

Medicaid Home and Community-Based Services Settings Regulation: Fitting the Pieces Together

February 21, 2023

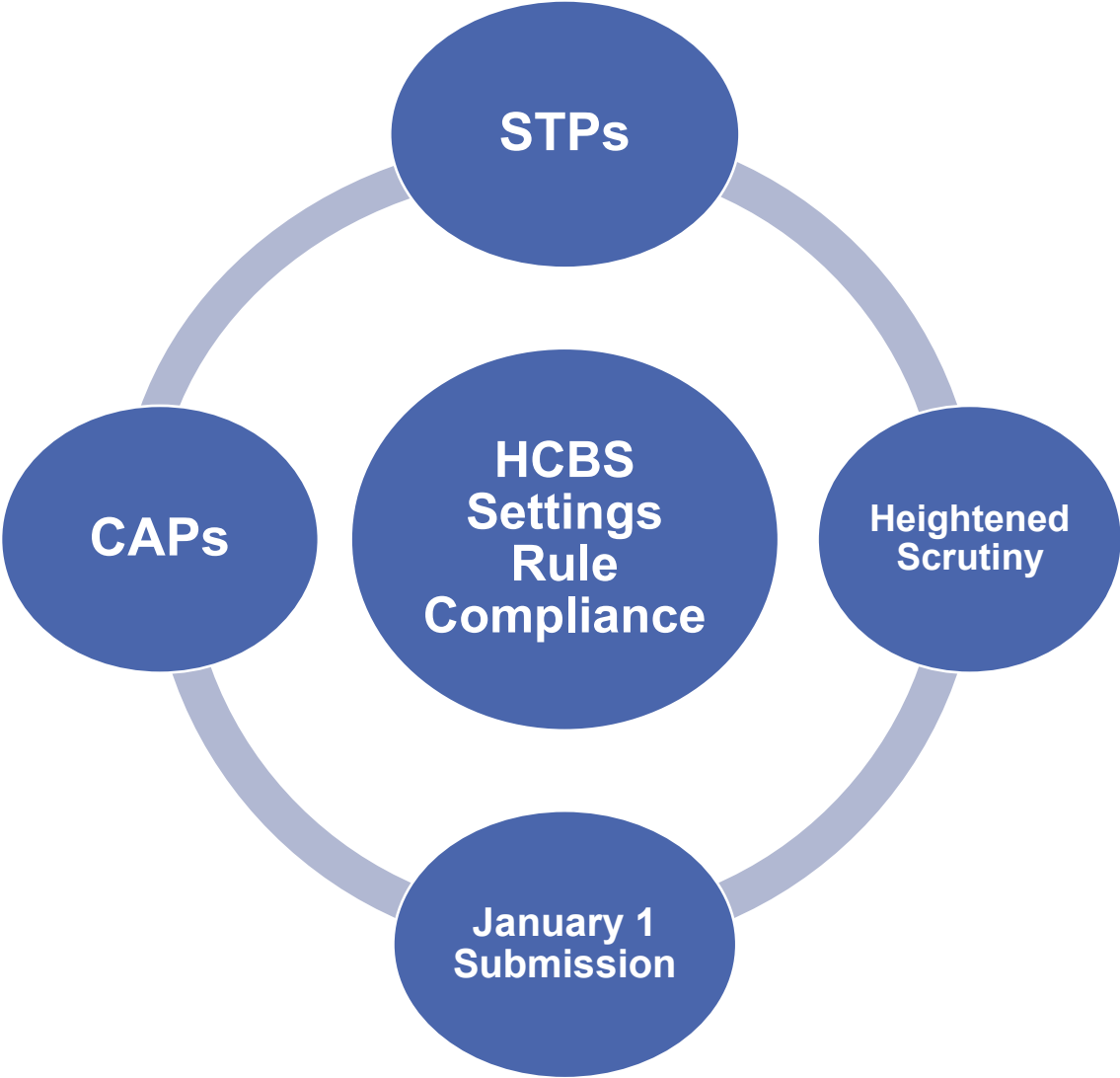
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Objectives

- Review the various activities states have undertaken to implement the Medicaid home and community-based services (HCBS) final settings rule
- Discuss the purpose, lifespan, and next steps regarding Medicaid HCBS settings rule implementation tools, including Statewide Transition Plans (STPs), Heightened Scrutiny, and Corrective Action Plans (CAPs)
- Identify Medicaid 1915(c) waiver and 1915(i) and 1915(k) state plan provisions for ongoing monitoring

HCBS Settings Rule Implementation Tools



Purpose, Lifespan, and Next Steps for HCBS Settings Rule Implementation Tools

Statewide Transition Plans

- **Purpose**

- Provide a roadmap of how a state will determine compliance with the HCBS settings regulatory criteria at both state and provider levels
- Includes actions, milestones, and associated timeframes

- **Lifespan**

- Approval dates are state-specific
- Automatically expires on March 17, 2023, the end of the regulation's transition period

- **What Comes Next?**

- States must either be in compliance with all regulatory settings criteria, or have requested a Corrective Action Plan from CMS

Heightened Scrutiny

- **Purpose**

- Provide an opportunity for presumptively institutional settings to continue receiving federal funding for HCBS, if the state and CMS affirm that the setting adheres to all regulatory settings criteria

- **Lifespan**

- CMS confirmation that the setting overcomes its institutional presumption stands. If the state receives information that a provider has altered its operations to no longer comply with regulatory criteria, or there is a need to assess a newly constructed presumptively institutional setting in the state, the state may contact CMS to determine next steps

- **What Comes Next?**

- Federal funding for HCBS is permitted for services received by individuals in presumptively institutional settings affirmed by the state and CMS to meet regulatory criteria. Federal funding is not available for HCBS rendered to individuals in a setting that does not overcome its institutional presumption. States should continue to monitor existing and newly constructed settings

January 1 Submission

- **Purpose**

- Provide information to CMS and stakeholders on how regulatory settings criteria have been incorporated into state-level oversight and enforcement and how providers have been assessed for regulatory compliance, and provide a point of contact for beneficiaries to report concerns about provider compliance

- **Lifespan**

- One-time request for this information. If a state makes different or additional opportunities available for beneficiaries to discuss provider concerns, transparency to stakeholders is strongly encouraged

- **What Comes Next?**

- CMS will post this information online on [Medicaid.gov/hcbs](https://www.Medicaid.gov/hcbs)

Corrective Action Plans (CAPs)

- **Purpose**

- Authorize additional opportunities beyond the regulation's transition period for a state to reach compliance with the provisions articulated in each approved CAP

- **Lifespan**

- All CAPs will be approved effective March 17, 2023; in some cases, CAPs will receive approval after this date, retroactive to March 17
 - State-specific or provision-specific expiration dates will be noted in each approved CAP

- **What Comes Next?**

- States must be compliant with all HCBS settings regulatory criteria, at both state and setting levels

What if a State Doesn't Have a CAP?

- States not requesting a CAP from CMS are indicating that all of the following statements are true, effective March 17, 2023:
 - All actions necessary to ensure state-level compliance with the regulatory settings criteria have been completed (or, in the case of modifications to state law or regulation, are underway)
 - All settings where HCBS are provided across the state, including presumptively institutional settings, have been assessed against the settings criteria and needed remediation has been completed
 - All presumptively institutional settings have been submitted to CMS for a sampled review, and have received concurrence from CMS that the settings adhere to regulatory criteria
 - If a heightened scrutiny site visit by CMS has occurred, or will be occurring in 2023, responses to the findings of that site visit have been submitted to CMS
- If any of the above statements are found to be inaccurate, states are at risk for CMS initiating compliance actions, including the withholding of federal funding

What Happens When a CAP Expires?

- Upon expiration of a CAP, all of the statements on the previous slide must be true
- If any of those statements are found to be inaccurate, states are at risk for CMS initiating compliance actions, including the withholding of federal funding

Ongoing Monitoring for HCBS Settings Requirements

Waiver and State Plan Provisions: Ongoing Monitoring

- After Statewide Transition Plans and Corrective Action Plans have come and gone, language in approved 1915(c) waivers, 1915(i) and (k) state plan benefits and 1115 demonstrations will describe how states will conduct ongoing monitoring to ensure continued regulatory compliance
- CMS will be further describing how the 1915(c) waiver application and 1915(i) and (k) state plan amendment pre-prints will be used for ongoing monitoring in 2023

More on Ongoing Monitoring (1 of 2)

- States are to have mechanisms in place for ongoing monitoring, detection of non-compliance, and to ensure continued compliance with the HCBS settings criteria, as is true for all Medicaid provisions
- States articulated their process for ongoing monitoring in Statewide Transition Plans, but ongoing monitoring is required for all HCBS waivers and state plan benefits, regardless of whether the transition period applied to them
- Through waiver actions and state plan amendments, states will describe how functions such as case management, licensure and certification standards, beneficiary feedback and other options for ongoing monitoring will be used to identify and remediate any provider compliance issues

More on Ongoing Monitoring (2 of 2)

- States that have received CMS approval for public health emergency (PHE)-related flexibilities related to the settings rule (e.g., 1915(c) waiver Appendix K amendments) will need to ensure ongoing compliance with the settings rule once the flexibility ends
- States requested these flexibilities for settings that were not established by the effective date of the final settings regulation, and were therefore not covered by the transition period. These settings had to be in compliance with the regulatory criteria in order to receive federal reimbursement for HCBS
- CMS is available for technical assistance on ways to ensure a return to compliance for these settings

Summary

- By the end of the transition period, March 17, 2023, all settings must be in compliance with the HCBS settings regulatory criteria not articulated in a CAP submitted to CMS
- Once the transition period is over, the HCBS authorities (e.g., 1915(c), (i), or (k)) contain the enforcement mechanism for ongoing compliance
- CMS is available for technical assistance on ways to ensure a return to compliance for settings that received a PHE-related flexibility, and for any ongoing compliance issues a state must address

Questions?

Resources (1 of 3)

CMS Baltimore Office Contact—Division of Long-Term Services and Supports:

- HCBS@cms.hhs.gov

To Request Technical Assistance:

- HCBSsettingsTA@neweditions.net

The Home and Community-Based Services Training series has trainings focused on various aspects of STP and HCBS implementation:

- [Home & Community Based Services Training Series | Medicaid](#)

Resources (2 of 3)

HCBS Settings Regulation Implementation: A National Conversation about Statewide Transition Plans

- <https://www.medicare.gov/medicaid/home-community-based-services/downloads/hcbs-rule-stp-conversation.pdf>

HCBS Settings Rule Implementation – Moving Forward Toward March 2023 and Beyond

- <https://www.medicare.gov/medicaid/home-community-based-services/downloads/hcbs-settings-rule-imp.pdf>

Themes Identified During CMS' Heightened Scrutiny Site Visits

- <https://www.medicare.gov/medicaid/home-community-based-services/downloads/themes-identified-during-cms.pdf>

Resources (3 of 3)

Frequently Asked Questions (FAQs): Home and Community-Based Settings Regulation Implementation: Heightened Scrutiny Reviews of Presumptively Institutional Settings: SMD # 19-001, issued on March 22, 2019

- <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>

1915(c) Waiver Technical Guide

- https://wms-mmdl.cms.gov/WMS/help/version_36_1915c_Waiver_Application_and_Accompanying_Materials.zip

1915(i) Template

- https://www.medicaid.gov/sites/default/files/2019-12/1915i-application_0.pdf