assessment	Remedy / Action Required
HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			

Table 9 Federal settings rule cross-walked to Ga. Comp. R. & Regs. r. 111-8-65, Rules and Regulations for Private Home Care Providers

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-65 Private Home Care Providers)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Not specified	Not directly addressed, but implied because the setting here is the individual's home.	Add language more specific to final rule.
(ii) 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.	111-8-65-.09 (2) Service Agreements "....All services provided to the client shall be based on a written service agreement entered into with the client or the client's responsible party....The service agreement must include...." & (4) Record keeping; 111-8-65-.11 Services Plans	Not addressed	Include language specific to final rule: that the agreement should be based on the individual's preferences and their choices should be noted in the agreement.
(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	111-8-65-.12 Clients Rights, Responsibilities, and Complaints	Not fully addressed	Add language and procedures specific to final rule.
(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices,	111-8-65-.12 Clients Rights, Responsibilities, and Complaints	Not fully addressed	Add language and procedures specific to final rule.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-65 Private Home Care Providers)	Compliance Assessment	Remedy / Action Required
including but not limited to, daily activities, physical environment, and with whom to interact.			
(v) Facilitates individual choice regarding services and supports, and who provides them.	111-8-65-.12 Clients Rights, Responsibilities, and Complaints	Not fully addressed	Add language and procedures specific to final rule.
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	N/A	N/A	This section is not applicable because the setting is a person's private home.
(B) Each individual has privacy in their sleeping or living unit:	N/A	N/A	This section is not applicable because the

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-65 Private Home Care Providers)	Compliance Assessment	Remedy / Action Required
(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.			setting is a person's private home.
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(D) Individuals are able to have visitors of their choosing at any time.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(E) The setting is physically accessible to the individual.	N/A	N/A	This section is not applicable because the setting is a person's private home.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need.	N/A	N/A	This section is not applicable because the setting is a person's private home.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-65 Private Home Care Providers)	Compliance Assessment	Remedy / Action Required
<p>(2) Document the positive interventions and supports used prior to any modifications to the person centered service plan.</p> <p>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
<p>(i) A nursing facility;</p> <p>(ii) An institution for mental diseases;</p> <p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p>	111-8-65-.07 Exemptions	N/A. The state regulations only apply to an individual's	None; state regulations do not apply to institutional settings.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (111-8-65 Private Home Care Providers)	Compliance Assessment	Remedy / Action Required
(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.		private residence.	

Note

We also looked at OCGA 31-7-300, et seq. but had nothing to add other than it is the authority for these regulations.

Table 10 Federal settings rule cross-walked to Ga. Comp. R. & Regs. r. 290-9-37, Rules and Regulations for Community Living Arrangements

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (290-9-37 Community Living Arrangements)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:			
(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.	Ga. Comp. R. & Regs. r. 290-9-37-.07 (8) "Each resident shall have a telephone available for incoming and outgoing calls that is maintained in working order...."; 290-9-37-.13 (6) "The routine of the residence shall be such that a resident may spend the majority of his or her non-sleeping hours out of the bedroom if he or she chooses." 290-9-37-.19 (4)(c) "Each resident shall have the right to:3. Interact with members of the community...."; (4)(g) "....Each resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents." 290-9-37-.19 (4)(k) "Each resident shall have access to a telephone....also have the right to have a private phone...."; 290-9-37-.19 (4)(l) "Each resident shall have the right to manage his or her own financial affairs...."	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(ii) 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.	290-3-37-.13 (2) "....The individual service plan shall contain at least the following information:...."	Not addressed	Add language specific to final rule: that the settings options are identified and documented in the care plan and are based on the individual's needs, preferences, etc.
(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.	290-9-37-.07 Administration, Criminal History Background Checks; 290-3-37-.08 (2) "A Community Living Arrangement shall provide for common living space and private sleeping areas." (9)(e) "Toilets, bathtubs, and showers shall provide for individual privacy." 290-9-37-.14 (4) "....The...Arrangement shall	Addressed	None. Current state regulation speaks to rule requirements; DCH may

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (290-9-37 Community Living Arrangements)	Compliance Assessment	Remedy / Action Required
	not require any resident to perform tasks...unless...participation of the resident is voluntary and appropriate."; 290-9-37-.15 (3) "The administrator...shall ensure that any staff member who interacts with residents, under contract or otherwise, receives work-related training...."; 290-9-37-.19 Resident Rights; 290-9-37-.19 (4)(l) "....Each resident shall have the right to be free from coercion to assign or transfer to the residence money, valuables, benefits, property, or anything of value other than payment for services rendered by the residence."; 290-9-37-.20 (6) "....Medications shall not be used as punishment or for the convenience of staff."; 290-9-37-.22 (1) "The Community Living Arrangement shall have and enforce effective procedures to minimize to the greatest extent possible the use of personal restraints...."; 290-9-37-.32 (1) "The Community Living Arrangement shall report...(d) Any assault, any battery on a resident, or any abuse, neglect, or exploitation of a resident...."		choose to add further Final Rule specifics.
(iv) 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.	290-9-37-.08 Minimum Floor Plan Requirements; 290-9-37-.13 (5) "Each Community Living Arrangement shall offer a range of social, recreational, and educational activities as required to meet the needs and preferences of each resident."; 290-9-37-.14 (2) "...the individual service plan for each resident must support evidence of assessment regarding capacity to be independent within the residence."; 290-9-37-.16 (1) "Community Living Arrangements shall not admit or retain a resident whose care requirements are beyond that which the residence is able to support."; 290-9-37-.19 (4)(c) "Each resident shall have the right to: ...2. Choose activities and schedules consistent with interests and assessments of the resident; 3. Interact with members of the community both inside and outside...; 4. Make choices about aspects of his or her life in the residence."; 290-9-37-.19 (4)(l) "Each resident shall have the right to manage his or her own financial affairs...."	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(v) Facilitates individual choice regarding services and supports, and who provides them.	290-9-37-.19 (4)(n) "Each resident shall also have the right to receive or reject medical care, dental care, or other service...."; (4)(o) "Each resident shall have the right to choose and retain the services of a personal physician and any other health care professional...."; (4)(p) "Each resident shall have the right to fully participate in the planning of his or her care."	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.

HCBS Federal Setting Requirement § 441.301(c)(4)-(5)	Related State Policy (290-9-37 Community Living Arrangements)	Compliance Assessment	Remedy / Action Required
§ 441.301(c)(4)(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:			
(A) 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	290-9-37-.17 Admission Agreement; 290-9-37-.26 (1) "Each admission agreement shall include a written procedure for handling discharge and transfer or the resident...."; 290-9-37-.27 Expedited Transfer or Discharge Planning	Not fully addressed; does not address resident's rights.	Add language more specific to final rule: that the residential agreement must convey all rights as exist under applicable state and local Landlord/Tenant law.
(B) Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting.	290-3-37-.08 (8)(b) "There shall be no more than one resident per bedroom unless adequate bedroom space is available for two residents to accommodate without crowding...."; (8)(f) "....For residents that have locks on doors...."; 290-3-37-.09 (1) Furnishings of the residents in the living room, bedroom, and dining room, including furnishings provided by the resident...."; (3) "Where a resident does not choose to provide furnishings..., the Community Living Arrangement shall provide...."; (5) Provision shall be made for assisting a resident to personalize the bedroom by allowing the use of his or her own	Not fully addressed	Include language more specific to final rule regarding roommates, locks, and furnishings.

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(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	furniture if so desired and by mounting or hanging pictures on bedroom walls."; 290-9-37-.19 (4)(d) "Each resident shall have the right to enjoy privacy in his or her bedroom...."		
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	290-3-37-.08 (4) "There must be common space, such as living and dining rooms, for use by the residents without restrictions."; 290-9-37-.19 (4)(c) "Each resident shall have the right to:2. Choose activities and schedules consistent with interests and assessments of the resident...."; 290-9-37-.23 Nutrition	Not fully addressed; does not specify access to food "at any time."	Add language more specific to final rule, especially regarding access to food "at any time."
(D) Individuals are able to have visitors of their choosing at any time.	290-3-37-.08 (3) "All residences shall provide an area for use by residents and visitors that affords privacy."; 290-9-37-.19 (4)(j) "....Residents have the right to have visitors at mutually agreed upon times...."	Not clear from this language whether visitors are allowed "at any time."	Include language more specific to final rule: that visitors are allowed "at any time."
(E) The setting is physically accessible to the individual.	290-9-37-.08 Minimum Floor Plan Requirements	Addressed	None. Current state regulation speaks to rule requirements; DCH may choose to add further Final Rule specifics.
(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: (1) Identify a specific and individualized assessed need. (2) Document the positive interventions and supports used prior	290-9-37-.13 (7) "A residence shall not restrict a resident's free access to common areas...or to the resident's own bedroom unless the rationale for not meeting this requirement is documented in the individual service plan of the resident, which justifies that exceptions are based on the needs of the resident."; 290-9-37-.21 (2) "Where medical protection devices and adaptive support devices have been determined to be the least restrictive alternative..., the following steps shall be taken prior to use...."; 290-9-37-.22 (1) "....The use of personal restraints shall be specified in the individual service plan and shall be used as a safety intervention solely for the purposes of protecting the safety of the resident or other persons in the residence after a hierarchy of appropriate interventions have been utilized...."; 290-9-37-.33 Variances and Waivers	Mostly addressed, but procedures do not match final rule.	Include language and procedures more specific to the final rule.

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<p>to any modifications to the person centered service plan.</p> <p>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>(7) Include the informed consent of the individual.</p> <p>(8) Include an assurance that interventions and supports will cause no harm to the individual.</p>			
§ 441.301(c)(5) Settings that are not Home and Community-Based. Home and community-based settings do not include the following:			
<p>(i) A nursing facility;</p> <p>(ii) An institution for mental diseases;</p> <p>(iii) An intermediate care facility for individuals with intellectual disabilities;</p> <p>(iv) A hospital; or</p> <p>(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that</p>	<p>290-9-37-.04 Exemptions</p>	<p>Addressed</p>	<p>None; state regulations do not apply to institutional settings.</p>

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is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.			