

The Kentucky Department for Medicaid Services (DMS) is working toward full compliance with the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) settings rule. In reviewing the state's progress, DMS has determined a corrective action plan is needed for the following waivers:

- Acquired Brain Injury (KY.0333)
- Acquired Brain Injury Long Term Care (KY.0477)
- Home and Community Based (KY.0144)
- Model II Waiver (KY.40146)
- Michelle P. Waiver (KY.0475)
- Supports for Community Living (KY.0314)

The CAP is needed to give the state additional time to update and strengthen Kentucky Administrative Regulations regarding the HCBS settings rule.

Kentucky uses a checklist to monitor provider compliance with the HCBS settings rule. Kentucky confirms the state has assessed all providers for compliance and provider-level remediation plans are in place and being monitored by the state where necessary. The HCBS settings compliance checklist is used during the initial provider certification and re-certification process, however, the state wants to strengthen HCBS settings requirements in the waiver specific KARs. This will give the state increased backing when bringing providers into compliance with the HCBS settings rule going forward. The state has experienced barriers when attempting to update regulations: A comprehensive waiver-redesign project, including needed KAR updates, was temporarily paused in February 2020 after a change in state administration. The federal public health emergency subsequently led to an extended pause on redesign activities while the state dealt with the impact of COVID-19 on 1915(c) HCBS waiver programs and focused on temporary waiver updates to support providers and participants.

- The implementation and ongoing management of federal PHE-related waiver updates prevented work on the waiver redesign and KAR update project from resuming until early 2022.

The state submitted heightened scrutiny packets for several providers but has not received a response from CMS. When submitted, these providers met the heightened scrutiny criteria based on location alone. Based on SMD#19-001 issued on March 22, 2019, the state believes these providers no longer meet the criteria and is awaiting CMS guidance. Kentucky is currently conducting a rate study for all 1915(c) HCBS waivers, which is expected to conclude in January 2023. The state intends to conduct a comprehensive update of all waiver-related KARs following the conclusion of the rate study, which will include adding regulatory requirements for HCBS settings. The state continues to monitor providers and offer technical assistance, however, stronger regulatory language is needed for future compliance monitoring and enforcement.