

# Home and Community Based Settings Rule

## Corrective Action Plan 2022



### **CMS Determination:**

The Centers for Medicare and Medicaid Services (CMS) understands that the pandemic has impeded state progress in assessing and bringing their Home and Community Based Services (HCBS) systems fully into compliance with the final HCBS Settings Rule. It is also understood that there are significant aspects of the settings criteria unrelated to pandemic disruptions that should be in place by now but are inconsistently implemented throughout the country.

In conversations with states and other stakeholders, Utah Medicaid understands the reality of where settings are today, and hears the concerns that not every setting in the country will be fully compliant with all requirements of the Settings Rule by March 17, 2023.

Time-limited corrective action plans (CAPs) are available for states to authorize additional time to achieve full compliance with settings criteria that are directly impacted by public health emergency (PHE) disruptions, when states document the efforts to meet these requirements to the fullest extent possible, and are in compliance with all other settings criteria.

### **Introduction:**

The state of Utah is committed to coming into full compliance with the HCBS Settings Rule criteria. It is also understood that the PHE has created challenges for some providers and settings to come into compliance with certain areas of the regulation.

As such, we would like to request a Corrective Action Plan (CAP) to extend the transition deadline and provide additional flexibility for providers and the state to fully comply.

## **Corrective Action Plan**

<b>Overview</b>
<b>HCBS Settings Rule Criteria Affected</b>
PHE workforce challenges resulting in any of the following: <ul style="list-style-type: none"><li>• Access to the broader community</li><li>• Opportunity for employment</li><li>• Option for a private unit and/or choice of a roommate</li><li>• Choice of non-disability specific settings</li></ul>
<b>HCBS Medicaid Waivers the CAP Affected</b>

- New Choices Waiver (NCW)
- Community Supports Waiver (CSW)
- Acquired Brain Injury (ABI)
- Aging Waiver (AW)

### Goal

The state will be compliant with all areas of the HCBS Settings Rule criteria, including those affected by the PHE, by July 31, 2023. An application process will be implemented for providers/settings requiring a CAP extension. Settings unable to demonstrate compliance by this date, will be disenrolled as an HCBS Waiver provider and individuals will be transferred to a compliant setting.

### Approach and Implementation

One of the significant barriers providers have expressed is the ability to hire and retain staff. Although this has been an ongoing concern within the waivers, it was made worse by the pandemic. The CSW, CTW, and ABI waivers received a contracted rate increase to address Direct Support Professional (DSP) wages that went into effect April 1, 2022. Some providers have been able to recover quicker than others with this increase. Additional time to hire, train, and increase their workforce is still needed for some settings.

Providers have also expressed difficulty in effectively integrating the community. For some providers it's due to PHE related staffing issues. For other providers, it's related to the fears and/or preferences of individuals due to the PHE. The state will continue to provide technical support to providers through the following avenues:

- Individualized, at the setting level, as needed
- Guidance documents
- Outreach and training

Settings will be required to apply for a CAP. Settings will only be approved for a CAP through the application process, if they are fully compliant with all regulatory settings criteria that are not impacted by the COVID-19 PHE, including its exacerbation of the workforce shortage, by the end of the transition period.

As a state, one of the barriers has been the ability to validate compliance of settings. Often, when conducting validation visits, state staff are unable to validate the areas identified under the CAP, resulting in another remediation plan for the setting. All validation visits conducted during the PHE were done remotely to ensure the health and safety of all involved.

The state will conduct both remote (only if identified as best for that setting's individualized circumstance) and in-person validation visits to ensure CAP criteria is met.

The additional time permitted by the CAP will allow for more in-person validation visits. In-person validation visits provide a higher level of quality assurance activities.

### **Stakeholder Feedback**

Stakeholders may give ongoing feedback on a setting's compliance status through any of the following methods:

- Through the state's HCBS Settings Transition [website](#) where the following [link](#) may be used to supply information on specific settings believed to have issues demonstrating compliance with the HCBS Settings Rule.
- Feedback, general questions, a request for technical assistance, or any other inquiries can also be submitted through an email that is HCBS Settings specific at [HCBSSettings@utah.gov](mailto:HCBSSettings@utah.gov).

All setting specific feedback will be added to provider remediation plans and providers will be given the opportunity to rectify any discrepancies. Non-setting specific feedback will be used to inform the state's training, capacity building, and technical assistance focus.

### **Timeline**

October 2022: Present CAP and application process to Settings Stakeholder Workgroup

November 2022 - December 2022: Distribute application and approve provider CAPs

December, 2022 - June 17, 2023: Provide support to settings approved a CAP extension

December, 2022 - July 17, 2023: Validate settings compliance

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June 17, 2023: Final date for settings to be compliant with HCBS Settings Rule

July 31, 2023: Final compliance as a state with HCBS Settings Rule