

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services 601
E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

September 13, 2024

Janet Mann, Medicaid Director
Division of Health and Medicaid Services
Arkansas Department of Human Services
112 West 8th Street, Slot S401
Little Rock, AR 72201

Dear State Medicaid Director Mann:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approval for a revised corrective action plan (CAP) for the State of Arkansas to bring the state's settings into compliance with the federal home and community- based services (HCBS) regulations found at 42 CFR §441.301(c)(4)-(5). The revised CAP was approved on September 13, 2024 and is effective as of March 17, 2023.

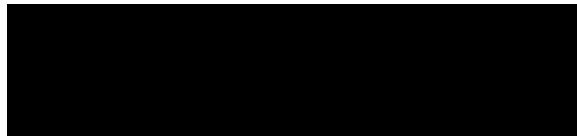
With this CAP, the state will be provided with additional time to bring settings into compliance with the regulatory criteria directly impacted by the COVID-19 public health emergency. For remaining HCBS settings regulations not subject to the CAP, the state and all settings were expected to be fully compliant by the end of the transition period on March 17, 2023. CMS is working with the state separately on compliance related to 42 CFR §441.301(c)(4)(vi)(A) and protections that address eviction processes and appeals.

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 working to ensure all settings are in compliance with the federal HCBS regulations. If you have questions concerning this information, please contact me at (206) 615-3814. You may also contact Lynn Ward at lynn.ward@cms.hhs.gov or at (214) 767-6327.

Sincerely,



Wendy Hill Petras, Deputy Director
Division of HCBS Operations and Oversight

Attachment

cc: Lynn Ward, CMS
Cynthia Nanes, CMS
Susie Cummins, CMS
George Failla, CMS
Ondrea Richardson, CMS
Amanda Hill, CMS
Michele Mackenzie, CMS
Curtis Cunningham, CMS
Melissa Weatherington, AR

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

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- ARChoices in Homecare Waiver, AR.0195;
- Living Choices Assisted Living Waiver, AR.0400; and
- Community and Employment Support Waiver, AR.0188.

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 assessment, validation, and remediation for ARChoices in Homecare Waiver and Living Choices Assisted Living Waiver (The AR Division of Provider Services and Quality Assurance)		
Validate provider self-assessments and notify non-compliant providers of the need for a state-issued corrective action plan (CAP).	May 1, 2023	May 15, 2023
Outreach to providers to provide assistance regarding policies and expectations related to compliance.	May 15, 2023	June 15, 2023

Milestone	Begin Date	Completion Date
HCBS Providers to submit CAPs to the state.	June 15, 2023	July 1, 2023
Complete monitoring visits to ensure providers have come into compliance.	July 1, 2023	November 1, 2023
Notify providers and individuals of continued non-compliance and begin the transition process to compliant settings or locating alternative funding.	November 2, 2023	December 31, 2023
Complete the transition process to compliant settings or locating alternative funding.	November 2, 2023	March 31, 2024
Site-specific assessment, validation, and remediation for the CES Waiver (The AR Division of Developmental Disabilities)		
As part of the work to assess and validate all CES waiver settings, develop random pull for on-site assessment of setting.	May 16, 2023	May 19, 2023
On-Site visits to identified providers.	June 5, 2023	September 5, 2023
Review documentation, generate findings, and send to providers with action steps including the opportunity to submit a state-issued CAP, as applicable. (On-going activity as reviews are completed.)	June 12, 2023	June 28, 2024
HCBS Providers to submit CAPs to the state.	September 12, 2023	June 28, 2024
Follow-up review of identified providers under a CAP for settings compliance.	October 16, 2023	June 28, 2024
Notify providers and individuals of continued non-compliance and begin the transition process to compliant settings or locating alternative funding.	November 16, 2023	December 31, 2023
Complete the transition process to compliant settings or locating alternative funding.	November 16, 2023	March 31, 2024
Heightened Scrutiny Activities		
Identify all presumptively institutional settings.		March 28, 2024
Post presumptively institutional settings for public comment.	July 1, 2024	July 31, 2024
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	August 6, 2024	August 6, 2024
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	August 29, 2024	August 30, 2024
Address heightened scrutiny findings related to CMS' heightened scrutiny	Date CMS issues	six months post the

Milestone	Begin Date	Completion Date
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.	findings to the state.	date CMS issues findings to the state.
Statewide Compliance		
Final compliance statewide with the HCBS settings rule.	<input type="checkbox"/>	The later of March 31, 2024 or 6 months post the date CMS issues heightened scrutiny findings to the state