

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

October 6, 2023

Emily Zalkovsky
Chief Medicaid and CHIP Services Officer
P.O. Box 13247
4601 W. Guadalupe St.
Austin, TX 78711-3247

Dear Director Zalkovsky:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Texas 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 Amanda Hill at Amanda.Hill@cms.hhs.gov or (410) 786-2457.

Sincerely,

Curtis Cunningham, 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 TEXAS

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Community Living Assistance and Support Services (CLASS) Waiver, TX. 0221;
- Deaf Blind with Multiple Disabilities (DBMD) Waiver, TX.0281;
- Home and Community-based Services (HCS) Waiver, TX. 0110; and
- Texas Home Living (TxHmL) Waiver, TX.0403.

1115 Demonstration Waiver:

- STAR+PLUS HCBS Demonstration, Project Number 11-W-00278/6.

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		
Complete the state’s final Statewide Transition Plan and receive approval from CMS.	December 21, 2022	July 20, 2023
Site-specific assessment, validation, and remediation for the CLASS Waiver non-residential settings (employment assistance, prevocational services, and supported employment)¹		
Identify non-residential settings that require initial assessment for compliance status.	July 1, 2023	December 31, 2023
Complete initial assessments of non-residential settings for compliance status. (25% complete)	January 1, 2024	February 15, 2024
Complete initial assessments of non-residential settings for compliance status. (50% complete)	February 16, 2024	March 31, 2024
Complete initial assessments of non-residential settings for compliance status. (75% complete)	April 1, 2024	June 15, 2024
Complete initial assessments of non-residential settings for compliance status. (100% complete)	June 16, 2024	September 1, 2024
Communicate non-compliance concerns to providers via electronic correspondence and state issued remediation action plans with remediation to be completed by providers within two weeks of notification but no later than the milestone completion date.	January 15, 2024	September 30, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (25% complete)	February 1, 2024	March 31, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (50% complete)	April 1, 2024	May 15, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (75% complete)	May 16, 2024	August 31, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (100% complete)	September 1, 2024	December 31, 2024

Milestone	Begin Date	Completion Date
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, phone call or an individual’s preferred communication strategy, if applicable. (25% complete)	April 1, 2024	May 15, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, phone call or an individual’s preferred communication strategy, if applicable. (50% complete)	May 16, 2024	August 31, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, phone call or an individual’s preferred communication strategy, if applicable. (75% complete)	September 1, 2024	January 3, 2025
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, phone call or an individual’s preferred communication strategy, if applicable. (100% complete)	January 4, 2025	January 31, 2025
Complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (25% complete)	May 1, 2024	June 15, 2024
Complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (50% complete)	June 16, 2024	September 30, 2024
Complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (75% complete)	October 1, 2024	February 3, 2025
Complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (100% complete)	February 4, 2025	March 31, 2025
Site-specific assessment, validation, and remediation for the HCS Waiver²		
<i>Residential Settings</i>		

Milestone	Begin Date	Completion Date
Complete remaining initial assessments of residential settings for compliance status. (50% complete)	February 1, 2023	March 31, 2023
Complete remaining initial assessments of residential settings for compliance status. (75% complete)	April 1, 2023	May 31, 2023
Complete remaining initial assessments of residential settings for compliance status. (100% complete)	June 1, 2023	July 1, 2023
Communicate non-compliance concerns to residential providers via electronic communication and state issued remediation action plans with remediation to be completed by residential providers within two weeks but no later than the milestone completion date.	September 26, 2022	August 31, 2023
Complete validation of the remediation for the remaining residential settings via desk review of evidence of completed remediation activities. (50% complete)	March 16, 2023	May 31, 2023
Complete validation of the remediation for the remaining residential settings via desk review of evidence of completed remediation activities. (75% complete)	June 1, 2023	July 31, 2023
Complete validation of the remediation for the remaining residential settings via desk review of evidence of completed remediation activities. (100% complete)	August 1, 2023	December 31, 2023
Furnish notices by electronic correspondence to disenroll non-compliant residential settings and provide notice to participants through written communication, a phone call or an individual’s preferred communication strategy, if applicable. (25% complete)	October 1, 2023	October 30, 2023
Furnish notices by electronic correspondence to disenroll non-compliant residential settings and provide notice to participants through written communication, a phone call or an individual’s preferred communication strategy, if applicable. (50% complete)	November 1, 2023	November 30, 2023
Furnish notices by electronic correspondence to disenroll non-compliant residential settings and provide notice to participants through written communication, a phone call or an individual’s preferred communication strategy, if applicable. (75% complete)	December 1, 2023	January 14, 2024

Milestone	Begin Date	Completion Date
Furnish notices by electronic correspondence to disenroll non-compliant residential settings and provide notice to participants through written communication, a phone call or an individual’s preferred communication strategy, if applicable. (100% complete)	January 15, 2024	February 29, 2024
Complete disenrollment of residential providers and relocation of participants to compliant residential HCB settings or secure alternative funding, if applicable. (25% complete)	November 1, 2023	December 31, 2023
Complete disenrollment of residential providers and relocation of participants to compliant residential HCB settings or secure alternative funding, if applicable. (50% complete)	January 1, 2024	February 29, 2024
Complete disenrollment of residential providers and relocation of participants to compliant residential HCB settings or secure alternative funding, if applicable. (75% complete)	March 1, 2024	April 30, 2024
Complete disenrollment of residential providers and relocation of participants to compliant residential HCB settings or secure alternative funding, if applicable. (100% complete)	May 1, 2024	September 1, 2024
Non-Residential Settings (employment assistance and supported employment)		
Identify non-residential settings that require initial assessment for compliance status.	July 1, 2023	December 31, 2023
Complete initial assessments of non-residential settings for compliance status. (25% complete)	January 1, 2024	February 15, 2024
Complete initial assessments of non-residential settings for compliance status. (50% complete)	February 16, 2024	March 31, 2024
Complete initial assessments of non-residential settings for compliance status. (75% complete)	April 1, 2024	June 15, 2024
Complete initial assessments of non-residential settings for compliance status. (100% complete)	June 16, 2024	September 1, 2024

Milestone	Begin Date	Completion Date
Communicate non-compliance concerns to non-residential providers via electronic communication and state issued remediation action plans with remediation to be completed by non-residential providers within two weeks but no later than the milestone completion date.	January 15, 2024	September 30, 2024
Complete validation of the remediation for non-residential settings via desk review of evidence of completed remediation activities. (25% complete)	February 1, 2024	March 31, 2024
Complete validation of the remediation for non-residential settings via desk review of evidence of completed remediation activities. (50% complete)	April 1, 2024	May 15, 2024
Complete validation of the remediation for non-residential settings via desk review of evidence of completed remediation activities. (75% complete)	May 16, 2024	August 31, 2024
Complete validation of the remediation for non-residential settings via desk review of evidence of completed remediation activities. (100% complete)	September 1, 2024	December 31, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (25% complete)	April 1, 2024	May 15, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (50% complete)	May 16, 2024	August 31, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (75% complete)	September 1, 2024	January 1, 2025
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (100% complete)	January 2, 2025	January 31, 2025

Milestone	Begin Date	Completion Date
Complete disenrollment of non-residential providers and relocation of participants to compliant non-residential HCB settings or secure alternative funding, if applicable. (25% complete)	May 1, 2024	June 15, 2024
Complete disenrollment of non-residential providers and relocation of participants to compliant non-residential HCB settings or secure alternative funding, if applicable. (50% complete)	June 16, 2024	September 30, 2024
Complete disenrollment of non-residential providers and relocation of participants to compliant non-residential HCB settings or secure alternative funding, if applicable. (75% complete)	October 1, 2024	February 1, 2025
Complete disenrollment of non-residential providers and relocation of participants to compliant non-residential HCB settings or secure alternative funding, if applicable. (100% complete)	February 2, 2025	March 31, 2025
Site-specific assessment, validation, and remediation for the TxHmL Waiver non-residential settings (employment assistance and supported employment)³		
Identify non-residential settings that require initial assessment for compliance status.	July 1, 2023	December 31, 2023
Complete initial assessments of non-residential settings for compliance status. (25% complete)	January 1, 2024	February 15, 2024
Complete initial assessments of non-residential settings for compliance status. (50% complete)	February 16, 2024	March 31, 2024
Complete initial assessments of non-residential settings for compliance status. (75% complete)	April 1, 2024	June 15, 2024
Complete initial assessments of non-residential settings for compliance status. (100% complete)	June 16, 2024	September 1, 2024
Communicate non-compliance concerns to non-residential providers via electronic communication and state issued remediation action plans with remediation to be completed by non-residential providers two weeks but no later than the milestone completion date.	January 15, 2024	September 30, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (25% complete)	February 1, 2024	March 31, 2024

Milestone	Begin Date	Completion Date
Complete validation of the remediation via desk review of evidence of completed remediation activities. (50% complete)	April 1, 2024	May 15, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (75% complete)	May 16, 2024	August 31, 2024
Complete validation of the remediation via desk review of evidence of completed remediation activities. (100% complete)	September 1, 2024	December 31, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (25% complete)	April 1, 2024	May 15, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (50% complete)	May 16, 2024	August 31, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (75% complete)	September 1, 2024	December 31, 2024
Furnish notices by electronic correspondence to disenroll non-compliant non-residential settings and provide notice to participants through written communication, a phone call or an individual's preferred communication strategy, if applicable. (100% complete)	January 1, 2025	January 15, 2025
Complete disenrollment of non-residential providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (25% complete)	May 1, 2024	June 15, 2024
Complete disenrollment of non-residential providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (50% complete)	June 16, 2024	September 30, 2024
Complete disenrollment of non-residential providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (75% complete)	October 1, 2024	January 31, 2025

Milestone	Begin Date	Completion Date
Complete disenrollment of non-residential providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable. (100% complete)	February 1, 2025	March 31, 2025
Site-specific assessment, validation, and remediation for the STAR+PLUS 1115 residential settings⁴		
Complete remaining validation of the remediation via desk review of evidence of completed remediation activities. (100% complete)	March 17, 2023	November 30, 2023
Furnish notices by electronic correspondence to disenroll non-compliant settings and provide notice to participants through written communication, a phone call or an individual’s preferred communication strategy, if applicable.	October 15, 2022	December 31, 2023
Complete disenrollment of providers and relocation of participants to compliant HCB settings or secure alternative funding, if applicable.	February 1, 2024	March 17, 2024
Individualized Skills and Socialization Settings Compliance in the DBMD, HCS, and TxHmL Waivers⁵		
Temporary licensure issued for the initial delivery of individualized skills and socialization.	January 1, 2023	August 31, 2023
HHSC validates provider compliance via on-site visit. (25% complete)	July 28, 2023	August 31, 2023
HHSC validates provider compliance via on-site visit. (50% complete)	September 1, 2023	September 30, 2023
HHSC validates provider compliance via on-site visit. (75% complete)	October 1, 2023	October 31, 2023
HHSC validates provider compliance via on-site visit. (100% complete)	November 1, 2023	November 30, 2023
Furnish notices by electronic correspondence to disenroll non-compliant settings and provide notice to participants through written communication, a phone call or an individual’s preferred communication strategy, if applicable.	October 1, 2023	January 31, 2024
Complete relocation of participants to compliant HCB settings or secure alternative funding, if applicable.	November 1, 2023	March 17, 2024

Milestone	Begin Date	Completion Date
Monitoring by HHSC of the providers’ progress via provider completion and submission of an attestation and community integration plan related to offsite services.	July 7, 2023	March 17, 2024
STP Addendum		
Aggregate validation data and compliance findings as an addendum to the state’s Statewide Transition Plan (STP) following validation of remediation.	July 21, 2023	January 31, 2025
Complete public comment period for aggregate validation data and compliance findings addendum.	February 15, 2025	March 16, 2025
Submit validation data results as an STP addendum to CMS.	March 17, 2025	April 15, 2025
Prospective Heightened Scrutiny Activities		
<i>Individualized Skills and Socialization (DBMD, HCS, TxHmL Waivers)</i>		
Complete public comment for presumptively institutional settings identified for heightened scrutiny by the state during the completion of initial compliance assessments and validation work.	December 1, 2023	December 31, 2023
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	January 1, 2024	January 31, 2024
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
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

Milestone	Begin Date	Completion Date
<i>Prevocational services (CLASS), supported employment, and employment assistance (DBMD, CLASS, HCS, and TxHmL)</i>		
Complete public comment for presumptively institutional settings identified for heightened scrutiny by the state during the completion of initial compliance assessments and validation work.	September 30, 2024	October 31, 2024
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	November 1, 2024	November 30, 2024
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
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	12 months post the date CMS issues findings to the state
Heightened Scrutiny Activities		
In relation to the sample of settings submitted to CMS on July 22, 2022: 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	12 months post the date CMS issues findings to the state
Heightened Scrutiny Site Visit		
Provide a written response to the CMS Heightened Scrutiny onsite visit report describing how the state will remediate findings and apply feedback to the state’s HCBS delivery system.	April 25, 2023	August 1, 2023

Milestone	Begin Date	Completion Date
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, remediation of the process for developing and implementing the person-centered service plan to include justification for modifications of additional conditions with required documentation, 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.	April 25, 2023	September 1, 2024 (with STAR+ PLUS person-centered planning by September 1, 2025)
Statewide Compliance		
Final compliance statewide with the HCBS settings rule.	—	The later of September 1, 2025 or twelve months post the date CMS issues heightened scrutiny findings to the state.

¹The state will complete up to 435 initial assessments based on individuals authorized for non-residential CLASS waiver settings between January 1, 2024 and September 1, 2024.

²The state will complete approximately 2,000 initial assessments for residential HCS waiver settings between March 18, 2023 and July 1, 2023 and up to 630 initial assessments for non-residential HCS waiver settings between January 1, 2024 and September 1, 2024.

³The state will complete up to 54 initial assessments for non-residential TxHmL waiver settings between January 1, 2024 and September 1, 2024.

⁴The state will complete approximately 15 desk reviews to validate remediation for the remaining STAR+PLUS 1115 settings by November 30, 2023.

⁵The state will complete approximately 700 onsite visits for Individualized Skills and Socialization settings in the DBMD, HCS, and TxHmL waivers between July 28, 2023 and November 30, 2023.