

HOME AND COMMUNITY-BASED SETTINGS  
PERSON CENTERED PLANNING  
AND  
TRANSITION PLANNING

WHAT WE KNOW SO FAR...





## WE WILL FOCUS TODAY'S PRESENTATION ON:

- A **very brief** overview of the entire rule
- Key provisions relating to the Home and Community-based (HCB) settings rules
- Key aspects of the person-centered planning requirements
- Transition planning to come into compliance with the HCB settings requirements

N.B.: Wherever you see this on a slide, this means we are using language directly taken from CMS materials on the rules

# BEFORE WE DIVE IN....



- This is the CMS site to go to for any and all information:
  - <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>
- Has everything and anything CMS has available on the new regulations including fact sheets, Webinars and regulatory guidance

# CMS SAYS THE INTENT OF THIS RULE IS:

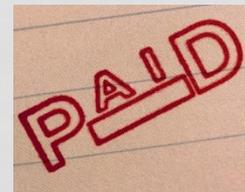
- To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the **1915(c)\*, 1915(i) and 1915(k)** Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate
- To enhance the quality of HCBS and provide protections to participants



# OVERVIEW OF THE RULE



- States can now combine multiple target populations within one 1915(c) waiver
- Gives CMS with new compliance options for 1915(c) waiver programs, not just approve/deny
- Establishes five-year renewal cycle to align concurrent authorities for certain demonstration projects or waivers for individuals who are dual eligible
- Includes a provider payment reassignment provision to facilitate certain state initiatives (payment of health premiums or training costs for example)



# OVERVIEW OF THE RULE

- Conflict-free case management
  - Was just in guidance, now it is in rule
- Implements the final rule for 1915(i) State plan HCBS—same requirements on HCB settings character, person-centered planning
- Makes clear HCB settings characteristics also apply to 1915(k) Community First Choice option
- Sets conditions and timelines for filing transition plans and coming into compliance with the HCB settings requirements

# AND THE “BIG DEAL” ITEMS.....

- HCB Settings Character
  - What is NOT community
  - What is likely not community
  - What is community
- Person-centered planning
  - Codifies requirements
- Transition planning-coming into compliance with the HCB settings requirements



# BEFORE WE DEFINE HCB SETTINGS CHARACTER..



- Settings that are NOT Home and Community-based:
  - Nursing facility
  - Institution for mental diseases (IMD)
  - Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
  - Hospital



# Settings PRESUMED NOT to Be Home And Community-based

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS



# BUT....



- The rules give the Secretary of HHS the discretion to ascertain if certain settings meet the HCB settings character
- That means that with regard to the settings described on the previous slide, states may make the case that the setting(s) *does* meet HCB settings character

# THE “NOT PRESUMED” SETTINGS MAY NOT BE INCLUDED IN UNLESS:

- A state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution; AND
- The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution



# WHICH BRINGS US TO HCB SETTINGS CHARACTER



- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting\*
- The new standards are “experiential” and about “qualities” of the setting



\*Echoes of Olmstead?

# HCBS SETTING REQUIREMENTS



42CFR441.310(C)(4)

- 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 home and community-based services





# HCB SETTING REQUIREMENTS

- The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting
- The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board



# PRIVATE ROOMS?



- What we have heard so far:
  - States must have options available for individuals to potentially choose a private room
  - Does NOT mean all providers must now offer or provide private rooms
  - Note on the previous slide, planning can take into effect the, “resources available for room and board”

# HCB SETTING REQUIREMENTS

- Ensures an individual's rights of privacy, dignity, 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



# CONGREGATE SETTINGS AND THE HCB SETTINGS REQUIREMENTS

- In the “Comments” preceding the new rule, in response to questions CMS wrote:
  - *“It is not the intent of this rule to prohibit congregate settings from being considered home and community-based settings. State plan HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule”*
  - So the test is whether congregate or not, does the setting have the qualities and experiences of a permissible HCB setting?

(A bit of advice—the comments section of the rules is well worth looking at...)



# CONGREGATE SETTINGS AND THE HCB SETTINGS REQUIREMENTS

- Be aware this is not just residential...the HCBS settings requirements apply to ALL HCB settings including day programs....
- CMS noted in the comments...:
  - “To the extent that the services described are provided under 1915(i) or 1915(k) (for example, residential, day, or other), they must be delivered in settings that meet the HCB setting requirements as set forth in this rule. We will provide further guidance regarding applying the regulations to non-residential HCB settings.”

# AND WENT ON TO SAY IN THEIR WEBINAR

- *Application of setting requirements to non-residential settings* – Rule applies to all settings where HCBS are delivered, **not just to residential settings** and CMS will provide additional information about how states should apply the standards to non-residential settings



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS



- CMS has laid out some specific guidance for settings where the services and living arrangement are combined, that is housing and supports are “bundled” together by one provider
- These additional requirements are that the:
  - Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
  - Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS



- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS



- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS

- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS

- CMS has developed a set of criteria that must be met when there are “modifications” to the settings requirements for an individual
- Basically this is about any restrictions such as limiting access to food or concerns about furnishings for example

# PERSON-CENTERED PLANNING

- The person-centered planning process is driven by the individual
- Includes people chosen by the individual
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible
- Is timely and occurs at times/locations of convenience to the individual
- Reflects cultural considerations/uses plain language
- Includes strategies for solving disagreement
- Offers choices to the individual regarding services and supports the individual receives and from whom
- Provides method to request updates



# PERSON-CENTERED PLANNING



- Conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- Identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual
- May include whether and what services are self-directed

# PERSON-CENTERED PLANNING

- Written plan reflects –
  - Setting is chosen by the individual and is integrated in, and supports full access to the greater community
  - Opportunities to seek employment and work in competitive integrated settings
  - Opportunity to 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



# PERSON-CENTERED PLANNING

- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others
- Includes risk factors and plans to minimize them
- **Is signed by all individuals and providers responsible for its implementation** and a copy of the plan must be provided to the individual and his/her representative



# PERSON-CENTERED PLANNING

- Distributed to the individual and others involved in plan
- Includes purchase/control of self-directed services
- Exclude unnecessary or inappropriate services and supports





SO, WHAT MIGHT THIS  
ALL MEAN FOR STATES?

# COMING INTO COMPLIANCE

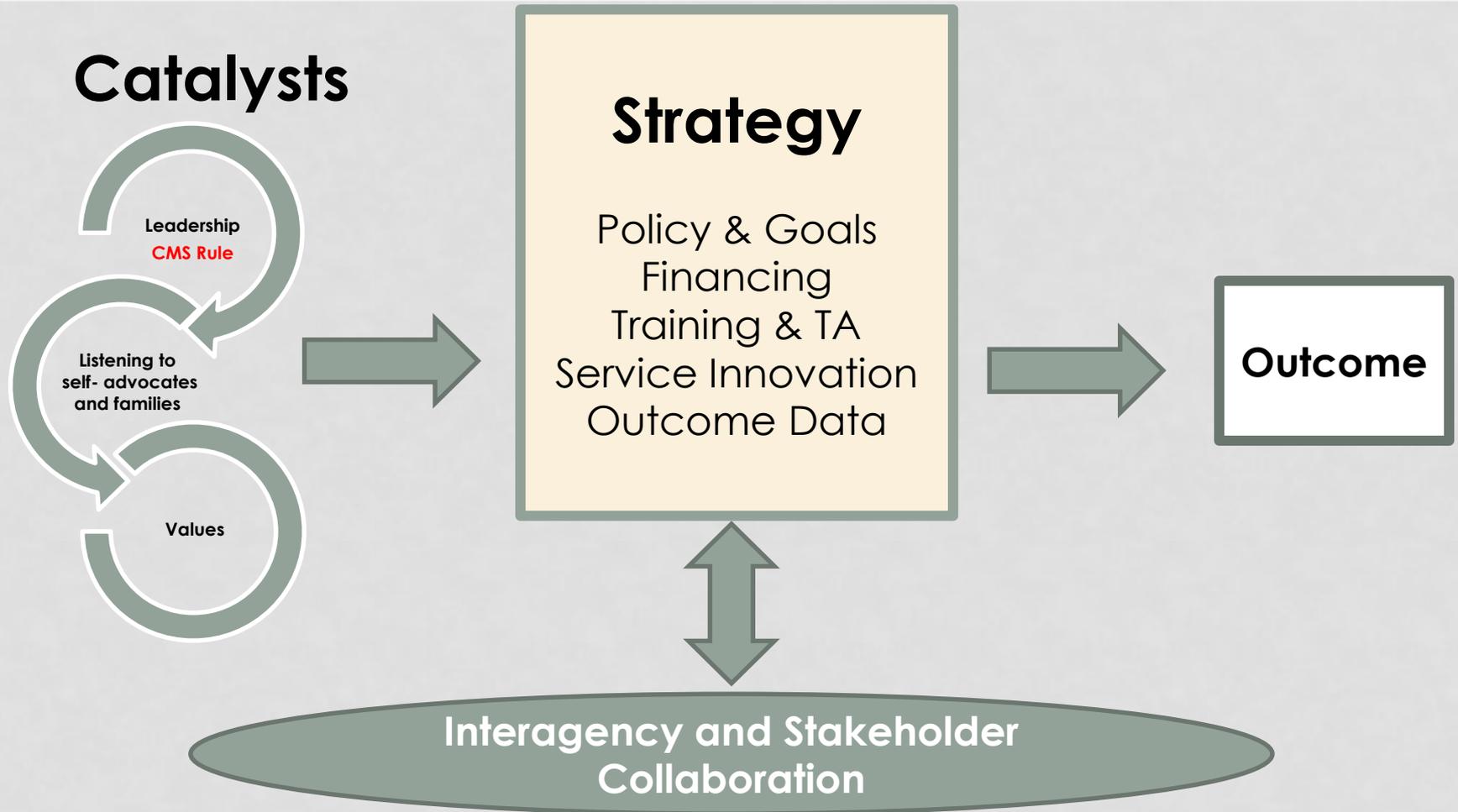


- CMS has termed coming into compliance with the HCB settings requirements, “Transition”
- States will have to provide a transition plan, *“detailing any actions necessary to achieve or document compliance with setting requirements”*
- What states have to do—and how quickly—depends on the timing of new waivers, amendments and renewals
- Don’t worry about the timing details—just know that a transition plan is likely due in sooner rather than later!

# GUIDANCE FOR MEETING HCBS REQUIREMENTS THE TRANSITION PLAN

- **CMS has not released guidance on developing the Transition Plan**
- **Where to start?**
  - States must have state standards, requirements and practices in place to communicate expectations, provide guidance and measure performance.
  - Before measuring provider compliance with the federal definition, it is advisable to first assess state standards, policies and practices to determine whether they are aligned with the Federal requirements and make necessary modifications.
- **The process of self-assessment is best conducted with stakeholders including self-advocates, families, advocates and providers.**
  - This process of involvement can help to build support for needed changes and prepare providers to make necessary changes to their program.

# A FRAMEWORK FOR SYSTEM CHANGE



# WHAT TO SELF-ASSESS

1. Service Definitions - Waiver and State Plan
2. Service standards and requirements
  - Regulations
  - Provider qualifications
  - Training requirements
3. Service contracts, rate methodology, billing and adequacy of rates
4. Person-centered planning requirements and documentation
5. Quality Oversight
  - Individual plan monitoring requirements – support coordination
  - UR practices
  - Provider monitoring – licensing, certification
  - Provider reporting requirements
  - Performance outcome measurement – using National Core Indicators
6. Information Systems

# 1) ASSESS WAIVER AND STATE PLAN SERVICE DEFINITIONS

- **Case management**
- **Homemaker and home health aide services**
- **Personal care services**
- **Adult day health services**
- **Habilitation services**
  - **Residential habilitation**
    - **Provider owned settings**
  - **Day habilitation**
- **Expanded Habilitation**
  - **Prevocational**
  - **Supported Employment**
  - **Education**
- **Day Treatment**

The setting is integrated in and supports full access of individuals 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

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

Provider owned setting requirements ....see previous slides

## 2) ASSESS SERVICE STANDARDS AND REQUIREMENTS

- **Regulations and standards**
- **Provider qualifications**
- **Training requirements**

The setting is integrated in and supports full access of individuals 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

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



Provider owned setting requirements ....see previous slides

# FACTORS TO CONSIDER IN ESTABLISHING SERVICE STANDARDS AND REQUIREMENTS

- **Is there a setting type or size at which integration is less likely to occur?**
  - Settings are designed exclusively or primarily for individuals with disabilities;
  - Settings provide multiple types of services and activities on-site in a manner that creates barriers to participation outside the setting
  - Regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities
  - Homes and apartments are the size typical of family home in the area
  - People living in their own homes have full access to the greater community and opportunities to engage in community life
- **Is there a setting location in which integration is less likely to occur?**
  - Enables unplanned interaction with non-disabled peers throughout the day
  - Requires planned interaction with non-disabled individuals throughout the day
- **What type activity in the community meets the standard?**
  - **Access 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**
  - 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

## “SUPPORTS FULL ACCESS TO THE GREATER COMMUNITY - OPPORTUNITIES TO ENGAGE IN COMMUNITY LIFE - CHOICE OF DAILY ACTIVITIES AND WITH WHOM TO INTERACT”

### How do people engage in community life? What are daily activities? What is an everyday life?

- **Planned activities** in the home community within all of life's activity domains:
  - Work
  - Volunteer work - at soup kitchen, community clean up, or other neighborhood service
  - Learning experiences and activities; books on tape; book clubs and art classes; self-help classes;
  - Joining community organizations
  - Recreation – swimming, bowling, dancing, movies
  - Social Life – getting together with family and friends; family and friends visit the person in their home
  - Peer support groups
  - Shopping
  - Maintain health and wellness – walking; gym membership; diet groups; going to medical appt.
  - Personal care – hairstyling, having nails done,
  - Maintaining home; maintenance and improvement; cleaning; laundry
  - Caring for others; relatives or friends
  - Spirituality: worship; meditation; yoga classes;
  - Hobbies: Pet care – walking the dog; gardening, painting; photography
  - Going on vacation
- **Unplanned interaction with the community**
  - Quick stop at the convenience store; borrowing items from a neighbor, waiting at the bus stop, shoveling snow a neighbor, walking the dog, hanging out at the pizza parlor, greeting the delivery man, answering the door when the boy scouts collect for the food drive, etc.

# FACTORS TO CONSIDER IN ESTABLISHING SERVICE STANDARDS AND REQUIREMENTS

- **If activities are conducted in groups, is there a size at which integration is less likely to occur?**
- **What is the frequency of activity in the community needed to meet the standard?**
- **Should standards differ by age of individuals?**
  - Children – children typically live with a family. Services for children would be home based, supportive of families and include options when children cannot live with their birth family including kin-care and shared living.
  - Working age adults - are typically out and about in their communities
  - Elderly – a time of decreasing activity and choice of living options that allow easy contact with peers
- **Should standards reflect the purpose of the setting?**
  - Treatment models e.g. Prader-Willi Syndrome; Criminal offenders; Dementia
  - Peer support groups

### 3) ASSESS

## SERVICE CONTRACTS, PAYMENT AND BILLING POLICIES

- **Contracts**
  - Establish requirements and the documentation needed to support billable activity
- **Billable activity** – what are we paying for? Activities? Outcomes?
  - Integrated in and supports full access community
    - opportunities to seek employment and work in competitive integrated settings,
    - engage in community life,
    - control personal resources,
    - receive services in the community, to the same degree of access as....
    - optimizes individual initiative, autonomy, and independence .....
- **Billing documentation**- how will we know outcomes are achieved?
- **Rate methodology**- incentives and disincentives for compliance;
  - Do the state's staffing ratio standards enable individualized services for people within the setting?
- **Adequacy of rates** to achieve desired outcomes

## 4) ASSESS PERSON-CENTERED PLANNING PRACTICES



- The person-centered planning process is **driven by the individual**
- Includes **people chosen by the individual**
- Provides necessary information and **support to the individual** to ensure that the individual directs the process to the maximum extent possible
- Is timely and occurs at times/locations of **convenience to the individual**
- Reflects **cultural considerations/uses plain language**
- Includes **strategies for solving disagreement**
- **Offers choices** to the individual regarding services and supports the individual receives and from whom
- Provides **method to request updates**



## 4) ASSESS PERSON-CENTERED PLANNING PRACTICES CONT.

- Conducted to reflect **what is important to the individual** to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- **Identifies the strengths, preferences, needs (clinical and support), and desired outcomes** of the individual
- May include whether and **what services are self-directed**

## 4) ASSESS PLAN DOCUMENTATION REQUIREMENT

- Written plan reflects –
  - **Setting is chosen** by the individual and **is integrated** in, and supports **full access to the greater community**
  - Opportunities to seek employment and work in **competitive integrated settings**
  - Opportunity to **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
  - Includes **individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education** and others



## 4) ASSESS PLAN DOCUMENTATION REQUIREMENT CONT.

- Includes **risk factors** and plans to minimize them
- **Documents that any modification, when a safety need warrants a restriction**, is supported by a specific assessed need and is justified in the person-centered service plan (*this means using of positive behavioral practices*)
- **Is signed by all** individuals and providers responsible for its implementation and a copy of the plan must be provided to the individual and his/her representative
- **Distributed to the individual** and others involved in plan
- Includes **purchase/control of self-directed services**
- **Exclude unnecessary or inappropriate services and supports**



# 5) ASSESS QUALITY MANAGEMENT PRACTICES

- **Quality Oversight**
  - Individual plan monitoring requirements – support coordination
  - UR practices
  - Provider monitoring – licensing, certification
- **Provider reporting requirements**
- **Performance outcome measurement - NCI**

## 6) ASSESS INFORMATION SYSTEMS

- Provider reporting
- Case management planning and monitoring
- Licensing and certification
- Billing
- Outcome performance measurement

# THE TRANSITION PLAN

- **Assess infrastructure and need for modifications:**
  1. Service definitions
  2. Service standards and requirements
    - Regulations
    - Provider qualifications
    - Training requirements
  3. Service contracts, rate methodology, billing and adequacy of rates
  4. Person-centered planning requirements and documentation
  5. Quality Management Practices
    - Individual plan monitoring requirements – support coordination
    - UR practices
    - Provider monitoring – licensing, certification
    - Performance outcome measurement – using National Core Indicators
    - Provider Reporting requirements
  6. Information Systems
- **Assess waiver and state plan applications**
- **Assess current services** against states requirements **and develop a plan to come into compliance** – incorporate assessment and change into the annual review cycle
- **Develop guidance and training for providers for implementation**
- **Public input is required**

# THE NEW RULES...



- Give us a LOT to think about
- Probably a LOT to do
- But the rules can potentially represent an incredible opportunity to bring our supports and services closer to what we aspire to in our system values and vision statements....

- Nancy Thaler  
[nthaler@nasddds.org](mailto:nthaler@nasddds.org)

- Robin Cooper  
[rcooper@nasddds.org](mailto:rcooper@nasddds.org)

