

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

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September 12, 2023

Jamie Kuhn, Medicaid Director  
Division of Medicaid Services  
Wisconsin Department of Health Services  
1 West Wilson Street, Room 350  
Madison, WI 53703

Dear Director Kuhn:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Wisconsin 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](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](mailto:ondrea.richardson@cms.hhs.gov) or 410-786-4606.

Sincerely,

Ryan Shannahan, Deputy 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 WISCONSIN**

**Medicaid authorities subject to the CAP**

**1915(c) HCBS Waivers:**

- Family Care Waiver, WI.0367; and
- Include, Respect, I Self-Direct Waiver, WI.0484.

**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
<b>Forthcoming Heightened Scrutiny Activities</b>		
Complete gathering information and evidence on settings requiring heightened scrutiny that were not included in the April 2021 submission to present to CMS.	December 6, 2022	March 31, 2024
Post the list of presumptively institutional settings requiring heightened scrutiny and information and evidence referenced above for public comment (post for 30 days total).	January 1, 2024	May 31, 2024
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	—	June 30, 2024
Complete beneficiary resolution if any heightened scrutiny settings are identified by the state to not overcome the institutional presumption. This includes completing the transition process for beneficiaries in non-compliant settings to compliant settings or locating alternative funding, if applicable.	December 6, 2022	July 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	The later of December 31, 2024 or 3 months post the date CMS issues findings to the state for the heightened scrutiny settings

<b>Current Heightened Scrutiny Activities</b>		
In relation to the sample of settings submitted to CMS on 4/02/2021: 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 December 31, 2024 or 6 months post the date CMS issues findings to the state
<b>Heightened Scrutiny Site Visit</b>		
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.	December 6, 2022	December 31, 2024
<b>Statewide Compliance</b>		
Final compliance statewide with HCBS settings rule.	—	The later of December 31, 2024, 3 months post the date CMS issues findings to the state for the forthcoming heightened scrutiny settings, or 6 months post the date CMS issues findings to the state for current heightened scrutiny activities.