

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

September 27, 2023

Jacey Cooper
Chief Deputy Director, Health Care Programs
California Department of Health Care Services
1501 Capitol Avenue, 6th Floor, MS 0000
Sacramento, CA 95814

Dear Deputy Director Cooper:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of California to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR §§441.301(c)(4)-(5) and 441.710(a)(1). 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,

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 CALIFORNIA

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Home and Community-Based Services Waiver for Californians with Developmental Disabilities, CA.0336;
- Home and Community-Based Alternatives Waiver, CA.0139; and
- Assisted Living Waiver, CA.0431.

1915(i) State Plan Benefit:

- Home and Community-Based Services State Plan Amendment, CA 21-0002.

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”).

The applicable regulatory criteria at 42 CFR §441.710(a)(1) are also subject to the CAP.

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.	February 23, 2018	June 30, 2023
Department of Health Care Services, Assisted Living Waiver and Home and Community-Based Alternatives Waiver, Site-specific Validation and Remediation Activities*		
Validate site-specific remediation via desk reviews and/or site visits. This step includes desk reviews of updated, state-issued Remediation Work Plans (RWPs) and supporting materials and/or site visits to confirm that all compliance issues have been resolved. (25% complete.)	September 1, 2022	July 1, 2023
Validate site-specific remediation via desk reviews and/or site visits. This step includes desk reviews of updated, state-issued Remediation Work Plans (RWPs) and supporting materials and/or site visits to confirm that all compliance issues have been resolved. (50% complete.)	July 2, 2023	October 1, 2023
Validate site-specific remediation via desk reviews and/or site visits. This step includes desk reviews of updated, state-issued Remediation Work Plans (RWPs) and supporting materials and/or site visits to confirm that all compliance issues have been resolved. (75% complete.)	October 2, 2023	January 1, 2024
Validate site-specific remediation via desk reviews and/or site visits. This step includes desk reviews of updated, state-issued Remediation Work Plans (RWPs) and supporting materials and/or site visits to confirm that all compliance issues have been resolved. (100% complete.)	January 2, 2024	March 31, 2024
Notification to providers of full compliance with all HCBS requirements.	February 1, 2023	April 30, 2024

Milestone	Begin Date	Completion Date
If applicable, provide notice to disenroll non-compliant settings unwilling to comply with remediation efforts and provide notice to participants.	February 1, 2023	June 30, 2024
If applicable, complete the disenrollment process for non-compliant providers and the transition process for individuals in non-compliant settings to compliant settings or locate alternative funding.	February 1, 2023	December 31, 2024
Department of Developmental Services, Home and Community-Based Services (HCBS) State Plan Amendment and HCBS Waiver for Californians with Developmental Disabilities, Site-specific Assessment, Validation, and Remediation Activities**		
Complete review of settings to determine level of compliance with settings criteria reflected in this CAP through site visit and/or desk review of remediation plans. (25% complete)	March 18, 2023	February 29, 2024
Complete review of settings to determine level of compliance with settings criteria reflected in this CAP through site visit and/or desk review of remediation plans. (50% complete)	March 18, 2023	April 30, 2024
Complete review of settings to determine level of compliance with settings criteria reflected in this CAP through site visit and/or desk review of remediation plans. (75% complete)	March 18, 2023	June 30, 2024
Complete review of settings to determine level of compliance with settings criteria reflected in this CAP through site visit and/or desk review of remediation plans. (100% complete)	March 18, 2023	August 31, 2024
Inform providers of necessary corrective actions required to be in compliance through state-issued written remediation plans.	March 18, 2023	September 13, 2024
Verify completion of necessary corrective actions required to be in compliance through site visit and/or review of evidence submitted. (25% complete.)	March 18, 2023	March 31, 2024
Verify completion of necessary corrective actions required to be in compliance through site visit and/or review of evidence submitted. (50% complete.)	March 18, 2023	May 31, 2024

Milestone	Begin Date	Completion Date
Verify completion of necessary corrective actions required to be in compliance through site visit and/or review of evidence submitted. (75% complete.)	March 18, 2023	July 31, 2024
Verify completion of necessary corrective actions required to be in compliance through site visit and/or review of evidence submitted. (100% complete.)	March 18, 2023	September 30, 2024
If applicable, provide notice to disenroll non-compliant settings unwilling to comply with remediation efforts and provide notice to participants.	April 1, 2024	October 31, 2024
If applicable, complete the disenrollment process for non-compliant providers and the transition process for individuals in non-compliant settings to compliant settings or locate alternative funding.	May 1, 2024	December 31, 2024
Heightened Scrutiny Activities		
Submit information to CMS on remaining 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 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.	August 15, 2023	September 29, 2023

Milestone	Begin Date	Completion Date
Address findings related to CMS heightened scrutiny site visit including, the state’s efforts in building capacity of non-disability specific settings, and 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, 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.	August 15, 2023	August 15, 2024
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	The later of December 31, 2024 or 12 months post the date CMS issues heightened scrutiny findings to the state

* The state will complete approximately 256 validation reviews between March 18, 2023 and March 31, 2024.

** The state will complete approximately 7,000 remediation plan reviews between March 18, 2023 and August 31, 2024.