

Disabled & Elderly Health Programs Group

November 16, 2015

Mari Cantwell
Chief Deputy Director, Health Care Programs
State of California, Department of Health Care Services
1501 Capitol Avenue, 6th Floor, MS 0000
Sacramento, CA 95814

Dear Ms. Cantwell,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of California's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. California submitted its STP to CMS on December 19, 2014 and resubmitted on August 14, 2015. CMS requests additional detail regarding waivers and settings, the systemic assessment, the site-specific assessment, monitoring of settings, remedial actions, heightened scrutiny, relocation of beneficiaries, and public comment. These issues are summarized below.

Waivers and Settings Included in the STP:

- The state has included several services under each waiver, rather than specific settings. The state also included "an initial listing of home and community-based settings that have been assessed through the systemic assessment process" (p. 17). It is unclear whether that listing includes all settings across home and community-based programs within the state. Please provide a list of all settings in which services are provided for each of the 1915(c) waivers, the 1915(i) State Plan, the 1915(k) Community First Choice (CFC) Program and the 1115 demonstration.
- Please clarify how Community Care Facilities (CCFs) relate to other settings under the 1915(c) San Francisco Community Living Support Benefit (SFCLSB) waiver. Is this an umbrella term for Residential Care Facilities for the Elderly or Adult Residential Facilities?
- Please clarify whether the services provided in Public Subsidized Housing, under the 1915(c) California Assisted Living Waiver, are limited to a specific provider, and how those settings comport with the requirements of the home and community-based settings regulation.
- In the STP (p. 4, 12) the state indicates that 1915(k) CFC services are provided in the homes owned by the individual or family member, and apartments where the individual pays rent through a landlord/occupant agreement. However, information received from the state specifying the types of settings individuals receiving CFC services reside, includes settings that could be considered provider-owned and operated. Please identify within the STP all setting types included in under the 1915(k) Community First Choice Program. Additionally, if any settings are confirmed to be provider-owned and operated, the state will need to perform a

systemic assessment to verify that the settings uphold the federal standards for home and community-based settings.

- The state notes that Community-Based Adult Services (CBAS) centers are the only home and community-based settings under its 1115 demonstration. However, CMS is aware of participants in the 1115 demonstration who receive home and community-based services in settings other than CBAS centers, such as in the In-Home Supportive Services (IHSS) Program. Please identify any other settings in which services are provided outside of CBAS centers under the 1115 demonstration.

Systemic Assessment:

- The state did not provide outcomes for a systemic assessment of settings under the 1915(c) SFCLSB waiver, which includes Adult Residential Facilities, Residential Care Facilities for the Elderly, and Direct Access Housing. Please assess regulations or other governing documents for these settings and provide a crosswalk of the components that address specific characteristics of the settings requirements, indicating whether the state documents comply, do not comply or are silent on the federal regulation.
- CMS reviewed a sample of state policies that were provided in the STP in support of the federal requirements and has the following observations/questions.
 - We have identified many policies that clearly reinforce the regulation. However, there are some state policies that appear to be silent in regard to the federal requirements.
 - For example, in the CBAS transition plan under federal requirement 1—the setting is integrated in and supporting full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid home and community-based services—the state policies T-22 54001, T-22 54207, T-22 78303, STC 98(c), and T-22 54217 do not directly relate to the federal requirement and would be considered silent on this issue. The state has provided other policies that clearly uphold this particular federal requirement. Please clarify which regulation prevails in this instance.
 - CMS has identified two federal requirements, requirement 3-- Ensuring individuals' rights of privacy, dignity and respect, and freedom from coercion and restraint—and requirement 7—Allowing individuals the freedom to have visitors at any time—that CBAS policies do not appear to uphold and CMS would consider the provided regulations to be silent on these federal requirements. Please review your state CBAS regulations for all federal requirements, identify any regulations that are silent on these standards, in addition to those that are out of compliance, and delineate how they will be remediated in order to clearly uphold the federal requirements.

- Under federal requirement 3-- Ensuring individuals' rights of privacy, dignity and respect, and freedom from coercion and restraint—in the CBAS transition plan, state code T-22 78315(a) indicates that, “restraints shall be used only as measures to protect the participant from injury to self, based on the assessment of the participant by the multidisciplinary team.” Please clarify whether the multidisciplinary team is the same as the person-centered planning team and how this type of restriction will be applied in accordance with the federal regulation.

Site-Specific Assessments:

- The state included a timeline for activities under the CBAS center assessment process. However, the state did not include a timeline for many of the milestones within the STP. Please provide a timeline for all activities that will be conducted as part of the transition process.
- The state has omitted from the STP several key details about the site-specific assessment process including: when provider self-surveys will be completed, how the state will ensure responses from providers, how beneficiary surveys will be matched to provider assessments, how beneficiary and provider surveys will be used to identify settings that require on-site assessment, an estimate of the number of on-site assessments, how the state will ensure coordination across on-site assessments, and how the on-site assessment tool would be used to categorize compliant and non-compliant settings. Please include these details in the description of this process.
- The state currently has a completion date of July 31, 2018 for on-site assessments and provider survey validation of CBAS centers. This end date may be too late for the state to identify any remaining issues that will allow all settings to fully comply before the March 2019 deadline. Please modify the timeframe for this activity to allow enough time for full validation and remediation for non-compliant sites.
- Please provide a description of how the state intends to assess IHSS settings under the 1115 demonstration that are not CBAS centers.
- It appears that the state included in its standard CBAS provider application and renewal process steps for ensuring that home and community-based characteristics are present. The state incorporated additional steps into existing processes. However, please clarify whether there is an on-site inspection by the state at the time of renewal. If there is not, please describe how the state is assured of a provider's ongoing compliance with settings requirements.
- The state has provided an initial on-site assessment of a sample of Congregate Living Facilities.
 - Please provide additional background information on the on-site assessments including: the total number of facilities under each setting, the number of facilities sampled, and for settings that are non-compliant, the number of beneficiaries who receive services in that setting.

- Additionally, the state indicated instances in which components of these settings conflicted with the federal requirements, and did not provide information about the characteristics of the settings that upheld the federal requirements. Under findings for requirements that appeared to meet federal standards, the state wrote “none.” Please clarify what “none” indicates for these settings.
- The state does not provide estimates of how many settings fully comply, do not comply but can with corrections, cannot comply with the settings requirements and will require relocation of beneficiaries, or presumptively have the qualities of an institution. Please provide an estimate of the number of settings that fall under each of these categories as determined from the systemic and site-specific assessments.

Monitoring of Settings:

The state provides a thorough description of the monitoring process that will take place during the CBAS transition process while offering less detail of monitoring activities for other settings included in the STP. Please provide more detail on monitoring activities for other settings. CMS recommends that the state review the CBAS monitoring process and assess its viability for use in other settings.

Remedial Actions:

- For the 1915(k) program, 1915(c) HIV/AIDS, and 1915(c) IHO waivers, the state writes, “the characteristics of home and provider settings are not addressed in State regulations, Waiver language, or applicable Waiver documentation; therefore, a Systemic assessment and remedial strategies are not necessary” (p. 62). Please provide remedial strategies to develop language for settings under this program and these waivers that uphold the federal standards for home and community-based settings.
- The state notes for its remedial strategy under the STP systemic assessment that it “will discuss the impacts of this characteristic during the Waiver renewal process” (Appendix B). Please provide specific remedial language for each conflicting or silent requirement and begin to remediate these policies prior to the waiver renewal process.
- Please provide specific milestones and corresponding timelines when developing remediation strategies for specific settings and sites.
- For the Congregate Living Facilities, the state identified broad remedial actions (e.g., “will need to provide greater accessibility amongst entry ways within the house”) but did not include specific milestones and timelines to help implement the required remedial actions. Please add milestones and timeframes for each issue that needs to be remediated.

Heightened Scrutiny:

The state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on the settings that match the

scenarios in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

Settings that are presumed to be institutional in nature include the following:

- Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, or immediately adjacent to, a public institution;
- Any other setting that has the effect of isolating individuals receiving Medicaid home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

Additionally, it is the state's responsibility to ensure that all settings demonstrate the characteristics of a home and community-based setting. If the state is operating with a presumption that an individual's private home or private family home is meeting this requirement, the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services, including recently piloted communities such as Sweetheart Spectrum and Golden Heart Ranch. Information available in the Toolkit on settings that isolate may be helpful in this regard.

Relocation of Beneficiaries:

The state does not include a plan for the relocation of beneficiaries in either the STP or the CBAS centers' transition plan. Please create a clear process with milestones and timelines to describe how the state will relocate beneficiaries if needed. This process should include: how reasonable notice and due process are provided to these individuals, a timeline for the relocation process, the number of beneficiaries impacted, and a description of the state's process that beneficiaries, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice of an alternate setting that aligns, or will align, with the regulation, with critical services/supports in place in advance of the transition.

Public Comment

- Please provide evidence of public notice for the public input periods to the STP. These were provided for the CBAS transition plan but were omitted in the STP.
- CMS notes that the state included an overview of public comments (Appendix A). In addition, please provide a summary of responses to themes identified in public comments received and clarify what changes were made to the STP based on public comment.

Other Concerns

- Currently the state includes some milestones in the CBAS transition plan. Additionally, some milestones have start dates but no identified completion date. Please add clearer milestones and timelines with reasonable timeframes.

- Previously, the state gave the assurance that it would not use settings with delayed egress and secured perimeters inside the waiver program. Please clarify how the state defines delayed egress, how the state defines secured perimeters, whether these settings are being used and if so, how the state is ensuring that they comport with the requirements of the regulation.
- Comments identified in the CBAS plan indicated that there may be characteristics of settings that are institutional in nature. For example, a comment that appears in the *CBAS HCB Settings Stakeholder Input Log* indicates that participants in certain settings have “name badges [to] identify their diet” and sit one-on-one with staff (p. 1 of comments, row 12). Practices that label the individual and publically identify what they can and cannot eat do not enforce rights to privacy and dignity. Please describe how the state is assessing those settings against the federal requirements to ensure compliance.

CMS would like to have a call with the state to go over these issues and to answer any questions the state may have. The state should resubmit its revised STP, in accordance with the questions and concerns above, within 75 days of the follow up phone call to this letter. A representative from CMS’ contractor, NORC, will be in touch shortly to schedule the call. Please contact Amanda Hill in the CMS Central Office at 410-786-2457 or Amanda.hill@cms.hhs.gov with any questions related to this letter.

Sincerely,

Ralph F. Lollar, Director
Division of Long Term Services and Supports

cc: Henrietta Sam-Louie ARA