



February 1, 2023

Amanda Hill, M.S.
Division of Long-Term Services and Supports
Centers for Medicare & Medicaid Services
amanda.hill@cms.hhs.gov
(p) 410.786.2457

RE: Nebraska's HCBS Final Settings Rule Corrective Action Plan

Dear Amanda Hill,

The State of Nebraska is committed to completing its successful implementation of the Home and Community-Based Services (HCBS) Settings Final Rule. The Department of Health and Human Services (DHHS) is submitting this request for a Corrective Action Plan (CAP) to ask for an extension through March 17th, 2024, to fully demonstrate compliance with the Final Rule for the applicable settings operating under the following federal Medicaid HCBS waiver authorities:

IMPACTED NEBRASKA HCBS WAIVERS Medicaid 1915(c) Waivers

- Aged and Disabled (AD) Waiver
- Comprehensive Developmental Disabilities (CDD) Waiver
- Developmental Disabilities Adult Day (DDAD) Waiver
- Traumatic Brain Injury (TBI) Waiver

The requested CAP would allow the State time to resolve working through the adjudication process with CMS for Heightened Scrutiny settings and work through the completion of the STP milestones. The State is requesting additional time to ensure full provider compliance with the following HCBS Final Rule criteria:

- Access to the broader community;
- Opportunities for employment;
- Choice of non-disability specific setting; and
- Option for a private unit and/or choice of roommate.

The State is currently working on the submission of outstanding milestone responses to Centers for Medicare & Medicaid Services (CMS) due to Public Health Emergency (PHE)-related delays. Additionally, the State has experienced delays in preparing heightened scrutiny packages for submission to CMS due to staffing shortages. Should CMS disallow any state-approved setting, the State is requesting additional time to implement our person-centered planning process as outlined in Attachment 5-Relocation. This process consists of an individual needs and goals assessment using Charting the LifeCourse, a geographic mapping of available services and supports, and a supported transition for the individual into a compliant setting of the participant's choice.

The State has and continues to work diligently to educate HCBS providers and stakeholders about the requirements of the HCBS Settings Final Rule and has carried out extensive outreach efforts with the goal of all providers achieving full compliance. The State remains committed to bringing providers, policies, and procedures into compliance while navigating unforeseeable impacts as or if they occur. One provider barrier our division recently identified is that our providers struggle at times with our state's STP Provider

Self-Assessment Process. To combat this issue, the division took action with a provider bulletin, targeted trainings and data confirmation. Nebraska has continued a rolling schedule of provider re-assessments to ensure provider operations are currently in alignment with settings requirements. The PHE caused such significant disruptions to service delivery that we feel a comprehensive refresh on assessment materials and subsequent validation efforts is in the best interest of the members served.

TIMELINE:

Milestone	Due Date	Status
Effective date of new rules and regulations: 100% complete	7/31/2021	Completed
Effective date of new rules and regulations: 100% complete	7/31/2021	Completed
Completion of residential provider remediation: 100%	10/31/2021	Completed
Completion of nonresidential provider remediation: 100%	10/31/2021	Completed
Complete gathering information and evidence on settings requiring heightened scrutiny that it will present to CMS	2/28/2021	Completed
Incorporate list of settings requiring heightened scrutiny and information and evidence referenced above into the final version of STP and release for public comment	4/30/2021	Completed
Submit STP with Heightened Scrutiny information to CMS for review	7/31/2021	Past Due; to be submitted by 3/31/2023.
Remediation of CMS identified issues with adherence to HS criteria.	3/17/2024	To be completed
Quarterly progress reports	3/31/2023 and on-going	Past Due
Completion of the STP Training Series, run by DHHS DDD. Targeted audiences include AD providers, DD Providers, DDD Staff, Participants & the Public & targeted training on the DD STP Self-Assessment process.	9/17/2023	In progress
Provider Re-Assessments (Data Validation of our Master Site List)	3/17/2023	In progress

The COVID-19 PHE has presented challenges to the State’s full implementation of HCBS Final Rule as the state has had to cope with a historically low workforce participation rate (70.4% in January 2020 to 69.1% in January 2021). This low workforce participation when coupled with consistently low unemployment rates has created staffing shortages across the spectrum of direct support and program administration functions of the HCBS system. Moreover, turnover stemming from wage volatility and increased workload have limited the ability of the system to fully recover or make progress on long-term goals.

Sincerely,



Tony Green, Director
 Division of Developmental Disabilities
 Department of Health and Human Services