



DDSN Executive Memo

**TO: EXECUTIVE DIRECTORS OF DSN BOARDS and
CEOS OF CONTRACTED SERVICE PROVIDERS WITH DAY PROGRAMS
EXECUTIVE DIRECTORS OF DSN BOARDS and
CEOS OF CONTRACTED SERVICE PROVIDERS WITH RESIDENTIAL SERVICES**

FROM: SUSAN KREH BECK, ED.S., LPES, NCSP, ASSOCIATE STATE DIRECTOR-POLICY 

DATE: AUGUST 10, 2020

RE: Status Update - Compliance with HCBS Regulation

The purpose of this correspondence is to provide an update on the status of compliance with the Home and Community Based Settings Regulation (Regulation).

On July 14, 2020, CMS issued a State Medicaid Director Letter regarding the Home and Community-Based Settings Regulation – Implementation Timeline Extension and Revised Frequently Asked Questions which can be found at:

<https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd20003.pdf>

This updated guidance:

- Allows states an additional year, through March 17, 2023, to complete implementation of activities required to demonstrate compliance with the settings criteria, and
- Extends the timeframes identified in relevant FAQs an additional year through this letter including:
 - If a state determines that a setting that isolates individuals from the broader community has implemented remediation strategies that brought the setting into compliance with the settings criteria by July 1, 2021, then that setting will not need to be submitted to CMS for a heightened scrutiny review.
 - States may submit to CMS isolating settings that have not completed necessary remediation for a heightened scrutiny review no later than October 31, 2021, which is an additional year from the original timeline.
 - Information on settings located in the same building as a public or private institution or on the grounds of or adjacent to a public institution be submitted for heightened scrutiny no later than March 31, 2021.

Since March 2020, due to the COVID-19 pandemic, DDSN has not prioritized the implementation of this Regulation, but has instead encouraged providers to focus on the health and wellbeing of those supported. While DDSN remains sensitive to the struggles the pandemic presents, it is time to push forward with ensuring each provider has a thorough and complete Compliance Action Plan (CAP) and that providers operating settings presumed to have institutional qualities submit Evidence Packages which refute that presumption.

Compliance Action Plans

All providers (n=54) operating HCBS settings (n=1321) in the state have submitted a CAP, but not all CAPs submitted were thorough and complete. Approximately 70% of providers have thorough and complete CAPs, but for 30% of providers additional information is required.

Next Step:

If your organization has not yet received approval for its CAP, please submit the needed information to DDSN so that approval can be obtained by **November 30, 2020**.

Evidence Packages

Evidence Packages are required when a setting is presumed to have institutional qualities. The Evidence Package must demonstrate how the setting overcomes the presumption. There are 115 settings in the state that are presumed to have institutional qualities.

The 115 settings presumed to have institutional qualities fall into two (2) categories:

- “Category 2” settings are those on grounds of adjacent to an ICF (5 settings), or
- “Category 3” settings are those that may have effect of isolating (110 settings).

Evidence Packages for 21 of the 115 settings have been submitted to DDSN.

Next Step:

For the remaining 94 settings, the Evidence Packages should be submitted to DDSN as noted below:

- Category 2 setting: no later than **October 30, 2020**.
- Category 3 settings Evidence Packages no later than **November 30, 2020**.

Please note that Evidence Packages for six (6) settings have already been reviewed by the State Level Review Team and those settings have been found to overcome the presumption that institutional qualities were present.

Again, this newly established timeline is an effort to continue to push the state’s compliance with this Regulation forward. DDSN recognizes that the spread of COVID -19 and the impact it has on any organization at any time cannot be predicted. Should you find that due to COVID -19 your organization is unable to submit necessary information to DDSN within these timelines, an extension may be requested. Please make your request in writing via email at least 30 days prior to the deadline. Requests should be sent to Colleen Honey at choney@ddsn.sc.gov.

Contact Information for Additional Question

If you have questions about the status of your organization’s CAP or Evidence Package(s) or need assistance with implementation of the Regulation, please contact Janet Priest at jpriest@ddsn.sc.gov.

Thank you for all you do for people with disabilities in South Carolina and for your continued efforts toward compliance with this Regulation.