Department of Health Care Services
State of California—Health and Human Services Agency

# Statewide Transition Plan for Compliance with Home and Community Based Settings Rules

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## Background

1915(c) Waivers

The federal government authorized the "Medicaid 1915(c) Home and Community-Based Services (HCBS) Waiver program" under Section 2176 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). It is codified in section 1915(c) of the Social Security Act. The original legislative intent of the HCBS Waiver program was to slow the growth of Medicaid (Medi-Cal in California) spending by providing services in less expensive settings. In order to contain costs, the federal legislation limited waiver services to individuals who would be institutionalized if the services were not provided. However, the costs of those waiver services cannot be higher than what they would cost in an institutional setting.

The law permitted states to waive certain Medicaid program requirements and in doing so, deviate from Medicaid requirements, such as providing services only in certain geographic areas ("waive statewideness"). The HCBS Waiver program also allowed states flexibility to offer different types of services to individuals with chronic disabilities. Prior to this, with the origin of Medicaid in 1965, members could only receive comprehensive long-term care in institutional settings.

The initial waiver application is approved by the Centers for Medicare & Medicaid Services (CMS) for three years with additional renewal applications needing to be approved every five years. The waiver can be designed for a variety of targeted diagnosis-based groups including individuals who are elderly, and those who have physical, developmental, or mental health disabilities, or other chronic conditions such as Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS). The waiver can be designed to offer a variety of services including case management, personal attendant services, adult day health care services, habilitation services, day treatment services, psychosocial rehabilitation services, mental health services, and other services specifically requested by the state. 1915(c) HCBS waivers have subsequently become mechanisms for many states, including California, to provide Medicaid-funded community-based, long-term care services and supports to eligible members.

Throughout the Statewide Transition Plan (STP), recipients of HCBS will be referred to as members, which includes all Medi-Cal eligible beneficiaries, participants, consumers, etc., who are enrolled in any of the HCBS programs.

1915(i) State Plan Program

Starting January 1, 2007, the Deficit Reduction Act of 2005 (DRA) gave states a new option to provide HCBS through their State Plans. Once approved by CMS, State Plans do not need to be renewed nor are they subject to some of the same requirements of waivers. Under this option, states set their own eligibility or needs-based criteria for providing HCBS. States are allowed to establish functional criteria in relation to certain services. The DRA provision eliminated the skilled need requirement and allowed states to cover Medicaid

beneficiaries who have incomes no greater than 150 percent of the federal poverty level and who satisfy the needs-based criteria. The Patient Protection and Affordable Care Act of 2010 created several amendments including elimination of enrollment ceilings, a requirement that services must be provided statewide, and other enrollment changes.

1915(k) Community First Choice (CFC) State Plan Program

CFC services are provided in the member's private residence (see Private Residence Presumed to be in Compliance section below). The provision of community-based services and supports are the most integrated setting appropriate to the individuals' needs without regard to age, type or nature of disability, severity of disability or the form of home and community-based services and supports that the individual requires in order to lead an independent life.

By being in the community and self-directing care, the individual is able to control their environment to the maximum extent consistent with their capabilities and needs. 1915(k) members have the ability to be active in their community and are able to seek employment by utilizing any available resources. These resources could be their CFC provider or their local community that they reside in.

CFC members select their residential setting of a home or abode of their own choosing. The CFC member chooses who their provider will be and that the services will be provided in the home of the individual or a residential setting, such as an apartment where the individual pays rent through a landlord / occupant agreement, or if the individual is living in a home owned by their family. Settings in which CFC services may be provided are unlicensed, private residences. CFC services are not provided in licensed Community Care Facilities (CCF), a Community Care Licensing term for licensed residential facilities.

Community-Based Adult Services (CBAS) 1115 Waiver

See **Attachment I** – Revised Draft CBAS Home and Community Based (HCB) Settings Transition Plan

New Home and Community-Based Setting Requirements

In January 2014, CMS announced it had finalized important rules that affect HCBS waiver programs and 1915(i) and 1915(k) State Plan programs provided through Medicaid/Medi-Cal, and subsequently published regulations in the Federal Register on January 16, 2014. The rules became effective 60 days from publication, or March 17, 2014. These final regulations are CMS 2249-F and CMS 2296-F.

Prior to the final rule, home and community based (HCB) setting requirements were based on location, geography, or physical characteristics. The final rules define HCB settings as more process and outcome-oriented, guided by the member's person-centered service plan by:

1. Being 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 HCBS.
2. Giving individuals the right to select from among various setting options, including non-disability specific settings and an option for a private unit in a residential setting.
3. Ensuring individuals' rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. Optimizing autonomy and independence in making life choices, including daily activities, physical environment and with whom to interact.
5. Facilitating choice regarding services and supports, and who provides them.

For Medicaid/Medi-Cal provider-owned or controlled HCB residential settings, the provider must offer:

6. A legally enforceable agreement between the provider and the consumer that allows the consumer to own, rent or occupy the residence and provides protection against eviction.
7. Privacy in units including lockable doors, choice of roommates and freedom to furnish and decorate units.
8. Options for individuals to control their own schedules including access to food at any time.
9. Individual's freedom to have visitors at any time.
10. A physically accessible setting.

Any modification(s) of the new requirements can only be made on an individual basis, supported by a specific and individually assessed need and justified in the person-centered service plan. Documentation of all of the following is required:

- Identification of a specific and individualized assessed need.
- The positive interventions and supports used prior to any modification(s) to the person-centered plan.
- Less intrusive methods of meeting the need that have been tried but did not work.
- A clear description of the condition(s) that is directly proportionate to the specific assessed need.
- Review of regulations and data to measure the ongoing effectiveness of the modification(s).
- Established time limits for periodic reviews to determine if the modification(s) is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

## HCBS Programs in California Affected by the Final Rules

<u>Program Responsibilities</u>

California's HCBS programs, which are the focus of this Statewide Transition Plan (STP) are either directly administered or overseen by the Department of Health Care Services (DHCS) as the single state agency for Medicaid/Medi-Cal. However, several of the HCBS waivers and the 1915(i) State Plan program are administered jointly by DHCS and the State or local entity with program responsibility. Administrative teams comprised of employees from the State department/entity with program responsibility exist at DHCS, the California Department of Public Health (CDPH), the Department of Developmental Services (DDS), the California Department of Aging (CDA), and the San Francisco Department of Public Health (SFDPH). The SFDPH administers a HCBS Waiver program in accordance with terms of an Agreement with DHCS.

Existing 1915(c) HCBS Waivers and the corresponding State department/entity with program responsibility are as follows:

1. MSSP Waiver (0141), CDA, Long Term Care & Aging Services
2. HIV/AIDS Waiver (0183), CDPH, Office of AIDS
3. DD Waiver (0336), DDS, Community Services
4. ALW (0431), DHCS, Long-Term Care Division
5. NF/AH Waiver (0139), DHCS, Long-Term Care Division
6. IHO Waiver (0457), DHCS, Long-Term Care Division
7. SFCLSB Waiver (0855), SFDPH
8. PPC Waiver (0486), DHCS, Systems of Care Division

The existing 1915(i) State Plan Amendment (SPA) is administered by DDS and utilizes the same provider types as the HCBS Waiver for Persons with Developmental Disabilities (DD Waiver).

<u>California's HCBS 1915(c), 1915(k), 1115 Waiver – CBAS Program, and 1915(i) State Plan Program</u>

California currently has an approved 1915(i) State Plan program that allows the State to access federal financial participation for services provided to individuals with developmental disabilities who do not meet the institutional level-of-care criteria required for participation in the DD Waiver, which is described in greater detail below.

California currently administers the following eight 1915(c) HCBS Waivers:

- *Multipurpose Senior Services Program (MSSP) Waiver.* The objective of this program is to provide opportunities for frail older adults to maintain their independence and dignity in community settings by preventing or delaying avoidable nursing facility placement. 38 MSSP sites perform Care management, which is the cornerstone of this waiver and involves beneficiary assessment; person-centered care planning; service arrangement, delivery and monitoring; and coordinating use of existing community resources. The waiver was approved on July 1, 2014 for five years, through June 30, 2019.

MSSP Waiver provider types include all of the following:

- Adult Day Program
- Building Contractor or Handyman/Private Nonprofit or Proprietary Agency
- Congregate Meals Setting
- Home Health Agency
- Licensed/Certified Professionals
- Private Nonprofit or Proprietary Agency
- Registered Nurse
- Social, Legal, and Health Specialists
- Social Worker Care Manager
- Title III (Older Americans Act)
- Translators/Interpreters
- Transportation Providers

- *HIV/AIDS Waiver.* The purpose of this waiver is to allow persons of all ages with mid- to late-stage HIV/AIDS to remain in their homes through a continuum of care designed to stabilize and maintain an optimal level of health, improve quality of life, and provide an alternative to institutional care in hospitals or nursing facilities. Services include, but are not limited to, enhanced care management, homemaker and attendant care services, nutritional counseling and supplements, psychotherapy, and non-emergency medical transportation. The current waiver was approved on January 1, 2012 for five years, through December 31, 2016.

  HIV/AIDS Waiver provider types include all of the following:

  - Building Contractor or Handyman
  - Clinical Psychologist
  - Specialized Medical Supplies
  - Non-Emergency Transportation
  - Foster Parent
  - Home Health Agency
  - Home Health Aide
  - Homemaker
  - Licensed Clinical Social Worker
  - Licensed Vocational Nurse
  - Local Pharmacy or Vendor
  - Marriage and Family Therapist
  - Master's Degree Nurse; Psychiatric and Mental Health Clinical Nurse Specialist or Psychiatric and Mental Health Nurse Practitioner
  - Private Nonprofit or Proprietary Agency
  - Registered Dietician
  - Registered Nurse
  - Social Work Case Manager
  - Waiver Agency with Exception Approved by CDPH/Office of Aids
  - Residential Care Facilities for the Chronically Ill
  - Foster Family Homes (Specialized)

- *HCBS Waiver for Persons with Developmental Disabilities (DD Waiver).* The purpose of this waiver is to serve beneficiaries of all ages in their own homes and community settings as an alternative to placement in hospitals, nursing facilities or intermediate care facilities for persons with developmental disabilities (ICF/DD). Community-based services for individuals with developmental disabilities are provided through a

statewide system of 21 private non-profit corporations known as Regional Centers. Regional Centers provide fixed points of contact in the community for persons with developmental disabilities and their families. The DD Waiver has been in operation since 1982 to assist in funding services for individuals who live in the community and who meet the ICF/DD level-of-care requirement. DD Waiver beneficiaries live in the setting of their choice, such as with their families, in their own homes or apartments, or in licensed settings. There is no wait list for eligible beneficiaries. The current waiver was approved on March 29, 2012 for five years, through March 28, 2017.

DD Waiver provider types include all of the following:

- Adaptive Skills Trainer
- Adult Residential Facility (CCF)
- Adult Residential Facility for Persons with Special Health Care Needs (CCF)
- Associate Behavior Analyst
- Behavior Analyst
- Behavior Management Consultant
- Behavioral Technician/Para-professional
- Building Contractor or Handyman
- Camping Services
- Certified Family Home; Foster Family Home
- Child Day Care Facility; Child Day Care Center; Family Child Care Home
- Client/Parent Support Behavior Intervention Training
- Clinical Psychologist
- Contractor
- Creative Arts Program
- Crisis Intervention Facility
- Crisis Team – Evaluation and Behavioral Intervention
- Day-Type Services (Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community-Based Training Provider, Socialization Training Program; Community Integration Training Program; Community Activities Support Service)
- Dentist
- Dental Hygienist
- Dietitian; Nutritionist
- Dispensing Optician
- Driver Trainer
- Durable Medical Equipment Provider
- Facilitators
- Family Home Agency: Adult Family Home/Family Teaching Home
- Financial Management Services Provider
- Group Home
- Hearing and Audiology Facilities
- Home Health Agency
- Home Health Aide
- Independent Living Program
- Independent Living Specialist
- Individual (Landlord, Property Management)
- Individual or Family Training Provider
- In-Home Day Program

- Licensed Clinical Social Worker
- Licensed Psychiatric Technician
- Licensed Vocational Nurse
- Marriage Family Therapist
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Orthotic Technician
- Parenting Support Services Provider
- Personal Assistant
- Personal Emergency Response Systems Provider
- Physical Therapist
- Physical Therapy Assistant
- Physician/Surgeon
- Psychiatrist
- Psychologist
- Public Transit Authority
- Public Utility Agency, Retail and Merchandise Company, Health and Safety Agency, Moving Company
- Registered Nurse
- Residential Care Facility for the Elderly (CCF)
- Residential Facility – Out of State (CCF)
- Respite Agency
- Small Family Home
- Social Recreation Program
- Special Olympics Trainer
- Speech Pathologist
- Sports Club, e.g., YMCA, Community Parks and Recreation Program; Community-Based Recreation Program
- Supported Employment
- Supported Living Provider
- Translator/Interpreter
- Transportation Provider
- Vehicle Modification and Adaptations
- Work Activity Program

- *Assisted Living Waiver (ALW).* This waiver offers eligible seniors and persons with disabilities age 21 and over the choice of residing in either a licensed Residential Care Facility for the Elderly or independent Publicly Subsidized Housing (PSH) private residences with Home Health Agency services as alternatives to long-term institutional placement. The majority of Publicly Subsidized Housing units serve low-income applicants, while a percentage of units are designated for ALW members. The goal of the ALW is to facilitate nursing facility transition back into community settings or prevent skilled nursing admissions for beneficiaries with an imminent need for nursing facility placement. Eight care coordinator agencies serving seven counties independently maintain wait lists. The current waiver was approved on March 1, 2014 for five years, through February 28, 2019.

  ALW provider types include the following:

  - Care Coordination Agency
  - Home Health Agency in Public Subsidized Housing
  - Residential Care Facility for the Elderly

- *Nursing Facility/Acute Hospital (NF/AH) – Transition and Diversion Waiver.* This waiver offers services in the home to Medi-Cal beneficiaries with long-term medical conditions, who meet the acute hospital, adult subacute, pediatric subacute, intermediate care facility for the developmentally disabled – continuous nursing care and Nursing Facility A/B levels of care with the option of returning and/or remaining in their home or home-like setting in the community in lieu of institutionalization. The current NF/AH Waiver was approved on January 1, 2012 for five years, through December 31, 2016.

  NF/AH Waiver provider types include all of the following:

  - Behavioral Therapist
  - Durable Medical Equipment Provider
  - Employment Agency
  - Home and Community-Based Continuous Care Facility
  - Home Health Agency
  - Home Health Aide
  - In-Home Support Services Public Authority
  - Intermediate Care Facility for the Developmentally Disabled – Continuous Nursing Care
  - Licensed Clinical Social Worker
  - Licensed Psychologist
  - Licensed Vocational Nurse
  - Marriage Family Therapist
  - Non-Profit or Proprietary Agency
  - Personal Care Agency
  - Private Nonprofit or Proprietary Agency
  - Professional Corporation
  - Registered Nurse
  - Waiver Personal Care Services Provide

- *In-Home Operations (IHO) Waiver.* This Waiver was originally developed for those individuals who had been continuously enrolled in a DHCS administered waiver prior to January 1, 2002 and who primarily receive direct-care services rendered by a licensed nurse. This waiver offers services in the home to Medi-Cal beneficiaries with long-term medical conditions in their home or home-like setting in the community in lieu of institutionalization. The current waiver was approved on January 1, 2015 for five years, through December 31, 2019.

  IHO Waiver provider types include all of the following:

  - Associate Clinical Social Worker (ACSW)
  - Durable Medical Equipment Provider
  - Employment Agency
  - Home and Community-Based Continuous Care Facility
  - Home Health Agency
  - Home Health Aide
  - In-Home Support Services Public Authority
  - Licensed Clinical Social Worker
  - Licensed Psychologist
  - Licensed Vocational Nurse
  - Marriage Family Therapist
  - Personal Care Agency
  - Private Nonprofit or Proprietary Agency
  - Professional Corporation

- Registered Nurse
- Waiver Personal Care Services Provider

- *San Francisco Community Living Support Benefit (SFCLSB) Waiver.* This waiver utilizes certified public expenditures for provision of waiver services to persons with disabilities age 21 and over who reside in the City and County of San Francisco and who are either homeless, residing in a nursing facility, or are at imminent risk of entering a nursing facility. Eligible individuals can move into licensed CCFs or Direct Access to Housing (DAH) sites, also known as PSH (e.g., private residences). Services consist of care coordination, community living support benefits, and behavior assessment and planning in both CCFs and DAHs; and home delivered meals and environmental accessibility adaptions in DAH sites.

  SFCLSB Waiver provider types include all of the following:

  - Adult Residential Facility (CCF)
  - Clinical Psychologist
  - Durable Medical Equipment Provider, Building Contractor or Handyman Private Nonprofit or Proprietary Agency
  - Home Delivered Meal/Meal Preparation Vendor
  - Home Health Agency
  - Licensed Clinical Social Worker
  - Marriage Family Therapist
  - Not-For-Profit Case Management Agency
  - Private Nonprofit or Proprietary Agency
  - Residential Care Facility for the Elderly (CCF)
  - Therapist (Various Specializations)

- *Pediatric Palliative Care (PPC) Waiver.* This waiver offers children with life limiting conditions a range of home-based hospice-like services while they maintain the option of receiving curative treatment. According to diagnosed need and an approved plan of care, services include: care coordination, expressive therapies, family training, individual and family caregiver counseling/bereavement services, pain and symptom management, personal care and respite care.

  PPC Waiver provider types include all of the following:

  - Agency Certified Nursing Assistant
  - Art Therapist
  - Associate Clinical Social Worker
  - Child Life Specialist
  - Congregate Living Health Facility
  - Home Health Agency
  - Home Health Aide
  - Hospice Agency
  - Licensed Clinical Social Worker
  - Licensed Psychologist
  - Licensed Vocational Nurse
  - Masters Level Social Worker
  - Massage Therapist
  - Music Therapist
  - Registered Nurse

*1915(k) Community First Choice (CFC)– In-Home Supportive Services (IHSS).* The goal of the IHSS program is to allow members to live safely in their own home and avoid the need for out of home care. Services are provided in the members' private residence. This could be a house, apartment, or the home of a relative. The members' home is the only setting in CFC – IHSS may be provided. Members residing in a licensed, provider-owned/controlled residential setting may not receive IHSS services.

1915(k) CFC services include:

- Personal care services like dressing, bathing, feeding, toileting
- Paramedical services like helping with injections, wound care, colostomy and catheter care under the direction of a licensed medical professional
- House cleaning
- Cooking
- Shopping
- Laundry
- Accompaniment to and from medical appointments

- *1115 Community-Based Adult Services Program (CBAS).* See **Attachment I** of the STP for details.

## Monitoring and Oversight Process

In keeping with state laws and regulations, and CMS approved Waiver and State Plan commitments, California's HCBS programs currently conduct periodic reviews of their care-management entities, providers, and residences of program members. Prior to implementation of the HCB Settings Final Rule, HCBS programs were required to conduct site visits to monitor and assess federal assurance compliance. Among the activities conducted during these on-site visits are member record reviews, member and staff interviews, home visits, person-centered plan review, and special incidents review,

In order to assess current settings and ensure ongoing compliance with the HCB Setting Final Rule, the State has expanded its current processes to include activities that will ensure compliance with the Final Rule, and remediation strategies to achieve compliance in the event a setting does not meet the HCB criteria. The state has developed an at-a-glance view of California's monitoring and oversight process demonstrating each programs approach to on-site assessments and compliance with the HCB Settings Final Rule (see **Attachment VI – Setting Assessment Process**).

## Private Residences Presumed to be in Compliance

CMS issued home and community-based (HCB) settings regulations which define HCB settings based on individual experience and outcomes with the purpose of maximizing the opportunities for members receiving Medicaid HCB services to receive those services in integrated settings. In formulating a plan to implement these regulations, California has determined that the following types of non-provider owned or controlled private residential settings qualify as HCB settings:

1. Private residences owned by the member or a relative of the member.

2. Unlicensed room and board homes chosen by the member and paid for by the member with his or her own money, sometimes using their Social Security payments. These homes are not limited to a category of residents, and both disabled and non-disabled individuals are free to reside in these homes.

3. Private residences chosen by the member where the member pays for part or all of the lease costs with the assistance of federal, State, or local funding. Examples include:
    - Affordable Housing Apartment Complexes funded by a combination of Low Income Tax Housing Credits, California State Housing and Bond initiatives, Housing and Urban Development, City and County local and federal funds, and bank financing, where residential eligibility is income based.
    - Housing and Urban Development (HUD) Section 8 Housing Choice Vouchers, which can be used to pay for housing anywhere that accepts vouchers. This includes the Medi-Cal partnership with the Housing Authority of the City of Los Angeles (HACLA), for section 8 vouchers for Medi-Cal seniors residing in skilled nursing facilities (SNFs) who would like to return to the community. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
    - HUD Non-Elderly Disabled Vouchers, which can be used by disabled individuals to live in any residence of their choice that accepts these vouchers. These vouchers do not require that the residences are limited to disabled residents. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
    - HUD Shelter Plus Care and Continuum of Care Vouchers, issued to people experiencing homelessness. This program provides case management supportive services to the homeless but do not require the residence be restricted to the homeless. All units must meet the applicable Housing

Quality Standards (HQS) set forth in 24 C.F.R. § 982.401. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.

- HUD Section 811 Project Rental Assistance Demonstration Program. For this program, no more than 25% of the units can be set-aside for 811 tenants, which results in a mix of tenant types. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
- Veterans Affairs Supportive Housing vouchers issued to homeless veterans and disabled veterans to help them pay for housing.
- Veteran Housing and Homeless Prevention Program, which acquires, constructs, rehabilitates and preserves affordable multifamily housing for veterans and their families.
- HUD Section 202 Senior Housing rent subsidies for very low-income households with at least one person who is at least 62 years old.
- LA Department of Health, Housing for Health, rental subsidies and supportive services for persons who are homeless, for use in a variety of community-based housing options such as non-profit owned supportive housing with units dedicated to serving homeless individuals and/or families, long term leases of privately owned buildings, and scattered site housing units rented from private landlords.

Consistent with CMS' HCB setting rules, California presumes that these non-provider-owned or controlled private residential home settings qualify as HCB settings. The dwellings are not limited to or designed specifically for people with disabilities. Rather, the members chose to live in the private residences in integrated settings with other people from the community and their families. The members realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings. These settings do not isolate the member from the broader community, and do not have the characteristics of an institution. These settings do not control the personal resources of the member, or utilize interventions or restrictions that exist in institutional settings.

Individuals living in these settings, or utilizing the described subsidies or vouchers to pay for rent in non-provider owned and controlled dwellings, personally select their homes that include non-disability specific settings and options for a private unit in a residential community setting. The individual decides whether or not to share a room with a person of their choice. Residents in these settings who are receiving HCB services are treated with the same respect and dignity as persons not receiving HCB services. The settings do not restrict the member from interaction with other non-disabled people in the broader

community. These settings do not restrict the member's independence in making life choices. The settings do not restrict the member's choice of HCB services and supports or who can provide those services.

Notably, California law governs all of these private residences in ways that makes them meet the minimum qualifications for HCB settings. Residential rental agreements are subject to fundamental Code limitations. Several provisions in residential rental agreements are deemed invalid as contrary to public policy and, if included, will be unenforceable. These statutory limitations demonstrate the legislative recognition of the unequal bargaining power historically typifying residential landlord-tenant relationships. The codes help prevent the unknowing signing away of valuable rights by tenants who may not fully understand the rental agreement. (*See Jaramillo v. JH Real Estate Partners, Inc.* (2003) 111 CA4th 394, 402-403.) A member living in these settings has a legally enforceable agreement for the housing which ensures the member's rights of privacy, dignity and respect, and freedom from coercion and restraint. Residential rental agreements cannot waive or modify any of the following tenant rights:

- Tenant's right to return of security deposit under Civil Code sections 1950.5(m) and 1953(a)(1);
- Tenant's right to protection under the implied warranty of habitability under Civil Code section 1942.1;
- Tenant's statutory protection against "retaliatory eviction" by the landlord under Civil Code section 1942.5;
- The tenant's right to have the landlord exercise a lawfully-imposed duty of care to prevent personal injury or property damage, under Civil Code section 1953(a)(5);
- Statutory limitations on the landlord's right to access the rented unit during the lease term under Civil Code § 1953(a)(1). The rights of a Landlord to enter a dwelling are limited to certain conditions under Civil Code section 1954;
- Tenant's right to assert a cause of action against the landlord under Civil Code section 1953(a)(2);
- Tenant's right to legally-required notice and hearing, including three or 30/60-day notice to terminate the tenancy, filing of a response to an unlawful detainer complaint, and an unlawful detainer trial, under Civil Code section 1953(a)(3) and (4). The non-waivable right to three-day notice also applies to federally-subsidized (HUD) rental housing. In federally-subsidized "Section 8" housing, landlords are required to give 90 days' written notice under Civil Code section 1954.535 and specify "good cause" to evict. In rent control jurisdictions, some form of "eviction control" restricts the grounds upon which tenancies may be terminated. Some local controls are quite extensive and others very selective.

- A landlord must allow a tenant with a disability to make reasonable modifications to the rental unit to the extent necessary to allow the tenant "full enjoyment of the premises." (Civil Code § 54.1(b)(3)(A).)
- Landlords of "buildings intended for human habitation" must install dead bolt locks on each "main swinging entry door of a dwelling unit" and exterior doors that provide ingress or egress to common areas with access to dwelling units in multifamily developments (Civil Code § 1941.3(a).) Any dwelling unit which lacks a proper lavatory or kitchen sink, bathtub shower, or less room or space dimensions than required by code, to an extent that endangers the life, limb, health, property, safety, or welfare of the occupant, is deemed substandard. (Health & Safety Code § 17920.3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. (Civil Code §1940(c).) Landlords are responsible for installing at least "one usable telephone jack" and the placement, maintenance and repair of inside telephone wiring "in good working order." (Civil Code § 1941.4.)
- A residential rental agreement compelling binding arbitration of disputes over a tenant's rights or obligations falls within the section 1953(a)(4) bar, and thus is void, because inherent in an arbitration agreement is the waiver of any right to a jury trial. (*Jaramillo v. JH Real Estate Partners, Inc., supra,* 111 CA4th at 403-404.)
- As a matter of state constitutional law, a contractual provision waiving the right to a jury trial in advance of pending litigation is unenforceable because it is not one of the ways the Legislature has directed that a jury may be waived. (Cal. Const. Art. I, § 16; Code of Civil Pro. § 631(d)).
- The California Fair Employment and Housing Act effectively makes protection from unlawful housing discrimination a non-waivable tenant right. (Gov. Code §§ 12920, 12955; *see also* Gov. Code § 12921(b).)

California will assess licensed residential settings types that are not private residences through provider and on-site assessments.

## California's Statewide Transition Plan

This STP identifies the framework and strategy for achieving and maintaining compliance with the federal requirements for HCB settings in California.

California's HCBS waiver and 1915(i) State Plan program differ significantly in the populations they serve, their size and complexities, and their statutory and regulatory structures, among other differences. The largest and most complex are the DD Waiver and the 1915(i) State Plan program, where the programs serve approximately 130,000

members in the provision of a vast array of residential and nonresidential services that are separately licensed and/or regulated. Participation in the DD Waiver is not required to access the State's full array of available developmental services. Providers are not separately identified for DD Waiver or 1915(i) State Plan program purposes; therefore, all providers potentially utilized for HCBS must be in compliance with the HCB setting requirements. For the DD Waiver, the entire system, serving over 270,000 members, is potentially affected by the new requirements.

In contrast, the SFCLSB Waiver, with 17 beneficiaries, represents the smallest 1915(c) waiver in California. Eligibility is open only to San Francisco residents who meet level of care eligibility and require at least one of six available services.

This 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, and 1115 waiver 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.

Resources to address and implement the many changes necessary to be in compliance with the regulations are and will continue to be limited. When resources are needed, they must be raised and vetted through the annual legislative budget process, which only allows for new resources prospectively, typically in the upcoming state budget year. Therefore, careful thought and analysis must go into every aspect of implementation in an effort to achieve compliance as cost effectively as possible. Since program systems and processes have long been established in California, standard processes will be considered for modification to bring about and ensure ongoing compliance, such as revising existing monitoring and oversight protocols to incorporate the regulatory requirements, utilizing available data, such as the National Core Indicator (NCI) and expanding existing complaint and appeal processes to allow for member and/or provider due process when disputes arise.

## Stakeholder Input

To achieve compliance, California will strongly emphasize inclusive stakeholder processes that analyze and guide implementation. Essential involvement will come from members. Their input concerning how they experience community inclusion and freedom of choice will be critical for system changes and implementation strategies. Also essential is provider input. Providers are the backbone of the system, ensuring that services and choices are available to members. How the regulations are implemented may affect the viability of providers as sustainable businesses. Stakeholder processes will also include entities and experts who are impacted by, or are knowledgeable about, the various topics, particularly, the California Department of Social Services as the licensing agency (Community Care Licensing [CCL]) for many of the HCB settings.

As the State continues this process, stakeholder input will evolve over time as implementation phases progress, as described below. With the stakeholder input, specificity will be added and/or modifications will be made to the various components identified in the STP.

Following is a summary of California's efforts to elicit stakeholder input and subsequent comments received to date on the STP. Please note: the Revised Draft CBAS Home and Community-Based (HCB) Settings Transition Plan details a separate stakeholder engagement process.

DHCS posted the first STP draft to the DHCS website on September 19, 2014, followed by a 30-day stakeholder input period, and the second STP draft on November 7, 2014, followed by another 30-day stakeholder input period. In addition, DHCS posted general public interest notices about impending public comment periods and meetings regarding development of the STP in the California Regulatory Notice Register on March 3, 2014 and April 25, 2014. The Register is available in print at public libraries as well as other public places. DHCS also posted a general public interest notice to inform stakeholders of a conference call on July 13, 2015, to discuss the revisions made to the STP, as well as to discuss comments received on the On-Site Assessment Tools and Provider Self-Survey Tools. Other notices were sent by the individual departments with responsibility for specific waivers; e.g., CDPH communicated directly with HIV/AIDS Waiver stakeholders; CDA with MSSP sites and CBAS centers; and DDS with Regional Centers.

DHCS received CMS feedback on the previously submitted STP on November 16, 2015. The letter can be found at: https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/ca/ca-cmia.pdf. CMS hosted a series of conference calls with the State to discuss CMS feedback and clarify the STP requirements outlined in the letter. The current STP draft, which addresses CMS' requirements, was posted to the DHCS website on August 29, 2016 for public review and input. Public comment will be analyzed and incorporated into the STP, and will be summarized in **Appendix A.** DHCS will also host a stakeholder conference call in September to discuss revisions to the STP and respond to questions or concerns.

## Implementation of the HCB Setting Requirements

Following is a description of the various phases of implementation that California will undertake to achieve compliance with the HCB setting requirements. California will move forward concurrently with many of the components listed below. As described previously, the details of implementation will vary significantly across the HCBS Waiver, 1915(i) and 1915(k) SPAs, and 1115 Waiver, program and be integrally guided by stakeholders. As remedial strategies are solidified, actions and timelines will be identified to track progress against objectives based on resources available.

Consistent with the above, additional State resources must be requested via the State legislative and budget processes. To ensure awareness of these needs, staff from the California Department of Finance and the State Legislature are invited to attend ongoing stakeholder meetings.

## Education, Outreach, and Training

As an important early step, information and education on the requirements of the HCB setting requirements and the regulations generally has been provided to State departments/entities, members and families, care-coordination agencies, regional centers, providers, advocacy groups and other interested stakeholders throughout the State on a continuous and ongoing basis. California has used website postings, conference calls, webinars, and public hearings as methods for getting information about the Final Rules widely disbursed. Additionally, all affected parties will be informed of the ongoing methods for providing input, being involved and staying informed as implementation progresses. Ongoing communication methods will be developed with stakeholder input.

The phase of assessing provider compliance with the settings requirements will involve intensive training of providers, care management agencies, regional centers, assessment team members, and others involved in the assessment process, and orientation for advocacy groups and other members of the interested public. Several webinars and locally held training sessions will take place over the next year as the various HCBS programs roll out Provider Self-Surveys, Member Surveys and On-Site Assessment activities.

## Systemic Assessment of Statutes, Regulations, Policies and Other Requirements

DHCS and the State departments/entities responsible for operating each HCBS Waiver, 1915(i) and 1915(k) State Plan programs, and 1115 Waiver reviewed and analyzed the applicable statutes, regulations, and policies governing residential and nonresidential HCB settings to determine the extent to which they comply with federal regulations. Departments requested stakeholder participation for input into the systemic assessment process to determine whether each standard is in compliance, out of compliance or whether the standard is silent on the federal requirement. Beginning early in 2015 the State engaged assistance from stakeholders who are required to adhere daily to California law, program regulations, and program policies.

Each department convened stakeholders via webinar, teleconference, and/or face-to-face meetings, and encouraged stakeholder input either directly during the meetings, by email, USPS mail, and telephone. Stakeholder involvement in review and analysis of statutes, regulations, and policies varied by program. For example, the sheer number of residential and non-residential HCB settings available to persons with developmental disabilities through the HCBS waiver and State Plan benefits required an extensive process to consider, deliberate, and validate existing State standards and policies.

The initial draft systemic assessment process was completed July 1, 2015, and following incorporation of public input, finalized August 6, 2015. To address issues CMS identified in the systemic assessment in its letter dated November 16, 2015, the State reexamined its

findings. During a series of meetings among the State departments, and as a result of discussions with CMS teams, updates have been made to the August 6, 2015 version. The revised systemic assessment indicates where specific programs will take action to bring their statutes, regulations and policy documents in conformance with the federal requirements. Given the amount of time required to effect statutory or regulatory changes in California, programs will develop and implement any needed changes during 2017 and 2018.

A revised summary of results including hyperlinks to applicable statute, regulations, policies and other source documents can be found in **Appendix B**. Please note that the systemic assessment is an indication of compliance, but does not preclude settings from further compliance determination processes, such as Provider Self-Surveys, Beneficiary Self-Surveys, and On-Site Assessments.

## Compliance Determination Process for HCB Settings

The State departments/entities will be responsible for ensuring appropriate provision of HCBS by all providers that serve, or may serve Medi-Cal members. California's assessment of HCBS providers will involve several distinct sets of activities that will feed into one another. All of these activities require large amounts of data in the planning stages, and will produce similar amounts of data needed for ongoing operations, program reporting to state management and CMS, and evaluation and program improvement. Some of the initial types and sources of data include member eligibility files, provider certification and payment files, program administration files, sampling, selection criteria, and validation protocols.

Following is an initial listing of HCB settings that have been assessed [see page numbers below] through the systemic assessment process for inclusion in the compliance determination process:

- Adult Day Program [Pg. 27]
- Adult Family Home/Family Teaching Home [Pg. 29]
- Adult Residential Facility (Includes Adult Residential Facility for Persons with Special Health Care Needs) [Pg. 31]
- Certified Family Home; Foster Family Home [Pg. 35]
- Child Day Care Facility; Child Day Care Center; Family Child Care Home [Pg. 37]
- Community-Based Adult Services [See **Attachment I** - Community-Based Adult Services Program Transition Plan – Appendix V]
- Congregate Living Health Facility [Pg. 38]
- Congregate Meal Site [Pg. 42]
- Day-Type Services (Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community-Based Training Provider, Socialization Training Program; Community Integration Training Program; Community Activities Support Service) [Pg. 45]
- Group Home [Pg. 46]

- Residential Care Facility for the Elderly [Pg. 48]
- Residential Care Facility for the Chronically Ill [Pg. XX]
- Small Family Home [Pg. 54]
- Work Activity Program [Pg. 56]

The first set of activities centers around provider self-surveys of their existing operations compared to the new requirements in the federal regulations. DHCS and State departments have developed an agency-wide core Provider Self-Survey Tool, which will be forwarded to all HCB settings for completion. The Residential and non-Residential Provider Self-Survey Tools are found in **Attachment IV and V**, respectively. The core survey tool may be modified, including guidance and instructions, to address specific provider types and programs.

The different HCBS programs may use both electronic and mail distribution processes to send the survey instruments and guidelines to providers. Additionally, California will host training webinars on the provider self-survey process and expectations, and will post follow up information on program websites. The survey distribution and training processes generally will begin the fourth quarter of 2016 and continue through the second quarter of 2017 (See **Attachment VII** - Statewide Transition Plan Milestones and Timeline for detailed timeline).

Depending on provider type, providers will have 30 to 60 days to complete and return their self-surveys. Programs will follow up with providers with reminder emails and phone calls. Except for programs like CBAS, which is integrating the provider self-surveys with other information required from CBAS centers in preparation for their biennial certification visits through 2018, completion of provider self-surveys is targeted for the third quarter 2017 (See **Attachment VII** - Statewide Transition Plan Milestones and Timeline for detailed timeline).

Program staff, or care coordination agencies and regional centers, will analyze returned self-surveys and identify them according to whether or not they meet the CMS readiness criteria. Providers whose self-surveys do not indicate that they fully meet the criteria will be further categorized by the type and level of remediation needed to achieve compliance. Those needing relatively straightforward corrective action (e.g., documenting procedures, staff training on the new requirements, reiterating rights and responsibilities to members and their representatives, etc.) will implement corrective action, monitored by program staff, care coordination agencies and regional centers. Those needing more extensive corrective action will be scheduled for on-site assessments.

Secondly, surveys of members will pose non-threatening questions to effectively elicit members' thoughts and feelings about the HCBS they receive, their ability to actively participate in life decision making, and any problems they encounter. Member survey

instruments also need to be tailored to the several different types of populations receiving HCBS—the elderly; persons with developmental disabilities, cognitive impairments, or mental illness; the physically disabled; AIDS patients; children needing palliative care in addition to treatment for acute diseases.

DHCS convened representatives from member advocate organizations and its sister agencies administering HCBS programs to develop the core questions for member surveys. These core questions will be incorporated in existing policies and procedures used by the various programs for member interviews, service planning, and complaint investigations.

Conducting member surveys will take many different forms during 2017. To avoid confusion and to assure the consistency and reliability of member input, California will not distribute member surveys in mass through the mail or electronic media. Instead HCBS programs will conduct face-to-face interviews with members or their authorized representatives as often as possible. For example, HCBS programs which use periodic recertification of member eligibility or reassessment of need for services may add the core questions to their recertification or reassessment processes. Programs which make on-site visits to HCBS providers or to member homes may interview members during these visits. Complaint investigations will include the opportunity to ascertain how members see their ability to access community resources.

Since many members receive HCBS from more than one provider, the focus will be on the HCBS provider(s) with which the member resides or spends a significant amount of time (i.e., 4 hours) on a regular basis. Member input can be linked to identified providers through each program's system for storing provider information.

In addition to corroborating information garnered from provider self-surveys and on-site assessments, member input will play an essential role in quality assurance and program improvement efforts. Its impact is felt in the scope and duration of HCBS that programs offer, the types and qualifications of providers used, and how services are financed.

On-site assessments are the litmus test for ascertaining provider compliance with the federal settings requirements. These assessments will confirm compliance or identify areas for remediation. DHCS and State departments have developed an agency-wide core On-Site Assessment Tool, for use in the On-Site Assessments of HCB settings. The Residential and non-Residential On-Site Assessment Tools are found in **Attachment II and III**, respectively. The core assessment tool includes questions that relate to each new federal requirement that will be used to determine if the HCB setting meets or does not meet the required federal rule. The core assessment tool may be modified to address specific provider types, including guidance and instructions, and will become the assessment tools utilized by the appropriate State departments/entities administering the program.

The responsibility for ensuring completion of On-Site Assessments rests with the State department/entity responsible for the program as specified under "HCBS Programs in California Affected by the Final Rules" section of this document. On-Site Assessments will be conducted by a survey team that includes representation from at least two of the following: State personnel, case managers or other representatives of case management entities, and licensing entities.
Depending upon the HCBS program's size and diversity of provider types, the selection of providers for on-site assessments can be done on the basis of several factors that may include:

- Statistically valid samples
- Annual or biennial regularly scheduled site visits for licensing or certification purposes
- The responses to the provider self-surveys, member input, and other factors like staff's knowledge of provider operations, including a history of site visits, complaints, and corrective actions
- The provider's location being on or adjacent to institutional settings.

As On-Site Assessments are completed for a sample of settings by provider type category, a general pattern of non-compliance may trigger a full review of all settings comprising the provider type category. On-Site Assessments will be ongoing until remedial strategies are identified and implemented. On-Site Assessments will be incorporated into ongoing monitoring protocols as a part of existing processes

There are HCBS providers which may serve members from several different HCBS programs. To ensure consistency and avoid duplication of effort, the program which has primary responsibility for monitoring and oversight of the providers will conduct any necessary on-site assessments. Other programs may rely on the findings of the responsible agency as to the providers' compliance with the federal requirements.

Like the analysis of provider self-surveys, on-site assessments will determine if a specific provider is in compliance with the federal settings requirements, or needs to implement corrective action to achieve compliance. The written results of each On-Site Assessment will be forwarded back to the HCB setting with specific information regarding improvements that will be required in order for the setting to come into compliance with the federal requirements and a timeline for completion. Remedial actions will be developed to include timelines, milestones and a description of the monitoring process to ensure timelines and milestones are met. Follow up of the compliance issues will be the responsibility of the administering State department/entity. Completed assessments, including documentation of any required follow-up actions as a result of the On-Site Assessments, will be maintained by the appropriate department

The final report of the compliance determination process will detail the number of HCB settings that are fully compliant with the requirements, partially compliant with the requirements and will require modifications, cannot meet the requirements and require withdrawal from the program, and the number of settings that require going through the heightened scrutiny process. Once completed, this report will be included in an updated STP.

## Heightened Scrutiny Process

The State must identify settings that are presumed to have institutional qualities. These settings include those that: are in a publicly or privately-owned facility that provide inpatient treatment; are on the grounds of, or immediately adjacent to, a public institution; or settings that have the effect of isolating individuals receiving Medi-Cal funded HCBS services. Settings that have one or more of these characteristics must be approved by CMS to continue to receive Medi-Cal HCBS funding. The State must demonstrate, through evidence presented by the State and public input, that the setting meets the HCB setting requirements.

Settings that may have the effect of isolating HCBS members are settings specifically designed for people with disabilities, often for people with a certain type of disability, and on-site staff provides many of the services available. In addition, settings that isolate HCBS members from the broader community may also be designed to provide members with multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities. These settings provide little or no interaction with the broader community and use interventions or restrictions that are used in institutional settings.

Using Provider Self-Surveys, On-Site Assessments and other monitoring activities, Member Surveys and stakeholder input, the State will identify settings that are in publicly or privately owned facilities that provide inpatient treatment; are on the grounds of, or immediately adjacent to, public institutions; or have the effect of isolating individuals receiving Medi-Cal funded HCBS services. These settings will be required to submit evidence to the State to demonstrate how they have the qualities of HCBS, which the State will then submit to CMS. The evidence should focus on the qualities of the setting and how it is integrated in and supports full access to the community. Specific evidence to be submitted may include:

1. Licensure requirements or other state regulations that clearly distinguish a presumed institutional setting from licensure or regulations of institutions;
2. Provider qualifications for staff employed in the setting that indicate training or certification for HCBS, and that demonstrate the staff is trained specifically for HCBS in a manner consistent with the HCB setting requirements;
3. Procedures that indicate support for activities in the greater community according to the individual's preferences and interests; and
4. Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided when desired by the member.

All settings submitted for heightened scrutiny must complete a Provider Self-Survey and will be subject to an On-Site Assessment where Beneficiary Self-Surveys will be conducted. The State's heightened scrutiny review process will consist of:

- A review of evidence provided by the setting;
- A review of the setting's policies and services;
- An on-site visit and an assessment of the physical characteristics;
- A Review of policies and procedures governing person-centered plan development and implementation;
- Member interviews and observation;
- Collection of evidence to submit to CMS in order to overcome the institutional presumption.

The State must determine, using input from the public, members, stakeholders, and providers whether or not it believes the setting overcomes the institutional presumption. The evidence required to overcome institutional presumptions must be submitted to the settings' contractor within thirty (30) days of its identification for the heightened scrutiny process. The contractor will review the evidence submitted, follow up with the setting for any necessary documentation, and make a recommendation to the corresponding State agency overseeing the program. The State agency will review the evidence, follow up with the contractor to request missing documentation, and recommend to DHCS a compliance determination. DHCS will review evidence and recommendations and will follow up if necessary with an On-Site Assessment and member survey to ensure all necessary information is obtained before making a determination of whether or not the setting overcomes the institutional presumption.

The State will work with settings when necessary to develop remediation strategies and timelines specific to each setting to achieve full compliance with the final rule. In the event that a setting cannot achieve compliance with the HCB settings rule, the transition of members will be conducted as described under the STP section "Changes in Services or Providers for Members."

## Changes in Members' Services or Providers

Currently California's HCBS programs have policies and procedures, which allow for changes in members' services or providers. These changes may occur due to several factors including:

- Changes in a member's need for specific types or intensity of services
- The member's selection of different service options available to meet needs
- The member's dissatisfaction with a provider's services or personnel
- Changes in a provider's staffing, hours of operation, or location
- Provider closure
- Provider withdrawal or suspension from the Medi-Cal program

The initial steps in addressing the impending change include reviewing the member's person-centered plan; reevaluating the goals and objectives, needs, preferences and choices of the member; and identifying the options available. The person-centered plan meeting would include the member, involved family members, conservators, authorized representatives, advocates, the care management agency or regional center coordinator, and provider staff who know the member well. To ensure a smooth transition from one provider to another, a transition plan outlining the specific transition activities, including any necessary supports and services needed to ensure a successful and person-centered transition, is incorporated into the person-centered plan.

Written notification to the member and the provider is given at least 30 days in advance of the effective date of the change, identifying the specific reasons for the transition. This notification also informs the member of their right to a fair hearing under Medi-Cal, including Aid Paid Pending if timely requested.

When one of California's HCBS programs determines that a provider owned and operated residence or day program setting is not in compliance with the HCB settings requirements, the first order of business is the setting's development of a workable remediation plan to come into full compliance with the HCBS Settings Rules over a reasonable timeframe. However, if the provider owned and operated residence or day program provider cannot come into compliance with the HCBS Settings Rule by March 2019, the program will initiate its policies and procedures to transition, if possible, affected members to compliant settings so they can continue to receive federally funded HCBS services.

When choosing provider owned and operated residences, members have the opportunity to explore integrated living options that match their identified service and support needs and choices. Considerations may include:

- Exploring the variety and types of community living options currently available (e.g., non-disability settings, supported living, small group homes, family home agencies)
- Proximity to services in the community
- Employment opportunities
- Needed medical services

Until California completes the process of assessing provider settings and determines appropriate remediation plans, it cannot estimate the number of individuals that may need to be transitioned eventually other settings.

## Milestones and Timeline

In order to illustrate the variety of compliance determination activities the State has performed, or will perform, California has developed a comprehensive milestones and timeline document for stakeholders to reference. It provides a convenient view of the milestone activities described in detail throughout the STP, and their associated timelines for completion (see **Attachment VII**).

## Role of Person-Centered Planning

Even though implementation of the new federal regulations affecting the person-centered planning process is not technically part of this STP, person-centered planning is inextricably linked to the HCB setting requirements. The State department/entity responsible for program administration will use a stakeholder process to evaluate the role of person-centered planning as it relates to determining compliance with the federal regulations, assessing member satisfaction with the setting options, and other possible community integration issues. Strategies may be developed to utilize information from the person-centered planning process to improve service delivery under the federal regulations.

Public comment supports the idea of the State's understanding regarding home-like and community integration within a persons' individual plan of care and basic civil right. DHCS believes community is not the mere physical presence of other buildings and people. It includes a safe and purposeful environment where individuals have needed support and safety, and the greatest freedom to live productive, connected lives according to their own desires.

The person-centered plan documents the member's choice of settings and services based on the needs and preferences of the member. The State will take into account the options provided and choice of the member or their parent or legal guardian when determining HCB settings compliance, thus keeping the end goal of optimizing autonomy, independence, and member choice in mind.

The State will ensure through STP activities and ongoing monitoring and oversight that the person-centered plan documents member choice, needs, preferences, and goals. Any modification to the HCBS setting requirements must be documented and supported by the person-centered plan and will only be made on an individual basis. For example, certain HCBS members will have a documented need to reside in a setting utilizing delayed egress and/or secured perimeters. State statute and regulation clearly identify the policies and procedures for implementing such interventions[1].

[1] Health and Safety Code Section 1584; 17 CCR 56068 – 56074, 56101, 56620 – 56625; 22 CCR 87705.

## Appeal Processes

As the State assesses HCBS settings for compliance with the Final Rule, providers and members will have an opportunity appeal compliance determinations made that result in loss of funding for providers or loss of service and/or member relocation of residence. In addition to the appeals and grievance policies that exist for each individual program, providers and members may utilize existing state processes to file an appeal. There are two distinct processes that providers and members may use to file appeals with the State.

*Provider Appeals*:
In the event that a setting is determined non-compliant and cannot or will not address issues of non-compliance through remediation, the provider has the option of filing an appeal through the Office of Administrative Hearings and Appeals (OAHA). OAHA is an independent hearing office created by DHCS to provide an appeals process for enrolled Medi-Cal providers to dispute actions taken by the Department. Providers looking to file an appeal related to HCBS setting compliance can find more information at http://www.dhcs.ca.gov/formsandpubs/laws/Pages/The-Office-of-Administrative-Hearings-and-Appeals.aspx

*Member Appeals*:
Members looking to dispute an HCBS setting determination by the State resulting in a loss of services and/or unwanted relocation of residence may file an appeal through the Medi-Cal Fair Hearing process. For more information regarding the Fair Hearing process, members may visit http://www.dhcs.ca.gov/services/medi-cal/Pages/Medi-CalFairHearing.aspx.

## Compliance Monitoring

Each HCBS Waiver and 1915(i) State Plan program, in consultation with stakeholders, will use the self-surveys, On-Site Assessments and/or other data collection methods, to develop remedial strategies and monitor progress toward compliance with the federal regulations. All State-level and individual-setting level remedial actions will be completed no later than March 17, 2019.

The State will ensure that HCB settings remain in compliance with the new requirements by utilizing current ongoing licensing and/or certification processes for both residential and non-residential settings, as well as weaving compliance reviews into current monitoring and oversight processes (**See Attachment VI – Setting Assessment Process**).

## Plan Updates and CMS Reporting

During the implementation period, progress on this STP will be continuously monitored and reported to CMS, as needed.

## Appendix A – Stakeholder Input

The State submitted a draft STP for public comment on December 19, 2014, followed by a second draft for public comment submitted July 1, 2015. On August 14, 2015, the State submitted its STP for CMS review, which included a summary of public comment and state responses. To review public comment and state responses on the previous STP submission, please visit: http://www.dhcs.ca.gov/services/ltc/Documents/STP_Final%20August%2014%202015.pdf

The August 29, 2016, revised STP incorporates stakeholder input from previous STP versions, and addresses CMS feedback received November 16, 2015. The letter can be found at https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/ca/ca-cmia.pdf.

The State will analyze, summarize, respond to and incorporate public input received during the August 29, 2016 – September 29, 2016 public comment period in Appendix A of the revised STP.

### Evidence of Public Notice

The following public notices were published in the California Register, which is distributed to public institutions and subscribers statewide.

DEPARTMENT OF HEALTH CARE SERVICES

FINAL RULES, CMS-2249-F, REQUIRE
HOME AND COMMUNITY-BASED (HCB) SETTING COMPLIANCE
Statewide Transition Plan Revision

The Department of Health Care Services (DHCS) has made revisions to the Statewide Transiton Plan (STP) to comply with the new federal Home and Community-Based Services (HCBS) settings rules. The purpose of the Transition Plan is to ensure that individuals receiving HCBS are integrated and have access to supports in the community. Moreover, The revised Plan provides assurance that individuals receiving HCBS have the same degree of access as their counterparts who are not on Medi-Cal HCBS.

This notice is to inform the public that the revised plan is available on the DHCS website: http://www.dhcs.ca.gov/services/ltc/Pages/HCBSStatewideTransitionPlan.aspx beginning July 1, 2015. The State invites all interested parties to review the plan and add comments using the Public Comment Templates posted on the website mentioned above before the end of the comment period on July 30, 2015. Comments can be provided by email: STP@dhcs.ca.gov, or by mail:

ATTN: Jalal Haddad
Department of Health Care Services
Long-Term Care Division
1501 Capitol Avenue, MS 4503
P.O. Box 997437
Sacramento, CA 95899-7437

We will be holding a **stakeholder** call to discuss the comments received on the STP Tools previously posted on the same website during June and inform the stakeholders of changes made to the Plan. Please refer to the website: http://www.dhcs.ca.gov/services/ltc/Pages/HCBSStatewideTransitionPlan.aspx for date, time, and call-in information. We look forward to receiving your comments and suggestions.

More information about the new federal rules are available at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html.

**FINAL RULES, CMS-2249-F, REQUIRE**
**HOME AND COMMUNITY – BASED (HCB) SETTING COMPLIANCE**
**Statewide Transition Plan - Stakeholder Phone Conference**

**Purpose**:
The Department of Health Care Services (DHCS) has made revisions to the Statewide Transition Plan (STP) to comply with the new federal Home and Community-Based Services (HCBS) setting rules. DHCS has also developed "On-Site Assessment Tools", "Provider Self-Survey Tools", and Public Comment Templates that stakeholders can use to provide feedback on the tools. The public comment period ended on June 30, 2015. DHCS will be holding a stakeholder phone conference to discuss:

- Changes made to the On-site Assessment Tools and Provider Self-Survey Tools
- Comments received on assessment tools, and provider survey tools
- Revisions made to the STP from prior version of the plan

| | |
|---|---|
| **Date: Monday, July 13, 2015** | **Time: 10:00 a.m. - 1:00 p.m.** |
| **Toll Free Phone Number: 1-877-917-7134** | **Participant Passcode: 7695981** |

**Agenda will be posted on DHCS web-site at:**
http://www.dhcs.ca.gov/services/ltc/Pages/HCBSStatewideTransitionPlan.aspx.

**PARTICIPATE VIA TEXT TELEPHONE RELAY**
If you use a TTY (text telephone) machine, and wish to participate in this phone conference via the California Relay Service (CRS), dial the CRS line at 711. Tell the CRS Operator that you wish to participate in a conference call. Then give the operator the toll free number 1 (877) 917-7134 and passcode 7695981. From this point onward, the operator will provide further instructions.

**To review revised STP, On-site Assessment Tools, Provider Self-Survey Tools, and Public Comment Templates, please visit our web-site at:**
http://www.dhcs.ca.gov/services/ltc/Pages/HCBSStatewideTransitionPlan.aspx

**More information about the new federal rules is available at:**
http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html.

**For Further Information, contact**
**Jalal Haddad**
**Department of Health Care Services**
**Long-Term Care Division**
**1501 Capitol Avenue, MS 4503**
**P.O. Box 997437**
**Sacramento, CA 95899-7437**

**FINAL RULES, CMS-2249-F, REQUIRE**
**HOME AND COMMUNITY – BASED (HCB) SETTING COMPLIANCE**
**Final Statewide Transition Plan Submission - Stakeholder Phone Conference**

**Purpose**:
The California Department of Health Care Services (DHCS) is providing notice that the final Statewide Transition Plan (STP) will be submitted to the Centers for Medicare and Medicaid Services (CMS) on August 14, 2015. This final STP describes California's plan to ensure approved Home and Community-Based Services (HCBS) waivers and programs comply with the new federal HCBS setting rules including timetables. DHCS will be holding a stakeholder phone conference after submission of the STP to CMS to discuss:

- Summary of public comments received on revised STP during 30 day comment period (July 2, 2015 – July 31, 2015)
- Summary of changes made to the final STP based on public input
- Updates on the revision of the On-Site Assessment Tools and Provider Self-Survey Tools as a result of public input

| | |
|---|---|
| **Date: Thursday, August 20, 2015** | **Time: 1:00 p.m. - 3:00 p.m.** |
| **Toll Free Phone Number: 888-456-0327** | **Participant Passcode: 7109848** |

**Agenda will be posted on DHCS web-site, please visit http://dhcs.ca.gov/STP for detail information.**

**PARTICIPATE VIA TEXT TELEPHONE RELAY**
If you use a TTY (text telephone) machine, and wish to participate in this phone conference via the California Relay Service (CRS), dial the CRS line at 711. Tell the CRS Operator that you wish to participate in a conference call. Then give the operator the toll free number 1 (888) 456-0327and passcode 7109848. From this point onward, the operator will provide further instructions.

**To review the STP, On-site Assessment Tools, and Provider Self-Survey Tools please visit http://dhcs.ca.gov/STP**

**More information about the new federal rules is available at:**
http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html.

**For Further Information, contact**
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## Appendix B - Systemic Assessment Summary

The following is an assessment summary, by setting type, of the statutes, regulations, policies and other requirements for all HCB settings listed in the "Compliance Determination Process for HCB Settings" section. The complete assessment of findings is available upon request. Please note that the systemic assessment is an indication of compliance, but does not preclude settings from further compliance determination processes, such as Provider Self-Surveys, Beneficiary Self-Surveys, and On-Site Assessments. For reference, the HCB Setting Requirement numbers in the tables below correspond to the following:

1. Being 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 HCBS.
2. Giving individuals the right to select from among various setting options, including non-disability specific settings and an option for a private unit in a residential setting.
3. Ensuring individuals' rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. Optimizing autonomy and independence in making life choices, including daily activities, physical environment and with whom to interact.
5. Facilitating choice regarding services and supports, and who provides them.

For Medicaid/Medi-Cal provider-owned or controlled HCB residential settings, the provider must offer:

6. A legally enforceable agreement between the provider and the consumer that allows the consumer to own, rent or occupy the residence and provides protection against eviction.
7. Privacy in units including lockable doors, choice of roommates and freedom to furnish and decorate units.
8. Options for individuals to control their own schedules including access to food at any time.
9. Individuals the freedom to have visitors at any time.
10. A physically accessible setting.

**Provider Setting Type - Adult Day Program**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 1 | **Met**<br>22 CCR Section 82022<br>22 CCR Section 82025<br>22 CCR Section 82026<br>22 CCR Section 82068<br>22 CCR Section 82072<br>22 CCR Section 82079<br>22 CCR Section 82087.3<br>22 CCR Section 82088 | None | Not Applicable |
| 2 | **Silent** | Client has choice of adult day program during person-centered planning. | Not Applicable |
| 3 | **Met**<br>22 CCR Section 82072<br>22 CCR Section 82075<br>22 CCR Section 82077.2<br>22 CCR Section 82077.4<br>22 CCR Section 82088<br>22 CCR Section 82092.4<br>22 CCR Section 82092.5<br>22 CCR Section 82092.6 | None | Not Applicable |
| 4 | **Met**<br>22 CCR Section 82068.2<br>22 CCR Section 82072<br>22 CCR Section 82077.2<br>22 CCR Section 82079<br>22 CCR Section 82088 | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **5** | **Met**<br>22 CCR Section 82072<br>22 CCR Section 82079 | None | Not Applicable |
| **6** | **Met**<br>22 CCR Section 82068<br>22 CCR Section 82068.3<br>22 CCR Section 82068.5 | None | Not Applicable |
| **7** | **Met**<br>22 CCR Section 82068<br>22 CCR Section 82072<br>22 CCR Section 82088 | None | Not Applicable |
| **8** | **Met**<br>22 CCR Section 82072<br>22 CCR Section 82076 | None | Not Applicable |
| **9** | **Met**<br>22 CCR Section 82072 | None | Not Applicable |
| **10** | **Met**<br>22 CCR Section 82087<br>22 CCR Section 82088 | None | Not Applicable |

**Provider Setting Type – Adult Family Home; Family Teaching Home**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 1 | **Met**<br>W&I Code Section 4501, 4502, 4646, 4689.1(e)<br><br>**Partially Met**<br>Members' control of personal resources - T17 Section 56091 | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to control of personal resources. | Fourth Quarter 2018 |
| 2 | **Met**<br>W&I Code Section 4501, 4502.1, 4512(b), 4646, 4689.1(e)<br><br>**Silent**<br>Option for private unit<br>Documentation of setting options | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for private unit and documentation of setting options. | Fourth Quarter 2018 |
| 3 | Met<br>W&I Code Section 4502(b)(2), 4502.1, 4646, 4689.1(e) | Not Applicable | Not Applicable |
| 4 | **Met**<br>W&I Code Section 4501, 4502(b)(2), 4646, 4689.1(e)(8)(B)&(C) | Not Applicable | Not Applicable |
| 5 | **Met**<br>W&I Code Section 4502(b), 4646, 4689.1(e)(8)(B)&(C)<br>T17 Section 56084(a)(2) | Not Applicable | Not Applicable |
| 6 | **Met**<br>T17 Section 56076, 56090(e), 56094 | The State will seek legislative authority or modify statute and/ or regulations as appropriate to align with the federal requirement related to privacy in living units, lockable doors, choice of roommates and furnishing sleeping units. | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **7** | **Silent**<br>Privacy in living unit<br>Lockable doors<br>Choice of roommates<br>Furnish sleeping units | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to privacy in living units, lockable doors, choice of roommates and furnishing sleeping units. | Fourth Quarter 2018 |
| **8** | **Met**<br>W&I Code Section 4502(b)(10), 4502.1, 4689.1(e)(8)(B-E)<br><br>**Silent**<br>Access to food at any time. | None | Fourth Quarter 2018 |
| **9** | **Silent**<br>Visitors any time | The State will discuss the impacts of this characteristic during the Waiver renewal process. | Fourth Quarter 2018 |
| **10** | **Met**<br>W&I Code Section 4646<br>T17 Section 56087(C) | None | Not Applicable |

**Provider Setting Type - Adult Residential Facility - Assisted Living Waiver; San Francisco Community Living Supports Benefit Waiver**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **1** | **Met**<br>22 CCR Section 80022<br>22 CCR Section 80025<br>22 CCR Section 85072<br>22 CCR Section 85079<br>22 CCR Section 85087<br><br>Waiver Language:<br>As subcontracted waiver providers, participating DHCS-approved ARFs will demonstrate, by inclusion in the CCP that they optimize participant independence and community integration, promote initiative and choice in daily living, and facilitate full access to community services. | None | Not Applicable |
| **2** | **Met**<br>22 CCR Section 85068.2<br>22 CCR Section 85072<br>22 CCR Section 85087<br>22 CCR Section 85088<br><br>Waiver Language:<br>As part of the Freedom of Choice process, applicants are provided with information regarding all HCBS waivers and programs | None | Not Applicable |
| **3** | **Met**<br>22 CCR Section 85088<br><br>Waiver Language: | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | The DHCS-approved ARFs must offer a residential setting that permits each resident to: Freedom to come and go from the residence at will | | |
| **4** | **Met**<br>22 CCR Section 85072<br>22 CCR Section 85079<br>22 CCR Section 85068.2 | None | Not Applicable |
| **5** | **Met**<br>22 CCR Section 85068.1<br>22 CCR Section 85068.2<br>22 CCR Section 85079<br><br>Waiver Language:<br>The DHCS-approved ARFs must offer a residential setting that permits each resident to: Freedom to elect whether or not to participate in any communal activities. | None. | Not Applicable |
| **6** | **Met**<br>22 CCR Section 80068<br>22 CCR Section 85068.1<br><br>Waiver Language:<br>DHCS-approved ARFs must provide each resident with a lease that specifies the resident's rights to use and occupy the property, the time period the lease is in effect, the rights of termination of the lease by the resident and by the property owner and the provision for termination, the services that will be provided, and an affirmative statement that the residential setting meets all Federal and State Fair Housing Law requirements. | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **7** | **Met**<br>22 CCR Section 85087<br>22 CCR Section 85088<br><br>Waiver Language:<br>The DHCS-approved ARFs must offer a residential setting that permits each resident to: Control access and egress to his/her living area, this includes the ability to secure their rooms, based on their CCP | None. | Not Applicable |
| **8** | **Met**<br>22 CCR Section 80072<br>22 CCR Section 85072<br>22 CCR Section 85079<br>22 CCR Section 86176<br><br>Waiver Language:<br>The DHCS-approved ARFs must offer a residential setting that permits each resident to: Have free choice of meals including choice among any meals offered to all residents (family style dining) or choice of an individual meal | None | Not Applicable |
| **9** | **Met**<br>22 CCR Section 85072<br><br>Waiver Language:<br>The DHCS-approved ARFs must offer a residential setting that permits each resident to: Control their daily routine, including having visitors of their choosing at any time. | None | Not Applicable |
| **10** | **Met**<br>22 CCR Section 85087<br>22 CCR Section 85087.2 | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | The DHCS-approved ARFs must offer a residential setting that permits each resident to: Freedom to come and go from the residence at will. | | |

**Provider Setting Type - Adult Residential Facility, Adult Residential Facility for Persons with Special Health Care Needs, Residential Care Facility for the Elderly, Group Home and Small Family Home – HCBS Waiver for Californians with Developmental Disabilities and 1915(i) State Plan**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 1 | **Met**<br>W&I Code Section 4501, 4502 (All setting types)<br><br>22 CCR Section 85072(b)(7) (Adult Residential Facility)<br>22 CCR Section 87468 (Residential Care Facility for the Elderly)<br><br>**Partially Met**<br>22 CCR Section 80026 (Adult Residential Facility, Adult Residential Facility for Persons with Special Health Care Needs, Group Home, and Small Family Home) | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to control of personal resources. | Fourth Quarter 2018 |
| 2 | **Met**<br>W&I Code Section 4502<br><br>**Silent:**<br>Option for private unit<br>Documentation of identified setting options not selected by consumer | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirements related to option for private unit and documentation of setting options. | Fourth Quarter 2018 |
| 3 | **Met**<br>W&I Code Section 4502(b)(2)&(8)<br><br>22 CCR Section 80072(a)(3) | None | Not Applicable |
| 4 | **Met**<br>W&I Code Section 4501, 4502 | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 5 | **Met**<br>W&I Code Section 4512(b)<br><br>**Silent**<br>Consumers' choice of provider of services | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to choice of provider of services | Fourth Quarter 2018 |
| 6 | Met<br>W&I Code Section 4741<br>22 CCR § 80068<br>SPA 09-023A, Services, 1.A)7.i)<br>DD Waiver: Appendix C-2, Facility Specifications | None | Not Applicable |
| 7 | **Met**<br>W&I Code Section 4502(b)(2)<br><br>T17 Section 50510(a)(2)<br><br>**Conflicting**<br>Lockable entrance doors for individuals that are bedridden<br><br>**Silent:**<br>Privacy in sleeping or living unit<br>Lockable entrance doors<br>Choice of Roommate<br>Freedom to furnish and decorate sleeping or living units | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to lockable entrance doors. | Fourth Quarter 2018 |
| 8 | **Met**<br>W&I Code Section 4502(b)(2)<br>22 CCR Section 80072, 80076(4) | The State will discuss the impacts of this characteristic | Fourth Quarter 2018 |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | **Silent**<br>Access to food at any time | during the Waiver renewal process | |
| **9** | **Silent**<br>Visitors each day, any time | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to visitors at any time. | Fourth Quarter 2018 |
| **10** | **Met**<br>W&I Code Section 4646<br><br>22 CCR Section 80087, 80088<br><br>**Silent**<br>Physically accessible setting | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to full access. | Fourth Quarter 2018 |

**Provider Setting Type – Certified Family Home; Foster Family Home**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **1** | **Met**<br>W&I Code Section 4501, 4502, 4646<br><br>22 CCR Section 89372 | None | Not Applicable |
| **2** | **Met**<br>W&I Code Section 4501, 4502, 4502.1, 4512(b), 4646,<br><br>22 CCR Section 89372<br><br>**Silent**<br>Documentation of identified setting options not selected by consumer | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for private unit and documentation of setting options. | Fourth Quarter 2018 |
| **3** | **Met**<br>W&I Code Section 4502, 4646<br><br>22 CCR Section 89372 | None | Not Applicable |
| **4** | **Met**<br>W&I Code Section 4501, 4502, 4646<br><br>22 CCR Section 89372 | None | Not Applicable |
| **5** | **Met**<br>W&I Code Section 4512(b), 4646 | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **6** | **Met**<br>1915(c)–Appendix C-2: Facility Specifications<br>1915(i)–Services, 1.A)7.i) | None | Not Applicable |
| **7** | **Silent**<br>Privacy in living unit<br>Lockable doors<br>Choice of roommates | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to privacy in living units, lockable doors, choice of roommates and furnishing sleeping units. | Fourth Quarter 2018 |
| **8** | **Partially Met**<br>W&I Code Section 4501, 4502, 4502.1, 4646 | None | Not Applicable |
| **9** | **Partially Met**<br>W&I Code Section 4501, 4502, 4502.1, 4646<br>22 CCR Section 89372 | None | Not Applicable |
| **10** | **Partially Met**<br>W&I Code Section 4502, 4646<br>22 CCR Section 80087, 80088 | None | Not Applicable |

**Provider Setting Type – Child Day Care Facility; Child Day Care Center; Family Child Care Home**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **1** | **Met**<br>W&I Code Section 4501, 4502, 4646 | None | Not Applicable |
| **2** | **Met**<br>W&I Code Section 4502, 4512(b), 4646<br><br>**Silent**<br>Documentation of identified setting options not selected by consumer. | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for private unit and documentation of setting options. | Fourth Quarter 2018 |
| **3** | **Met**<br>W&I Code Section 4502, 4646<br><br>22 CCR Section 101223, 102423 | None | Not Applicable |
| **4** | **Met**<br>W&I Code Section 4501, 4502, 4646 | None | Not Applicable |
| **5** | **Met**<br>W&I Code Section 4512(b), 4646 | None | Not Applicable |

**Provider Setting Type - Congregate Living Health Facility**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **1** | **Met**<br>H & S Section 1250<br><br>Waiver Language:<br>In addition to the skilled nursing services and pursuant to H&S code sections 1250(i) and 1267.13, a CLHF will provide or arrange for the following basic services to be provided to individuals enrolled in the Waiver, as part of the per diem rate paid to CLHF Waiver providers:<br>• Medical supervision<br>• Case Management<br>• Pharmacy consultation<br>• Dietary consultation<br>• Social Services<br>• Recreational Services<br>• Transportation to and from medical appointments<br>• Housekeeping and laundry services<br>• Cooking and shopping | None | Not Applicable |
| **2** | **Met**<br>H & S Section 1267.13<br><br>22 CCR Section 51344<br><br>Waiver Language:<br>Common areas in addition to the space allotted for the resident's sleeping quarters, shall be provided in sufficient quantity to promote the socialization and recreational activities of the residents in a homelike and communal manner | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **3** | **Met**<br>H & S Section 1265.7<br><br>Waiver Language:<br>Bathrooms of sufficient space and quality shall be provided to allow for the hygiene needs of each resident and the ability of the staff to render care without spatial limitations or compromise. No bathroom shall be accessed only through a resident's bedroom.<br><br>**Partially Met**<br>H & S Section 1267.13 | DHCS will modify Waiver language to include the requirement that consumer to bathroom ratios promote the right to privacy, dignity and respect. | January 2017 |
| **4** | **Met**<br>H & S Section 1250 (i) (5)<br>H & S Section 1267.13. (d)<br><br>Waiver Language<br>Common areas in addition to the space allotted for the resident's sleeping quarters, shall be provided in sufficient quantity to promote the socialization and recreational activities of the residents in a homelike and communal manner. | None. | Not Applicable |
| **5** | **Met**<br>22 CCR Section 51343.2<br><br>Waiver Language:<br>As a Waiver service provider, each NF/AH Waiver enrolled individual will be assessed for needed or required services as identified by the individual, their legal representative/legally responsible adult(s), primary care physician, family, caregivers, and/or other individuals at the request of the individual. The | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | CLHF will establish a POT to address how these services will be provided, the frequency of the services and identify the provider for those services that are not included in the CLHF's per diem rate under this Waiver. The CLHF will be responsible for arranging for the following services, which may include but are not limited to:<br>• Counseling services provided by a Licensed Clinical Social Worker;<br>• Occupational therapy provided by an Occupational Therapist<br>• Physical therapy provided by a Physical Therapist<br>• Speech therapy provided by a Speech Therapist<br>• Education and training of the Waiver participant to self-direct his/her care needs and/or the education and training of their identified caregivers (who are not CLHF employees) on their care needs<br>• Assessment for and repair of Durable Medical Equipment and<br>• State Plan Personal Care Services or WPCS as described in the approved Waiver when off site from the CLHF if such care is not duplicative of care required to be provided to the waiver participant by the CLHF (i.e., not for care to and from medical appointments). State Plan or WPCS providers will not be paid for care that is duplicative of the care being provided by the CLHF. | | |
| **6** | All CLHF residents sign a legally enforceable lease agreement with the residential setting provider, however Health and Safety Code is silent on this protocol. | DHCS will modify Waiver language to include a legally enforceable lease agreement exists between provider and consumer | January 2017 |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **7** | **Met**<br>H & S Section 1267.13<br><br>The facility shall be in a homelike, residential setting. The facility shall provide sufficient space to allow for the comfort and privacy of each resident and adequate space for the staff to complete their tasks.<br><br>The residents' individual sleeping quarters will allow sufficient space for safe storage of their property, possessions, and furnishings and still permit access for the staff to complete their necessary health care functions. Not more than two residents shall share a bedroom. | None | Not Applicable |
| **8** | **Silent** | DHCS will modify Waiver language to include the requirement that consumer may control their own schedules including access to food. | January 2017 |
| **9** | **Met**<br>H & S Section 1267.13 | None | Not Applicable |
| **10** | **Met**<br>H & S Section 1267.13 | None | Not Applicable |

**Provider Setting Type - Congregate Meal Site**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 1 | **Met**<br>45 CFR 1321.53(b)(3)<br><br>CDA Terms and Conditions Exhibit A. Article1.(7)<br><br>OAA 315(b)(4) | None | Not Applicable |
| 2 | **Met**<br>Older Americans Act (OAA) Section 339.(2)(E)<br><br>MSSP Waiver Section 6 Additional Requirements, Section E. In accordance with 42 CFR §431.151, a participant may select any willing and qualified provider to furnish waiver services.<br><br>MSSP Waiver Appendix D-1, d. Service Development Process- The waiver participant is involved in the development of the care plan and has a choice in service selection. | None | Not Applicable |
| 3 | **Met**<br>WIC9103.1(a)<br><br>22 CCR Section 7636.7(d)<br>22 CCR Section 7500 (b)<br><br>OAA §315 (b)(1)<br><br>22 CCR Section 7636.1(b)(9) | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **4** | **Met**<br>45 CFR Section 1321.53(b)(3)<br>22 CCR Section 7638.5 (d)<br><br>Waiver Language:<br>In accordance with 42 CFR §431.151, a participant may select any willing and qualified provider to furnish waiver services included in the service plan unless the State has received approval to limit the number of providers under the provisions of §1915(b) or another provision of the Act .<br><br>Waiver Language:<br>The waiver participant is involved in the development of the care plan and has a choice in service selection. | None. | Not Applicable |
| **5** | **Met**<br>22 CCR Section 7638.5 (d)<br>22 CCR Section 7636.9(a)(4) | None | Not Applicable |
| **6** | Not Applicable | None | Not Applicable |
| **7** | Not Applicable | None | Not Applicable |
| **8** | Not Applicable | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **9** | **Met**<br>22 CCR Section 7638.7 (a)<br>22 CCR Section 7638.9(c) | None. | Not Applicable |
| **10** | **Met**<br>22 CCR Section 7638 (b)(3)<br><br>ADA [42U.S.C. Section 12101 et seq.]<br><br>CDA Terms and Conditions Exhibit D. Article II. (C)(3) | None | Not Applicable |

**Provider Setting Type – Day-Type Services***

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 1 | **Met**<br>W&I Code Section 4501, 4502(a), 4512(b), 4688.21<br><br>**Silent**<br>Consumer's control of personal resources<br>Integrated in and supports full access…to the greater community | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to control of personal resources, integration, and support of full access. | Fourth Quarter 2018 |
| 2 | **Met**<br>W&I Code Section 4512(b)<br><br>**Silent**<br>Documentation of identified setting options not selected by consumer. | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for documentation of setting options. | Fourth Quarter 2018 |
| 3 | **Met**<br>W&I Code Section 4502(b)(2)&(8)<br><br>22 CCR Section 82072(a)(1-4) | None | Not Applicable |
| 4 | **Met**<br>W&I Code Section 4501, 4502(b)(1)&(6)&(7), 4688.21<br><br>**Silent**<br>Optimizes, but does not regiment | The State will discuss the impacts of this characteristic during the Waiver renewal process. | Fourth Quarter 2018 |
| 5 | **Met**<br>W&I Code Section 4512(b), 4688.21 | None | Not Applicable |

* Day-Type Services in the HCBS Waiver for Californians with Developmental Disabilities and 1915(i) State Plan include Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community-Based Training Provider, Socialization Training Program; Community Integration Training Program; Community Activities Support Service.

**Provider Setting Type –Residential Care Facility for the Chronically Ill**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **1** | **Met**<br>22 CCR Section 87872<br>22 CCR Section 87887<br>22 CCR Section 87888<br>22 CCR Section 87896 | None | Not Applicable |
| **2** | **Met**<br>22 CCR Section 87872<br>22 CCR Section 87887<br>22 CCR Section 87888<br>22 CCR Section 87896 | None | Not Applicable |
| **3** | **Met**<br>22 CCR Section 87872<br>22 CCR Section 87888<br>22 CCR Section 87898<br>22 CCR Section 87899<br>22 CCR Section 87900<br>22 CCR Section 87901<br>22 CCR Section 87902 | None | Not Applicable |
| **4** | **Met**<br>22 CCR Section 87870<br>22 CCR Section 87872 | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | 22 CCR Section 87896 | | |
| **5** | **Met**<br>22 CCR Section 87870<br>22 CCR Section 87872<br>22 CCR Section 87896 | None | Not Applicable |
| **6** | **Met**<br>22 CCR comparable to characteristics:<br><br>22 CCR Section 87868<br>22 CCR Section 87868.1<br>22 CCR Section 87868.2<br>22 CCR Section 87868.3<br>22 CCR Section 87868.4 | None | Not Applicable |
| **7** | **Met**<br>22 CCR Section 87868<br>22 CCR Section 87872<br>22 CCR Section 87887<br>22 CCR Section 87888<br><br>**Silent**<br>Lockable Doors | An All Project Director's Letter will provide guidance regarding lockable doors. | Q4 2016 |
| **8** | **Met**<br>22 CCR Section 87872<br>22 CCR Section 87876 | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **9** | **Met**<br>22 CCR Section 87872 | None | Not Applicable |
| **10** | **Met**<br>22 CCR Section 87887 | None | Not Applicable |

**Provider Setting Type - Residential Care Facility for the Elderly – Assisted Living Waiver; San Francisco Community Living Supports Benefit**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **1** | **Met**<br>H&S Code Section 1569.269<br><br>22 CCR Section 87464<br>22 CCR Section 87467<br>22 CCR Section 87468<br><br>Waiver Language:<br>The setting is integrated in, and facilitates the individual's 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, in the same manner as individuals without disabilities. | None. | Not Applicable |
| **2** | **Met**<br>22 CCR Section 87464<br>22 CCR Section 87467<br>22 CCR Section 87468<br><br>Waiver Language:<br>The setting is selected by the individual from among all available alternatives and is identified in the person-centered service plan. The participant has the right to choose the provider they prefer. This applies to the CCA, the RCF and where to the extent that options are available, the HHA in PSH. | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | Participants are provided with information regarding the available providers in the county of interest upon request, and via the DHCS website: http://www.dhcs.ca.gov/services/ltc/Pages/ALWPP.aspx<br><br>The CCA provide the participant with the choices available to them in lieu of the ALW. The participant signs the Freedom of Choice document indicating his or her choice of the ALW as the preferred option for the delivery of services. The participant has the right to decline the waiver services at any time. | | |
| **3** | **Met**<br>H&S Code Section 1569.269<br><br>22 CCR Section 87468<br><br>Waiver Language:<br>An individual's essential personal rights of privacy, dignity and respect, and freedom from coercion and restraint are protected. | None. | Not Applicable |
| **4** | **Met**<br>22 CCR Section 87462<br>22 CCR Section 87464<br>22 CCR Section 87468<br><br>Waiver Language:<br>Facilities participating as ALW HCBS settings are required to have the following qualities: Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact are optimized and not regimented. | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **5** | **Met**<br>22 CCR Section 87219<br>22 CCR Section 87467<br><br>Waiver Language:<br>Individual choice regarding services and supports, and who provides them, is facilitated. | None | Not Applicable |
| **6** | **Met**<br>22 CCR Section 87224<br><br>Waiver Language:<br>The unit or room is a specific physical place that can be owned, rented or occupied under another legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the State's landlord tenant law. | None | Not Applicable |
| **7** | **Met**<br>22 CCR Section 87307<br><br>Waiver Language:<br>Each individual has privacy in their sleeping or living unit:<br>(1) Units have lockable entrance doors, with appropriate staff having keys to doors;<br>(2) Individuals share units only at the individual's choice; and<br>(3) Individuals have the freedom to furnish and decorate their sleeping or living units.<br><br>ALW RCFE Provider Manual: Section C. Program Requirements.<br>(1) Resident Privacy | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| | (a) ALW benefits are furnished to residents who reside in private residency units. While all waiver residents must be offered a private unit, residents may ask to share a residence with a roommate of their choice.<br>(i) Sharing a residence may not be a requirement of program participation.<br>(ii) The ISP must reflect the choice of the resident to share a residence.<br>(iii) Residents who wish to share a residence must initiate and submit their request to their Care Coordinator who will forward the request to the housing provider. If the resident is cognitively impaired, the request may be initiated and submitted to the Care Coordinator by the resident's responsible party.<br>(b) All residences shall have kitchenettes and private or semi-private bathrooms not shared by more than one other resident.<br>(c) All ALW residents have a right to privacy. Residences may be locked at the discretion of the resident, except when a physician or mental health professional has certified in writing that the resident is sufficiently cognitively impaired as to be a danger to self or others if given the opportunity to lock the door. (This requirement does not apply where it conflicts with the fire code.) | | |
| **8** | **Met**<br>22 CCR Section 87219<br>22 CCR Section 87464<br>22 CCR Section 87555<br><br>Waiver Language:<br>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. | None | Not Applicable |

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| **9** | **Met**<br>H&S Code Section 1569.269<br><br>22 CCR Section 87464<br>22 CCR Section 87468<br><br>Waiver Language:<br>Individuals are able to have visitors of their choosing at any time. | None | Not Applicable |
| **10** | **Met**<br>22 CCR Section 87219<br>22 CCR Section 87307<br>22 CCR Section 87705 | None | Not Applicable |

**Provider Setting Type – Work Activity Program**

| HCBS Setting Requirement # | Requirement Met, Partially Met, Conflicting, Silent | Remedial Strategy | Timeline for Completion |
|---|---|---|---|
| 1 | **Met**<br>W&I Code Section 4501, 4502, 4512(b)<br><br>**Conflicting**<br>Setting is integrated in and supports full access to the greater community- W&I Code Section 4851(e)<br><br>**Silent**<br>Members' control of personal resources | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to integration, support of full access, and control of personal resources. | Fourth Quarter 2018 |
| 2 | **Met**<br>W&I Code Section 4512(b), 4646<br><br>**Silent**<br>Documentation of identified setting options not selected by consumer | None | Fourth Quarter 2018 |
| 3 | **Met**<br>W&I Code Section 4502(a)&(b)(2)&(8) | None | Not Applicable |
| 4 | **Met**<br>W&I Code Section 4501, 4502, 4646<br><br>Conflicting<br>Does not regiment - W&I Code Section 4862(a) | The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to regimentation. | Fourth Quarter 2018 |
| 5 | **Met**<br>W&I Code Section 4512(b), 4646 | None | Not Applicable |

**1915(k), 1915(c) HCBS Waiver IHO Settings**

The setting utilized for these programs are the members' private residence; therefore, the state presumes the settings meet the requirements of the HCB Settings Final Rule.