

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



Medicaid Benefits and Health Programs Group

June 30, 2023

Stephanie Azar, Commissioner
Alabama Medicaid Agency
501 Dexter Avenue, PO Box 5624
Montgomery, AL 36103

Dear Commissioner Azar:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Alabama to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR §441.301(c)(4)-(5). The CAP is effective March 17, 2023.

The CAP provides the state with additional time to bring settings into compliance with the regulatory criteria directly impacted by the COVID-19 public health emergency. For remaining HCBS settings regulations not subject to the CAP, the state and all settings are expected to be fully compliant by the end of the transition period on March 17, 2023.

The state will report to CMS on progress with activities, milestones, and timeframes outlined in the attachment. Full compliance is achieved when all Medicaid-funded HCBS is rendered in a compliant setting. Closure of the CAP will be granted after the state completes the activities described in the attachment, at which point the state will be in full compliance with all HCBS settings provisions of the regulation.

It is important to note that CMS approval of a CAP 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 v. LC* 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.

Thank you for your efforts in establishing a CAP and completing this work to ensure all settings are in compliance with the federal HCBS regulations. If you have questions or need further assistance, please contact Ondrea Richardson at ondrea.richardson@cms.hhs.gov or 410-786-4606.

Sincerely,

Melissa Harris, Deputy Director

Attachment

cc: Wendy Hill Petras, Acting Director, Division of HCBS Operations and Oversight,
CMCS, CMS

MEDICAID HOME AND COMMUNITY-BASED SERVICES SETTINGS REGULATIONS
CORRECTIVE ACTION PLAN FOR THE STATE OF ALABAMA

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Home and Community-Based Waiver for Persons with Intellectual Disabilities, AL.0001;
- Home and Community-Based Services Living at Home Waiver for Persons with Intellectual Disabilities, AL.0391;
- Community Transitions Waiver, AL.0878; and
- Home and Community-Based Waiver for the Elderly and Disabled, AL.0068.

Regulatory criteria subject to the CAP

All settings:

- 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, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS at 42 CFR §441.301(c)(4)(i) (entire criterion except for “control personal resources”),
- 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 at 42 CFR §441.301(c)(4)(ii),
- 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 at 42 CFR §441.301(c)(4)(iv), and
- Facilitates individual choice regarding services and supports, and who provides them at 42 CFR §441.301(c)(4)(v).

Provider-owned or controlled residential settings:

- Individuals sharing units have a choice of roommate in that setting at 42 CFR §441.301(c)(4)(vi)(B)(2), and
- Individuals have the freedom and support to control their own schedules and activities at 42 CFR §441.301(c)(4)(vi)(C) (entire criterion except for “have access to food at any time”).

State milestones and timeframes under the CAP

Milestone	Begin Date	Completion Date
Validation and Relocation Activities: Intellectual Disabilities and Living at Home Waivers		
Validate full compliance with all HCBS requirements.	May 1, 2023	December 1, 2023
Notification to providers of full compliance with all HCBS requirements.	August 1, 2023	December 20, 2023
Disenrollment notifications to providers not in full compliance with all HCBS requirements.	September 1, 2023	January 31, 2024
Relocation notifications to waiver participants and, as applicable, their guardians, for participants receiving services from non-compliant providers.	October 1, 2023	February 20, 2024
Identification and/or recruitment of HCBS compliant providers/settings for relocation of individuals as needed.	October 1, 2023	February 20, 2024
Relocation of individuals to HCBS compliant settings as needed.	January 20, 2024	May 31, 2024
Heightened Scrutiny Activities		
Submit to CMS information about the completed public input for the 5 adult day health settings conducted in March 2023.	—	June 13, 2023
Complete another round of public input for relevant settings presumed institutional for isolation of HCBS beneficiaries due to inadequacy of the public input notice for the September-October 2021 notice period.	July 1, 2023	July 31, 2023
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	August 1, 2023	August 31, 2023
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	Date CMS pulls the appropriate list of settings and sends the list of settings to the state	Within 30 days of receipt of the listing from CMS

Milestone	Begin Date	Completion Date
Address heightened scrutiny findings related to CMS’ heightened scrutiny review including, as applicable, remediation of all similarly situated settings that utilize a similar service delivery model and, as applicable, any overall assessment processes of all providers of HCBS in the state to ensure that all providers are being assessed appropriately against the regulatory settings criteria.	Date CMS issues findings to the state	12 months post the date CMS issues findings to the state
Heightened Scrutiny Site Visit		
Address findings related to CMS heightened scrutiny site visit including, as applicable, needed remediation required to ensure compliance of the settings visited, remediation of all similarly situated settings that utilize a similar service delivery model, remediation of the process for developing and implementing the person-centered service plan, and application of site visit feedback to the overall assessment process of all providers of HCBS in the state to ensure that all providers are being assessed appropriately against the regulatory settings criteria.	December 22, 2022	December 20, 2023
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	12 months post the date CMS issues heightened scrutiny findings to the state