



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



GAVIN NEWSOM
GOVERNOR

November 30, 2022

THIS LETTER SENT VIA EMAIL

Ms. Michele Mackenzie
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HOME AND COMMUNITY-BASED SERVICES FINAL RULE: CMS CORRECTIVE ACTION PLAN

Dear Ms. Mackenzie:

The State of California is committed to completing its successful implementation of the Home and Community-Based Services (HCBS) Settings Final Rule. The Department of Health Care Services (DHCS) is submitting this request for a Corrective Action Plan (CAP) to ask for an extension through June 30, 2024, to fully demonstrate compliance with the Final Rule for the applicable settings operating under the following federal Medicaid HCBS waiver authorities:

- Section 1915(c) Home and Community-Based Services Waiver for Californians with Developmental Disabilities
- Section 1915(i) Home and Community-Based Services State Plan Amendment
- Section 1915(c) California Self Determination Program Waiver for Individuals with Developmental Disabilities
- Section 1915(c) Home and Community-Based Alternatives Waiver
- Section 1915(c) Assisted Living Waiver

The COVID-19 Public Health Emergency (PHE) has presented challenges to the State's full implementation of the HCBS Final Rule through its significant impact to the State's already stressed direct service workforce. Additionally, service providers' ability to hire and retain staff while finding coverage for staff who are out because of health

considerations has significantly impacted their ability to effectively integrate individuals into the community. Thus, the State is requesting additional time to ensure full provider compliance with the following HCBS Final Rule criteria:

- Access to the broader community
- Opportunities for employment
- Choice of non-disability specific settings
- Option for a private unit and/or choice of roommate

The State has and continues to work diligently to educate HCBS providers and stakeholders about the requirements of the HCBS Settings Final Rule and has carried out extensive outreach efforts to help all providers achieve full compliance by March 17, 2023.

The State remains committed to bringing providers, policies, and procedures into compliance while navigating PHE-related impacts. As such, the State has issued consistent, statewide notifications to engage providers, and offered numerous training opportunities for each step of the assessment and remediation process included below. As of November 21, 2022, the State has:

- Conducted site assessments of all applicable HCBS settings against the requirements in the HCBS Final Rule
- Identified settings that did not comply with the Final Rule and developed requests for Remediation Work Plans (RWPs) for those providers
- Issued requests for RWPs to providers and hosted a series of Technical Assistance webinars to help providers understand what they needed to do to come into compliance
- Reviewed all provider RWPs and followed up with providers to ensure their plans for remediation included efforts that would bring them into compliance
- Collected evidence from providers to show they have fulfilled their RWPs and are now in compliance with the HCBS Final Rule

The State is currently working with providers to close out evidence review and compliance validation and has been actively providing ongoing technical assistance, including hosting office hours several times a week for providers to ask the questions about and receive clarification on the evidence needed to demonstrate compliance. Despite these efforts, challenges remain to fully implement all elements of the HCBS Final Rule.

As noted above, the COVID-19 PHE has put additional stress on the direct service workforce, which has limited providers' ability to fully remediate the final HCBS Final Rule Criteria; most notably, ensuring individuals have access to the broader community and opportunities for employment. While providers are not preventing access to the community or employment, sufficient staffing is generally required to support individuals in those pursuits. Moreover, when managing staffing shortages during the PHE, providers are forced to prioritize the most essential needs of the individuals they support and their staff. To that end, the majority of providers allocate their limited resources to ensuring the health and safety of those they support and staff.

To address the systemic direct service workforce shortage, the State is investing in the recruitment, training, and retention initiatives listed below, including initiatives funded through its approved HCBS Spending Plan. However, because of the timeframes of the initiatives, it is not likely that the State will experience measurable results prior to March 17, 2023. For this reason, the State is requesting an extension of the date to come into compliance to June 30, 2024, which will provide time necessary for the workforce initiatives to fully implement, expend funds and generate a positive impact on provider staffing.

- Implementation of Service Provider Rate Reform; phases in funding and policies to implement rate reform, including a quality incentive program that creates an enhanced person-centered, outcomes-based system. The first phase implementing service provider rate increases began in April 2022. The next phase will be implemented in January 2023 (accelerated from July 2023), with full implementation by July 1, 2024 (accelerated from July 1, 2025).
- Direct Support Professional (DSP) Workforce Training and Development; establishes a training and certification program for direct support professionals tied to wage differentials to foster a more sustainable and professional workforce.
- DSP Training Stipends; provides up to two training stipends for direct service professionals who complete specified training and development courses.
- DSP Internship Program; establishes an entry-level training and internship program for individuals interested in becoming direct support professionals.
- Pilot of Remote Technology Supports; pilot of individual services and supports that use technology solutions to increase independence and reduce reliance on one-to-one in-person direct support.
- DSP Bilingual Differential; provides a pay differential to direct service professionals who can communicate with individuals served in a language or medium other than English.
- Non-IHSS Care Economy Payments; provides a onetime payment to current direct service HCBS providers to aid in retention of these providers.

- IHSS Career Pathways program; provides training and career development of IHSS providers as well as stipends for attending training.
- Innovation Fund; provides grants to organizations working to meet the needs of the direct care workforce.
- Learning Innovations Institute; a new repository of information about training opportunities statewide.
- Grants to HCBS Clinical Workforce; providers with significant Medi-Cal caseload will be eligible for grants that can be used for loan repayment, sign-on bonuses, training and certification costs, to aid in clinical workforce retention and development.
- Continued technical support and training to service providers and individuals served and their families in understanding person-centered practices and thinking and ways to individualize services amidst staffing shortages.

CMS' approval of the State's requested CAP and extension will provide the time needed for the State to fully implement the initiatives designed to address and mitigate direct service workforce issues exacerbated by the PHE. As the pressure of the direct service workforce shortage is reduced over time, providers will have improved access to the trained workforce they need to move away from emergency management and toward full compliance with the HCBS Final Rule.

Finally, the State recently closed out the Public Comment period for the heightened scrutiny packets for presumptively institutional settings and is preparing to submit the materials to CMS for review in the upcoming weeks. The CAP and extension will allow time for CMS and the State to have more opportunities to discuss the adjudication of those settings to help ensure compliance.

Sincerely,

ORIGINAL SIGNED BY

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cc: See Next Page

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