

**HCBS Settings Rule
Proposed Corrective Action Plan (CAP)
ID/DD Waiver MS.0282.R05.00**

HCBS Settings Final Rule criteria for which additional time is needed:

42 CFR 441.301(c)(5)(v)—State presentation of information to CMS that presumptively institutional settings have the qualities of home and community-based settings.

The Mississippi Division of Medicaid received notice from the Centers for Medicare and Medicaid Services (CMS) of final approval of the Statewide Transition Plan on July 11, 2022. The State outlined its efforts to bring Home and Community Based Services (HCBS) into full compliance prior to the March 17, 2023, transition period deadline. However, Mississippi submitted two (2) 1915(c) ID/DD Waiver Supervised Living settings for CMS Heightened Scrutiny review with the submission of the State Transition Plan. Both settings are fully certified by the Department of Mental Health (DMH) and in good standing. The settings completed the remediation process with DMH and were determined compliant with all HCBS requirements other than their location. The Supervised Living settings met the second prong of Heightened Scrutiny: one (1) was adjacent to a long-term care nursing facility and one (1) was adjacent to an ICF.

The Mississippi Division of Medicaid (DOM) received feedback from CMS on March 3, 2023, requesting additional information on the two ID/DD Waiver supervised living settings. If CMS determines the settings have not overcome institutional qualities, the State will need additional time to consult with each person and family, review all available options to ensure informed choice, and/or locate or certify another setting if necessary for all persons needing to be relocated. Since a final determination has not yet been confirmed, DOM and DMH are submitting this proposed Corrective Action Plan (CAP) at the suggestion of CMS to allow for additional time to reach a final determination. Once a final determination is made, the State respectfully requests a period not less than six (6) months from the date of the determination to take necessary and appropriate action.

The state's efforts to bring providers into compliance with the criteria, and the PHE-related impacts that created barriers to compliance:

The settings under Heightened Scrutiny review are as follows:

Proper I Supervised Living Home operated by Region IV Community Mental Health Center was located next door to a long-term care nursing facility at the time of the initial assessment, remediation, and validation. The provider and supervised living home have no affiliation with the nursing facility and are located in a residential neighborhood. Persons without disabilities reside beside, behind, and across the street from the home. The four-bedroom supervised living home is certified by the Department of Mental Health for four (4) persons. Currently, three (3) ID/DD Waiver recipients live in the home, each with their own private room. The home was initially assessed in person by an independent contractor on November 15, 2018. The assessment included review of the physical setting, interview with staff, and interviews with two (2) persons residing in the home. The State identified areas of noncompliance and the provider completed remediation. The validation on June 29, 2020 was conducted virtually due to Covid-19 Public Health Emergency (PHE). The validation included interviews with staff and a virtual tour of the home; reviewing person-centered plans – Plan of Services and Supports (PSS); and reviewing

provider policies and procedures, written lease agreements, monthly house meeting notes, staff and individual training records, grievance procedures, Individual Rights Forms, documentation persons were offered and/or received key(s) to their home and bedroom, choice of provider and services forms, pictures of the home and location, etc. Since the community had many closures in 2020 due to the pandemic and people were not accessing community activities to the extent they were doing so pre-pandemic, the State conducted a secondary on-site validation visit June 7, 2022. The on-site validation visit included a survey of the physical setting, review of Plan of Services and Supports and previous evidence submitted by the provider, and interview with staff and two persons receiving services in the home to confirm changes had been made and people were accessing community activities and resources per individual choice. Region IV reports the nursing facility closed in the fall of 2022 and the building is for sale. The State is gathering information to address questions from CMS and will submit further evidence by April 3, 2023.

First Avenue Home I operated by Millcreek is located adjacent to an Intermediate Care Facility (ICF) also owned and operated by Millcreek. The supervised living home is certified for five (5) persons and currently has five (5) individuals living in the home, each with a private room. The home is located across the street and two houses down from the main ICF campus. The home also has smaller ICF Group Homes on each side of the HCBS ID/DD Waiver home. Homes across the street are privately owned by people without disabilities. The ID/DD Waiver home operates independently from the ICF and does not share staff with the ICF except:

- Human Resources - provide criminal background checks for HCBS staff, and
- Business Office personnel - bill HCB services.

No staff from the ICF are in contact with people receiving Waiver services nor do Waiver recipients utilize any ICF facilities. Millcreek has separate community policies and procedures. The home was initially assessed by an independent contractor on February 17, 2018. The assessment included review of the physical setting, interview with staff, and interviews with two (2) persons residing in the home. The State identified areas of noncompliance and the provider completed remediation. The validation on June 29, 2020 was conducted virtually due to Covid-19 Public Health Emergency (PHE). The validation included interviews with staff and a virtual tour of the home; reviewing person-centered plans – Plan of Services and Supports (PSS); and reviewing provider policies and procedures, written lease agreements, staff and individual training records, annual training plans, orientation training checklist, grievance procedures, Individual Rights Forms, documentation persons were offered and/or received key(s) to their home and bedroom, choice of provider and services forms, Final Rule Handbook for Supervised Living, etc. Since the community had many closures in 2020 and people were not accessing community activities to the extent pre-Covid, the State conducted a secondary on-site validation visit June 29, 2022. The on-site validation visit included a survey of the physical setting, review of Plan of Services and Supports and previous evidence submitted by the provider, and interviews with staff and two persons receiving services in the home to confirm changes had been made and people were accessing community activities and resources per individual choice. The State is gathering information to address questions from CMS and will submit further evidence by April 3, 2023.

If CMS determines either setting cannot meet HCBS Final rule requirements, the State will need up to six (6) months post CMS determination to transition individuals from identified non-compliant settings as outlined in the milestones below.

Milestones/Timeline to Overcome Barriers:

Milestone	Begin Date	End Date
<p>The following two 1915c ID/DD Waiver Supervised Living Homes were submitted to CMS for Heightened Scrutiny Review based on their location:</p> <p>Proper I Supervised Living Home operated by Region IV Community Mental Health Center, located adjacent to a nursing facility</p> <p>First Avenue Home I Supervised Living Home operated by Millcreek, located adjacent to an Intermediate Care Facility (ICF)</p>	5/27/2022	
<p>Initial feedback received from CMS and additional evidence to be submitted to CMS for review; the State will address questions from CMS and provide additional evidence pending CMS formal response</p>	3/3/2023	4/3/2023* *additional time may be needed pending CMS formal response
<ul style="list-style-type: none"> • 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 and will implement the necessary remediation to achieve timely compliance • Meet with individuals located in non-compliant setting(s) and their guardian/family representative or other persons of choice to inform of CMS determination and to review alternative HCBS settings including non-disability specific settings; schedule and conduct Plan of Services and Supports (person-centered plan meeting); assist the person relocate to setting or services of choice • Terminate certification of setting(s) determined to be noncompliant with the HCBS Settings Rule 	Date CMS issues a determination and findings to the state	6 months post the date CMS issues a determination and findings to the state
<p>Final Compliance as a State with HCBS Settings Rule</p>		6 months post the date CMS issues a heightened scrutiny determination and findings to the state