



UPDATE: CMS HCBS Settings Regulation Final Rule

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Agenda

- Introduction
- Overview: CMS Home and Community Based Services (HCBS) Settings Requirements
- Trends in HCBS Compliance
- Virginia's Self-Assessment Process
- What's Next?
- Questions



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Introduction

Introduction

Goal and Purpose

- Instead of defining what community is not, defines the qualities and characteristics of a HCB setting
- Ensure individuals receiving services through HCBS programs have full access to the benefits of community living
 - Builds upon decades of public policy to further expand opportunities for meaningful community inclusion and integration
 - Tool to assist states with adhering to the Olmstead mandate (SA) and ADA requirements



Overview: CMS HCBS Settings Requirements

Overview: CMS HCBS Requirements

- Regulations became effective January 2014
- Requires states to submit a Statewide Transition Plan detailing how the state will ensure all settings comply
 - Requires both a systemic and settings review
 - Systemic review accepted for initial approval
 - States must develop methodology to ensure 100% of settings reviewed
 - Settings review and validation condition for final approval
- **Compliance deadline extended to March 17, 2022**

Overview: CMS HCBS Requirements

Is integrated in and supports access to the greater community

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Is selected by the individual from among setting options including non-disability specific settings

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

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

Overview: CMS HCBS Requirements

What is an Integrated Setting?

People receiving HCBS have the opportunity to live, work, and receive services in the greater community:

- Located in mainstream society
- Offers access to community activities when and with whom the person chooses
- Choice in daily life activities
- Ability to interact with people without disabilities to the fullest extent possible

Examples include: scattered site supportive housing, supported employment in a mainstream job

Overview: CMS HCBS Requirements

Settings that are NOT Home and Community Based:

- Nursing facility
- Institution for mental disease (IMD)
- Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- Hospital

Overview: CMS HCBS Requirements

Settings that Isolate

Examples of characteristics of settings that isolate:

- Designed specifically for people with disabilities or specific disabilities
- Comprised primarily of people with disabilities and staff providing services
- Individuals receiving services are provided multiple types of services onsite
- Individuals receiving services have limited interaction with the broader community
- Use restrictive interventions

Overview: CMS HCBS Requirements

Settings that Isolate

CMS has provided explicit examples of residential settings that isolate:

- Disability-specific farms
- Gated disability communities
- Residential schools
- Congregate, disability-specific settings that are co-located and operationally related

Overview: CMS HCBS Requirements

Settings that are “Presumed Institutional” may not be included in a state’s HCBS programs unless:

The state submits evidence (including public input) demonstrating that the **setting has the qualities of a HCBS setting and NOT that of an institution**; and

- ✓ The U.S. Secretary of HHS finds, based on a heightened review of the evidence, that the setting meets the requirements of a home and community based setting
- ✓ This process is referred to as ***Heightened Scrutiny***

Overview: CMS HCBS Requirements

Presumptively Institutional Settings

- Settings in facilities **providing inpatient institutional services**
- Settings **on the grounds of, or adjacent to, a public institution**
- Settings that **have the effect of isolating HCBS recipients from the broader community**. Characteristics may include:
 - Designed **specifically for PWD** or with **specific disabilities**
 - Comprised **primarily of PWD and staff providing services**
 - PWD are **provided** multiple types of **services onsite**
 - PWD have **limited interaction with the broader community**
 - Use **restrictive interventions**

Overview: CMS HCBS Requirements

Additional Requirements for Provider-Controlled or Operated Residential Settings

- The **unit/dwelling** is a physical place that can be owned, rented, or occupied **under a legally enforceable agreement with eviction protections.**
- **Choice of roommate**
- **Privacy in his/her sleeping or living unit.**
- **Freedom to furnish or decorate unit**
- Individuals have the freedom and support to **control their own schedules and activities** and have **access to food at any time.**
- Individuals are able to have **visitors** of their choosing **at any time.**
- The setting is **physically accessible** to the individual.



Overview: CMS HCBS Requirements

ANY modification to any of these conditions **must be supported by a specific assessed need and justified in the person centered plan.**



Trends in HCBS Compliance

Overview: CMS HCBS Requirements

CMS Policy Guidance

Heightened Scrutiny

- **Every one** of HCBS characteristics is met for **every resident**;
- People in the setting **are not isolated** from the **greater community**
 - Proximity to resources, activities and transportation
 - Varied schedules based on interests; not all activities provider organized
 - Activities that foster relationships with community members
 - Choice of setting (including non-disability specific setting)
 - People without disabilities consider it part of their community
- **Strong evidence** that the **setting does not have institutional qualities**
 - Different practices, provider qualifications, no interconnectedness

Trends in HCBS Compliance

CMS Policy Guidance

- Closer examination of facility based day settings
- Focus on Adult Day Health/Care and Adult Day Treatment Facilities
- Reverse integration alone not sufficient to meet standard
- Every HCBS characteristic must be met for every individual in the setting
- “Intentional Communities” pose specific challenges; not known if they will pass heightened scrutiny.
- Cannot be options for “choice” in settings without building capacity
- The HCBS rules set the floor; **states can set higher standards**

Trends in HCBS Compliance

CMS Policy Guidance

“Tiered Standard”

- States have flexibility to set different standards for existing and new settings through their STP
 - Existing settings must meet the minimum standards in the rules in order to continue to provide waiver services while they work to come into compliance before the end of the transition period. States may “suspend admission to the setting or suspend new provider approval/authorizations for those settings”
 - New settings **must comply from the outset.**
- Simultaneously, the state may establish or promote new or existing models of service that more fully meet the state’s standards.

Trends in HCBS Compliance

CMS Policy Guidance

Planned Construction of New Settings that have Presumed Institutional Characteristics:

- CMS will not give “pre-approval” through Heightened Scrutiny to planned construction for a setting presumed to be institutional (such as a gated community or farmstead)
- A setting must be operational and occupied by beneficiaries for a state; then setting will be assessed by the state and CMS will perform a heightened scrutiny review

Trends in HCBS Compliance

CMS Identified National Trends

- New and reworked service definitions, particularly in the area of day services and employment
- Elimination of Prevocational Services and Sheltered Workshops
- Revising service definitions to emphasize employment as first option
- Focus on “person-centeredness and choice as strategy to overcome isolated settings
- Reverse integration and open admission policies, in combination with other strategies



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Virginia's Self Assessment Process

Virginia's Self-Assessment Process

HCBS Settings in VA

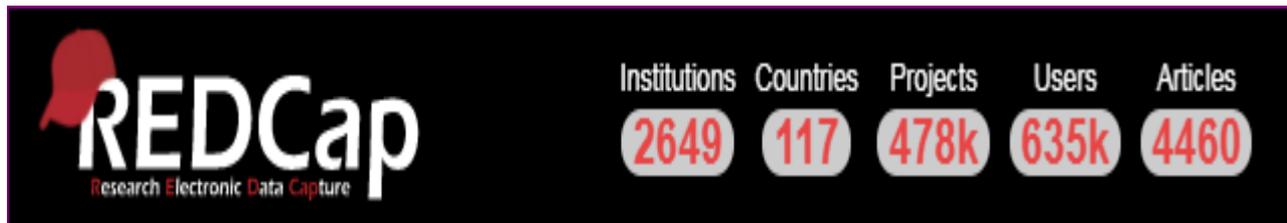
Affected **DD Waiver settings** include:

- Group Homes
- Sponsored Residential Homes
- Supported Living
- Group Day
- Group Supported Employment



Virginia's Self-Assessment Process

REDCap (**R**esearch **E**lectronic **D**ata **C**apture)
a tool for building and managing secure online surveys and databases.



Virginia's Self-Assessment Process

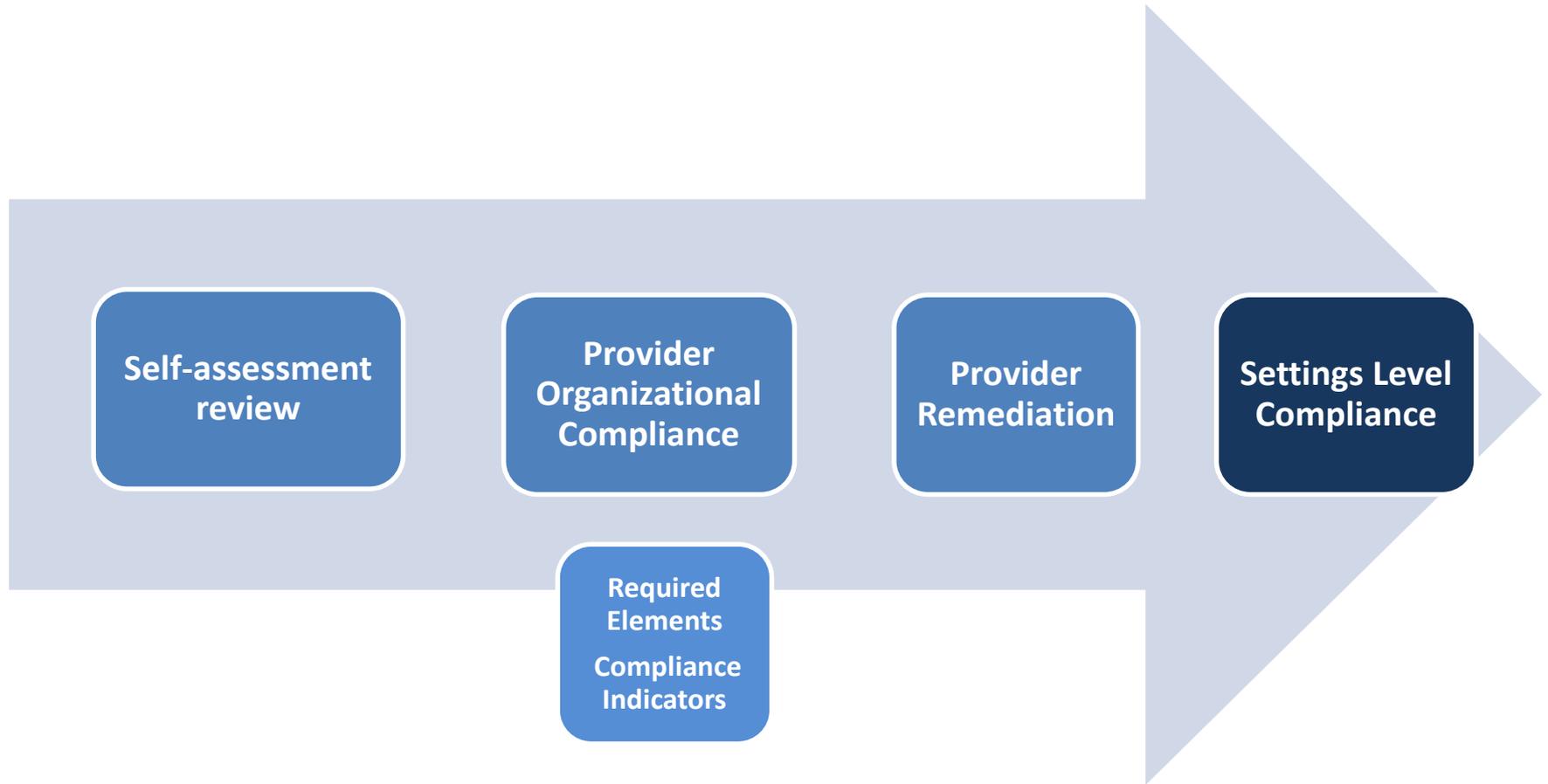
Self-Assessment Sections in REDCap:

 Data Collection Instrument
Provider Information
Contact Person
Services/Settings
Part 1: Questions 1-11 must be completed one time by the provider organization.
Part 2: Questions 12-18 must be completed for each setting/site and Part 3: Questions 19-34 must be completed for each Residential setting/site.
Part 4: Current Provider New/Relocated Settings
Part 5: Review and Validation of Self-Assessment

Virginia's Self-Assessment Process

- Self-Assessment portal opened on September 11, 2017 and closed on November 17, 2017
- Over 80% of providers “completed” the self assessment by November 17th
- Deadline extensions were provided and managed on an individual basis
- Approximately 98% of identified providers have “completed” the self-assessment to date
- Separate self-assessment process developed for newly-licensed providers

Virginia's Self-Assessment Process



Virginia's Self-Assessment Process

Provider Organizational Compliance

Required evidence for a determination of a provider being fully **Compliant**:

1. A rights policy inclusive of HCBS specific rights
2. A requirement for notification/disclosure of HCBS rights to individuals
3. Staff training/orientation on HCBS rights

Virginia's Self-Assessment Process

Self Assessment Review

HCBS Compliance Summary:

- 1) **The setting integrated in and supportive of full access to the greater community**

Compliant Non-Compliant Partially Compliant

- 2) **Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint**

Compliant Non-Compliant Partially Compliant

- 3) **Optimize, 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**

Compliant Non-Compliant Partially Compliant

- 4) **Facilitate individual choice regarding services and supports, and who provides them**

Compliant Non-Compliant Partially Compliant

- 5) **Provider Owned/Operated Residential Settings Compliance Elements**

Compliant Non-Compliant Partially Compliant



Virginia's Self-Assessment Process

Expectations for Compliance

- HCBS provisions embedded into provider policies
 - Provider philosophy/goal/mission statement reflects HCBS values
 - Human rights policies outline all HCBS specific requirements
 - Policies disclosed to individuals/families
 - Policies describe how individuals achieve full access to the greater community in a meaningful way (with evidence)
 - Policies include person centered references (no institutional or outdated references/terminology)
- Evidence consistent with HCBS requirements and provider narrative (policies, manuals, training, person-centered calendars, ISP with outcomes, etc.)
- Evidence demonstrates individual/family input on settings, activities, etc. and follow-up or outcome of input/feedback.

Virginia's Self-Assessment Process

Expectations for Compliance (cont'd)

- Staff training on HCBS, (PCT/PCP; job descriptions, etc.)
- Community-based activities/options described in narrative; evidence of community connections, access to individualized activities based on preferences
- Narrative describing how individual “choice” and preferences made/honored
- Family involvement in individual’s life; use of natural supports
- Additional requirements for provider owned and operated settings in residential policies (AND evidence of compliance with additional requirements
- Evidence of involvement of others in assessment process (staff, individuals, family members)

Virginia's Self-Assessment Process

What we learned...

- Majority of providers believe compliance with Human Rights regulations synonymous with HCBS
- Many provider policies adopted regulatory language wholesale without description of implementation in the setting
- Evidence did NOT support narrative text
- Superficial evidence (pictures without context)
- Provider misunderstanding of HCBS concepts (co-located, etc.)

Virginia's Self-Assessment Process

What we learned....

- Outdated provider policies (i.e., outdated terminology, institutional language, paternalistic references); some out of context for service
- Provider policies in direct conflict with HCBS requirements (i.e., visiting hours, food, ability to come and go, leases)
- Evidence does not show meaningful community participation
- Assessments with no evidence submitted
- No evidence of HCBS rights or disclosure to individuals/families or posted in the setting

Virginia's Self-Assessment Process

What we learned....

- Some promising provider practices , not sufficient to demonstrate compliance.
- Residential providers are NOT incorporating additional requirements for provider-owned and operated properties (exclude required components)
- Evidence does not demonstrate how individual “choice” is made in the setting (services and providers)
- **Overwhelming majority of provider policies do NOT demonstrate HCBS principles/requirements**
 - Overwhelming majority of providers: non-compliant
 - Very few deemed “partially compliant”
 - Consistent with assumptions given to CMS in STP

Virginia's Self-Assessment Process

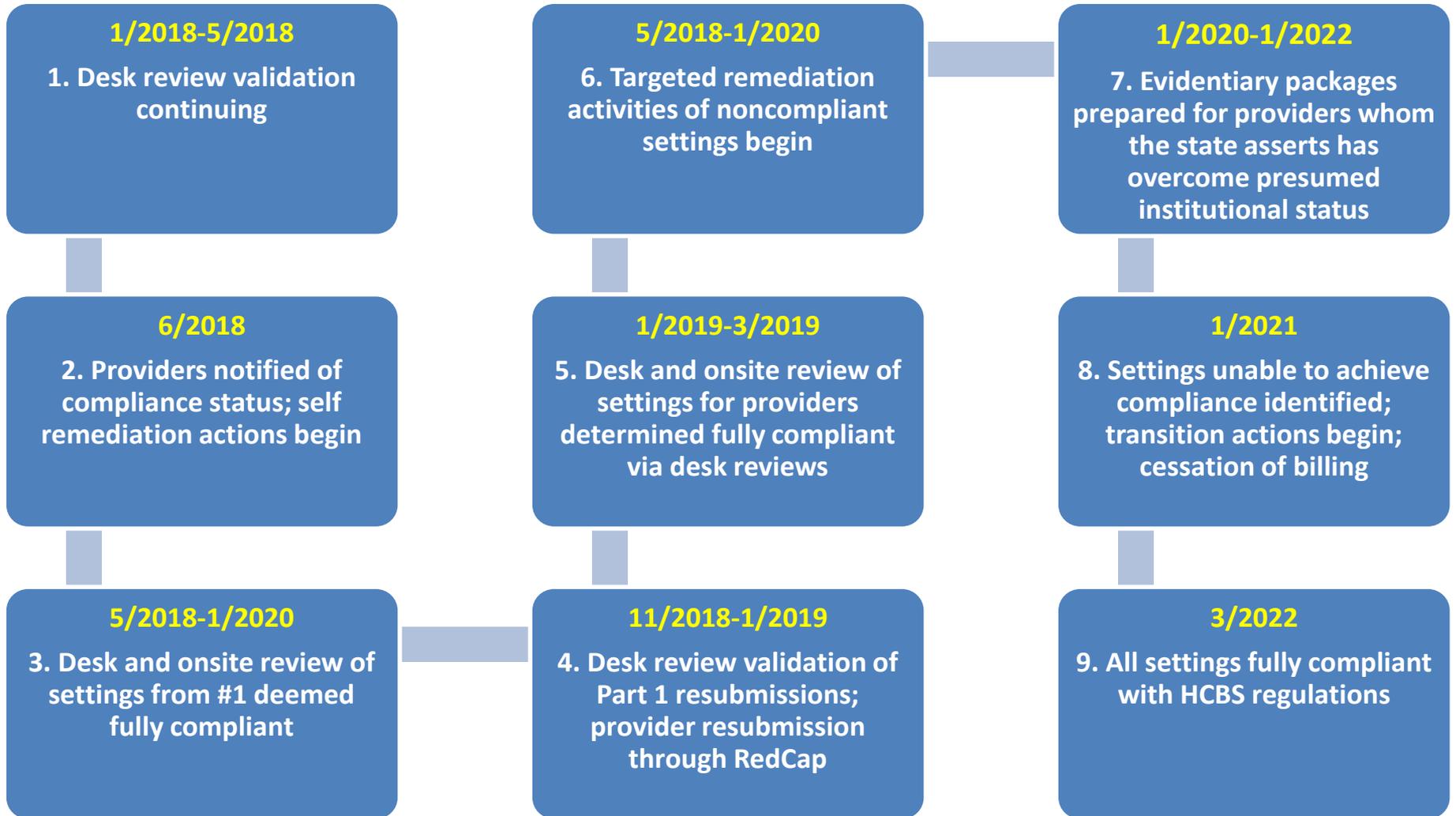




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What's Next?

What's Next?



What's Next?

- DMAS release of provider compliance status
- DMAS HCBS toolkit webpage
 - Micro-learning resources for self-remediation
- Provider self-reassessment
- Settings reviews (desk audits and approx. 400 settings on-site)
- Determination of statewide compliance for Statewide Transition Plan
- Submit to CMS for final approval
- Ongoing monitoring through existing reviews

Role of Support Coordinators

SC HCBS Monitoring and Oversight

- Ensure individuals they support are being served in settings that comply with HCBS regulations
- Ensure individuals have choice of services, providers, using person-centered processes
- Monitoring to occur during routine visits/interactions with individuals:
 - Via quarterlies, ensure settings are in compliance with requirements: (HCBS protections posted, no restrictions not justified and outlined **in an individual's plan**, access to food anytime, access to visitors anytime, physically accessible, control of schedule, etc. no private information about individual posted,.)
 - Responsibility of SC to follow up with provider to ensure that they are aware of HCBS non-compliance.

Role of Support Coordinators

HCBS Transitions/Relocations

- SC's working with individuals whose provider status is expected to change as a result of the provider's non-compliance will notify individuals receiving services and their families the anticipated need to relocate.
- SC's will work with the individual/family members, etc. using PCP to ensure the individual's smooth transition to an alternate setting that complies with the HCBS settings requirement.

Thank You!

**Thank you for the opportunity
to talk to you today!**