

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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March 17, 2023

Adaline Strumolo  
Deputy Commissioner  
Department of Vermont Health Access  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010

Dear Commissioner Strumolo:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Vermont to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR §§ 441.301(c)(4)-(5) and 441.710(a)(1). 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](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](mailto: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 VERMONT**

**Medicaid authorities subject to the CAP**

**Section 1115 demonstration:** Project Number 11-W-00194/1.

**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”).

The applicable regulatory criteria at 42 CFR §441.710(a)(1) are also subject to the CAP.

**State milestones and timeframes under the CAP**

Milestone	Begin Date	Completion Date
<ul style="list-style-type: none"> <li>• Survey Brain Injury Program (BIP) providers and participants</li> <li>• Review Workforce Report recommendations and identify feasible actions</li> <li>• Identify or develop training opportunities for direct support professionals and independent direct support workers</li> <li>• Codify Employment Best Practice Guidelines</li> <li>• Release provider grant opportunities (first round bonuses and premium pay payments made in CY22)</li> <li>• Launch of training platform for independent employers/employees; explore mechanism for incentivizing training</li> <li>• Develop and release a Request for Proposals for at least 3 pilot planning grants for housing options/alternatives for people with developmental disabilities.</li> <li>• Solicit input and provide information to stakeholders and providers regarding the CAP and related opportunities</li> </ul>	<p>January 1, 2023</p>	<p>March 31, 2023</p>
<ul style="list-style-type: none"> <li>• Analyze BIP provider/participant survey results and identify feasible actions</li> <li>• Identify funding sources to implement workforce report actions</li> <li>• Monitor progress of provider grants</li> <li>• Implement mechanism for training for direct support professionals and independent direct support workers</li> <li>• Implement incentive mechanism for independent employer/employee training</li> <li>• Award pilot planning grants for housing options/alternatives for people with developmental disabilities</li> <li>• Coordinate with DAIL Business Office to explore ability to increase growth and investment in Supported Employment programs at the provider agencies through the “Employment Base” in DS HCBS funding for SFY2024</li> </ul>	<p>April 1, 2023</p>	<p>June 30, 2023</p>

Milestone	Begin Date	Completion Date
Address findings related to CMS heightened scrutiny site visit including needed remediation required to ensure compliance of Heartbeat Lifesharing with the settings criteria at 42 CFR § 441.301(c)(4) and remediation of all similarly situated settings that utilize a similar service delivery model, and application of site visit feedback to the overall assessment process of all providers of HCBS and the case management system in Vermont to ensure that all providers are being assessed appropriately against the regulatory settings criteria and will implement the necessary remediation to achieve timely compliance.	November 9, 2022	September 17, 2023
<ul style="list-style-type: none"> <li>• Implement BIP provider/participant survey actions</li> <li>• Implement workforce report actions</li> <li>• Monitor uptake of training opportunities</li> <li>• Assess potential impact of training on staff retention</li> <li>• Monitor progress of provider grants</li> <li>• Review/evaluate usage and success of independent employer/employee training</li> <li>• Monitor progress of Developmental Disabilities Services housing pilot planning grants</li> </ul>	July 1, 2023	September 30, 2023
Final compliance statewide with HCBS settings rule.	—	December 31, 2023