DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

Disabled & Elderly Health Programs Group

February 21, 2017

Ms. Stephanie Azar
Commissioner of the Alabama Medicaid Agency
State of Alabama, Alabama Medicaid Agency
501 Dexter Avenue, PO Box 5624
Montgomery, AL 36103-5624

Dear Ms. Azar:

This letter is to inform you that CMS is granting Alabama **initial approval** of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Approval is granted because the state has completed its systemic assessment; included the outcomes of this assessment in the STP; clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative/regulatory changes and changes to vendor agreements and provider applications; and is actively working on those remediation strategies. Additionally, the state submitted the March 2016 draft of the STP for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the March 2016 draft submitted by the state, CMS provided feedback on July 26, 2016. The state resubmitted an updated version of the plan on October 25, 2016 and received additional feedback on December 9, 2016; CMS requested that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state resubmitted an updated STP on January 20, 2017 in response to CMS' feedback. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP. CMS also completed a spot-check of 50% of the state's systemic assessment for accuracy. Should any state standards be identified in the future as being in violation of the federal HCBS settings rule, the state will be required to take additional steps to remediate the areas of non-compliance.

In order to receive final approval of Alabama's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- Complete comprehensive site-specific assessments of all home and community-based settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the home and community-based settings rule transition period (March 17, 2019);
- Outline a detailed plan for identifying settings that are presumed to have institutional characteristics, including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under Heightened Scrutiny;
- Develop a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the home and community-based settings rule by March 17, 2019; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Alabama has made progress toward completing each of these remaining components, there are several technical issues that have been outlined in Attachment II of this letter that must be resolved before the state can receive final approval of its STP. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for another minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Pat Helphenstine (410-786-5900 or patricia.helphenstine1@cms.hhs.gov) or Michelle Beasley (312-353-3746 or michelle.beasley@cms.hhs.gov) at your earliest convenience to confirm the date that Alabama plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial approval of an STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

I want to personally thank the state for its efforts thus far on the HCBS Statewide Transition Plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,

Ralph F. Lollar, Director
Division of Long Term Services and Supports

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF ALABAMA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 01/20/2017

- **Public Notice and Engagement – Public Comments:** The Centers for Medicare and Medicaid Services (CMS) requested the state clarify whether the summary of comments in Appendix B were those collected during the most recent public comment period (March 1, 2016 – March 30, 2016). If the comments are from multiple comment periods, CMS asked the state to indicate which comments are from which period. CMS also encouraged the state to make available a complete list of all comments on the Alabama Medicaid Agency (AMA) website and include a link to these comments within the STP.

  State's Response: The state clarified that the summary of comments in Appendix B were all from the most recent March 1, 2016 through March 30, 2016 public comment period. A date has been added to the appendix to clarify this. The state has also made the complete list of comments available on the AMA website and has included links to these comments within the STP.

- **Public Notice Date:** CMS requested that the state specify the date in which a statement of public notice was posted online along with the revised STP and asked whether the state included a deadline for the public to submit comments along with instructions for how to submit comments and dates of any public meetings. CMS also asked the state to indicate when the press release about the opportunity for public comment was issued and when the date of the hard copy of the revised STP was available to the public, along with how the public was notified about how to obtain a hard copy. CMS further requested the state to provide evidence of when the electronic and non-electronic postings for public notice were issued.

  State's Response: The state included a response within the STP that the statement of public comment was posted online March 1, 2016 with the revised STP that included instructions and the deadline for submitting comments. The state also indicated that the press release about the public comment period was issued on March 1, 2016. The state further clarified that the hard copy of the revised STP was made available to the public March 1, 2016 by posting the announcement, which included instructions on how to obtain a hard copy in the Medicaid district offices throughout the state. The state included emails providing evidence of the request for posting the revised STP for public comment in Appendix B.

- **Operational Hyperlinks:** CMS requested that the state ensure that all hyperlinks within the STP including the link to the revised STP are operational.

State's Response: The state indicated that all links were tested and are correct and operational.

- **Public Notice and Engagement:** CMS asked the state to consider incorporating the following recommendations outlined in the March 30, 2016 letter of the Alabama Disabilities Advocacy Program (ADAP) submitted to the state during the last public comment period on the STP: "Form a home and community-based services (HCBS) compliance workgroup tasked with ensuring compliance to the Final Rule. The members of the workgroup should include waiver recipients, caregivers of waiver recipients, Agency staff, appropriate personnel from other state agencies and advocates."

  State's Response: The state responded to CMS and indicated that it is making use of existing stakeholder workgroups to provide information and obtain feedback about the STP for compliance with the Final Rule. Due to the significant differences between the settings of the nursing facility level of care (NF LOC) waivers and the intermediate care facility level of care (ICF LOC) waivers the state has decided to use separate work groups based on level of care. Please see pages 415-416 of the STP for more details.

- **Public Notice and Engagement of Waiver Recipients:** CMS asked the state to consider incorporating the following recommendations outlined in the outlined in the March 30, 2016 ADAP letter submitted to the state during the last public comment period on the STP: "Develop and distribute information to every waiver recipient and caregiver that describes the HCBS regulations, Alabama's plans to comply with these regulations and any possible changes to current waiver services. Establish a system by which waiver recipients and their caregivers can ask questions and receive information regarding changes to current waiver services."

  State's Response: The state responded to CMS that case managers are required to conduct a face-to-face visit with waiver recipients monthly. The state will utilize these case managers to provide every waiver recipient and caregiver with printed updates and materials that describe the HCBS regulations, Alabama's plans to comply with these regulations and any possible changes to current waiver services. Waiver recipients will also be provided with instructions on how to request additional information and/or provide feedback. The state will also utilize direct mailings for routine general information regarding HCBS. Correspondence will include instructions on how to request additional information and/or provide feedback.

- **Public Notice and Engagement of Waiver Participants:** CMS asked the state to consider incorporating the following recommendations outlined in the March 30, 2016 ADAP letter submitted to the state during the last public comment period on the STP: "Develop information for waiver recipients and their caregivers on Person-Centered Planning principles and available waiver services that is easy to read and easily accessible."

State's Response: The state noted that State Operating Agencies are required to provide formal training to all case management staff regarding Person-Centered Planning (PCP) Principles to ensure appropriate and effective delivery of services based on the preferences of the recipient. Through its No Wrong Door implementation grant, the state is in the process of developing a comprehensive PCP training, working with Elsevier DirectCourse and Support Development Associates, to be made available to all waiver case managers. The state will utilize these trained case managers to reach every waiver recipient and caregiver to distribute easily accessible information on PCP principles and available waiver services. Once developed, this information will also be located on the Agency's website for access by the public and stakeholders.

- **Public Notice and Engagement:** CMS asked the state to consider incorporating the following recommendations outlined in the March 30, 2016 ADAP letter submitted to the state during the last public comment period on the STP: "Provide information regarding the progress of the Agency's transition plan and HCBS compliance efforts on an ongoing, regular basis. This information should be readily available to and easily accessible by the public, especially waiver recipients and/or their caregivers."

  State's Response: The state is creating a webpage on the Medicaid Agency's website dedicated to STP activities. The webpage will provide information regarding the progress of the Agency's transition plan and HCBS compliance efforts on an ongoing, regular basis for the public, waiver recipients and their caregivers. Major milestones and updates will be distributed by case managers to waiver recipients and their caregivers.

- **Systemic Assessment Crosswalk:** CMS asked that the state provide the location of electronic copies of each referenced document, such as texts of the various state waiver manuals.

  State's Response: The state has provided hyperlinks to electronic copies of all referenced state code or policy documents within each crosswalk in Appendix A and Section II of the STP.

- **Systemic Assessment Results:** CMS requested that the state update its systemic assessment crosswalk to include specific text or summaries of the text that the state has identified as compliant, noncompliant, partially compliant or silent as relevant to each federal requirement. CMS also identified two typos on pages 19 and 30 of the STP where incorrect waivers and requirements were referenced.

  State's Response: The state has included in each crosswalk additional specific text or summaries of the text which the state has identified as compliant, noncompliant or partially compliant as relevant to each federal requirement. The state notes that silence indicates no specific text was identified. The state has also clearly indicated the compliance status for each state standard

reviewed against the federal requirements. Finally, the state corrected both typos identified by CMS.

- **Systemic Assessment Result (Rights of Privacy, Dignity, Respect and Freedom from Coercion and Restraint):** CMS noted that it had concerns that AMA Administrative Code, Chapter 58, Rule No. 580-5-33-.05 Policies and Procedures, seemed institutional in nature and may not support the goals of the federal requirements. The section refers to policies and procedures that support healthy hygiene and personal cleanliness and the option to choose clothing that fits appropriately. CMS further asked the state to explain how these policies ensure an individual's rights to privacy, dignity and respect.

  State's Response: The state indicated that the rule provides some support for this requirement in that, historically, many individuals with intellectual and developmental disabilities did not routinely have access to these basic elements of human dignity. ADMH has placed significant emphasis on the elimination of stigma and feels it remains important to be sure individuals are provided with options that enhance their integration and reduce stigmatization. This standard also does not stand alone and should be viewed as only one part of the overall emphasis in dignity, respect and freedom from coercion and restraint that are also represented in the crosswalk. ADMH will work with consumer and stakeholder groups to examine this section of state standards and make any revisions that may be needed. Additionally, the state's current regulations (580-5-33-.03, -.05, and -.11) do address an individual's rights to privacy, dignity and respect. The state has also proposed to amend Rule No. 560-X-52 and Rule No. 560-X-35 to include the verbatim language of this federal setting regulation (see pages 277 and 337, respectively, of the revised STP).

- **Systemic Remediation Result (Rights of Privacy, Dignity, Respect and Freedom from Coercion and Restraint):** CMS noted that that the standards that Alabama cited as support for the requirement to ensure an individual's right to privacy, dignity and respect, and freedom from coercion and restraint for the Elderly & Disabled, TA, and HIV waivers addressed protections against inappropriate use and disclosure of beneficiary protected health information, but do not specifically address ensuring individual rights to privacy, dignity and respect or freedom from coercion and restraint. CMS asked the state to explain how the state planned to remediate this in each section of the systemic assessment crosswalk.

  State's Response: The state indicates that "all AMA Administrative Rules for every waiver will be updated to specifically address these requirements, in keeping with the Final Rule." The state further proposes to (1) revise its AMA Long Term Care Quality Assurance Manual and Medicaid Waiver Participant Surveys to add discovery strategies regarding privacy, dignity and respect, and freedom from coercion and restraint, (2) promulgate a new Medicaid Waiver Programs Policy and Procedure Guide that will specify the case manager's role to monitor and assess

compliance with this requirement on at least a monthly basis, (3) include proposed probes in the Home Visit Tool and the Medicaid Waiver Survey for participants to discover any instances that require remediation, (4) develop training for all direct service provider and case managers, (5) revise the Provider Certification and Guidance Manual for DDD, which already addresses privacy, dignity, coercion and restraint in some detail, with additional discovery strategies for unauthorized use of restraint, and (6) revise the SAIL Policy Manual to specify the case manager's role to monitor and assess compliance with this requirement on at least a monthly basis.

- **Systemic Remediation Result (Rights of Privacy, Dignity, Respect and Freedom from Coercion and Restraint):** CMS noted that the state had not adequately addressed an individual's right to freedom from coercion in any of the policies and codes, and asked the state to ensure that any use of restrictive interventions is documented and utilized according to each individual's person-centered plan. Additionally, CMS noted that the Living at Home (LAH) and Intellectual Disability (ID) waivers "currently rely on habilitation settings and currently allow restraints, restrictions or both." CMS asked the state to ensure that any use of restrictive interventions is documented and utilized according to each individual's person-centered plan.

  State's response: The state responded that "all crosswalks have been revised to address coercion and restraint, including in the respective administrative rules, AMA policies and operating agency policies." Additionally, the state has updated the LAH and ID waiver crosswalks to clarify that any use of restrictive interventions is documented and utilized according to each individual's person-centered plan and that "restrictive interventions are not allowed in any of the remaining waivers and those crosswalks have been revised to include proposed language that case managers will monitor for any use of restrictive interventions and take appropriate action if any are discovered."

- **Systemic Remediation Result (Optimize Individual Initiative, Autonomy, and Independence in Making Life Choices)**: CMS found that AMA Administrative code Ch. 44, Rule No. 560□X□44□.04(10) did not support this requirement in the Adult Day Health or Community Transition Waiver sections of the crosswalk and asked the state to provide its plan for remediation.

  State's Response: The state has proposed in the crosswalk to amend AMA Administrative code Ch. 44, Rule No. 560□X□44 to add language that specifically states that waiver services must be provided in settings that optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment and with whom to interact.

- **Systemic Remediation Result (Individuals Receiving HCBS Will Have Full Control of Personal Resources and Opportunities to Engage in Community Life):** The previous version of the crosswalk cited Title 38: Public Welfare, Section 38□9C□4□Rights as support for the requirement that individuals receiving HCBS will have full control of personal resources and opportunities to engage in community life. This section notes that individuals in the LAH waiver have "the right to reasonable access to and privacy of mail, telephone, communications, and visitors." CMS asked the state to clarify the definition of "reasonable access" to ensure that individuals have access to and privacy of visitors, communications, mail and telephone at all times. CMS noted that the term "reasonable access" occurs in the state code language excerpted on pages 151, 176, and 194 and asked the state to explain how the state will interpret this issue in sub-regulatory guidance throughout the crosswalk.

  State's Response: The state notes in its crosswalk that it plans to amend Title 38: Public Welfare, Section 38□9C□4□Rights to clarify that individuals have the right of access to and privacy of mail, telephone, communications and visitors without restriction.

- **Systemic Remediation Result (Access to Food):** CMS asked the state to explain how it will remediate AMA Administrative Code, Chapter 58, Rule No. 580-5-33-.12 Continuity and Personal Security to address the requirement that individuals receiving HCBS will have access to food at any time . CMS also asked the state to provide the codes or sub-regulatory guidance that ensure compliance to access to food at any time in provider-owned or controlled residential settings in the ID Waiver section of the systemic assessment crosswalk.

  State's Response: In the crosswalk, the state has proposed to "revise Chapter 580-5-33 to clarify that food will be available at any time without restriction." The proposed amendment would further state, "Any modification of this right must be in accordance with an identified need, approved through due process and documented in the person-centered plan."

- **Systemic Remediation Results:** CMS asked the state to provide more detailed language explaining how it will remediate instances of non-compliance and silence with regard to the federal requirements in the "Remediation Requirement" column of the systemic assessment crosswalk.

  State's Response The state has added more detailed language in the "Remediation Requirement" column of each systemic assessment crosswalk. The state has included the language it plans to include in amendments to its standards.

- **Additional Questions from Public Comment:** CMS requested that the state verify that it has either responded to the public comment suggestions it disagrees with and/or has incorporated the suggestions the state agrees with in the systemic assessment that were raised during the public

comment period. CMS specifically asked the state to address several comments including ones that asked the state to clarify existing service definitions that may require modification, provide assurances that certifications of settings is performed consistently and does not pose unintentional barriers that prevent settings from complying with federal HCBS requirements, describe how the state captures data on agencies who perform poorly in the areas of safety, rights and health/wellness through the certification process, and explain how the state is working with other state departments whose standards may be implicated as part of the state's compliance with the federal HCBS rule.

State's Response: In response to CMS' request, the state has provided a detailed response to each comment including any revisions made to the systemic assessment crosswalk in response to public comments. For example, in response to the comment related to clarifying existing service definitions, the state has described how it has revised service definitions or proposed language to be added to the definitions to allow providers the ability to offer services in a manner that fully comports with the federal HCBS requirements. The state specifically noted that a draft version of the service revisions is currently underway and will be reviewed by a workgroup comprised of ADMH/DDD staff and providers and that the new services would be added to the Definitions section of the administrative code which would become effective July 1, 2017. The state asserts that there are no known requirements that would pose barriers to compliance and goes on to describe the specific staff involved in the certification process, training provided to providers on the certification process and the various meetings which occur throughout the state to reinforce the training. Additionally, the state will engage the appropriate division staff to address any barrier to implementation of the HCBS Settings rule and to advocate for changes that may negatively impact that implementation.

- **Waiver Settings:** CMS asked the state to include a comprehensive list of all settings where HCBS are provided under each waiver program in the STP.

  State's Response: The state has provided a comprehensive list of all settings in the STP.

- **Foster Homes:** CMS asked the state if any HCBS are provided in foster homes. If so, the state must ensure that the systemic assessment addresses any regulations or other state standards that pertain to these settings to ensure that they comport with the federal settings requirements.

  State's Response: The state has provided an additional systemic assessment crosswalk addressing the compliance level of state standards around foster homes.

- **Provider Owned and Controlled Non-Residential Settings:** CMS asked the state to ensure individuals experience these settings in the same manner as individuals who do not receive Medicaid HCBS in provider-owned and controlled non-residential settings. CMS also

requested that the state provide any policies or regulations that address physical accessibility in non-residential settings.

State's Response: In response to CMS' request, Alabama included remediation language in the provider manuals indicating that "individuals receiving Medicaid HCBS in non-residential provider owned or controlled settings should have the same experience in those settings as individuals not receiving Medicaid HCBS. The state also added regulatory citations to both crosswalks indicating these settings are physically accessible to participants.

- **Systemic Assessment Remediation:** CMS noted that the remediation language for the requirement that the setting is integrated 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 for the Community Transition Waiver (Adult Day Health) did not include any references to opportunities to seek employment and work in competitive integrated settings, and to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS. CMS asked the state to develop a remediation plan indicating that Adult Day Health Centers (ADHCs) should be expected to serve as a conduit of information/referral to where beneficiaries can explore or attempt to garner employment or volunteer opportunities in the community, although ADHCs themselves are typically not expected to provide employment opportunities because many serve an aging population. CMS also noted that the state standards for the Living at Home Waiver do not seem to address the settings' requirement to optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. The state was asked to develop a remediation plan for this.

  State's Response: The state has included the appropriate remediation in the STP for each of the issues above. The ADH Standards will be revised to add the following proposed addition under section V.C: "Provide, as appropriate to the needs and interests of individual participants, information and/or referral to resources for employment or volunteer opportunities in the community. Centers are not expected to directly provide employment opportunities, however." Alabama has also proposed to revise Alabama Administrative Code Chapter 560-x-2, Rule No. 560-x-2.01 Authority and Purpose to include the provision that the settings must "optimize autonomy and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact."

- **Residential Provider-owned or Controlled Settings:** The state was asked to include the federal requirements that individuals sharing units have a choice of roommates and that

individuals have the freedom and support to control their own schedules and activities in any waivers with residential provider owned or controlled settings. The state was asked to assess any applicable state standards and provide a remediation plan if necessary.

State's Response: The state included these federal requirements and assessed the appropriate state standards. The following remediation language has been proposed and is in draft form in Alabama Administrative Code 580-5-33-.04 Promotion and Protection of Individual Rights (7) (k): "Privacy including a choice of private bedroom or choice of a roommate with furnishings positioned so as to maximize privacy". The ID crosswalk has been updated to reflect this addition.

- **Systemic Assessment Accuracy:** On pages 223 and 283 of the STP, Alabama Administrative Code, Chapter 580-5-33, Rule No. 580-33-.08-Community Placement is cited by the state as being compliant with the integration requirement in the federal HCBS rule. However, CMS was not able to locate the cited language and asked the state to check this citation and update it for accuracy. CMS also noted that on pages 230 and 290, the state cited the Assessment Tool for Basic Assurance, 2012 as having questions regarding preferred work and activities. Upon review of the questions, CMS asked the state to provide remediation to include additional questions that address whether the setting offers competitive integrated employment.

  State's Response: The correct citation for the cited language is Alabama Administrative Code, Chapter 580-5-30, Rule No. 580-30-.08 Community Placement. The ID and LAH crosswalks have been updated to reflect this correction. Additionally, the state has indicated that they will add the following questions to the Assessment Tool for Basic Assurance to address whether settings offer access to competitive integrated employment:
  - Do personal assessments identify preferred work and activities, including assessing interest in competitive integrated employment?
  - Are the identified preferences documented in the person-centered plan with appropriate goals and objectives?
  - If people indicate an interest in competitive integrated employment:
    - Are there available options for competitive integrated employment?
    - If the setting does not offer competitive integrated employment options, do the team and case manager take action to locate and procure such options?

- **Systemic Assessment Accuracy:** On pages 227 and 287 of the STP, Alabama Administrative Code Chapter 580-5-33,Rule No. 580-5-33.02-Definitions: Supported Employment definition is cited, along with "Principles" in support of the federal requirement that 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. Upon review of this citation, there were no principles listed, but there were

definitions for both individual and group supported employment. Group supported employment includes work crews in the definition and other language to suggest enclaves are allowable. CMS asked if the state was planning to change this definition. If not, then the state was instructed to (a) only include the individual supported employment definition as evidence of compliance; and (b) ensure that all group supported employment settings are being assessed and validated for compliance with the federal HCBS requirements.

State's Response: The state has clarified this in the STP. The state described the location of the principles and also provided excerpted language in the STP. Additionally, the state has indicated that all providers currently delivering Group Supported Employment have been trained on the HCBS Settings Rule requirements and are subject to the administrative code requirements outlined above. All applicable state standards consistently state that employment must be "integrated" into the mainstream of society. As a part of its Site-Specific Settings Assessment, the state will be assessing and validating all group supported employment for compliance with the HCBS requirements.

- **Medicaid Waiver Survey for Participants:** The state acknowledged that the existing survey does not include questions probing the requirement that settings be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. However, the three probing questions provided as remediation also do not adequately comply with the requirement and additional questions are needed to be more directly related to the various aspects of the HCBS requirement. CMS asked the state to include additional questions for this requirement (pages 71, 94, 123, 164, 207, 233, 293).

  State's Response: The State proposed to include additional questions, including the following:
  - Do you spend time in other places used by people in the community?
  - Do you shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community when you want to?
  - If you work or volunteer, is it in the same kinds of places that others work or volunteer in?
  - Do you have control over your money and have access to it whenever you want to?

- **Provider Certification and Guidance Manual:** CMS asked the state to identify where in the manual it addresses that the individual may select among a variety of setting options, including non-disability specific settings. The state was asked to provide the exact citation (page number/section of manual). If the document is silent, the state was asked to provide a remediation plan.

State's Response: The state has provided this information in the STP. Specifically, the state has indicated that the Provider Certification and Guidance Manual, Revised June 2014 addresses an individual's ability to select among a variety of setting options on pages 16 and 17, People Choose Where and with Whom They Live, People Live in Integrated Environments.

- **Individual Restrictions:** CMS asked the state to ensure any restrictions on individuals are documented through the person-centered planning process. Alabama Administrative Code, Chapter 580-5-33, Rule No. 580-5-33-.04-Promotion and Protection of Individual Rights mentions restrictions on individuals (page 299). The state was asked to provide a citation or provide a remediation plan indicating that these restrictions are always documented through the person-centered planning process.

  State's Response: The state has indicated that Alabama Administrative Code, Chapter 580-5-33, Rule No. 580-5-33-.04-Promotion and Protection of Individual Rights will be revised to add the following proposed language: "All restrictions are included in the individual's person-centered plan. Each person affected has a Behavioral Support Plan that is approved by the Behavioral Team and reviewed and adjusted as necessary and discussed during the PCP process." The relevant crosswalks (ID and LAH) have been revised to reflect this revision.

- **Use of Restraints:** CMS noted that there is an implied assumption by the state that any use of restraint will be documented in the PCP (see pages 238 and 299), but CMS was not able to locate any state standards cited in the STP where this is listed as a direct requirement. The state was asked to provide a citation with this information, or include a remediation plan.

  State's Response: The state proposes to add language to Alabama Administrative Code 580-5-33-.11 Positive Supports and Services (29) (f) to state that "All restraints as approved through the BSP process are included in the individual's person-centered plan. The QDDP will monitor the use based on the frequency determined by the Director of Psychological and Behavioral Services." The ID and LAH crosswalks have been updated to reflect this revision. Restraint is prohibited in all other waivers under any circumstances.

- **Requirement about Leases:** CMS asked the state to ensure that any remediation language about the federal requirement about leases for residential provider owned or controlled settings clearly indicate that the lease agreements in place must provide protection and address eviction processes and appeals identical to those provided under the state's landlord tenant law.

  State's Response: The state has updated the remediation language to ensure that the protections and appeals provided are identical to those provided under the state's landlord tenant law.

- **Remediation Language:** In many places throughout the systemic assessment, the incorrect waiver is referenced in remediation language. The state was asked to correct these references throughout the STP.

  State's Responses: The state has corrected the remediation language throughout the STP.

ATTACHMENT II.

CMS FEEDBACK THAT MUST BE ADDRESSED BY THE STATE OF ALABAMA PRIOR TO RECEIVING FINAL APPROVAL OF ITS HCBS STP (ADDITIONAL PUBLIC COMMENT PERIOD REQUIRED)

Site-Specific Assessments

Please include the following details in the STP:

- Please include more details explaining how the various settings for each service are structured within the state, i.e., are any Day Habilitation sites co-located with nursing facilities, in what types of sites are "workplaces" located, etc.
- ***Onsite Assessments:*** Please provide a detailed explanation of the process for onsite assessments as part of the site-specific assessment, including a timeline for completion of these visits for each setting type.
    - Additionally, please provide clarification on the criteria used to determine when a site visit will be conducted and how many sites are expected to be completed for each setting type.
    - Please also explain any training on the federal requirements that has been provided to the staff conducting the onsite assessments.
- ***Provider Self-Assessment Tools:***
    - Please provide more detail regarding the content in the various self-assessment tools used to assess sites within the state. Please also explain how providers were prompted to respond to questions in the assessments, i.e., yes/no responses, narrative responses, etc. Were providers asked to attach evidence along with their completed assessments? If so, please describe the evidence submitted.
    - CMS requests a detailed description of how the state will address providers who do not complete the self-assessment. Additionally, please provide additional detail on the methodology used by the state to calculate the scores of the self-assessments.
    - Please also clarify that providers will be required to assess each of their individual sites.
- ***Validation of Provider Self-Assessments:*** Please provide details regarding the process for review and validation of the provider self-assessments including who will be responsible for the review and validation, and when the review and validation will be complete. States must provide a validity check for provider self-assessments. States that choose to initiate a provider self-assessment are recommended to conduct a beneficiary/guardian assessment (or other method for collecting data on beneficiary experience) that mirrors or is similar to the provider assessment in order to have a comparable set of data from the beneficiary perspective. States are responsible for assuring that all HCBS settings comply with the final HCBS rule in its entirety. Quality thresholds should not be used to reduce the state's requirement to assure compliance

across all settings. States may deploy a number of validation strategies, including but not limited to onsite visits, consumer feedback, external stakeholder engagement, and state review of data from operational entities, such as managed care organizations (MCOs) or regional boards/entities. The more robust the validation processes (incorporating multiple strategies to a level of degree that is statistically significant), the more successful the state will be in helping settings assure compliance with the rule. The state must assure at least one validation strategy is used to confirm provider self-assessment results, and should also supplement strategies where there may be a perceived conflict of interest with additional validation tactics.

- ***Validation of Non-Residential HCBS:*** It is unclear if state staff is validating Day Habilitation, Workplaces, and Community Settings via an onsite review, desk review, or some combination of both. Please clarify. Please also provide details regarding what state entity completes the certification reviews referenced for these settings. Please further explain how the scoring process works in regards to the certification process, and confirm whether this is a process that will be used for ongoing monitoring or if it is also being used to determine initial compliance with the federal HCBS requirements. Please include this detail within the STP.
- ***Individual, Private Homes:*** The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the HCBS settings requirements if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside. A state will generally not be required to verify this presumption, but does need to include details within the STP as to how the state will monitor these settings to assure ongoing compliance with the rule in the future. Additionally, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and the state determines that presumption is overcome, the state should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to confirm whether the setting overcomes that presumption. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving HCBS (for example, a setting purchased by a group of families solely for their family members with disabilities using HCBS services).
    - Also note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual), are considered provider owned or controlled settings and should be evaluated as such.
- ***Training of Case Managers Conducting Assessments of Private & Foster Home Settings:*** CMS commends the state for conducting assessments of all the private and foster home settings to ensure that none have characteristics that are institutional or isolating in nature. Please address the following issues in the STP:

- For the on-site assessments of the dormitory and apartment complexes where some waiver participants reside, provide details on what the on-site assessment included and how compliance was validated.
- Provide clarification of how the integration of residents of the apartment complexes into the community is facilitated.

- ***Group Settings:*** As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the rule. This includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities.
- ***Non-Disability Specific Settings:*** The STP should indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across HCBS. Please provide additional clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services.
- ***Reverse Integration Strategies:*** CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. As CMS has previously noted, states cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS by itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule. Under the rule, with respect to non-residential settings providing day activities, the setting should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community. Settings cannot comply with the community integration requirements of the rule simply by only hiring, recruiting, or inviting individuals who are not HCBS recipients into the setting to participate in activities that a non-HCBS individual would normally take part of in a typical community setting. CMS encourages Alabama to provide sufficient detail as to how it will assure non-residential settings implement adequate strategies for adhering to these requirements.
- ***Assessment Results:*** Please ensure that the outcomes of the site-specific assessments are included in the revised STP.

Site-Specific Remedial Actions

Alabama has proposed that providers with settings that are out of compliance develop a remediation plan to come into compliance with the federal regulations. CMS requests that the following details on the remediation plan be included in the revised STP.

- Please specify who will be developing the remediation plan, the date by which all of the remediation plans will be submitted and the date by which they will be reviewed and approved by the state.
- Specify whether providers will need a remediation plan for each of their settings that are not fully compliant, or whether the state will do all remediation at the provider level rather than the individual setting level.
- Clarify the process that the state will use to ensure ongoing compliance with the remediation plan.
- Describe steps to be taken to assure that various personnel that are responsible for assessing/validating settings to assure they are compliant with the federal HCBS rule are being trained on the federal HCBS requirements. The state should also include its strategy for implementing quality assurance checks in the process to make sure that verification of setting compliance is being conducted consistently throughout the state.
- Describe the process for educating providers on any changes to state standards that will require providers to make specific adjustments or modifications systems-wide in order to comply with the federal HCBS rule.

Monitoring of Settings

Please include a more detailed description of the state's plan for ongoing monitoring of settings to ensure continued compliance with the Federal Rule. Specifically, CMS asks the state for details on the following items.

- The systemic assessment indicates the state is revising the tools for licensing and certification to comport with the final rule. Please provide more detail about these tools and how they are used for the state's ongoing monitoring activities.
- Please also provide a waiver-specific or setting-specific description of monitoring activities including identification of specific entities responsible for monitoring each of the sites and the associated timelines, as well as the state's plan for overseeing monitoring efforts.
- Clarification on the role of the licensing process, if any, in overall monitoring.
- Clarification on what other processes/entities, if any, will be used for monitoring.
- Additional information on how the state will share its plans for monitoring of ongoing compliance of settings with beneficiaries, external stakeholders and the public.

Heightened Scrutiny

Alabama has noted in its STP that the state is in the process of developing both a comprehensive process for identification of settings presumed to be institutional, as well as a tool/protocol to be used for the collection of evidence if heightened scrutiny will be requested. We look forward to

seeing the details of this process in Alabama's future submissions to CMS along with the results from the additional site visits by AMA to the 13 settings identified thus far as potentially requiring heightened scrutiny. We ask that the state provide a clear timeline for any necessary remediation activities. CMS would also like to remind the state that a public comment period must also be factored in for settings submitted under the heightened scrutiny process. There are several tools and sub-regulatory guidance on this topic available online at http://www.medicaid.gov/HCBS.

As a reminder, the state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on a setting meeting any of the three scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional or isolating qualities.

These settings include the following:

- Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, or immediately adjacent to, a public institution;
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Communication with and Support to Beneficiaries when a Provider will not be Compliant

The state has noted that it is currently developing a formal process for assisting participants to transition to compliant Adult Day Health (ADH) Programs should any ADH contracts be terminated. It is anticipated the state may identify other settings across various HCBS funding authorities during its assessment and validation processes that are unwilling or unable to come into compliance with the federal HCBS requirements. CMS asks that Alabama include the following details of this process, as well as the process for communicating with beneficiaries in any other setting types, in the state's next installation of its STP.

- Please include a timeline and a description of the processes for assuring that beneficiaries, through the person-centered planning process, will be given the opportunity, the information and the supports necessary to make an informed choice of an alternate setting that aligns, or will align by the end of the transition period, with the regulation. CMS requests that this description and timeline specifically explain how the state intends to assure beneficiaries that they will be provided sufficient communication

and support including options among compliant settings, and assurance that there will be no disruption of services during the transition period.

- Please provide an estimate of the number of individuals who may need assistance to locate compliant settings in which to receive services.

Milestones

CMS requests that the state resubmit an updated milestone chart reflecting anticipated milestones for completing systemic remediation, site-specific assessment and remediation, heightened scrutiny, communication with beneficiaries, and ongoing monitoring of compliance. CMS will contact the state shortly to provide a milestone template for review that will contain dates gleaned from the STP.