

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

November 1, 2023

David Baden, Interim Director
Oregon Health Authority
500 Summer Street Northeast, E15
Salem, OR 97301-1097

Dear Interim Director Baden:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Oregon to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR §§441.301(c)(4)-(5), 441.530(a), and 441.710(a)(1). The CAP is effective March 17, 2023.

On September 18, 2023, the state requested a six month extension to complete the approved CAP in order to mitigate the heightened scrutiny site visit findings identified by CMS and to allow the state to make permanent changes that will strengthen training and oversight of all HCBS programs following the high provider turnover rate during the COVID-19 pandemic. The approved CAP is revised to amend the completion dates for milestones: 1.) address findings related to the CMS heightened scrutiny site visit, 2.) address heightened scrutiny findings related to CMS' heightened scrutiny review and 3.) final statewide compliance. CMS is accepting the state's request and granting an extension until June 30, 2024.

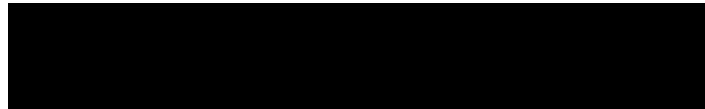
The CAP provides the state with additional time to bring settings into compliance with the regulatory criteria directly impacted by the COVID-19 public health emergency. For remaining HCBS settings regulations not subject to the CAP, the state and all settings are expected to be fully compliant by the 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 compliant with the federal HCBS regulations. If you have any questions concerning this information, please contact me at (410) 786-7561. You may also contact Carshena.Harvin@cms.hhs.gov or (206) 615-2400.

Sincerely,



George P. Failla, Jr., Director
Division of HCBS Operations & Oversight

Attachment

cc:

Curtis Cunningham, Director, Division of Long-Term Services and Supports (CMS)

Dana Hittle, OHA

Chris Pascual, OHA

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

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Aging and Physically Disabled Waiver, OR.0185;
- Children’s Home and Community-Based Services Waiver, OR.0117;
- Adults’ Home and Community-Based Services Waiver, OR.0375;
- Medically Involved Children’s Waiver, OR.0565;
- Medically Fragile (Hospital) Waiver, OR.40193; and
- Behavior (Intermediate Care Facilities/Intellectual Developmental Disabilities) Model Waiver, OR.40194.

1915(i) State Plan HCBS:

- Home and Community-Based Services State Plan Option

1915(k) Community First Choice:

- Community First Choice State Plan Option State Plan Amendment

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”).

The applicable regulatory criteria at 42 CFR §441.530(a) and §441.710(a)(1) are also subject to the CAP.

State milestones and timeframes under the CAP

Milestone	Begin Date	Completion Date
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	The later of June 30, 2024 or 3 months post the date CMS issues findings to the state
Heightened Scrutiny Site Visit		
Provide a written response to CMS Heightened Scrutiny visit report describing how the state will remediate findings and apply feedback to the state’s HCBS delivery system.	June 16, 2023	July 16, 2023
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, 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.	June 16, 2023	June 30, 2024

Milestone	Begin Date	Completion Date
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	The later of June 30, 2024 or 3 months post the date CMS issues heightened scrutiny findings to the state