

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 13, 2024

Tom Wallace, Deputy Secretary
Health Care Finance and Data
Florida Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 8
Tallahassee, FL 32308

Dear Deputy Secretary Wallace:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Florida 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 retroactively effective to 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 as of the end of the transition period on March 17, 2023. In the absence of an approved final Statewide Transition Plan (STP), Florida's CAP also requires the state to complete outstanding STP activities.

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,

Ryan Shannahan, Deputy Director
Division of Long-Term Services and Supports

Attachment

cc: George Failla, Director, Division of HCBS Operations and Oversight, CMCS, CMS

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

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Developmental Disabilities Individual Budgeting Waiver (iBudget), FL.0867; and
- Long Term Care Managed Care Waiver, FL.0962

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
Statewide Transition Plan Settings Compliance Determination		
Aggregate validation data and compliance findings following validation of remediation for settings previously assessed.	July 10, 2019	June 30, 2024
Statewide Transition Plan Assessment, Remediation, or Validation Activities		
<i>All Settings¹</i>		
Completion of site-specific assessments.	July 1, 2024	December 31, 2024
Completion of validation activities for Long Term Care settings.	January 1, 2025	January 31, 2025
Aggregate assessment data for all settings.	February 1, 2025	February 28, 2025
Complete 30-day public comment period for aggregate assessment data for all settings, including settings previously assessed.	March 1, 2025	April 15, 2025
Submit compliance results to CMS for all settings.	April 16, 2025	April 30, 2025
Communicate non-compliance concerns to providers and state issued remediation action plans with remediation to be completed by settings within two weeks of notification, but no later than the milestone completion date.	May 1, 2025	May 31, 2025
Complete remediation and validation activities (via desk review) to address community integration. 25% complete	June 1, 2025	June 30, 2025
Complete remediation and validation activities (via desk review) to address community integration. 50% complete	July 1, 2025	July 31, 2025
Complete remediation and validation activities (via desk review) to address community integration. 75% complete	August 1, 2025	August 31, 2025
Complete remediation and validation activities (via desk review) to address community integration. 100% complete	September 1, 2025	October 15, 2025

¹ For all settings, the state will complete a total of 5,580 site specific assessments and provide 5,580 compliance determinations for all setting types. The number of settings that require remediation and validation will be determined after site specific assessments are completed. This includes for residential settings: 2,952 assisted living facilities; 224 adult family care homes; 1,833 group homes; 157 licensed foster homes; and 7 planned residential communities; and for non-residential settings: 406 adult day care centers. This is the data as of May 9, 2024, and is subject to change as providers enroll/disenroll from the Medicaid program.

Milestone	Begin Date	Completion Date
As applicable, furnish notices to providers to disenroll non-compliant settings and notify participants. 100% complete	May 1, 2025	November 15, 2025 ²
As applicable, complete provider disenrollment and relocate participants to compliant settings. 100% complete	June 1, 2025	December 31, 2025 ²
<i>I/DD Group Home Settings³</i>		
Assessment of all individuals in I/DD group home settings to determine if there is a requirement for restrictions on access to keys. 25 % complete	July 1, 2024	September 30, 2024
Assessment of all individuals in I/DD group home settings to determine if there is a requirement for restrictions on access to keys. 50 % complete	October 1, 2024	December 31, 2024
Assessment of all individuals in I/DD group home settings to determine if there is a requirement for restrictions on access to keys. 75 % complete	January 1, 2025	March 31, 2025
Assessment of all individuals in I/DD group home settings to determine if there is a requirement for restrictions on access to keys. 100 % complete	April 1, 2025	June 30, 2025
Update each person-centered service plan to reflect the assessment and determination for restrictions on access to keys. 25 % complete	July 1, 2024	September 30, 2024
Update each person-centered service plan to reflect the assessment and determination for restrictions on access to keys. 50 % complete	October 1, 2024	December 31, 2024
Update each person-centered service plan to reflect the assessment and determination for restrictions on access to keys. 75 % complete	January 1, 2025	March 31, 2025
Update each person-centered service plan to reflect the assessment and determination for restrictions on access to keys. 100 % complete	April 1, 2025	June 30, 2025
Provide keys to all individuals who were not assessed to require a restriction. 25 % complete	July 1, 2024	September 30, 2024
Provide keys to all individuals who were not assessed to require a restriction. 50 % complete	October 1, 2024	December 31, 2024
Provide keys to all individuals who were not assessed to require a restriction. 75 % complete	January 1, 2025	March 31, 2025

² The State anticipates all settings will be able to remediate any identified deficiencies during the supplemental assessment process. Should a setting be unwilling or unable to remediate deficiencies, notification and disenrollment will be a rolling process.

³ For I/DD residential settings, the state will update a total of 10,203 person-centered service plans to reflect the assessment of all individuals for access to keys. Completion of the milestones will align with the standard person-centered planning process occurring over the year and may not be strictly on a calendar-based cycle.

Milestone	Begin Date	Completion Date
Provide keys to all individuals who were not assessed to require a restriction. 100 % complete	April 1, 2025	June 30, 2025
<i>I/DD Planned Residential Community Settings⁴</i>		
Complete site-specific assessment (via onsite review) of Planned Residential Communities. 25%	December 12, 2022	December 31, 2023
Complete site-specific assessment (via onsite review) of Planned Residential Communities. 50%	December 12, 2022	December 31, 2023
Complete site-specific assessment (via onsite review) of Planned Residential Communities. 75%	December 12, 2022	December 31, 2023
Complete site-specific assessment (via onsite review) of Planned Residential Communities. 100%	December 12, 2022	December 31, 2024
Complete remediation and validation activities (via onsite and desk review) of Planned Residential Communities. 25% complete	December 12, 2022	December 31, 2023
Complete remediation and validation activities (via onsite and desk review) of Planned Residential Communities. 50% complete	December 12, 2022	December 31, 2023
Complete remediation and validation activities (via onsite and desk review) of Planned Residential Communities. 75% complete	December 12, 2022	December 31, 2023
Complete remediation and validation activities (via onsite and desk review) of Planned Residential Communities. 100% complete	December 12, 2022	January 31, 2025
Provide CMS with final compliance determinations for I/DD planned residential community settings.	January 1, 2024	February 28, 2025
As applicable, furnish notices to disenroll noncompliant settings and provide notice to participants. 100%	March 1, 2025	March 31, 2025
As applicable, complete disenrollment of providers and relocation of participants to compliant settings or secure alternative funding. 100% complete	April 1, 2025	June 30, 2025
<i>I/DD Foster Home Settings⁵</i>		

⁴ For planned residential community settings, the state will assess a total of 7 settings. The number of settings that require remediation will be determined after site specific assessments are completed. Validation of remediation will only occur if assessments by the state cannot be verified.

⁵ For foster home settings, the state will complete a total of 157 site specific assessments. Seventy-five percent of assessments were completed between January 1, 2016 and December 31, 2019. The number of settings that require remediation will be determined after site specific assessments are completed. Validation of remediation will only occur if assessments by the state cannot be verified.

Milestone	Begin Date	Completion Date
Complete site-specific assessment (via onsite review) of foster home settings. 100%	January 1, 2016	December 31, 2024
Complete remediation and validation activities (via onsite and desk review) of foster home settings. 100% complete	January 1, 2016	January 31, 2025
Provide CMS with final compliance determinations for I/DD foster home settings.	January 1, 2020	February 28, 2025
As applicable, furnish notices to disenroll noncompliant settings and provide notice to participants. 100%	March 1, 2025	March 31, 2025
As applicable, complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding. 100% complete	April 1, 2025	June 30, 2025
<i>Residential non-disability specific settings⁶</i> <i>Long Term Care</i>		
Complete remediation and validation activities (via desk review) to address access to services in residential non-disability specific settings. 25%	September 1, 2024	October 31, 2024
Complete remediation and validation activities (via desk review) to address access to services in residential non-disability specific settings. 50%	November 1, 2024	November 30, 2024
Complete remediation and validation activities (via desk review) to address access to services in residential non-disability specific settings. 75%	December 1, 2024	December 31, 2024
Complete remediation and validation activities (via desk review) to address access to services in residential non-disability specific settings. 100%	January 1, 2025	January 31, 2025
As applicable, furnish notices to disenroll noncompliant settings and provide notice to participants. 100%	October 1, 2024	February 28, 2025 ²
As applicable, complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding. 100% complete	November 1, 2024	March 31, 2025 ²
<i>Non-residential non-disability specific settings⁷</i> <i>Long Term Care</i>		
Complete remediation and validation activities (via desk review) to address access to services in non-residential non-disability specific settings. 25%	September 1, 2024	October 31, 2024

⁶ For residential non-disability specific settings, the state will complete remediation as required and necessary, and validation activities for 483 settings out of a total of 3,176 settings. This includes validation activities for 341 assisted living facilities and 142 adult family care homes.

⁷ For non-residential non-disability specific settings, the state will complete remediation as required and necessary, and validation activities for 198 settings out of a total of 406 settings.

Milestone	Begin Date	Completion Date
Complete remediation and validation activities (via desk review) to address access to services in non-residential non-disability specific settings. 50%	November 1, 2024	November 30, 2024
Complete remediation and validation activities (via desk review) to address access to services in non-residential non-disability specific settings. 75%	December 1, 2024	December 31, 2024
Complete remediation and validation activities (via desk review) to address access to services in non-residential non-disability specific settings. 100%	January 1, 2025	January 31, 2025
As applicable, furnish notices to disenroll noncompliant settings and provide notice to participants. 100%	October 1, 2024	February 28, 2025 ²
As applicable, complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding. 100% complete	November 1, 2024	March 31, 2025 ²
Heightened Scrutiny – Statewide Transition Period Activities		
Submit the list of settings identified during the statewide transition period by settings type and category of institutional presumption to CMS.	June 27, 2022	June 27, 2022
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	June 27, 2022	January 31, 2025
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	3 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, systemic findings related to processes for the development and ongoing monitoring of 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 12, 2022	April 30, 2025
Heightened Scrutiny – Prospective Activities		

Milestone	Begin Date	Completion Date
As applicable, complete public comment for presumptively institutional settings identified for heightened scrutiny by the state during the completion of assessment, remediation, and validation work.	July 1, 2024	August 31, 2025
As applicable, submit the list of settings identified by settings type and category of institutional presumption to CMS.	September 1, 2025	September 15, 2025
As applicable, 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
As applicable, 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	3 months post the date CMS issues findings to the state
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	The later of December 31, 2025 or, as applicable, 3 months post the date CMS issues prospective heightened scrutiny findings to the state