

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Medicaid Benefits and Health Programs Group

September 28, 2023

Henry Lipman, Director
Division of Medicaid Services
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301

Dear Director Lipman:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of New Hampshire 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. 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 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 Ondrea Richardson at ondrea.richardson@cms.hhs.gov or 410-786-4606.

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 NEW HAMPSHIRE

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Developmental Disabilities, NH.0053;
- Acquired Brain Disorder, NH.4177; and
- Choices for Independence, NH.0060.

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
Assessment, Remediation, or Validation Activities		
Developmental Disabilities (DD) and Acquired Brain Disorder (ABD) Waivers*		
Finalize amendment of state administrative rule He-M 310.	November 1, 2022	June 22, 2023
Reassess and validate settings for full compliance with state administrative rule He-M 310, as amended.	August 1, 2023	November 30, 2023
Update Individual Rights booklet to reflect amendment of He-M 310 and complete distribution to waiver participants and, as applicable, their guardians.	July 1, 2023	December 31, 2023
Issue state-based corrective action plans for settings not in full compliance with the settings criteria included in this CAP under administrative rule He-M 310, as amended.	October 1, 2023	December 31, 2023
Complete validation reviews for settings under a state-issued corrective action plan to confirm the settings are in full compliance.	November 1, 2023	January 31, 2024
As applicable, complete disenrollment notifications to providers not in full compliance with administrative rule He-M 310, as amended.	November 15, 2023	February 15, 2024
As applicable, complete relocation notifications to waiver participants and, as applicable, their guardians, for participants receiving services from non-compliant providers.	November 15, 2023	February 15, 2024
Complete disenrollment of providers and relocation of individuals to HCBS compliant settings, as needed.	December 15, 2023	May 31, 2024
Choices for Independence (CFI) Waiver**		
Finalize He-E 310 Rights of Persons Receiving Choice for Independence Home and Community based Care and Nursing Facility Care to codify all HCBS settings criteria.	December 2, 2022	January 19, 2024
Update of Administrative Rule He-P 805, Supported Residential Health Care Facility Licensing Rules to allow Choices for Independence residents to have visitors at any time.	May 1, 2023	February 1, 2024

Milestone	Begin Date	Completion Date
Update Individual Rights booklet to reflect final and updated administrative codes and distribute to waiver participants and, as applicable, their guardians.	February 1, 2024	March 17, 2024
Perform reassessments via onsite visits of presumptively institutional settings for full compliance with administrative rules He-E 310 and He-P 805, as amended.	February 1, 2024	April 30, 2024
As applicable, complete disenrollment and participation relocation notifications to providers not in full compliance with administrative rules He-E 310 and He-P 805, as amended.	February 15, 2024	May 15, 2024
As applicable, complete disenrollment of providers and relocation of individuals to HCBS compliant settings.	April 1, 2024	July 31, 2024
Heightened Scrutiny Activities		
Complete remediation of presumptively institutional setting in accordance with He-M 310, as amended, and the CMS determination letter dated April 10, 2019.	April 10, 2019	January 31, 2024
Prospective Heightened Scrutiny Activities		
Conduct public comment on presumptively institutional settings, including the assessment and validation results including remediation plans for settings that are not compliant.	May 1, 2024	June 15, 2024
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	July 1, 2024	July 15, 2024
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	Date CMS pulls the appropriate list of settings and sends the list of settings to the state	Within 30 days of receipt of the listing from CMS

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 July 31, 2024 or 3 months post the date CMS issues heightened scrutiny findings to the state

*The state will reassess 1,071 settings under the DD and ABD waivers between August 1, 2023 and November 30, 2023.

**The state will reassess 3 settings under the CFI waiver between February 1, 2024 and April 30, 2024.