

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 24, 2023

Tara LeBlanc, Medicaid Executive Director
Louisiana Department of Health
Bureau of Health Services Financing
628 North 4th Street
Baton Rouge, LA 70802

Dear Director LeBlanc:

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

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- New Opportunities Waiver, LA.0401;
- Children’s Choice Waiver, LA.0361;
- Supports Waiver, LA.0453; and
- Residential Options Waiver, LA.0472.

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
Site-Specific Remediation and Validation Activities		
Issued memo announcing the upcoming training to discuss the Corrective Action Plan.	May 9, 2023	May 9, 2023
Conduct training and provide direction for submitting a provider-level CAP to the settings that are not in compliance.	May 31, 2023	May 31, 2023
Distribute application, approve provider CAPs for the settings that are approvable and notify the setting.	June 1, 2023	July 31, 2023
Notify providers if their CAP is not approvable, and begin the disenrollment process.	June 1, 2023	August 30, 2023
Notify the individuals receiving services of the setting’s non-compliance and offer assistance in selecting a setting that has been determined as compliant with the HCBS Settings Rule.	June 1, 2023	September 30, 2023
Provide technical guidance, training, and support to settings approved for the CAP extension. Continue monitoring ongoing remediation efforts of the settings.	June 1, 2023	January 30, 2024
Continue efforts to increase workforce through partnerships with community partners.	March 17, 2023	December 31, 2024
Conduct final onsite validation visits for those settings with an approved CAP, but not under heightened scrutiny review.	February 1, 2024	July 31, 2024
Notify setting of compliance determination and proceed with disenrollment of the setting if failed to remediate the areas of noncompliance.	May 1, 2024	September 30, 2024
Notify the individuals receiving services of settings that failed to remediate and offer assistance in selecting a setting that has been determined as compliant with the HCBS Settings Rule.	June 1, 2024	October 31, 2024
Complete the transition of individuals to a compliant setting.	August 1, 2024	December 31, 2024
Heightened Scrutiny Activities		
Conduct onsite review and complete the Heightened Scrutiny Report that is to be posted for the presumptively institutional setting that is serving waiver beneficiaries.	July 1, 2023	August 1, 2023
Post the Heightened Scrutiny Report for public comment for 30 days.	August 1, 2023	September 30, 2023
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	October 1, 2023	November 30, 2023

Milestone	Begin Date	Completion Date
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	3 months post the date CMS issues findings to the state
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	The later of 12/31/2024 or 3 months post the date CMS issues findings to the state for the HS settings