

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

March 14, 2023

Adela Flores-Brennan
Medicaid Director
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Dear Director Flores-Brennan:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Colorado 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 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 (410) 786-2457 or Amanda.Hill@cms.hhs.gov.

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 COLORADO

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Brain Injury Waiver (BI), CO.0288.R06.00;
- Community Mental Health Supports Waiver (CMHS), CO.0268.R06.00;
- Complementary and Integrative Health Waiver (CIH), CO.0961.R02.12;
- Developmental Disabilities Waiver (DD), CO.0007.R08.17;
- Elderly, Blind, and Disabled Waiver (EBD), CO.0006.R09.00; and
- Supported Living Services Waiver (SLS), CO.0293.R05.18.

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
Validate site-specific remediation via desk reviews and/or site visits. This step includes desk reviews of updated provider transition plans (PTPs) and supporting materials and/or site visits to confirm that all compliance issues have been resolved.	April 8, 2016	September 14, 2023 for adult residential settings October 13, 2023 for non-residential settings
Provisionally notify providers that have settings (a) determined to be noncompliant or (b) put forward for heightened scrutiny and not yet approved as required, as well as individuals receiving services at these settings (as well as guardians and any other legally responsible parties) via case managers.	September 1, 2022	September 21, 2023 for adult residential settings October 20, 2023 for non-residential settings
Providers that disagree with the Department’s determination that their setting is (a) noncompliant or (b) still awaiting required heightened scrutiny approval may submit an informal request for reconsideration with the Department. Individuals receiving services at such settings, as well as other interested parties, may submit evidence relevant to a provider’s informal request for reconsideration.	September 14, 2022	September 21, 2023 for adult residential settings November 3, 2023 for non-residential settings
The Department will complete its reconsideration of any settings as to which providers have submitted timely and complete requests for reconsideration.	September 28, 2022	November 15, 2023 for adult residential settings December 15, 2023 for non-residential settings
Individual Transition Plan (ITP) will be implemented, such that individuals no longer receive Medicaid-funded services at settings that are (a) noncompliant or (b) still awaiting required heightened scrutiny approval.	December 1, 2022	Settings not subject to heightened scrutiny: March 15, 2024 Settings subject to heightened scrutiny: 12 months post the date CMS issues a heightened scrutiny determination and findings to the state
Heightened scrutiny packets with public comment response posted on website and submitted to CMS.	June 10, 2021	May 31, 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 and will implement the necessary remediation to achieve timely compliance.	Date CMS issues a determination and findings to the state	12 months post the date CMS issues a determination and findings to the state
Final Compliance as a State with HCBS Settings Rule	—	12 months post the date CMS issues a heightened scrutiny determination and findings to the state