

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

August 7, 2023

Robert Kerr, Director
South Carolina Department of Health and Human Services
PO Box 8206
Columbia, SC 29202

Dear Director Kerr:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of South Carolina 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, 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 SOUTH CAROLINA

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Community Supports Waiver, SC.0676;
- Head and Spinal Cord Injury Waiver, SC.0284; and
- Intellectually Disabled and Related Disabilities Waiver, SC.0237.

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
Assessment, Remediation, or Validation Activities		
SC.14.0 Completion of nonresidential provider remediation: 75%	January 1, 2023	September 15, 2023
SC.11.0 Completion of residential provider remediation: 100%	January 1, 2023	October 1, 2023
SC.15.0 Completion of nonresidential provider remediation: 100%	January 1, 2023	October 1, 2023
South Carolina Department of Health and Human Services (SCDHHS) staff will conduct randomly selected compliance and settings visits to review monitoring completed by the South Carolina Department of Disabilities and Special Needs (SCDDSN) and the Quality Improvement Organization (QIO) in response to deficiencies identified in the CMS heightened scrutiny visit report. These visits will supplement site visits conducted for ongoing monitoring and compliance.	August 1, 2023	October 1, 2023
SC.21.0 Complete notifying 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: 25%	January 1, 2023	November 1, 2023
SC.22.0 Complete notifying 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: 50%	January 1, 2023	November 8, 2023
SC.23.0 Complete notifying 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: 75%	January 1, 2023	November 15, 2023

Milestone	Begin Date	Completion Date
SC.24.0 Complete notifying 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: 100%	January 1, 2023	November 22, 2023
SC.25.0 If applicable, complete relocation of participants to compliant HCB settings or secure alternative funding: 25%	January 1, 2023	January 5, 2024
SC.26.0 If applicable, complete relocation of participants to compliant HCB settings or secure alternative funding: 50%	January 1, 2023	January 19, 2024
SC.27.0 If applicable, complete relocation of participants to compliant HCB settings or secure alternative funding: 75%	January 1, 2023	February 2, 2024
SC.28.0 If applicable, complete relocation of participants to compliant HCB settings or secure alternative funding: 100%	January 1, 2023	March 17, 2024
Heightened Scrutiny Activities		
Provide a written response to the CMS heightened scrutiny determination letter describing how the state will remediate findings and apply feedback to similarly situated settings.	July 19, 2022	July 21, 2023
Address heightened scrutiny findings related to CMS’ heightened scrutiny review for the 11 sampled settings 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.	July 19, 2022	March 17, 2024
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.	March 9, 2023	April 17, 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, 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.	March 9, 2023	March 17, 2024
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	March 17, 2024