Melissa Harris
Deputy Director, Disabled and Elderly Health Programs Group
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Deputy Director Harris:

I am writing regarding the rules applicable to individuals who receive home and community-based services ("HCBS") under the January 2014 home and community-based settings rule. In my meetings with constituents and other interested parties my staff and I are asked about the scope of the Settings Rule. While CMS issued guidance on March 22, 2019, I ask that you please review and provide a written response to the following questions regarding the Settings Rule considering the guidance:

1. Does the Settings Rule prohibit the use of HCBS funding for farmsteads, intentional communities, and campus settings?
2. Does the Settings Rule require that an individual receiving HCBS funding first try another HCBS setting before receiving services in an HCBS compliant farmstead, intentional community, or campus setting?
3. Does the Settings Rule require that an individual receiving HCBS spend a certain percentage of their day or week (e.g., 25%) "in the community?"
4. Is a setting considered not to be isolating under the Settings Rule if all of the following are true: (a) the setting offers the individuals it serves opportunities to receive services and engage in activities in the broader community and offers to provide the supports each individual needs to access those services and activities; (b) individuals then choose whether to receive services and engage in activities in the community or at the setting; (c) the setting honors those choices; and (d) all of this is documented in the individuals’ personal plans?
5. Does the Settings Rule impose a density cap on housing for people with disabilities (e.g., that no more than 25% of a multi-unit building be occupied by individuals receiving HCBS funding)? If so, what is the density cap?
6. Does the Settings Rule limit the number of community program participants to three individuals?
7. Does the Settings Rule limit the capacity in HCBS residential settings to four individuals?
8. Does the Settings Rule limit to 25 the number of individuals who may receive day services from an HCBS provider at any one time?

These questions are arising on an increasingly frequent basis, I respectfully request your written response at your earliest convenience. Thank you in advance for your attention to this matter.

Sincerely,

Brian K. Fitzpatrick (PA-01)
Member of Congress