

WA HCBS Settings Final Rule Proposed Corrective Action Plan (CAP)

Pursuant to CMS's May 24, 2022, announcement, Washington (the state) requests a one-year corrective action plan (CAP). The purpose of the proposed CAP is to ensure setting compliance that was evidenced prior to the COVID Public Health Emergency (PHE) continues to be evidenced after the PHE. Washington acknowledges that necessary restrictions imposed during the PHE, and the workforce crisis during and after the PHE, may have had some detrimental effects on compliance. Washington further acknowledges the fundamental rights and values protected by the HCBS Settings Final Rule. The proposed CAP is limited in scope to issues the state has identified in post compliance data.

HCBS Settings Final Rule criteria for which additional time is needed.

CMS's announcement indicates that "CMS will authorize CAPs to continue federal reimbursement of HCBS beyond the end of the transition period, if states need additional time to ensure full provider compliance with the regulatory criteria NOT included on slide 7. These include for example: – Access to the broader community; [and] – Opportunities for employment . . ."

WA has identified the following issues requiring extra time to ensure full provider compliance:

- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- Modifications must be supported by a specific assessed need and justified in the person-centered service plan.

Washington's efforts to date to fully ensure compliance with the HCBS settings rules:

The state has:

- Implemented needed revisions to state-level oversight mechanisms such as state code or regulations, licensure and certification standards, provider manuals, MCO contracts, etc.
- Conducted extensive outreach and training to providers and staff.
- Assessed all provider types of HCBS and ensured the completion of needed provider-level remediation to comply with all regulatory criteria of a home and community-based setting.
- Submitted all needed information to CMS for a heightened scrutiny review of presumptively institutional settings and received final CMS feedback on whether such settings overcome that presumption.

The PHE-related impacts that created barriers to compliance:

- Turnover of staff and direct care workers
- Workforce shortage for residential providers
- Restrictions imposed to keep participants safe during the PHE
- Flexibilities for Level of Care assessments over 12 months and telephonic assessments

- Training of staff was focused on infection control measures and proper donning and doffing of PPE

WA will use this year to:

- Train and retrain staff responsible for ensuring compliance.
- Review routine long-term care facility licensing inspection forms and add resident interview questions if any are missing.
- Review long-term care facility licensing requirements to identify requirements that could be amended for clarity.
- Review 2022 – 2023 consumer survey results to determine whether there are any changes to the results post the COVID-19 pandemic effects.
- Regularly communicate with HCBS participants about their preferences and experiences.
- Implement a new mandatory screen in the assessment platform to document settings modifications. This system enhancement will improve documentation clarity and compliance. Will release between March 1, 2023 and June 30, 2023