

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

December 9, 2024

Meghan Groen, Senior Deputy Director
Behavioral and Physical Health and Aging Services Administration
Michigan Department of Health and Human Services
400 South Pine Street 7th Floor
Lansing, MI 48933-2250

Dear State Medicaid Director Groen:

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 Michigan 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 December 9, 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.

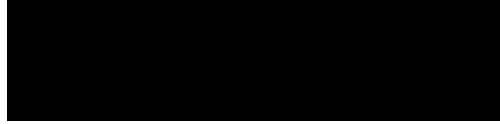
The state will report to CMS on progress with activities, milestones, and timeframes outlined in the attachment. Full compliance is achieved when all Medicaid-funded HCBS is rendered in a compliant setting. Closure of the CAP will be granted after the state completes the activities described in the attachment, 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.

State Medicaid Director Groen

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 (410) 786-7561. You may also contact Krystal Duffy at Krystal.Chatman@cms.hhs.gov or at (410) 786-5235.

Sincerely,



Division of HCBS Operations and Oversight

Attachment

cc: Cynthia Nanes, CMS
Susie Cummins, CMS
Wendy Hill Petras, CMS
Ondrea Richardson, CMS
Amanda Hill, CMS
Michele Mackenzie, CMS
Curtis Cunningham, CMS

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

Medicaid authorities subject to the CAP 1915(c) HCBS Waivers:

- Habilitation Supports Waiver, MI. 0167; and
- MI Choice Waiver, MI.0233.

1115 Demonstration:

- Behavioral Health Demonstration Project Number 11-W-00305/5.¹

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.

1

¹ Effective October 1, 2023 the settings currently included in the Behavioral Health Demonstration Project Number 11-W-00305/5 will transition to the 1915(i) authority under §1915(i) State Plan Amendment (SPA 22-0007). At that time, all references to the 1115 program therein will revert to the 1915(i) SPA.

State milestones and timeframes under the CAP

Milestone	Begin Date	Completion Date
Heightened Scrutiny Activities: MI Choice Waiver Settings		
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	6 months post the date CMS issues findings to the state
Heightened Scrutiny Activities: Habilitation Supports Waiver and Behavioral Health Demonstration Project Settings		
Submit the list of settings identified by settings type and category of institutional presumption to CMS.		6/26/2023
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	09/15/2023	11/29/2023
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.	09/11/2024	9/11/2025
CMS Onsite Visit		
Address findings related to CMS heightened scrutiny site visit including,	10/09/2024	04/11/2025

<p>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, remediation of the process for developing and implementing the person-centered service plan, 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.</p>		
<p>Statewide Compliance</p>		
<p>Final compliance statewide with HCBS settings rule.</p>		<p>9/11/2025</p>