

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-14-26  
Baltimore, Maryland 21244-1850



## **Disabled & Elderly Health Programs Group**

---

August 24, 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:

In follow-up to the 2/23/18 initial approval granted to California's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

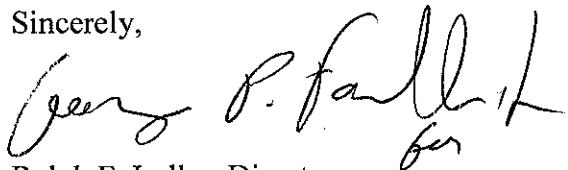
As a reminder, in order to receive final approval, the STP should include:

- 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 rule 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.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period. I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph F. Lollar".

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

## **ATTACHMENT**

**Additional CMS feedback on areas where improvement is needed by the state of California  
in order to receive final approval of the HCBS Statewide Transition Plan**

***PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.***

### **Settings**

- Please clarify if the HIV/AIDS Waiver setting of “Foster Family Homes (specialized)” falls under the heading of “Certified Family Home, Foster Family Home” listed on pg. 22 and assessed starting on pg. 133 of the systemic assessment.
- The state indicates on pg. 54 that the Social Recreation Program is a service provided in the community, and not in a setting, but has highlighted it as a setting on pg. 10. Please clarify the discrepancy.
- Assisted Living Waiver- Home Health Agency in Public Subsidized Housing: Please clarify if an individual living in a particular setting must also receive services from a particular Home Health Agency. Please clarify, if this is the case, how the state is assessing these settings for compliance with the provider-owned and controlled settings criteria.
- Licensed and Unlicensed Board and Care Homes- Please clarify if HCBS are received in any of these settings and whether the operator of any Home is providing any of these HCBS.
- Unlicensed Room and Board Homes- Please clarify if HCBS are received in any of these settings and whether the operator of any Home is providing any of these HCBS.
- The state describes services for the homeless in the section of the STP describing private residences that are presumed compliant (pg. 15). Please clarify who the supportive housing provider is and if they provide HCBS. Please also clarify the average length of stay in these settings.

### **Site-specific Assessment**

#### ***Individual, Privately-Owned Homes:***

The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this category of settings with the regulatory criteria over time. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS to the individual) are considered provider-owned or -controlled settings and should be evaluated as such.

The state indicates on p. 18 that “the STP identifies at a high level the commitments and requirements that each of the eight HCBS waivers, 1915(i) and 1915(k) State Plan programs will meet. The specific approach and details of each program’s transition process will reflect the input and guidance of the particular program’s stakeholders, and the unique structure and organization of the program itself. The complexity of each task will vary significantly across programs.” CMS requests that the state update the STP to reflect the different programs and the processes that are specific to each. In addition, please clarify the following:

- The Community Based Adult Services (CBAS) STP indicates on pg. 33 that initial assessment of all CBAS centers for compliance with the settings criteria will be completed by December 31, 2019, while p. 4 of Appendix V indicates initial compliance determinations will conclude in the fall of 2018. Please clarify the correct date and ensure it is consistent throughout the STP.
- The CBAS STP, Section 4: Person-Centered Planning (pgs. 26-28) indicates that the target date for the implementation of elements of the person-centered service plan is December 2017. Please note the person-centered service planning criteria were effective as of March of 2014 and do not have a transition period, with the exception of the provisions outlining documentation requirements for modifications to the settings criteria. For this reason, items related to coming into compliance with person-centered planning provisions should be removed from the STP. CMS requests a separate discussion with the state to discuss the state’s compliance with person-centered planning. It is acceptable to keep the information related to what has been added to the standard terms and conditions (STCs) as it relates to the Person-Centered Planning for informational purposes.

***Provider Self-Assessment Process:***

- The CA STP indicates that the Provider Self-Survey Tool “may be modified, including guidance and instructions, to address specific provider types and programs”

(pg. 23). Please provide additional information if the Provider Self-Survey has been modified for specific provider types and programs.

- The CA STP indicates that failure to return a Provider Self-Survey will result in varying responses by the state depending on the provider type (pg. 23). Please provide details regarding what the response will be according to each program.
- The CA STP indicates that “Program staff, or care coordination agencies and regional centers, will analyze returned [provider] self-surveys and identify them according to whether or not they meet the CMS readiness criteria. As appropriate, departments may review returned Provider Self-Surveys to validate results and promote consistency in determinations.” (pg. 23). Please provide the evaluation criteria/guidance in use that will trigger further review by department staff; please clarify what is meant by “CMS readiness criteria,” and if this ensures all of the HCBS setting criteria are captured in the self-assessment tool.

***Validation of Settings:***

- **Onsite Reviews:** In the CA STP, CMS notes the state intends to utilize On-Site Assessments and Member Surveys to validate Provider Self-Surveys for “a sample of settings by provider type category”, and “if a general pattern of Provider Self Survey and validation discrepancy is found across a provider type category, the state will conduct an in-depth review to identify the source of the discrepancy. Follow-up actions in this case could include, but not be limited to increasing the number of planned On-Site Assessments and Member Surveys to validate the results of the Provider Self Surveys” (pgs. 25 and 26). CMS requests the state provide additional details regarding the process for review and validation of Provider Self-Surveys for those settings under the Developmental Disabilities (DD) Waiver and 1915(i) State Plan, Assisted Living Waiver, and HCBS Alternatives Waiver. States are responsible for assuring that all HCBS settings comply with the regulatory criteria. The state can use multiple validation processes (including but not limited to state onsite visits; data collection on beneficiary experiences; desk reviews of provider policies, consumer surveys, and feedback from external stakeholders; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to DD and aging networks, etc.).
  - Please discuss the timeline for assuring that all settings are initially assessed and validated so as to allow settings that may require modifications to have the appropriate amount of time to complete any corrective actions prior to the end of the transition period.
  - CBAS STP:

- CBAS Attachment IV indicates that during the certification or renewal process a sample selection is being done. Please clarify what the sample is of.
- The STP also indicates that the core assessment tools “may be modified, including guidance and instructions, to address specific provider types and programs” (pg. 25). Please provide additional information if the tools dated 8/14/2015 have been modified for specific provider types and programs.

***Member Surveys:*** Please provide details regarding the participant interviews as part of the on-site review process under the HIV/AIDS and the DD Waivers and the 1915(i) assessment process, including how interviewees will be selected and what assurances are made to preserve the rights of the participants to privacy during the interview process.

- Please clarify if the member survey includes questions reflecting all aspects of the HCBS settings criteria.
- The CA STP states that member surveys can be linked to providers but is not clear if they can be linked directly to a setting. Please clarify if the member survey can be linked directly to the setting.
- Please explain the extent to which these surveys will factor into the state’s overall validation process in the updated CA STP.
- CBAS STP:
  - Please describe the review and follow up process for the participant setting assessments obtained during and after the onsite survey.
  - Please describe how discrepancies between provider self-assessments and participant surveys are rectified.

***Site-Specific Assessment Process:***

- CMS notes that the STP indicates that the site-specific assessment process may change: “The State recognizes the need for reasonable and sound methodology(ies) early in the assessment design and implementation process. Given stakeholder comments on the need for a vendor to perform these functions, the State is evaluating how to implement these provisions of the plan” (pg. 27). CMS requests that the state provide updated details regarding how the state will complete the site-specific assessment process for each program in the resubmitted STP.
- The state outlined the sample of providers that will receive an on-site assessment. Please clarify the size of the sample to receive on-site assessments.
- The list of settings to be assessed through onsite validation on pgs. 26-27 does not include the below settings. Please clarify why these settings are not included.
  - HIV/AIDS waiver Foster Family Home (Specialized)
  - DD waiver Residential Facility-Out of State
  - DD waiver Supported Employment

- ***Reverse Integration:*** CMS wishes to remind the state that states cannot comply with the home and community-based settings criteria simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries is not considered by CMS by itself to be a sufficient strategy for complying with the community integration requirements outlined in the regulation. Under the rule, settings should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community.
- Please provide a detailed plan the state will use for communicating and assisting beneficiaries currently receiving services in settings that are determined not to be able to come into compliance prior to the end of the transition period that includes:
  - A description for how participants will be offered informed choice and assistance in locating a compliant residential or nonresidential setting in which HCBS are provided or accessing alternative funding streams.
  - An estimated number of beneficiaries who are in settings that the state anticipates will not be in compliance by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.
  - Confirmation of the state's timeline for supporting beneficiaries in exploring and securing alternative options should a transition out of a non-compliant setting be necessary.
  - An explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

***Aggregation of Final Validation Results:***

- Please update the initial findings of setting compliance across the respective waivers and the CBAS program with final results once all validation activities are completed. Examples for how other states are effectively organizing and compiling setting assessment and validation results are available upon request. Please make sure to confirm the number of settings in each category of HCBS that the state found to be:
  - Fully compliant with the federal HCBS requirements;
  - Could come into full compliance with modifications;
  - Cannot comply with the federal HCBS requirements; or
  - Are presumptively institutional in nature.

## **Site-Specific Remedial Strategies**

Because the state has not yet completed its site-specific assessments, the STP does not include any setting compliance determinations. Therefore, in the next iteration of the STP, please include identify any specific actions to remediate any noncompliant settings. In addition to providing this information in the updated STP, CMS requests the following additional clarification and details:

***Corrective Action:*** The STP states, “Those [providers from the self-survey] needing corrective action through technical assistance...will implement corrective action, monitored by program staff, care coordination agencies and regional centers. Those needing more extensive corrective action may be scheduled for on-site assessments” (pg. 24). The state should confirm if it intends to issue corrective action plans to all providers who indicate non-compliance through the Provider Self-Survey or are found to be non-compliant through the state’s other validation methods. In addition, the state should clarify, for the HCBS program settings that will not receive site visits, if the current sample sizes of providers who will receive site visits includes those providers who require extensive corrective action (pgs. 26-28).

***Non-Disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.

***Remediation Activities:*** The state includes three remediation activities; however, the state only provides a general timeframe of March 2017-March 2022 (“Milestones and Timeline 9/01/2017”). If the state determines that following the Provider Self-Survey or site-specific assessment that certain settings may not be, or are not in compliance with the federal HCBS settings criteria, please include outcomes and the remedial actions the state will use to assure full compliance with the requirements, including:

- Timelines for completing actions and deliverables
- A description of the monitoring process to ensure timelines and milestones are met

## **Ongoing Monitoring of Settings**

- In “Attachment V: Setting Assessment Process,” the state includes information on the frequency of site visits that occur as part of the monitoring process, the monitoring team staff, and monitoring tasks, which all vary depending upon the waiver. Please clarify that the nurse, program analyst, and social worker who make up the monitoring team staff, are

program staff and do not provide direct services to individuals and do not work for providers.

- Please remove the San Francisco Community Living Support Benefit (SFCLSB) column since that waiver has been incorporated into another waiver.
- Please amend the name for the NF/AH waiver to align with its current name.
- Please clarify if the Developmental Disabilities Services (DDS) process also applies to the 1915(i) monitoring and oversight process.
- Please include the monitoring and oversight process for the 1915(k) program.
- Please clarify if the frequency of the activities under “Other Compliance,” occur at the same frequency listed under “site visit frequency” or at some other frequency.
- On pg. 26 the state indicates the member surveys and on-site assessments will be incorporated into ongoing monitoring. Please describe the details of the assessments and surveys and how the state will ensure that all settings are monitored using this process.
- CBAS STP: The state indicates that implementation of the provider self-assessment and participant settings assessment tools will be ongoing to ensure full and continued compliance beyond March of 2022. Please describe how these assessments will be validated by the state on an ongoing basis.

### **Heightened Scrutiny**

As a reminder, 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 a presumptively institutional setting, the institutional presumption will stand and the state must describe the process for determining next steps for the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal settings criteria. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

- ***Timeline for Submission of Heightened Scrutiny:*** In the CA STP “Milestones and Timeline 9/01/2017” document, the state indicates it will submit its evidence for analysis for heightened scrutiny on a rolling basis between Q4 2017 and Q3 2021. The CBAS STP “Milestones and Timeline” document dated 9/01/2017 indicates that all settings requiring heightened scrutiny review will be submitted to CMS at the same time (September 2021). CMS is concerned with the proposed timeline through September 2021 for the heightened scrutiny review process and subsequent potential communication

with participants. After CMS has reviewed all settings put forward for heightened scrutiny, the state will need to allow enough time before March 2022 to remediate any compliance issues. If compliance issues are not remediated, the state must also have enough time to communicate with individuals receiving services from non-compliant settings and possibly support them in accessing compliant providers or alternate funding streams. Please revise the timeline to reflect sufficient time to complete all of these activities by March 2022.

### **General**

- On pg. 16 the state makes the following statement, “In the event of conflict between the final rule and additional guidance issued by CMS, the final rule will solely be followed.” Please note that any additional guidance issued by CMS to clarify the final rule is sub-regulatory guidance and should be followed in implementation efforts. Please clarify or remove this statement from the STP.