

Foreword

Background – 1915(c) Waivers

The Federal government authorized the “Medicaid 1915(c) Home and Community-Based Services (HCBS) Waiver program” in 1981 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, beneficiaries could only receive comprehensive long-term care in institutional settings (“budget neutrality”).

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 beneficiaries.

Background – 1915(i) State Plan

The Deficit Reduction Act of 2005 (DRA) gave states starting January 1, 2007 a new option to provide HCBS through a state plan amendment (SPA). Once approved by CMS, 1915(i) SPAs do not need to be renewed nor are they subject to some of the same requirements of waivers; for example, budget neutrality. 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.

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

Issues addressed in this Plan

This Statewide Transition Plan will present ways in which the State of California will evaluate home and community-based (HCB) settings where 1915(c) waivers and 1915(i) state plan program services are currently available. If it is determined that there are settings that do not meet the final regulations' HCB settings requirements, such HCB settings will be required to make changes that will bring them into compliance.

Information included in this document includes:

- Overview of State Responsibility
- HCB Settings
 - Summary of New Federal Requirements
 - Requirements for Modification of Compliance
- Overview of HCBS Programs
 - Multipurpose Senior Services Program (MSSP) Waiver
 - HIV/AIDS Waiver
 - HCBS Waiver for Persons with Developmental Disabilities (DD) Waiver
 - Assisted Living Waiver (ALW)
 - Nursing Facility/ Acute Hospital Transition and Diversion (NF/AH) Waiver
 - In-Home Operations (IHO) Waiver
 - San Francisco Community Living Support Benefit (SFCLSB) Waiver
 - Pediatric Palliative Care (PPC) Waiver
- Existing Settings in HCB Programs – Review and Analysis
 - California Plan for Determination of HCB Setting Compliance

Overview of State Responsibility

The State's HCBS program administrative teams are comprised of employees from the Department of Health Care Services (DHCS), the California Department of Public Health (CDPH), the Department of Developmental Services (DDS), and the California Department of Aging (CDA). The San Francisco Department of Public Health (SFDPH) administers a 1915(c) waiver in accordance with terms of an Agreement with DHCS.

Existing waivers and corresponding state administrative teams 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

Existing 1915(i) SPAs 09-023A and 11-041 are administered by DDS.

HCBS Settings

Prior to the final rule, HCBS setting requirements were based on location, geography, or physical characteristics. The final rules define HCBS settings as more process and outcome-oriented, guided by the consumer'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 Medi-Cal provider-owned or controlled HCBS settings, the provider must offer:

- 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.
- Privacy in units including lockable doors, choice of roommates and freedom to furnish and decorate units.
- Options for individuals to control their own schedules including access to food at any time.
- Individuals the freedom to have visitors at any time.
- A physically accessible setting.

Any modification(s) of the new requirements must be 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.

Overview of HCBS Programs

California currently has two approved 1915(i) SPAs that allow 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 eight 1915(c) HCBS waivers.

Descriptions of the individual waivers follow below.

- *Multipurpose Senior Services Program (MSSP) Waiver.* The objective of this program is to provide opportunities for frail seniors age 65 or older to maintain their independence and dignity in community settings by preventing or delaying avoidable nursing facility placement. Care management is the cornerstone of this waiver and involves beneficiary assessment; person-centered care planning; service arrangement, delivery and monitoring; as well as coordinating the use of existing community resources. The 39 MSSP sites maintain wait lists independently; average wait in days statewide is 91 (during 10/1/12 through 12/31/12). The current waiver was approved on July 1, 2009.

MSSP Waiver provider types include all of the following:

- Adult Day Care/ Support Center
- 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 Care Manager (RN)
- 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. There is no waiting list for eligible beneficiaries. The current waiver was approved on January 1, 2012.

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

- Clinical Psychologist
 - Foster Parent
 - Home Health Agency
 - Licensed Clinical Social Worker
 - Local Pharmacy or Vendor
 - Marriage and Family Therapist
 - Masters Degree Nurse; Psychiatric and Mental Health Clinical Nurse Specialist or Psychiatric and Mental Health Nurse Practitioner
 - Private Nonprofit or Proprietary Agency
 - Registered Dietician
 - RN
 - Social Work Case Manager
 - Waiver Agency with Exception Approved by CDPH/Office of Aids
- *HCBS Waiver for Persons with Developmental Disabilities (DD Waiver).* The purpose of this waiver is to serve participants 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 requirements. DD Waiver participants 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 waiting list for eligible beneficiaries. The current waiver was approved on March 29, 2012.

DD Waiver provider types include all of the following:

- Activity Center
- Adaptive Skills Trainer
- Adult Day Care Facility
- Adult Development Center
- Adult Residential Facility
- Adult Residential Facility for Persons with Special Health Care Needs

- Associate Behavior Analyst
- Behavior Analyst
- Behavior Management Consultant
- Behavior Management Program
- Behavioral Technician/Para-professional
- Building Contractor or Handyman
- Camping Services
- Certified Family Home
- Child Day Care Facility; Child Day Care Center; Family Child Care Home
- Client/Parent Support Behavior Intervention Training
- Clinical Psychologist
- Community-Based Training Provider
- Contractor
- Creative Arts Program
- Crisis Intervention Facility
- Crisis Team – Evaluation and Behavioral Intervention
- 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 (LVN)
- Marriage Family Therapist
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Orthoptic 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
 - Residential Facility (Out-of-State)
 - Respite Agency
 - Small Family Home
 - Social Recreation Program
 - Socialization Training Program; Community Integration Training Program; Community Activities Support Service
 - Special Olympics Trainer
 - Speech Pathologist
 - Sports Club: (e.g., YMCA, Community Parks and Recreation Program, Community-Based Recreation Program)
 - Supported Employment
 - Supported Living Provider
 - Translators/Interpreters
 - Transportation Providers
 - 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 an independent publicly subsidized housing with Home Health Agency services as alternatives to long-term institutional placement. 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, 2009.

ALW provider types include all of the following:

- Care Coordination Agency
 - Home Health Agency in Public Subsidized Housing
 - Residential Care Facility for the Elderly
- *Nursing Facility/Acute Hospital (NF/AH) Waiver*. This waiver combined three 1915(c) waivers into one waiver. The NF/AH 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.

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

- Durable Equipment Provider
 - Employment Agency
 - Home and Community-Based Continuous Care Facility
 - Home Health Agency
 - In-Home Support Services Public Authority
 - Intermediate Care Facility for the Developmentally Disabled – Continuous Nursing Care
 - Licensed Clinical Social Worker
 - Licensed Psychologist
 - LVN
 - Marriage Family Therapist
 - Non-Profit or Proprietary Agency
 - Personal Care Agency
 - Private Nonprofit or Proprietary Agency
 - Professional Corporation
 - RN
 - Waiver Personal Care Services Provider
- *In-Home Operations (IHO) Waiver.* This waiver serves eligible individuals who:
 - 1) were previously enrolled in a DHCS-administered HCBS waiver prior to January 1, 2002, and who require direct care services provided primarily by a licensed nurse; or
 - 2) have been receiving continuous care in a hospital for 36 months or longer and have physician-ordered direct care services that are greater than those available in the NF/AH waiver for the participant's level of care. The current waiver was approved on January 1, 2010 .

IHO Waiver provider types include all of the following:

- Durable Medical Equipment Provider
- Employment Agency
- Home and Community-Based Continuous Care Facility
- Home Health Agency
- In-Home Support Services Public Authority
- Licensed Clinical Social Worker
- Licensed Psychologist
- LVN
- Marriage Family Therapist
- Personal Care Agency

- Private Nonprofit or Proprietary Agency
 - Professional Corporation
 - RN
 - 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 Community Care Facilities (CCFs) or Direct Access to Housing (DAH) sites (e.g., private homes). 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 adaptations in DAH sites.

SFCLSB Waiver provider types include all of the following:

- Adult Residential Facility
 - 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
 - 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
- LVN
- Masters Level Social Worker
- Massage Therapist
- Music Therapist
- RN

Existing Settings in HCBS Programs – Review and Analysis

California Plan for Determination of HCB Setting Compliance:

The standards, rules, regulations and other requirements for the following HCB settings will be analyzed and reviewed by DHCS, CDA, DDS and CDPH to determine the extent to which they comply with federal regulations. State departments will be responsible for ensuring appropriate provision of HCBS by all providers that serve Medi-Cal beneficiaries.

- Adult Family Home/Family Teaching Home
- Adult Residential Facility
- Adult Residential Facility for Persons with Special Health Care Needs
- Certified Family Home
- Congregate Living Health Facility
- Home and Community-Based Continuous Care Facility
- Foster Family Home
- Group Home
- Intermediate Care Facility for the Developmentally Disabled-Continuous Nursing Care
- Residential Care Facility for the Elderly
- Residential Facility (Out-of-State)
- Small Family Home

The compliance determination process includes all of the following:

- An initial State-level assessment of standards, rules, regulations, and other requirements to determine if they are consistent with the federal requirements. This will be completed within six months of CMS approval of the Statewide Transition Plan.
- This State-level assessment will be conducted jointly by DHCS and the State Department(s) responsible for operating each Waiver with stakeholder input.
- Results of this assessment will be available for public comment and will be used to determine and develop the remedial strategies that may be necessary to ensure that

all HCB settings conform to the federal requirements.

- In addition to the State-level assessment, on-site evaluations of individual settings will be conducted as follows:
 - On-site evaluations will be conducted at all settings that, per CMS guidance, are presumed not to be HCB settings.
 - For all other settings, a representative random sample of on-site evaluations will be conducted.
 - It is anticipated that the on-site evaluations will be completed within one year of CMS approval of the assessment tool.
- The on-site evaluations will be conducted by a survey team that includes one or more of the following: State personnel, service recipients or their family members, case managers or other representatives of case management entities, representatives of consumer advocacy organizations, and/or other stakeholders.
- The responsibility for ensuring completion of these evaluations rests with the program staff as specified under the “Overview of State Responsibility” section of this document. The State will support the provision of training for all participants of survey teams to ensure that HCB settings are built around the person-centered plan approach and are compliant with the new federal requirements.
- DHCS will develop an assessment tool for use in the on-site evaluations of HCB settings. The assessment tool will include each new federal requirement that will be used to determine if the HCB setting meets or does not meet the required federal rule. The completed assessment tool will be maintained in the appropriate State file for each waiver and will be used to verify compliance at the time of CMS renewal of the HCBS waiver.

Note: this assessment tool shall be developed and circulated for stakeholder comments no later than 60 days after CMS approval of this Statewide Transition Plan.

- The assessment tool will be forwarded to each HCB setting selected for evaluation with instructions to complete a self-assessment prior to the evaluation completed by the survey team. The completed assessment will be forwarded back to the Waiver program for review.
- Using the completed assessments, each selected HCB setting (selected from the list identified under the “California Plan for Determination of HCB Setting Compliance” subsection of this document) will be evaluated by a survey team described above.
- Written results of each survey will be forwarded back to the HCB setting with specific information regarding improvements that will be required in order to come into compliance with the federal requirements and a timeline for completion.

- Completed assessments for all settings, including documentation of any required follow-up actions as a result of the on-site evaluations, will be maintained in the appropriate State file for each waiver.
- An appeal process, to be developed, which allows the HCB setting to dispute the HCB setting's compliance or the need to comply with the specific requirement when the HCB setting determines the requirement is not applicable to the particular setting.

Note: the appeal process shall be developed and circulated for stakeholder comments no later than 60 days after CMS approval of this Statewide Transition Plan.

- All State-level and individual setting level remedial actions will be completed by no later than March 17, 2019.
- Progress on completion of this Statewide Transition Plan will be monitored at least every six months and will include public posting on the status with opportunity for public input.