

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

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May 11, 2023

Jennifer Strohecker  
Director  
Utah Division of Medicaid and Health Financing  
Department of Health  
PO Box 143101  
Salt Lake City, UT 84101

Dear Director Strohecker:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Utah 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 approved CAP is revised to amend the completion date for the first milestone to validate site-specific remediation. The effective date for the CAP is 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.

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](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 [Amanda.Hill@cms.hhs.gov](mailto:Amanda.Hill@cms.hhs.gov) or (410) 786-2457.

Sincerely,

Melissa Harris, Deputy Director

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 UTAH**

**Medicaid authorities subject to the CAP**

**1915(c) HCBS Waivers:**

- New Choice Waiver (NCW), UT.0439;
- Community Support Waiver (CSW), UT.0158; and
- Acquired Brain Injury (ABI), UT.0292.

**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**

<b>Milestone</b>	<b>Begin Date</b>	<b>Completion Date</b>
<b>Site-Specific Validation Activities</b>	-	-
Validate site-specific remediation for presumptively institutional settings compliance; final date for settings under site-specific remediation to be compliant with HCBS Settings Rule.	December 1, 2022	June 17, 2023
As applicable, notify settings undergoing site-specific remediation that did not submit a rebuttal or were not successful in their rebuttal, and individuals receiving services at these settings, that the settings were determined to be non-compliant.	May 17, 2023	July 17, 2023
As applicable, disenroll non-compliant settings and relocate individuals to a compliant setting.	May 17, 2023	September 30, 2023
<b>Heightened Scrutiny Activities</b>	-	-
For the list of presumptively institutional settings received by CMS on March 17, 2023 (Batch 1), 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
As applicable, post for public comment any remaining presumptively institutional settings that were successful in their rebuttal (Batch 2).	May 17, 2023	June 30, 2023
As applicable, for Batch 2 (presumptively institutional settings that were successful in their rebuttal), submit the list of settings identified by type and category of institutional presumption to CMS.	July 1, 2023	July 31, 2023
As applicable, for the Batch 2 (presumptively institutional settings that were successful in their rebuttal), 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
Address findings related to CMS’ heightened scrutiny review for Batch 1 and 2, as applicable, including, as applicable, remediation of all similarly situated	Date CMS issues findings to the	12 months post the date CMS

<b>Milestone</b>	<b>Begin Date</b>	<b>Completion Date</b>
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.	state for each batch, as applicable	issues findings to the state, for each batch, as applicable
<b>Statewide Compliance</b>	-	-
Final compliance statewide with HCBS settings rule.	—	12 months post the later of the two dates, as applicable, CMS issues heightened scrutiny findings to the state