

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Disabled & Elderly Health Programs Group

February 23, 2018

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:

This letter is to inform you that CMS is granting California **initial approval** of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Approval is granted because the state has completed its systemic assessment, included the outcomes of this assessment in the STP, clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, and is actively working on those remediation strategies. Additionally, the state distributed the STP dated November 2016 for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the November 2016 draft submitted by the state, CMS provided additional feedback on March 28, 2017, October 17, 2017, and February 2, 2018 requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed the feedback, and resubmitted the most recent version of the STP, dated January 11, 2018, on February 14, 2018. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP.

In order to receive final approval, all STPs should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);

- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings criteria by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

While the state of California has made much progress toward completing each of these remaining components, there are several technical issues to be resolved before the state can receive final approval of its STP. CMS will be providing detailed feedback about these remaining issues shortly. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for a minimum 30-day public comment period.

Upon review of this feedback, CMS requests that the state please contact Amanda Hill at Amanda.Hill@cms.hhs.gov to confirm the date that California plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial approval of an STP 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 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.

I want to personally thank the state for its efforts thus far on the HCBS STP. CMS appreciates the state's completion of the systemic review and corresponding remediation plan, and looks forward to the next iteration of the STP that addresses the remaining technical feedback that is forthcoming.

Sincerely,

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

ATTACHMENT I

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF CALIFORNIA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 01/11/18

- **Public Notice and Engagement:** CMS requested the state provide additional information about the most recent STP public comment period including the dates of public notice, the state's response to public comments received and changes the state made to the STP based on the comments.
State's Response: The state responded to all public comments and indicated changes made in the STP as a result of the comments. The state also included dates of public notice, the URL for the STP and details regarding how individuals could get a copy of the STP and submit comments to the state.
- **Settings:** The state was asked to ensure that the names of setting types are continuous and comprehensive throughout the STP.
State's Response: The state added Adult Residential Care Facilities to be identified under the Assisted Living Waiver and updated the STP to reflect setting types in bold font to distinguish them from services.
- The state was asked to amend the STP or clarify why the following services were not included in the systemic assessment crosswalk: Developmental Disabilities (DD) waiver- Residential Facility-Out of State, DD waiver- Social Recreation Program, DD waiver- Supported Employment, Intermediate Care Facility for the Developmentally Disabled Continuous Nursing (ICF/DD-CN), and In-Home Operations (IHO) Continuous Care Facility.
State's Response: The state clarified that the out of state residential facilities use the same standards as the in-state residential facilities in the DD waiver. The state further clarified that through the Social Recreation Program services are only provided in the community that are used in the same way by non-Medicaid HCBS recipients. The state clarified group Supported Employment and identified it as such and included it in the systemic assessment. The state clarified that the ICFs/DD-CN will be converted to long-term care facilities prior to March of 2022, and the Continuous Care Facilities, which are also known as congregate living health facilities (CLHFs), are no longer a setting type in the IHO waiver.
- The state was reminded that settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) are considered provider-owned or controlled settings and should be evaluated as such.
State's Response: The state indicated in their responses that the state identifies private residences owned by an unrelated caregiver as a provider-owned and controlled setting and that they updated the STP to include these settings as a setting type that will undergo the same compliance determination process as all other provider-owned and controlled settings.

Community-Based Adult Services (CBAS) Systemic Assessment Crosswalk:

- The state was asked to clearly outline the following information within the crosswalk: citation for each policy identified, a general description of each policy's relevance to the home and community-based settings rule, and each section of the policy that either aligns with, conflicts with, or is silent on home and community-based settings criteria.
State's Response: The state amended the systemic assessment to include all of the requested information.

- The state was also asked to include in the CBAS crosswalk the URL links to each section of code that was provided as evidence of compliance with the settings criteria.

State's Response: The state included the links to the applicable codes.

CMS conducted a spot check of the state CBAS standards that are included in the crosswalk, and had concerns with several of the state's determinations regarding compliance with the HCBS settings criteria. CMS requested that the state revisit its systemic assessment to ensure that each determination was accurate with regard to the settings criteria. Some examples of this spot check are provided below.

- In regard to the settings criteria of "The setting is integrated in and supports full access to 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 HCBS."
 - CMS found the state's T-22 §78341 to be partially compliant and asked the state to propose remediation.
State's Response: The state updated the STP.
 - CMS found the state's T-22 §54329 to be partially compliant and asked the state to propose remediation.
State's Response: The state updated the STP.
- CMS asked the state to clarify the process through which the California Health & Safety Code (H&S) §1584, which allows for use of secure perimeters and egress control devices in Facilities for Alzheimer or Dementia Participants, is supported by a specific assessed need and documented in the person-centered plan.
State's Response: The California Department of Aging distributed two All Center Letters that gave policy directives to all CBAS providers to be in compliance with state and federal criteria when using soft restraints and secured perimeters and/or delayed egress devices. In addition to the All Center Letters, the state outlined in the systemic assessment that they will continue to determine CBAS center compliance with all of the settings and person-centered planning criteria during the onsite validation of the CBAS Provider Self-Assessment (PSA) Survey at the time of their certification renewal.
- CMS asked the state to identify the remediation activities it will conduct, with associated timeframes in order to ensure that its state standards comport with the settings criteria.
State's Response: The state included throughout their systemic assessment remediation action such as inserting all of the federal settings criteria for non-residential settings into the CBAS section of Medi-Cal Provider Manual as well as revising the ADHC/CBAS statutes to include the settings criteria for non-residential settings.

Main STP Systemic Assessment Crosswalk:

- The state was asked to clearly outline the following information within the crosswalk: citation for each policy identified, a general description of each policy's relevance to the home and community-based settings rule, and each section of the policy that either aligns with, conflicts with, or is silent on the requirements of the home and community-based settings criteria.
State's Response: The state amended the systemic assessment to include all of the requested information.
- The state was asked to provide a crosswalk of the regulations and/or policies that govern the IHO waiver.

State's Response: The state clarified that the IHO waiver will be phased out before the end of the transition period and that is why it is not included in the systemic assessment crosswalk.

- CMS indicated that the cited HCBS regulations in the systemic crosswalk were not complete.
State's Response: The state made the changes to their legend key to ensure that all of the settings criteria were accurately assessed.

CMS conducted a spot check of the state standards that are included in the state's crosswalk, and had concerns with several of the state's determinations regarding compliance with the HCBS settings criteria. CMS requested that the state revisit its systemic assessment to ensure that each determination was accurate with regard to the settings criteria. Some examples of this spot check are provided below.

- CMS requested the state include in their systemic assessment the regulation's criteria for how to implement modifications of the additional conditions for provider owned and controlled settings at §441.301(c) (4)(vi)(F)(1)-(8).
State's Response: The state included this criteria in their systemic assessment crosswalk along with the remediation plan.
- CMS had concerns regarding the systemic assessment not indicating the criterion that settings be physically accessible to individuals receiving services in the settings.
State's Response: The state assured all settings were accessible to individuals and made the attestation in the systemic assessment that the setting options are identified and documented in the person-centered service plan and are based on the individual's needs and preferences and that the setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to the physical environment.
- CMS asked the state to clarify why the Family Child Care Homes were listed as being a non-residential setting in the systemic assessment.
State's Response: The state clarified the title of the settings was misleading and Family Child Care Homes are non-residential settings where children receive services during the day and live in their parent's or primary caregiver's home.
- In regard to the settings criterion of, "Individuals have access to food at any time."
 - In the Adult Residential Facility- Assisted Living Waiver, CMS had concerns regarding the state and provider's interpretation of the current policy as being compliant with this criterion.
State's Response: The state clarified that systemic assessment is a way of determining the state's levels of compliance prior to the individual setting's assessment process and assured CMS that the state will confirm whether or not the provider is meeting the criterion.
 - For Congregate Living Health Facility (CLHF), CMS found the state standard to be silent and asked the state to propose remediation.
State's Response: The state provided remediation.