



JENNIFER KENT
DIRECTOR

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



EDMUND G. BROWN JR.
GOVERNOR

**Summary of Public Comment on the Nursing
Facility/Acute Hospital Transition and Diversion
Waiver Renewal**

8-31-2016

CONTENTS

Overview	2
Purpose of Soliciting Feedback and Public Comment from Stakeholders.....	2
Public Comment Analysis Methodology	2
Results of Public Comments Analysis.....	2
Waiver Overview and Waiver Policy.....	3
Waiver Case Management.....	6
Financial Management.....	8
Meeting logistics.....	10
General comments.....	10
Conclusion	11

Summary of Public Comment on the Nursing Facility/Acute Hospital Transition and Diversion (NF/AH) Waiver Renewal

OVERVIEW

The Nursing Facility/Acute Hospital (NF/AH) Transitions and Diversion Waiver provides Medi-Cal beneficiaries with long-term medical conditions who meet one of the designated levels of care an opportunity to remain in their own home or community by receiving in home long-term care. It gives beneficiaries the option of remaining in the home or home-like community setting in lieu of institutionalization. The costs of the NF/AH Waiver services and State Plan services cannot be higher than what they would cost in an institutional setting as the waiver needs to maintain overall cost neutrality.

PURPOSE OF SOLICITING FEEDBACK AND PUBLIC COMMENT FROM STAKEHOLDERS

The NF/AH Waiver ends on December 31, 2016. The state intends to renew the waiver effective January 1, 2017. The state has sought public input into the development of the waiver proposal to ensure the new proposed waiver meets the needs of the waiver participants and federal waiver requirements.

PUBLIC COMMENT ANALYSIS METHODOLOGY

During the process of the NF/AH waiver renewal, The Department of Health Care Services (DHCS) has solicited comments and feedback on the waiver renewal proposal from waiver participants, waiver providers, family members, and advocates. DHCS accepted and read each form of public input by logging every letter, note, email, etc. DHCS grouped the comments that seemed to go together into similar themes, and then categorized the recurring patterns. Each section below represents a summary of all comments related to each theme and focuses on reoccurring themes. Comments are in their original submission language in format.

RESULTS OF PUBLIC COMMENTS ANALYSIS

DHCS collected public comments in October 2015 at the two kick-off meetings. After DHCS had published the waiver renewal proposal, DHCS opened a 30-Day public comment period from June 10, 2016, through July 10, 2016; however, DHCS continued to accept public comments till the close of business on the day of its last public meeting which was held on July 29, 2016. DHCS dedicated an email box to receive stakeholder inputs and collected public comments at the five stakeholder meetings that were held in July at five different locations throughout the state: Sacramento, Fresno, Los Angeles,

San Diego, and Redding. DHCS sent letters to all NF/AH Waiver participants and providers inviting them to attend one of the meetings either in person or by telephone, and to submit any questions or comments directly to the dedicated email box or by mail to In-Home Operations (IHO). DHCS received 245 written and oral comments:

- 32% of these comments came from advocates,
- 33% came from beneficiaries and family members, and
- 35% came from providers.

This document summarizes comments received through all venues from the two kick-off meetings in October 2015 and from the public comment period that opened on June 10 through July 29, 2016. The public comments were organized around five major sections. Each section below represents a summary of all comments related to each theme and focuses on reoccurring themes.

WAIVER OVERVIEW AND WAIVER POLICY

This section summarizes the comments and feedback received on the waiver policies.

- Increase Waiver Capacity (16 comments)
 - *Add 10,000 slots, approximately 20,000 nursing home residents are interested in returning to the community; the increased waiver slot is inadequate to clear the wait list.*

Response: The State has committed to an interim assessment which is the process to test the efficacy of the NF/AH Renewal model. The State will complete the interim assessment halfway through the waiver term, year three of the renewed waiver which will inform any need for subsequent waiver changes. A component of the interim assessment will be waiver enrollment trends and capacity, among other items of the model (e.g., cost neutrality, enrollment goals, etc.).

- EPSDT Turning 21 (13 comments)
 - *Similar to the State's proposal to permit IHO Waiver recipients to receive care from their same provider of service, we would request that beneficiary who have been receiving PDHRCF services under EPSDT be able to continue to receive care from the same providers with a transitional care unit.*
 - *Failure to permit continuity of care for this small population will be devastating to the individual and their families.*

Response: The State is working closely with PDHRCF Transitional Care Unit providers to continue the conversation around including TCU as a benefit available under the renewed waiver.

- Statewide Transition Plan (6 comments)
 - *Insure that a person-centered approach recognizes a person with a disability's desire to have a pet or service animal and need for assistance with pet care.*
 - *We support the state's proposal to ensure that residential settings/benefits that function more like an institution be compliant with new federal requirements for home and community-based settings.*

Response: The State has notated this comment.

- Outreach and Education: (15 comments)
 - *State and contractors must do outreach and ensure information about the waiver is provided in appropriate formats and languages to a wide range of people.*
 - *Most people including social workers, regional centers, physicians, schools, social services do not know about this program.*

Response: The State has begun researching current outreach and education by surveying the waitlist population and will develop an outreach plan based off of data received and with assistance from the contracted Care Management Agencies (CMAs).

- Providers and Public Authority Registry: (8 comments)
 - *WPCS participants do not have access to the Public Authority Registries. Recommends that the state establishes the IHSS public authorities as WPCS providers.*
 - *Expand service provider category.* (8 comments)

Response: The State has notated this comment.

- Terminating Participants Due to Behavior Issues: (6 comments)
 - *We urge the state to remove this provision from the proposal entirely.*
 - *Terminated participants will move into institutional settings prematurely, which is costlier to the state. Many NF/AH participants suffer from dementia and exhibit common dementia-related behaviors including anxiety, or aggression. The provision will result in a denial of due process.*

Response: The State has notated this comment.

- Ensure Long-Term Services in The Community Readily Available: (2 comments)
 - *States needed to take necessary steps to ensure that provision of LTC services in the community are available as institutional placement, so people are not unnecessarily placed in nursing facilities or other institutions.*

Response: The State has notated this comment.

- Oversight of Nursing Facilities to Referrals: (2 comments)
 - *Improve the oversight of nursing homes' obligation to make referrals based on responses to MD 3.0 Question Q. Create incentives for nursing homes to discharge residents who want to leave. Shut down nursing facility bed upon discharge of residents.*

Response: The State has notated this comment.

- WPCS Overtime Rule: (8 comments)
 - *12-hour limitation is not based on objective data or the lives and needs of consumer and providers. The bar should be removed.*
 - *FLSA exemption caps are limited, flawed and unfair to participants and providers. Remove the 12-hour/day limitation.*

Response: The State has notated this comment.

- Clarifications on Policy Change & Suggested Policy Change: (11 comments)
 - *What are the procedures for authorizing medically necessary services within the aggregate model? Explain "The state will institute monitoring procedures and frequent checks and balances to ensure management of medically necessary services and cost neutrality are appropriately occurring."*
 - *The state can put a mechanism in place to draw down federal participation, just like Quality Assurance Fee in Nursing Facility*
 - *We are concerned that simply changing the ratio of transitioned individuals to those moving off the waitlist in community settings will not fully achieve the State's goal. For instance, transitions from institutional settings to the community are hampered by the lack of access to affordable, accessible housing. We encourage the State to work across the administration to outline a strategy to ensure Californians can access LTSS outside of institutional settings, and make plans for the needs and preferences of our expanding aging population. Setting a 60 / 40 enrollment benchmark. We believe that a person's enrollment in the waiver should be based on need rather than location of residence that might also coincide with an untoward incentive for institutionalization. We recommend deleting the provisions that placement in the waiver for community-residing individuals be tied to institutional transitions.*

Response: The State has committed to an interim assessment which is the process to test the efficacy of the NF/AH Renewal model. The State will complete the interim assessment halfway through the waiver term, year three of the renewed waiver, which will inform any need for subsequent waiver changes. A component of the interim assessment will be waiver enrollment trends and benchmark goals and cost neutrality, among other items of the model (e.g., assessment of medically necessary services, capacity, etc.).

WAIVER CASE MANAGEMENT

This section summarizes comments received on waiver case management.

- Speed the Approval Process (13 comments)
 - *Speed the approval process*
 - *The existing waiver approval process is slow and causes people to be sent to nursing homes.*
 - *The existing waiver approval process is slow and causes people to be sent to nursing homes that otherwise could go to their home or community setting. Institutional care costs are higher demonstrated as higher than home care costs. This slow process costs the state additional expense. Creating a better waiver approval process would prevent many people from going to an institution who don't need to and reduce overhead for HCBS costs.*

Response: The state expects the approval process will improve when case management moves to Care Management Agencies (CMAs). However, the State is committed to an interim assessment to test the efficacy of the NF/AH renewal model. The State will complete the interim assessment on the third year of the waiver renewal which will inform any need for subsequent waiver changes. A component of the interim assessment will be the waiver approval process, among other items of the model (e.g., cost neutrality, enrollment goals, etc.).

- Provide More Variety of Level of Care and Make Level of Care More Flexible (11 comments)
 - *if there were different levels that people could participate at and yet slightly more care more based on each individual's disability and what their need actually is*
 - *The three LOC are confusing. It is not clear if DHCS is consolidating or eliminating LOC. What happens to those waiver participants currently at this LOC? Waiver needs to continue with the ICF/DD LOC to enable these individuals to remain as independent as possible*
 - *we suggest that the newly named HCB Alternatives Waiver identify Brain Injury as a third subpopulation.*

Response: The state has notated this comment.

- The Right to Choose Providers (13 Comments)

- *Allow parents of minors and spouses to provide WPCS*
- *Everybody who is receiving care has the right to decide who touches their bodies in such an intimate way and who see after their safety. And that they have the security of knowing that somebody that they trust and love is caring for them*
- *Participants should have the right to self-determination of services and continue with the services with their chosen providers PDHRCF/TCU*

Response: The State has notated this comment.

- Adequate Evaluation of Services (1 Comment)
 - *I don't think the services available to me were adequately discussed by the case manager.*

Response: The State has notated this comment.

- Participant Eligibility (2 comments)
 - *I have had clients denied eligibility for the NF waitlist because they do not have NF care needs at the time they completed the waitlist application. DHCS should determine eligibility at their application is processed. DHCS should not deny any consumer entry to the waitlist.*

Response: The State has notated this comment.

- Care Management Agencies (CMAs) (19 comments)
 - *Contract with CMAs that can provide specialty services*
 - *DHCS considers the broadest range of CMAs including MSSP, CCT, independent living, and supported living services agencies. Develop CMAs in conjunction with stakeholders*
 - *On the top of page nine, the proposal indicates that the State will shift responsibility for utilization management including approval of Treatment Authorization Requests to CMAs, with the state "confirming authorization of services from review of all medical documentation." However, on page 10, the proposal notes that the State will "consider" moving the responsibility for TARs to CMAs. It is unclear what these discrepancies mean and ultimately which entity – the state or the CMA – will control service utilization and approval. We recommend clarifying how this TAR approval process will work and how current backlogs will be addressed.*

- *What will happen to beneficiaries between January 2017 and July 2017 while waiting to contract with CMAs?*
- *Prohibit CMAs from "self-referring" or including in their provider network any provider who has any sort of legal relationship to the CMA. We oppose managed care plans serving as CMAs. Managed care plans have been providing limited provider networks which has resulted in poor access to care in some areas*

Response: The CMA will determine and be responsible for service utilization. The state will monitor that service utilization performed by the CMA was medically necessary, matched the participants care plan and was appropriate based on the participants' care needs. The state will continue to provide care management to waiver participants until CMAs are contracted with.

FINANCIAL MANAGEMENT

This section summarizes comments received on waiver financial management.

- Individual Cost Cap (9 comments)
 - *Raising the individual cost cap so that it is more in line with the cost of institutional care*
 - *I understand it's a cost neutral program. However, I do know that they pay the facility more than twice the amount of the amount that they're willing for him to come home.*

Response: The State moved away from an individual cost limit to cost in waiver aggregate methodology.

- Cost in Aggregate (22 comments)
 - *If you could change it to the aggregate, then that would help a lot.*
 - *Allow flexible budget to give participants control over the services*
 - *What formula will be used to determine the aggregate cost cap? Will increased institutional costs be taken into account each waiver year?*

Response: The State moved the payment methodology to "cost in waiver aggregate" in the proposed waiver, per stakeholders' recommendations. The State has noted the other comments.

- Institutional Bias (3 comments)

- *Were you paying the institution for more money for the worst outcome and you're not showing up and helping the provider do a good job because that's the key to keeping people out of institutions.*
- *Base overall cost cap on the actual full institutional costs*

Response: The State has notated this comment.

- Adjust Cost Annually to reflect Inflation (2 comments)
 - *Allowing an annual adjustment to reflect inflation*

Response: The State has notated this comment.

- Provider Rate Increase (18 comments)
 - *Increase pay rate*
 - *inadequate rate. Raise the rate*
 - *The Waiver proposal does not address barriers that make services difficult to access, including inadequate rates for in-home nursing, and an array of appropriate services.*

Response: The State has notated this comment.

- WPCS Overtime Rule and Worker's Compensation (10 comments)
 - *Also, finding reliable providers especially in the rural areas. It's very difficult when there's a great deal of distance that has to be traveled as mentioned prior to this. I'm trying to find reliable providers that will not touch inappropriately.*
 - *I do not really agree with overtime issues because I don't think that's going to benefit all of the providers.*
 - *I'm worried about the overtime and what that's going to do. Don't - I'm not happy about the state imposing caps when it's my life which you're not supposed to limit my life.*
 - *I feel like if someone needs a lot of care, that Medi-Cal should cover at 16 hours any given day.*
 - *Everyone is required to have Workmen's Comp so the quality is going to arise as well.*
 - *Also worker's compensation should be provided for waiver of participants - I mean for waiver of providers.*
 - *Remove the CAP from the Overtime*

Response: The State has notated this comment.

- WPCS Timesheet and Payment Issues (6 comments)
 - *Consolidate timesheets between IHSS and WPCS. Participants as employers should receive timesheets directly*

Response: The State has notated this comment.

MEETING LOGISTICS

This section summarizes the comments the state received on Meeting Logistics. The state has noted a response when appropriate.

- Meeting Transportations (3 comments)
 - *transportation to/from the meetings should be provided*

Response The State has notated this comment.

- Language Services (3 comments)
 - *notices should be sent in other languages*

Response: Public Meeting notices included language encouraging the public to request materials in an alternate format or language. The state did not receive any request to send materials in any language other than English.

- Multiple Locations (5 comments)
 - *I think we need more than two meetings besides just LA and Sacramento*

Response: The state held five public meetings in July.

GENERAL COMMENTS

This section summarizes the general comments. The state did not need to respond to the comments in this section. There were 18 comments received under these six main categories of general comments.

- *I appreciate the waiver over IHSS. The intake or nurses are much more respectful and kinder, and they're more concerned about what the consumer - consumer direction and what the consumer wants. I appreciate that the waiver personal care services include psychosocial interaction and encourages that. And so it would be nice if you could actually do something to meet the needs of people with psychiatric disabilities or behavioral disabilities and make it known to people that that exists.*
- *Request Pediatric day health centers be added as provider under NF/AH*
- *IHSS hours are not enough. Continue with WPCS program*

- *Available Services and Provider Types; Participant Rights and Safeguards; and Financial Accountability and Model are listed as components that remain the same. However, based on information provided in the waiver renewal proposal, it appears as though aspects of these components are changing. We recommend revising the listing of what remains the same to reflect only those items with no changes.*
- *The state provides details about the expected timeline for transitioning CNCs to long term care. We ask that during the transition, they are exempted from any waiver requirements. We ask the State to convene a CNC stakeholder panel to discuss the reimbursement process for these settings as the current reimbursement is not adequate.*
- *That's one of the good points about the waivers; they do pay some services while the seven days, but it should be for as long as the person is in the hospital.*

CONCLUSION

DHCS appreciates the comments and feedback it received regarding the NF/AH Waiver renewal and its proposed changes. This summary of the public comment represents all public comments received on the NF/AH Waiver renewal and the state's responses, when applicable.