

## **CMS Determination:**

CMS understands that the pandemic has impeded state progress in assessing and bringing HCBS systems into full compliance with the HCBS settings final 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, we understand the reality of where we are today and hear 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 to 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 Home and Community Based Services (HCBS) Settings Rule criteria. It is also understood that the (PHE) has created challenges for some providers and settings for coming into compliance with certain areas of the regulation.

As such, we would like to request a Corrective Action Plan (CAP) to extend our transition deadline and provide additional flexibility for our providers and the State to come into full compliance.

## **Corrective Action Plan**

Overview
<b>HCBS Settings Rule Criteria Affected</b>
<p>PHE workforce challenges resulting in any of the following:</p> <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>

## HCBS Medicaid Waivers the CAP Affected

- New Choices Waiver (NCW)
- Community Supports Waiver (CSW)
- Community Transition Waiver (CTW)
- Acquired Brain Injury (ABI)

## 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.

Another barrier providers have expressed is the ability to effectively integrate into the community. For some providers it has been due to PHE related staffing issues. For other providers it has been 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

As a State, one of the barriers has been the ability to validate compliance for 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

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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.

## Timeline

September 2022 - Present CAP and application process to Settings Stakeholder Workgroup

October - 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

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