

# The HCBS Final Rule and Indiana's Non-Residential Remediation Process

*Facilitating a Pathway to a "Good Life" for  
Hoosiers with Disabilities*



# HCBS Final Rule

- The Final Rule Published January 26, 2014- Effective March 17, 2014
- Supports enhanced quality in HCBS programs and adds protections for individuals receiving services
- Requires that all of the settings in which Medicaid-reimbursed HCBS are provided, including both residential and non-residential (day services), are integrated in and support full access to the greater community
- All states must comply with the new rule



# HCBS Final Rule

- All States were required to develop a Transition Plan that outlines how settings will be fully compliant by March 17, 2022
- Components of the plan include:
  - A description of settings (residential, non-residential)
  - A Systemic Assessment of State Policies and Procedures
  - And a Process for Site Specific Assessments and remediation



# Indiana's Statewide Transition Plan

- The intent of the transition plan and remediation strategies is not to close or terminate providers but instead, to work with individuals, providers and other stakeholders to come into compliance with the HCBS Final Rule and the vision of ensuring individuals are fully integrated into the community, afforded choice, and have their health and safety needs met.



# Indiana's Statewide Transition Plan Non-Residential(Day Services) Site Assessments

- Began with Provider Self-Survey
- Providers were requested to submit policies/procedures to verify how they responded to survey
- Site visits were then conducted to validate findings



# Indiana's Statewide Transition Plan Non-Residential(Day Services) Site Assessments

- Providers were given their completed site assessments along with a remediation tool
- Providers will develop plans to submit to DDRS
- DDRS will monitor timelines and completion of plans until compliant



# Indiana's Statewide Transition Plan Non-Residential(Day Services) Site Assessments

- Ongoing monitoring will be conducted through provider re-approvals, policy revisions, and provider agreements to ensure continued compliance of its settings with the federal requirements



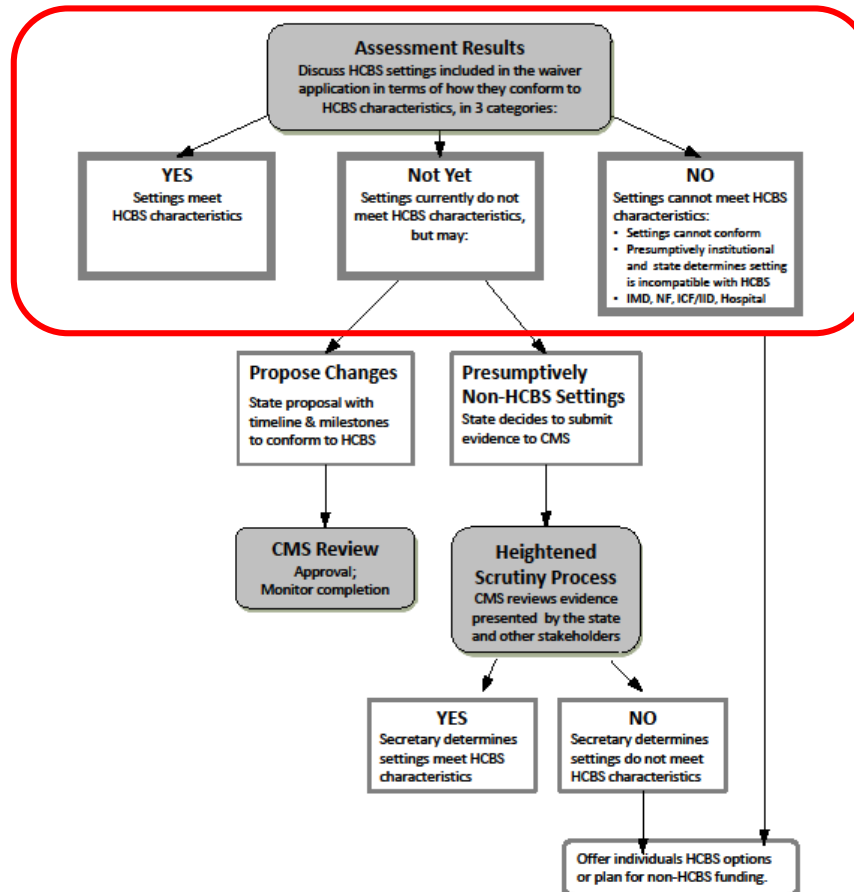
# Timeline

- Preliminary Determination of Non-Residential Settings Compliance
- Disseminate Site Visit Results - Began October 16th
- Initial Provider Remediation Plan submission - November 28<sup>th</sup> through December 19th
- DDRS responses- February 2019
- Continued Monitoring Toward Full HCBS Compliance- Ongoing





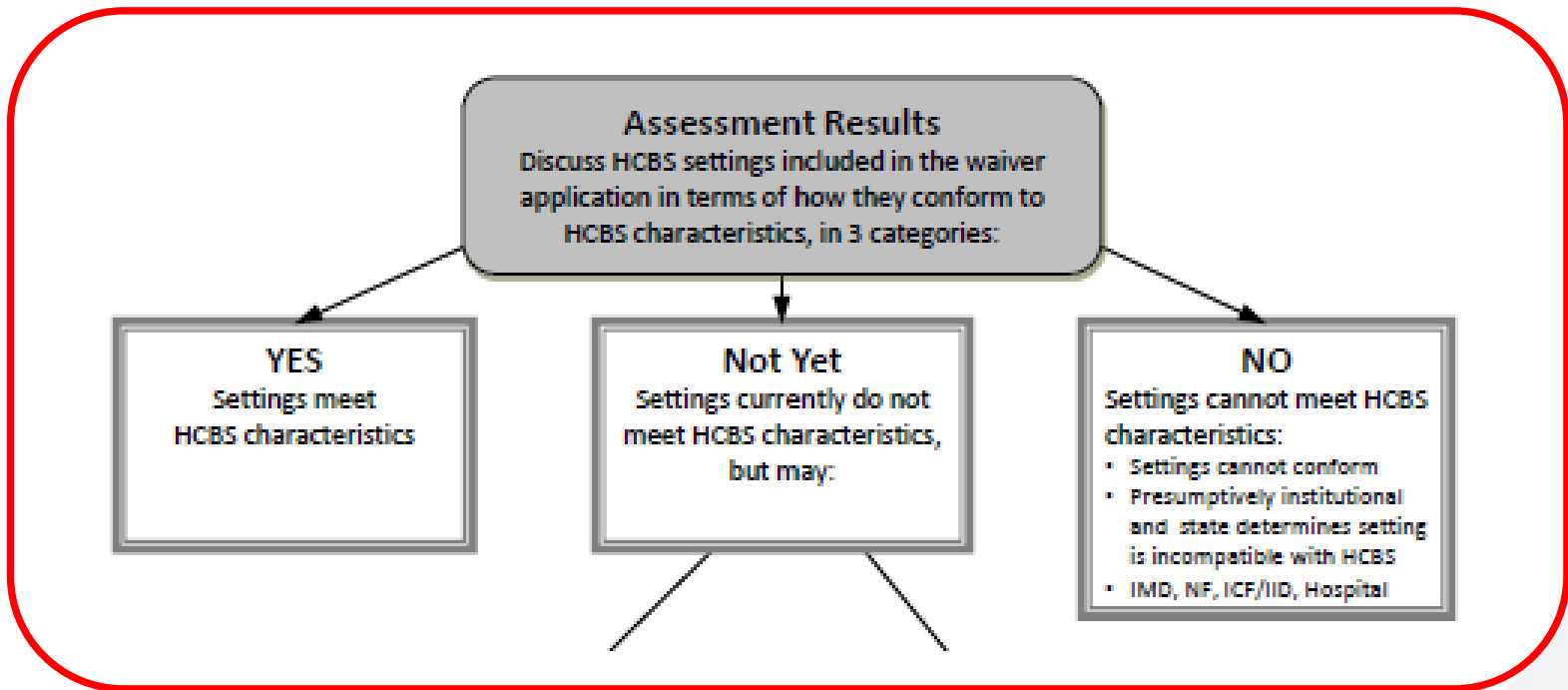
## STEPS TO COMPLIANCE FOR HCBS SETTINGS REQUIREMENTS IN A 1915(c) WAIVER and 1915(i) SPA



NOTE: Substantive changes in a 1915(c) HCBS Waiver Transition Plan will require public comment.



# Non-Residential Compliance With HCBS Rule



# Non-Residential Site Assessment Results and Findings

Each non-residential site visited had at least one area of potential remediation identified. Most can be easily addressed. Areas commonly identified in need of remediation include:

- **Community integration** - Nearly half of the sites did not provide opportunities for regular interaction (4 or more times per week) with individuals from the broader community engaged in activities based on what they want to do or a part of their person-centered plan.
- **Freedom of movement** - Individuals may have the freedom to move throughout the site, but often assessors found individuals could not go outside as they chose based on a person-centered plan and assessed need. When movement was restricted, it was more often a result of blanket policies and procedures rather than based on individual needs as identified through each individual's support plan.
- **Age appropriate activities** - Roughly ¼ of the sites did not appear to offer any age-appropriate activities. Sites needing remediation were found to offer toys and activities more appropriate for young children (e.g. children's movies, Fisher Price toys, pre-school-age puzzles) rather than older adults.
- **Flexibility in schedules** - Sites not offering flexibility in meal and break times were most often those providing pre-vocational activities or sheltered work. Overall lacked opportunities for individual choices.
- **Barriers/restricted movement** - Nearly half of the sites were found to have some form of a barrier restricted movement, such as locked doors, gates, etc.
- **Meals/private dining** - As these were non-residential settings, many sites reported that individuals bring their own lunches. As such, these sites were found to not allow alternative person-centered options for dining. These sites were also most likely to provide pre-vocational activities or sheltered work.
- **Staff training** - While many sites reported offering staff training for new hires and continued education, many of these sites did not have the same training offerings for volunteers



# Non-Residential Categories

- Providers Determined Initially Compliant
- Providers Requiring Remediation
- Providers Requiring a Site visit



# CMS Exploratory Questions

- Providers are encouraged to look at the exploratory questions
- Use as a guidance for developing plan
- Can help to frame how you view the site assessment



Exploratory Questions:

1. *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. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)*

- Does the setting provide opportunities for regular meaningful non-work activities in integrated community settings for the period of time desired by the individual?
- Does the setting afford opportunities for individual schedules that focus on the needs and desires of an individual and an opportunity for individual growth?
- Does the setting afford opportunities for individuals to have knowledge of or access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting, and who in the setting will facilitate and support access to these activities?
- Does the setting allow individuals the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting? For example, do individuals receive HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS?
- Is the setting in the community/building located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices, etc. that facilitates integration with the greater community?
- Does the setting encourage visitors or other people from the greater community (aside from paid staff) to be present, and is there evidence that visitors have been present at regular frequencies? For example, do visitors greet/acknowledge individuals receiving services with familiarity when they encounter them, are visiting hours unrestricted, or does the setting otherwise encourage interaction with the public (for example, as customers in a pre-vocational setting)?
- Do employment settings provide individuals with the opportunity to participate in negotiating his/her work schedule, break/lunch times and leave and medical benefits with his/her employer to the same extent as individuals not receiving Medicaid funded HCBS?
- In settings where money management is part of the service, does the setting facilitate the opportunity for individuals to have a checking or savings account or other means to have access to and control his/her funds. For example, is it clear that the individual is not required to sign over his/her paychecks to the provider?
- Does the setting provide individuals with contact information, access to and training on the use of public transportation, such as buses, taxis, etc., and are these public transportation schedules and telephone numbers available in a convenient location?

- Alternatively where public transportation is limited, does the setting provide information about resources for the individual to access the broader community, including accessible transportation for individuals who use wheelchairs?
- Does the setting assure that tasks and activities are comparable to tasks and activities for people of similar ages who do not receive HCB services?
  - Is the setting physically accessible, including access to bathrooms and break rooms, and are appliances, equipment, and tables/desks and chairs at a convenient height and location, with no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting? If obstructions are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstructions?
2. *The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/ 441.710(a)(1)(ii)/441.530(a)(1)(ii)*
- Does the setting reflect individual needs and preferences and do its policies ensure the informed choice of the individual?
  - Do the setting options offered include non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA?
  - Do the setting options include the opportunity for the individual to choose to combine more than one service delivery setting or type of HCBS in any given day/week (e.g. combine competitive employment with community habilitation)?
3. *The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)*
- Is all information about individuals kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for PT, OT, medications, restricted diet, etc., in a general open area?
  - Does the setting support individuals who need assistance with their personal appearance to appear as they desire, and is personal assistance, provided in private, as appropriate?

- Does the setting assure that staff interact and communicate with individuals respectfully and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities?
- Do setting requirements assure that staff do not talk to other staff about an individual(s) in the presence of other persons or in the presence of the individual as if s/he were not present?
- Does the setting policy require that the individual and/or representative grant informed consent prior to the use of restraints and/or restrictive interventions and document these interventions in the person-centered plan?
- Does the setting policy ensure that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting and/or restrictive to the rights of every individual receiving support within the setting?
- Does the setting offer a secure place for the individual to store personal belongings?

4. *The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)*

- Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- Does the setting afford a variety of meaningful non-work activities that are responsive to the goals, interests and needs of individuals? Does the physical environment support a variety of individual goals and needs (for example, does the setting provide indoor and outdoor gathering spaces; does the setting provide for larger group activities as well as solitary activities; does the setting provide for stimulating as well as calming activities)?
- Does the setting afford opportunities for individuals to choose with whom to do activities in the setting or outside the setting or are individuals assigned only to be with a certain group of people?
- Does the setting allow for individuals to have a meal/ snacks at the time and place of their choosing? For instance, does the setting afford individuals full access to a dining area with comfortable seating and opportunity to converse with others during break or meal times, afford dignity to the diners (i.e., individuals are treated age-appropriately and not required to wear bibs)? Does the setting provide for an alternative meal and/or private dining if requested by the individual? Do individuals' have access to food at any time consistent with individuals in similar and/or the same setting who are not receiving Medicaid-funded services and supports?



- Does the setting post or provide information on individual rights?
- Does the setting prohibit individuals from engaging in legal activities (ex. voting when 18 or older, consuming alcohol when 21 or older) in a manner different from individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports?
- Does the setting afford the opportunity for tasks and activities matched to individuals' skills, abilities and desires?

5. *The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v) 441.710(a)(1)(v)/441.530(a)(1)(v)*

- Was the individual provided a choice regarding the services, provider and settings and the opportunity to visit/understand the options?
- Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?
- Does the setting ensure individuals are supported to make decisions and exercise autonomy to the greatest extent possible? Does the setting afford the individual with the opportunity to participate in meaningful non-work activities in integrated community settings in a manner consistent with the individual's needs and preferences?
- Does setting policy ensure the individual is supported in developing plans to support her/his needs and preferences? Is setting staff knowledgeable about the capabilities, interests, preference and needs of individuals?
- Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?

# Remediation Tool

Indiana BDDS HCBS Settings Rule Remediation Tool.pdf - Adobe Acrobat Reader DC  
File Edit View Window Help

Home Tools Indiana BDDS HCB... x Sign In

**Indiana BDDS HCBS Settings Rule Provider Remediation Tool**  
**Day Service Settings**

The following are the Federal Requirements of a home and community based setting for Medicaid HCBS Waiver services. All settings must be in compliance with the requirements by March 17, 2022 in order to provide HCBS Waiver Services. In the Remediation Tool below, the language and criteria are listed to help guide you through a remediation strategy. Please reference your site survey for more detail on each Federal Requirement. Once you have identified potential areas in need of remediation and completed the tool, please return to the Bureau of Developmental Disabilities Services (BDDS), no later than the date indicated below, for approval. After your remediation plan has been reviewed by BDDS this tool will be returned for adjustments and implementation.

**Name of Provider:**

**Provider Address:**

**Provider Contact:**

**Date HCBS Final Rule Remediation Tool Due:**

**1. Federal Requirement: The setting is integrated in and supports full access to the greater community.**

Remediation Plan	Estimated Timeline	
	Action	Estimated Completion Date



<b>2. Federal Requirement: The setting is selected by the individual from among setting options.</b>		
<b>Remediation Plan</b>	<b>Estimated Timeline</b>	
	<b>Action</b>	<b>Estimated Completion Date</b>
<b>3. Federal Requirement: The setting ensures an individual's rights of privacy, dignity, and respect and freedom from coercion and restraint.</b>		
<b>Remediation Plan</b>	<b>Estimated Timeline</b>	
	<b>Action</b>	<b>Estimated Completion Date</b>
<b>4. Federal Requirement: The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact.</b>		
<b>Remediation Plan</b>	<b>Estimated Timeline</b>	
	<b>Action</b>	<b>Estimated Completion Date</b>

<b>5. Federal Requirement: The setting facilitates individual choice regarding services and supports, and who provides them.</b>		
<b>Remediation Plan</b>	<b>Estimated Timeline</b>	
	<b>Action</b>	<b>Estimated Completion Date</b>

# Assessment Example 1-B



PCG-Indiana  
IN DDRS Provider Onsite Assessment

HCBS Final Rule Onsite Assessment Tool

Date: 07/11/2017

CMS HCBS STANDARD - The setting is integrated in and supports full access to the greater community

# 1-B

OBSERVATIONAL GUIDANCE TO ASSESS COMPLIANCE - Does the site support both facility habilitation AND community habilitation?

Observation:

No

Evidence for Observation:

The provider indicates the location does not support community habilitation.

Photo/Document Reference:

Photo/Document Reference:



# Example of a Completed Remediation Plan

## Indiana BDDS HCBS Settings Rule Provider Remediation Tool Day Service Settings

The following are the Federal Requirements of a home and community based setting for Medicaid HCBS Waiver services. All settings must be in compliance with the requirements by March 17, 2022 in order to provide HCBS Waiver Services. In the Remediation Tool below, the language and criteria are listed to help guide you through a remediation strategy. Please reference your site survey for more detail on each Federal Requirement. Once you have identified potential areas in need of remediation and completed the tool, please return to the Bureau of Developmental Disabilities Services (BDDS), no later than the date indicated below, for approval. After your remediation plan has been reviewed by BDDS this tool will be returned for adjustments and implementation.

**Name of Provider:** Provider Indiana

**Provider Address:** 1234 1<sup>st</sup> St., Indianapolis, Indiana 46214

**Provider Contact:**

**Date HCBS Final Rule Remediation Tool Due:** 11/28/2018

1. Federal Requirement: The setting is integrated in and supports full access to the greater community.

Remediation Plan	Estimated Timeline	
	Action	Estimated Completion Date
#1-B: Although the location is classified as a sheltered workshop, we continue to provide community activities geared toward work training opportunities billed under Prevocational (PV). The location has implemented an internal process that enables management to electronically track Prevocational activities that are community-	Continue to track all community-based Prevocational outings electronically.	8/29/2018



<p>based. We believe the site does support community and facility-based habilitation for the individuals served.</p> <p>The location serves a wide age range of individuals, including many older individuals with lengthy tenures in the program. Of the 218 individuals currently enrolled:</p> <ul style="list-style-type: none"> <li>• 15% are younger than 30</li> <li>• 36% are 30 to 50 years old</li> <li>• 49% are older than 50 (including 18% who are 62 or older)</li> <li>• 59% have 10 or more years in the program</li> </ul> <p>From past surveys and intake data we have found that younger participants and their families are more likely to want nontraditional day services that incorporate community-based learning and employment opportunities. Older participants and their families are more likely to want traditional programming, which they have valued over the past 30 years, and they are less open to innovation and change. We will use our existing data on demographics and related preferences to prioritize our efforts to increase community-based programming while offering choices to all individuals.</p> <p>Because younger individuals are most likely to be interested in community employment and other integrated activities, our initial focus will be on developing specific programming options based on the needs and interest of individuals younger than 30. Based on their wants and needs from the PCISP and survey listed in the following section (#1-F), we will provide integrated community-based programming and/or employment for these individuals. Offerings may include community-based certifications, credentialing that will aid in employment, continuing education and volunteer opportunities.</p> <p>The next priority group will be the 30 to 50 age range. Based on past surveys, this demographic typically does not have a strong preference for either community or facility based programming; therefore, we will rely heavily on the PCISP, Lifecourse and the survey to develop a meaningful day for them, including choices in community-based programming, employment opportunities, and facility-based programming.</p>	<p>Develop a roster that has all DOB and start dates to continue to project ages and tenure and allow better planning for future endeavors.</p> <p>Review participants' PCISP along with individual wants and offer emerging choices.</p>	<p>9/10/2018</p> <p>1/2019</p>
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<p>The older than 50 demographic will be our lowest priority. Past surveys and research has shown that older individuals with long tenure in the program typically do not want to change their routines. However, we will still use the PCISP to ensure that they have opportunities to engage in the community.</p> <p>Our goal for the location is to offer choices of community-based services and employment for all age demographics based on the interest of each participant. Prioritizing groups of individuals by age will allow us to initially allocate more resources to individuals most likely to benefit. However, no individual will be prevented from participating in an activity or experience based on their age.</p>	<p>Develop ongoing Townhall meetings with stakeholders (At least semi-annually)</p>	<p>1/2019</p>
<p>#1-F: Due to varying schedules, not all participants are able to interact with members of the community through the offerings 4 times a week. About 20% of participants attend services part-time (fewer than 21.25 hours per week), and most of those attend fewer than 4 days a week. Part-time participants schedule their days and hours at the facility around community employment, volunteer opportunities, and other activities in which they are integrated and engaged with the community.</p> <p>When planning community activities we need to consider the physical and medical needs of each individual to ensure their safety and wellbeing. We currently take individuals into the community in groups of 4:1 (4 participants to 1 staff). This allows staff to safely and adequately support the individuals. Within the current rate structure and service delivery definition, it is difficult to implement individuals participating in community-based activities 4 times a week. Most of the participants we serve have the Family Supports Waiver (FSW) and receive additional services, therefore limiting the funding available for outings in smaller ratios. In spite of these limitations, the site does offer an array of community-based programs. For example, a group of participants goes to Butler, Indiana, (typically 5 days a week) to work at a manufacturing facility where they interact with the staff and management at that facility. The site also houses person-centered programs (My Day My Way and Challengers) in which individuals work with staff to develop their own idea of a meaningful day, incorporating community-based activities and lifelong learning. The site also offers a training program that takes 3 to 4 individuals to the surrounding</p>	<p>Hire a DSP that is dedicated to community-based outings</p> <p>Increase individuals receiving community employment supports or community employment by 10%</p> <p>Increase the number of participants who engage in community-based</p>	<p>1/2019</p> <p>6/2019</p> <p>12/2019</p>



# Resources

- HCBS Final Rule Guidance  
<https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>
- Indiana HCBS Final Rule Transition Plan  
<https://www.in.gov/fssa/ddrs/4917.htm>
- HCBS Advocacy Coalition  
<https://hcbsadvocacy.org/>



# Questions?





All people have the right to live, love, work, learn, participate, play and pursue their dreams in their community.

