

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 29, 2023

Ryan Moran, Deputy Secretary and Medicaid Director
Maryland Department of Health
201 West Preston Street, Room 525
Baltimore, MD 21201

Dear Deputy Secretary Moran:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Maryland 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,

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

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 MARYLAND

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Home and Community-Based Options Waiver, MD.0265; and
- Waiver for Adults with Brain Injury, MD.40198.

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
Settings Remediation and Validation Activities for Residential Providers		
Complete desk audits to review provider records, participant satisfaction surveys, customer service questionnaires (CSQ), performance measures associated with the 1915(c) Waivers, participants’ plans of service, on-site or virtual site visits, and reportable events noting alleged or actual adverse incidents that occurred with participants to ascertain a site’s compliance with the final rule.	March 18, 2023	September 30, 2023
Issue a notice to suspend waiver participant admissions to the non-compliant setting for a 90-day period beginning October 1, 2023. Non-compliant settings will still be paid for existing waiver participants at their location. Providers that submit documentation to indicate their compliance with the final rule within the 90-day time period may have the suspension lifted. The notice will provide that failure to come into compliance by December 31, 2023 will result in a termination from the program once all Medicaid waiver participants are relocated to compliant settings.	October 1, 2023	December 31, 2023
Residential Provider Site Sanction Activities		
Issue to suspended providers who have remained non-compliant since March 17, 2023 a 30-day final warning notice on December 1, 2023. Non-compliant providers receiving this final warning remain in suspended status for waiver participant admissions. Supports Planners and Medicaid participants or their representatives will be notified that their current provider has received a final notice that they will be terminated due to non-compliance with the Final Rule. The notice will inform case managers, participants or their representatives that relocation efforts will commence on January 1, 2024 to move the participant to a compliant setting. The provider will be terminated once all participants have been relocated.	December 1, 2023	December 1, 2023
Terminate Medicaid residential provider sites that remain non-compliant after the final warning. Non-compliant residential providers are notified of their termination once all Medicaid waiver participants are relocated.	January 1, 2024	April 30, 2024

Milestone	Begin Date	Completion Date
Relocation of Medicaid waiver participants residing in non-compliant settings.	January 1, 2024	April 30, 2024
Heightened Scrutiny Activities		
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 April 30, 2024 or 3 months post the date CMS issues heightened scrutiny findings to the state