

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Disabled & Elderly Health Programs Group

May 18, 2023

Julie Marquardt
Acting Assistant Commissioner for Health and Medicaid Director
Minnesota Department of Human Services
540 Cedar Street, PO Box 64983
St. Paul, MN 55167

Dear Acting Director Marquardt:

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

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Brain Injury, MN.4169;
- Community Alternative Care, MN.4128;
- Community Access for Disability Inclusion MN.0166;
- Developmental Disabilities MN.0061; and
- Elderly Waiver MN.0025.

Section 1115 demonstration:

- Project Number 11-W-00286/5.

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 |
|---|--|--|
| Heightened Scrutiny Activities | | |
| Address findings related to CMS’ heightened scrutiny review for Batches 1, 2 and 3, including, as applicable, remediation of all similarly situated settings that utilize a similar service delivery model and, as applicable, any overall assessment processes for 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 for each batch | 12 months post the date CMS issues findings to the state for each batch |
| Address findings related to CMS heightened scrutiny site visit, including needed remediation required to ensure compliance of the six settings visited, remediation of the process for developing and implementing the person-centered service plan, 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 Minnesota to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance. | December 6, 2022 | March 17, 2024 |
| Statewide Compliance | | |
| Final compliance statewide with HCBS settings rule. | — | 12 months post the final date CMS issues heightened scrutiny findings to the state for Batches 1, 2, and 3 |