

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 15, 2023

Mike Randol, Medicaid Director
Montana Department of Public Health and Human Services
PO Box 4210
Helena, MT 59604

Dear Director Randol:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Montana 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.

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 Amanda.Hill@cms.hhs.gov or (410) 786-2457.

Sincerely,

Ryan I.

Shannahan -S

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I. Shannahan -S
Date: 2023.09.15
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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 MONTANA

Medicaid authorities subject to the CAP

1915(c) HCBS Waivers:

- Big Sky Waiver, MT.0148;
- Developmental Disabilities Comprehensive Waiver, MT.0208; and
- Behavioral Health Severe Disabling Mental Illness Waiver, MT.0455.

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
Administrative Activities		
Modification to all applicable state rules and regulations, including provider manuals, inspection manuals, and procedures.	September 1, 2022	February 28, 2024
Site-Specific Remediation Activities		
Identify the number of providers who did not complete their remediation plans by March 17, 2023.	March 17, 2023	March 31, 2023
Review and approve provider prepared corrective action plan.	March 31, 2023	April 30, 2023
100% of state-issued provider corrective action plans complete.	April 30, 2023	October 30, 2023
100% of providers with completed state level corrective action plans will be re-assessed and revalidated.	April 30, 2023	November 30, 2023
If applicable, furnish notices to disenroll non-compliant settings and provide notice to participants.	April 30, 2023	December 31, 2023
If applicable, complete provider disenrollment and relocation of participants to compliant HCB settings or secure alternative funding.	April 30, 2023	March 31, 2024
Heightened Scrutiny Activities		
Post for public comment presumptively institutional settings.	September 1, 2023	September 30, 2023
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	November 1, 2023	November 15, 2023
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.	6 months post the date CMS issues findings to the state.
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	The later of March 31, 2024 or 6 months post the date CMS issues heightened scrutiny findings to the state