

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

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June 16, 2023

Sarah Fertig, Medicaid Director  
Division of Health Care Finance  
Kansas Department of Health and Environment  
900 SW Jackson Avenue, Suite 900  
Topeka, KS 66612

Dear Director Fertig:

This letter and accompanying attachment represent the Centers for Medicare & Medicaid Services (CMS) approved corrective action plan (CAP) for the State of Kansas 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](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 L. Harris -S

Digitally signed by  
Melissa L. Harris -S  
Date: 2023.06.16  
10:14:44 -04'00'

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 KANSAS**

**Medicaid authorities subject to the CAP**

**1915(c) HCBS Waivers:**

- Intellectual/Developmental Disabilities Waiver, KS 0224;
- Physical Disability Waiver, KS 0304; and
- Home and Community Based Services for the Frail Elderly, KS 0303.

**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
<b>Heightened Scrutiny Activities</b>		
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	12 months post the date CMS issues findings to the state
<b>Heightened Scrutiny Site Visit</b>		
Provide a written response to CMS Heightened Scrutiny visit report describing how the state will remediate findings and apply feedback to the state’s HCBS delivery system.	May 16, 2023	June 23, 2023
Address findings related to CMS heightened scrutiny site visit including needed remediation required to ensure compliance of the settings visited, remediation of all similarly situated settings that utilize a similar service delivery model, remediation of the process for developing and implementing the person-centered service plan, and application of site visit feedback to the overall assessment process of all providers of HCBS in the state to ensure that all providers are being assessed appropriately against the regulatory settings criteria.	May 16, 2023	May 16, 2024
<b>Statewide Compliance</b>		
Final compliance statewide with HCBS settings rule.	—	12 months post the date CMS issues heightened scrutiny findings to the state



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Laura Howard, Secretary

Laura Kelly, Governor

Below is a comprehensive review of the remediation strategies the state of Kansas intends to implement in response to the site visit conducted by CMS from March 13 to 16, 2023. The aim of these strategies is to enhance the state’s HCBS settings and ensure they align with the standards set out in 42 CFR § 441.301(c)(4).

Remediation Strategy	Description
<p>Initiative: Charting the LifeCourse (CtLC)</p>	<p>Through the enhanced FMAP funds, the state will be utilizing just over \$2 million to contract with the University of Missouri-Kansas City’s (UMKC) Institute for Human Development in order to roll out the Charting the LifeCourse (CtLC) framework as the primary tool to be used for Person-Centered Service planning. CtLC is a highly individualized approach and encourages families and individuals to actively participate in planning their lives, rather than passively receiving services. It emphasizes a proactive, organized, and interactive process for achieving a fulfilling and productive life. Key components of the CtLC include:</p> <ol style="list-style-type: none"> <li>1. <b>Pathway to Life:</b> Plotting the roadmap for a good life, pinpointing what needs to be learned and accomplished, strategizing, and seeking essential supports and services.</li> <li>2. <b>Life Aspects:</b> CtLC encourages a holistic view, taking into account all life facets, including day-to-day living, safety, community involvement, social engagement, health, and self-advocacy.</li> <li>3. <b>Life Phases:</b> With CtLC, it's recognized that different life stages—from infancy to old age—bring unique needs, experiences, and decisions. Planning and getting ready for these transitions is crucial.</li> <li>4. <b>Combined Supports:</b> The CtLC concept encapsulates various supports, from informal ones like friendships and community resources, to more formal, financed supports.</li> <li>5. <b>Guiding Beliefs:</b> CtLC operates on principles valuing every person's right to live, love, work, have fun, and chase their dreams within their community, respecting individual freedom and encouraging community involvement.</li> <li>6. <b>Learning and Querying:</b> The CtLC framework also offers a way to document experiences and questions throughout life, turning them into valuable resources for future planning and decision-making.</li> </ol>

Remediation Strategy	Description
	<p>This will be a phased, multi-year effort, but will anchor person-centered processes into policy and will focus on person-centered planning competencies. The state will have work well underway by May 16, 2024.</p>
<p>Initiative: HCBS IDD Waiver Changes</p>	<p>The state’s Intellectual and/or Developmentally Disabled (IDD) Waiver will expire in 2024 and work has already begun on the its renewal. Over the course of the summer of 2023, the state will convene stakeholder groups to address the following topics:</p> <ol style="list-style-type: none"> <li>1. <b>Navigating Conflict of Interest</b> - The State must address the issue of case management and waiver assessments being conducted by the same service provider, as it's seen as a conflict of interest. A resolution is needed ahead of the 2024 IDD Waiver renewal.</li> <li>2. <b>Unbundling Day Services</b> - KDADS is tasked with separating services in the coding system to enhance clarity and transparency. For example, day supports and vocational training need distinct identification.</li> <li>3. <b>Unbundling Residential Services</b> - Similarly, KDADS needs to clearly distinguish services such as shared living, independent living, and group homes in the coding system.</li> <li>4. <b>Refining Ratio Billing</b> - The State's current ratio billing system requires revision for improved clarity and compliance with federal regulations.</li> <li>5. <b>Enhancing Supported Employment</b> - The State is considering how to bill at a competitive rate for supported employment services and to ensure these services are delivered in an integrated competitive setting. Efforts are already underway through the Employment First initiative.</li> <li>6. <b>Functional Assessment changes</b> - The State has agreed on a shift from the BASIS tool to the Medicaid Functional Eligibility Instrument (MFEI) assessment format. In this transition, an alternative method for determining funding levels for IDD waiver services, independent of the level of care assessment, must be established.</li> <li>7. <b>Assistive Technology</b> - The use of technology can enhance individuals' independence. KDADS is working on developing policies and standards to ensure that technology use is more person-centered. Current initiatives are collecting information on assistive technology usage.</li> </ol> <p>The state recognizes that the IDD waiver will not be approved by May 16, 2024. However, much of the stakeholder engagement and change management activities are actively underway or have already taken place.</p>

Remediation Strategy	Description
Initiative: InterRAI Tool	<p>It was noted by state staff during the site visit that the state’s Managed Care Organization, Aetna Better Health of Kansas, had a noticeably better-quality PCSP template than the other two MCOs. Aetna’s care planning tool is based on the InterRAI.</p> <p>KDADS currently has a licensing agreement with InterRAI. This agreement allows the state to use the InterRAI suite of valid and reliable instruments for functional eligibility purposes. A component of the licensing agreement states that if an InterRAI based screener is used all participants accepted into the program are required to receive the full InterRAI assessment tool, with the exception of NF residents who receive the MDS. To date, use of the full care planning in tools has not been fully implemented in Kansas.</p> <p>KanCare MCO representatives have previously indicated a need for 12-18 months to prepare for implementing the full care planning tools in Kansas, which is a reasonable timeline to support software development and system changes. The KanCare contracts include a clause that MCOs may be required to use assessment tools of the state’s choice, but the MCOs will not move forward with investing time or money into the new system until this directive is finalized with an implementation date.</p> <p>The state will move forward with selecting a MCO implementation date in order to comply with the InterRAI licensing agreement and to improve the overall person-centered planning process.</p>
Initiative: Participant Survey Questions	<p>KDADS has instructed the MCOs to survey persons served on their settings features to ensure they experience the core characteristics of HCBS in compliance with the Settings Rule. This survey will be required as part of the annual person-centered service planning meeting with all HCBS participants. The survey comprises of 10 questions for everyone regardless of services received, and an additional five residential related questions for those individuals who receive paid supports in a residential environment. The survey questions are as follows:</p> <ol style="list-style-type: none"> <li>1. I have access to food and can eat when I want.</li> <li>2. I can have people visit me when I want.</li> <li>3. I have the freedom to go wherever I want.</li> <li>4. I am in charge of my daily schedule to do what I want.</li> <li>5. I can participate in activities I enjoy outside of this building/location when I want.</li> <li>6. I can work in the community if I want.</li> <li>7. I can spend my money on what I want.</li> </ol>

Remediation Strategy	Description
	<p>8. I can lock up my personal items when I want.</p> <p>9. I am able to lock the restroom/bathroom door when I want.</p> <p>10. I am able to change my service provider when I want.</p> <p><b>[RESIDENTIAL SETTINGS]</b></p> <p>11. I can decorate my home how I want.</p> <p>12. I am able to lock my bedroom door when I want.</p> <p>13. I can physically access all parts of my home when I want.</p> <p>14. I have input on choosing my roommate.</p> <p>15. I have a rental agreement or rental lease where I live.</p> <p>The purpose of these survey questions is three-fold:</p> <ol style="list-style-type: none"> <li>1. Education and empowerment: not only for individuals receiving services, but their circles of support as well; the intent is for everyone to understand and feel engaged with the core elements the rule ensures.</li> <li>2. Data: allowing the state to track and trend progress over time and to identify areas that may need policy or training adjustments.</li> <li>3. Feedback: related to compliance concerns at the provider/setting level or other overall insights into service delivery.</li> </ol>
<p>Initiative: Settings Rule Grants</p>	<p>KDADS, through the enhanced FMAP funds, is set to launch an initiative in support of compliance with the HCBS Final Rule. The state has allocated \$5 million to assist providers in creating and maintaining settings that meet the standards established by the Rule. This initiative stems from the understanding that some providers find it challenging to meet the accessibility standards required by the Rule due to financial constraints. By providing these funds, the state hopes to eliminate the financial barriers providers face and to make it easier for them to improve and sustain their settings in line with the Rule's requirements.</p> <p>The distribution of these funds will be in the form of outcome-based grants. The goal of this approach is to ensure that the funds will result in tangible improvements that align with the Rule's assurances. Providers can apply for these</p>

Remediation Strategy	Description
	<p>grants, with the intent of using the funds specifically for remodeling their settings. The financial support will allow providers to make the necessary infrastructural changes to fully comply with the Settings Rule.</p> <p>Through this initiative, not only is the state facilitating provider compliance, but it is also furthering its commitment to provide high-quality, accessible services for those served on an HCBS waiver. It recognizes that the initial costs of renovation work can be high, but the long-term benefits of increased accessibility, improved care quality, and overall compliance with HCBS standards exceed the costs.</p> <p>This initiative represents a significant step forward in the state's ongoing efforts to ensure all providers can offer settings that are fully in line with the HCBS Final Rule. Ultimately, the goal is to support providers in creating environments that promote independence, choice, and inclusion for all participants.</p>
Ongoing: Internal review process	<p>KDADS has recently revamped the HCBS Program Integrity and Compliance (PIC) Unit, broadening its responsibility to include annual and ongoing monitoring of compliance with the HCBS Final Rule. This monitoring initiative is guided by the performance goals described in the Statewide Transition Plan.</p> <p>Previously, the PIC unit faced staffing shortages that limited its effectiveness. However, it is now fully staffed and equipped to oversee providers, analyze settings, and assess participant surveys. This enhanced oversight ensures that all aspects of the HCBS systems align with the components of the Settings Rule.</p> <p>The improved staffing situation is a significant step forward, as in the past, compliance was determined through a disjointed process involving outside entities. Many providers had been deemed compliant without a unified evaluation system. This situation created challenges in standardizing compliance and ensuring consistent adherence to the Rule.</p> <p>To further enhance the quality of the state's compliance monitoring, KDADS will institute additional internal quality assurance checks. The assessment will be conducted both through interviews and direct observation, allowing for more accurate and meaningful evaluation. The revamped evaluation process is now a comprehensive one, handled entirely by KDADS. This represents a shift from the previous fragmented approach.</p> <p>To ensure the effectiveness and consistency of this new process, state staff are now receiving thorough training. They are becoming well-versed in the requirements related to settings under the Final Rule. With this knowledge, they are able to align their activities to meet these requirements effectively. Open and clear communication across the team is a key component of this revamped process. Expectations are now applied evenly, fostering a sense of fairness and shared responsibility.</p>

<b>Remediation Strategy</b>	<b>Description</b>
	<p>Another important shift in the state’s approach is the increase in onsite visits. Previously, many of these visits were conducted virtually. Going forward, KDADS will conduct more in-person visits, allowing for hands-on evaluations. To ensure continuity and ongoing compliance, onsite visits of providers will be completed every two years.</p> <p>These enhancements to the HCBS PIC Unit will foster more rigorous, consistent, and comprehensive compliance monitoring, thereby better aligning our operations with the Final Rule's requirements.</p>
<p>Ongoing: Settings Rule Training</p>	<p>Kansas is bolstering provider support with comprehensive, ongoing training initiatives that are designed to address the key aspects of the Rule. This includes the mandatory use of KDADS-curated training materials, available on the KDADS website. Use of these approved trainings will be verified through interviews and onsite visits.</p> <p>To ensure ongoing learning and adherence to the Rule, KDADS will host quarterly in-person training sessions and will offer customized trainings as needed. Eventually, the training framework will be incorporated into the statewide Kansas TRAIN program, the state’s online learning management system.</p> <p>The training will encompass the five core characteristics of the Final Rule: Rights, Choice, Privacy, Autonomy, and Integration. These principles must be upheld by all providers serving individuals through HCBS, regardless of waiver program. The training will further emphasize the distinction between reverse integration and true community integration, stressing that the former alone does not satisfy the Rule's requirements.</p> <p>Furthermore, Kansas is launching learning collaboratives to facilitate community-based understanding of the fundamental concepts of the Final Rule, such as choice, autonomy, privacy, rights, integration, and inclusion. These collaborative sessions aim to transform the understanding of the Final Rule into an integral part of service providers' visions.</p>
<p>Policy: HCBS Settings Rule Ongoing Monitoring</p>	<p>KDADS is presently working on the expansion and refinement of the initial compliance review and ongoing monitoring system, which is designated as the HCBS Compliance Portal. As each aspect of this comprehensive system is achieved and finalized internally, it will be incorporated within a new policy. The policy serves as a detailed roadmap, providing precise instructions for providers on what steps they must take to achieve and maintain compliance. It outlines the compliance criteria for HCBS settings within Kansas and specifies the systematic procedures and processes for sustained monitoring of these settings to ensure ongoing adherence to the settings rule. The overall aim of this policy is to establish a robust, effective, and transparent monitoring system that encourages and ensures ongoing compliance with HCBS settings requirements. The Compliance Portal will be instrumental in safeguarding the rights and well-being of individuals receiving services, promoting their full inclusion and participation in the community, and ensuring the quality and efficacy of the services provided.</p>

Remediation Strategy	Description
	<p>The policy establishes the following provisions:</p> <p>Compliance Expectations: Defines the requirements that providers and settings where individuals participating in HCBS programs receive their services and supports, must meet. This includes, but is not limited to: ensuring that individuals' rights are respected, settings are integrated and support full access to the greater community, and individuals have a role in planning their services.</p> <p>Ongoing Monitoring Mechanisms: Details the processes and procedures by which the state will conduct regular monitoring activities to ensure continued compliance of HCBS settings. This includes periodic site visits, reviews of provider records and service plans, and obtaining feedback directly from individuals receiving services.</p>
<p>Policy: HCBS Use of Monitoring and/or Recording Technology</p>	<p>This policy will set forth the objectives and guidelines for the application of one-way video cameras, as well as other forms of monitoring and/or recording technology utilized in HCBS environments. The primary intention of utilizing these technologies is to support the health and safety of individuals, but must align with the Settings Final Rule and other state statutes. It is important to stress that the implementation of these technologies is only deemed appropriate when a clinical necessity exists.</p> <p>This policy also provides a comprehensive framework of the specific conditions under which the use of monitoring and/or recording technology is permissible. These technologies must not be employed as tools for staff convenience, general surveillance, or as preventative measures against abuse or neglect. Additionally, they should never be viewed as a substitute for maintaining a sufficient and competent staff team.</p> <p>All costs tied to the deployment and maintenance of these technologies will fall under the responsibility of the service provider. Additionally, it is crucial that all individuals present in the setting are informed about the presence and use of these technologies. This includes gathering informed consent from those individuals who are directly affected or interacted with by these technologies. Clear and conspicuous notifications about the active monitoring or recording should be displayed in pertinent areas of the setting.</p> <p>The policy highlights the balance between employing technology to ensure health and safety, and respecting the rights and privacy of individuals in HCBS settings. It underscores KDADS' commitment to create a respectful, safe, and inclusive environment for all individuals, ensuring that the application of technology serves to enhance, rather than infringe upon, the overall quality of their life and care.</p>
<p>Policy: Person-Centered Service Planning</p>	<p>KDADS is in the process of revising the Person-Centered Service Plan policies. The revision will include the implementation of a universal options counseling form and the inclusion of the participant survey questions noted in remediation strategy #4. Additionally, the policy will notate the Charting the LifeCourse framework as the</p>

Remediation Strategy	Description
	<p>recommended approach for person-centered planning until the full rollout noted in remediation strategy #1 is fully implemented.</p> <p>Generally, the policy aims are to provide a clearer understanding of the Person-Centered Service Plan requirements and the process of its creation. It functions as an implementation guide to help waiver participants under the 1915 (c) program know what to expect when developing and executing their plans. It will also serve as a reference, detailing relevant forms and documents that are included in the PCSP, and outlining requirements for quality assurance compliance with the waiver’s plan of care. Lastly, the policy acts as a procedural manual that provides timelines and identifies responsible parties for governing the Person-Centered Service Plan and its activities.</p> <p>This policy revision underscores KDADS's commitment to ensuring that all participants' services are tailored to their unique needs, preferences, and goals, emphasizing their right to direct their services and participate fully in their communities.</p>
<p>Policy: Restraints, Seclusions, Restrictive Interventions</p>	<p>KDADS will be implementing a Restraints, Seclusions and Restrictive Interventions policy with the aim to ensure that individuals are safeguarded from coercion and undue restraint. The policy will offer clear guidance regarding the use of such measures. This aim aligns with the settings regulations' emphasis on person-centered service planning and the importance of creating an environment that supports individual autonomy and freedom.</p> <p>The policy’s intent is to assure that any use of restrictive interventions, whether physical, mechanical, or chemical restraints, or even seclusion, is consistently applied and used solely as a last resort. Such measures should only be considered when an individual exhibits behavior that is dangerously self-destructive, violent, or that presents an imminent threat to the safety of themselves or others. The policy sets a rigorous standard, favoring the most stringent requirements, and as such will not only meet the regulatory guidelines but also ensure the safety and dignity of every individual receiving services.</p> <p>Additionally, the policy will seek to be proactive, providing explicit guidance and education to staff, so that the primary focus remains on preventative strategies and non-restrictive interventions. This approach includes robust training programs to equip staff with the skills to manage challenging behaviors effectively and appropriately. It will outline clear documentation and reporting protocols to ensure accountability and continuous learning. These measures, in turn, reinforce the state’s commitment to improve its practices and its dedication to ensuring the safety and wellbeing of all HCBS participants.</p>
<p>Policy: Virtual Delivery of Services</p>	<p>Throughout the pandemic, the state allowed some services to be delivered virtually as an Appendix K measure. The state presently has included virtual delivery of services in waiver amendments submitted to CMS. The state has</p>

<b>Remediation Strategy</b>	<b>Description</b>
	<p data-bbox="493 175 1984 246">begun creating a Virtual Delivery of Services policy to take effect by the end of the Appendix K transition period on November 11, 2023.</p> <p data-bbox="493 276 1984 506">Virtual service delivery is an approach that uses technology as an interactive conduit between service providers and recipients. It is defined by the use of a live real-time audio-visual connection, facilitating a two-way communication channel. This could be facilitated through various platforms such as Skype, Zoom, Facetime, or telephonic systems that support live two-way communication. The core aim of this service delivery model is to enhance participants' functional abilities, foster meaningful relationships, enrich interactions, and aid participants in gaining a deeper sense of community involvement.</p> <p data-bbox="493 535 1984 847">While virtual delivery of services serves as a practical and convenient method of service delivery, the state maintains that it's crucial for it to not become the sole means of interaction for participants and should not replace traditional, physical modes of interaction. Other community integration opportunities should be pursued in parallel through an array of other services that participants have access to. Additionally, beyond the functional and social benefits of this model, an integral component of this policy is a robust framework to safeguard the privacy and confidentiality of participants, including the option for participants to opt out of virtual service delivery at any point in time. As such, stringent measures will be put in place to protect personal data, ensure the security of digital interactions, and uphold the participants' rights to privacy.</p>