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DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

October 10, 2022

To: Tribal Chairpersons, Designees of Indian Health Programs, and Urban Indian Organizations

Subject: Notice of Proposed Change to the Medi-Cal Program

The purpose of this letter is to provide information regarding a proposed change to the Department of Health Care Services' (DHCS) Medi-Cal Program that will be submitted to the Centers for Medicare and Medicaid Services (CMS). DHCS is forwarding this information for your review and comment.

DHCS is required to seek advice from designees of Indian Health Programs and Urban Indian Organizations on Medi-Cal matters having a direct effect on Indians, Indian Health Programs or Urban Indian Organizations per the American Recovery and Reinvestment Act of 2009 (ARRA). Please note that this memo transmits information regarding an update to the Home and Community-Based Settings (HCBS) Statewide Transition Plan (STP). The STP describes how DHCS will demonstrate to CMS compliance with the federal HCBS Final Rule for all of DHCS HCBS programs.

Please see the enclosed summary for a detailed description of this DHCS proposal.

QUESTIONS AND COMMENTS:

Indian Health Programs and Urban Indian Organizations may submit written comments or questions concerning this proposal within 30 days from the receipt of notice.

Comments may be sent by email to STP@dhcs.ca.gov or by mail to the address below:

1501 Capitol Avenue, MS 4502
P.O. Box 997437
Sacramento, CA 95899-7437
Attn: Sara Albertson

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And Urban Indian Organizations

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Please note that Indian Health Programs and Urban Indian Organizations may also request a consultation on this proposal of the STP at any time as needed.

Sincerely,

Original signed by

Andrea Zubiarte, Acting Division Chief
Office of Tribal Affairs
Department of Health Care Services

Enclosure



Department of Health Care Services Tribal and Designees of Indian Health Programs Notice

PURPOSE

To provide notice that the revised Statewide Transition Plan (STP) for Home and Community Based Services (HCBS) will be submitted for approval to the Centers for Medicare and Medicaid Services (CMS) in the fall of 2022. DHCS, in collaboration with partner agencies created an STP that describes timelines and strategies for how the State will comply with the Federal Home and Community-Based (HCB) Settings Final Rule that became effective March 17, 2014. The STP includes the Community-Based Adult Services (CBAS) Transition Plan (Attachment #1), which outlines how CBAS centers comply with the HCB Settings requirements and steps taken to ensure ongoing compliance through and beyond March 17, 2023.

BACKGROUND

CMS issued regulations that define the settings in which states can pay for Medicaid Home and Community-Based Services (HCBS) effective March 17, 2014. HCBS are types of person-centered care delivered in the home and community as an alternative to nursing homes. HCBS programs offer a package of services and support to Medi-Cal beneficiaries who would otherwise require care in a nursing home, but who prefer to remain at home. The purpose of the regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated and support full access to the greater community. This includes opportunities to seek employment and work in competitive and community settings, participate in community life, control personal resources, and receive services in the community similar to individuals who do not have HCBS. The regulations increase the opportunities for participants in HCBS programs to have access to the benefits of community living and to receive services in the most integrated setting.

HCBS programs in California include:

- Community First Choice Option - part of the In-Home Support Services Program
- The Multipurpose Senior Services Program
- The Home and Community-Based Alternatives Waiver
- The Assisted Living Waiver
- Program for All-Inclusive Care for the Elderly
- Community-Based Adult Services (CBAS)
- Home and Community-Based Services for Persons with Developmental Disabilities
- Self-Directed Services for Persons with Developmental Disabilities

CMS announced a requirement for states to review and evaluate current HCBS services, including both non-residential and residential programs, to demonstrate compliance with the federal HCBS Settings Final Rule in January 2014. States must ensure all HCBS settings comply with the federal requirements by completing a review of existing state standards including rules, regulations, standards, policies, licensing requirements, and other provider requirements. States must be in full compliance with the federal requirements by March 17, 2023.

SUMMARY OF PROPOSED CHANGES

The revised STP describes California's current efforts and actions the state proposes to implement to ensure HCBS waiver providers achieve compliance with the federal HCBS Settings Final Rule. The STP also describes the on-site assessment process of HCBS settings, actions required for providers to achieve compliance, and the State's heightened scrutiny review

process.

The following sections of the STP / CBAS Transition Plan (Attachment #1) were updated:

- Created a section for sunset waivers that are no longer considered HCBS.
- Updated the number of settings validated across programs.
- Added narrative describing the upcoming public comment period and related activities.
- Included information on the additional technical assistance that was provided by DHCS.
- Updated completion date of statutory or regulatory changes in California.
- DHCS included information about the new ISP.
- Added information regarding ALW and HCBA Waiver Validation.
- DDS included information on member surveys and included their onsite-validation plan.
- DDS Included information on their compliance determinations.
- Per CMS recommendation, DHCS clarified that all settings received on-site assessments.
- DHCS included the probing questions that were included in the RWP and removed compliance definitions.
- Included information on how DHCS supported providers through the PHE (extended RWP due date, trainings, and 1:1 support).
- Clarified that DHCS will utilize existing monitoring and oversight processes to ensure ongoing compliance.
- Added public comments received in June 2021.
- DD Waiver approval dates amended to reflect approved waiver (rather than pending).
- DDS population updated to reflect more current numbers.
- Additional training recordings have been posted to our website and are now reflected in the STP as well.
- Updated to read compliance category instead of level of compliance. Updated compliance category titles to better represent where DDS providers are at in terms of compliance.
- Clarification of evidence submitted to validate remediation activities.
- Updated how the state will notify individuals living in non-compliant settings of their options.
- Updated remediation timelines.
- Updated attachment XI site assessment process, monitoring and oversight, and on-site monitoring protocols.
- Correction of minor typographical and formatting errors.

IMPACT TO TRIBAL HEALTH PROGRAMS

If a Tribal Health Program (THPs) participates in any of the HCBS programs, as outlined above, they may need to modify where and how the services are delivered to meet the HCBS Settings Final Rule requirements by March 17, 2023. Policies and program design may need to be changed and additional staff training may be necessary to assure understanding of the new expectations. The State completed on-site assessments of HCBS providers in 2019. DHCS will monitor and provide oversight of HCBS programs to ensure compliance with the HCBS Settings Final Rule requirements including periodic reviews. THPs who are found to be out of compliance will be required to submit corrective action plans.

IMPACT TO FEDERALLY QUALIFIED HEALTH CENTERS (FQHCs)

If a Federally Qualified Health Center (FQHC) participates in HCBS programs, they may need to modify where and how the services are delivered to meet the HCBS Settings Final Rule by March 17, 2023. Policies and program design may need to be changed and additional staff training may be necessary to assure understanding of the new expectations. The State completed on-site assessments of HCBS providers in 2019. DHCS will monitor and provide

oversight of HCBS programs to ensure compliance with the HCBS Settings Final Rule requirements including periodic reviews. FQHCs who are found to be out of compliance will be required to submit corrective action plans.

IMPACT TO INDIAN MEDI-CAL BENEFICIARIES

If an American Indian Medi-Cal member is receiving HCBS services they will have increased protections relating to where they receive HCBS to ensure individuals are afforded opportunities to be fully integrated into their communities. In the event that an HCBS setting cannot achieve compliance with the HCBS Settings Final Rule, the State will provide reasonable notice to all individuals receiving services and before the required 30-day period. DHCS will mail notices to individuals receiving services residing in sites that will not or cannot become compliant well before March 17, 2023. Once an individual receives notice, a transition plan will be developed by the Care Coordination Agency or Waiver Agency, which involves the individual's chosen circle of support. The full transition process is described under the STP section "Changes in Services or Providers for Individuals receiving services."

RESPONSE DATE

DHCS invites all interested parties to review the STP along with the CBAS Transition Plan and provide public input. Public comments on the STP can be submitted through the public comment form below, and through US mail. The DHCS website will provide a link to the STP, which will include the CBAS Transition Plan.

Indian Health Programs and Urban Indian Organizations may also submit written comments or questions concerning this proposal within 30 days (October 14, 2022 to November 13, 2022) from the receipt of this notice by mail to the address below.

Public comments should be submitted through the following routes:

Email:

STP@dhcs.ca.gov

US Mail:

Department of Health Care Services
Integrated Systems of Care Division
Attn: Sara Albertson

1501 Capitol Avenue, MS 4502
P.O. Box 997437
Sacramento, CA 95899-7437

For further information on the CBAS Transition Plan attachment please contact:

Email:

cbascda@aging.ca.gov

Phone:

916-419-7545

US Mail:

California Department of Aging
2880 Gateway Oaks, Suite 200
Sacramento, CA 95833