

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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August 3, 2023

Maureen Corcoran, Director  
Ohio Department of Medicaid  
50 West Town Street, Suite 400  
Columbus, OH 43215

Dear Director Corcoran:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Ohio 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, Acting Director  
Division of Long-Term Services and Supports

Attachment

cc: Wendy Hill Petras, Acting Director, Division of HCBS Operations and Oversight,  
CMCS, CMS

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

**Medicaid authorities subject to the CAP**

**1915(c) HCBS Waivers:**

- Assisted Living, OH.0446;
- PASSPORT, OH.0198;
- MyCare Ohio, OH.1035;
- Ohio Home Care, OH.0337;
- Individual Options, OH.0231;
- Self-Empowered Life Funding, OH.0877; and
- Level One, OH.0380.

**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**

<b>Milestone</b>	<b>Begin Date</b>	<b>Completion Date</b>
<b>Site-Specific Remediation and Validation Activities: Nursing Facility Based Waiver Programs*</b>	-	-
<b><i>Validation and Oversight Activities</i></b>	-	-
Complete 25 percent in-person visits to non-compliant settings (adult day and assisted living) addressing outstanding remediation under a state-issued corrective action plan.	May 1, 2023	August 31, 2023
Complete 50 percent in-person visits to non-compliant settings (adult day and assisted living) addressing outstanding remediation under a state-issued corrective action plan.	September 1, 2023	November 30, 2023
Complete 75 percent in-person visits to non-compliant settings (adult day and assisted living) addressing outstanding remediation under a state-issued corrective action plan.	December 1, 2023	March 31, 2024
Complete 100 percent in-person visits to non-compliant settings (adult day and assisted living) addressing outstanding remediation under a state-issued corrective action plan.	April 1, 2024	June 30, 2024
In the event a setting that fails to demonstrate evidence of compliance or subsequently produce acceptable evidence of compliance the state will initiate and complete activities to decertify the setting.	January 1, 2024	September 30, 2024
<b><i>Notification and Transition Activities</i></b>	-	-
Complete 25 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	May 1, 2023	August 31, 2023

Milestone	Begin Date	Completion Date
Complete 50 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	September 1, 2023	November 30, 2023
Complete 75 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	December 1, 2023	March 31, 2024
Complete 100 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	April 1, 2024	June 30, 2024
Complete 100 percent of transitions to HCBS compliant service settings or issue appeal rights for residential settings or non-residential settings.	January 1, 2024	September 30, 2024
<b>Site-Specific Remediation and Validation Activities: Department of Developmental Disability Operated Waiver Programs**</b>	-	-
<b><i>Validation and Oversight Activities</i></b>	-	-
Complete 67 percent in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	January 1, 2021	June 30, 2023
Complete 73 percent in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	July 1, 2023	September 30, 2023
Complete 78 percent in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	October 1, 2023	December 31, 2023

<b>Milestone</b>	<b>Begin Date</b>	<b>Completion Date</b>
Complete 83 in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	January 1, 2024	March 31, 2024
Complete 88 percent in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	April 1, 2024	June 30, 2024
Complete 95 percent in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	July 1, 2024	September 30, 2024
Complete 100 percent in-person visits to provider owned and controlled settings (residential and nonresidential) addressing outstanding remediation under a state-issued corrective action plan.	October 1, 2024	November 30, 2024
In the event a setting fails to demonstrate evidence of compliance or subsequently produce acceptable evidence of compliance, the state will initiate and complete activities to decertify the setting.	October 1, 2023	March 31, 2025
<b><i>Notification and Transition Activities</i></b>	-	-
Complete 78 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	January 1, 2021	December 31, 2023
Complete 78 percent of transitions to HCBS compliant service settings or issue appeal rights for residential settings or non-residential settings.	January 1, 2021	March 31, 2024
Complete 83 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	January 1, 2024	March 31, 2024

<b>Milestone</b>	<b>Begin Date</b>	<b>Completion Date</b>
Complete 83 percent of transitions to HCBS compliant service settings or issue appeal rights for residential settings or non-residential settings.	April 1, 2024	June 30, 2024
Complete 88 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	April 1, 2024	June 30, 2024
Complete 88 percent of transitions to HCBS compliant service settings or issue appeal rights for residential settings or non-residential settings.	July 1, 2024	September 30, 2024
Complete 95 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	July 1, 2024	September 30, 2024
Complete 95 percent of transitions to HCBS compliant service settings or issue appeal rights for residential settings or non-residential settings.	October 1, 2024	December 31, 2024
Complete 100 percent notifications to members, guardians, case managers, facility support staff and any other identified responsible parties that the setting is not in compliance with HCBS settings requirements, and that resolution or alternate funding sources need to be considered.	October 1, 2024	December 31, 2024
Complete 100 percent of transitions to HCBS compliant service settings or issue appeal rights for residential settings or non-residential settings. Residential settings and Non-Residential Settings that fail to meet the HCBS setting requirements may be suspended, proposed revocation, or removal of licensure if the setting fails to meet HCBS standards.	January 1, 2025	March 31, 2025
<b>Heightened Scrutiny Activities</b>		

Milestone	Begin Date	Completion Date
Batch 1: 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.	March 29, 2022	February 29, 2024
Batch 2: 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	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 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 person-centered service plans, and application of site visit feedback to the overall assessment process of all providers of HCBS in Ohio to ensure that all providers are being assessed appropriately against the regulatory settings criteria.	November 9, 2022	February 29, 2024
<b>Statewide Compliance</b>	-	-
Final compliance statewide with HCBS settings rule.	—	The later of March 31, 2025 or 6 months post the date CMS issues heightened scrutiny findings to the state for Batch 2

\* Assisted Living, OH.0446; PASSPORT, OH.0198; MyCare Ohio, OH.1035; Ohio Home Care, OH.0337. The state will complete approximately 457 in-person visits between May 1, 2023 and June 30, 2024.

\*\* Individual Options, OH.0231; Self-Empowered Life Funding, OH.0877; Level One, OH.0380. The state completed approximately 2,500 validation



reviews by June 30, 2023 and will complete an additional 1,200 reviews by November 30, 2024.