

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
601 E. 12th St., Room 355  
Kansas City, Missouri 64106



**Medicaid and CHIP Operations Group**

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December 17, 2020

Jacey Cooper, Chief Deputy Director  
Health and Human Services  
Department of Health Care Services  
1501 Capitol Avenue, MS 0000  
Sacramento, CA 95899-7413

Re: CA 20-0038 §1915(k) Community First Choice Option State Plan Amendment (SPA)

Dear Ms. Cooper:

The Centers for Medicare and Medicaid Services (CMS) is approving your request to amend the Community First Choice Option (CFCO) state plan benefit submitted under transmittal number CA 20-038. This amendment waives the annual level of care recertification requirement for 1915(k) beneficiaries who either have no reasonable expectation of improvement to their medical condition, or are unavailable to participate in a recertification review. CMS conducted the review of the state's submittal according to statutory requirements in Title XIX of the Social Security Act and relevant federal regulations.

The SPA is approved with a July 1, 2020 effective date. Enclosed are the following pages to be incorporated into your approved state plan:

- Attachment 3.1 – K, pages 1 and 1a

It is important to note that CMS' approval of this change to the state's 1915(k) CFC state plan benefit solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under federal laws including, but not limited to, the Americans with Disabilities Act, §504 of the Rehabilitation Act, or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).

If you have any questions concerning this information, please contact me at (206) 615-2356, or your staff may contact Kathleen Creggett at [Kathleen.Creggett@cms.hhs.gov](mailto:Kathleen.Creggett@cms.hhs.gov) or (415) 744-3656.

Sincerely,

Digitally signed by David  
L. Meacham -S



Date: 2020.12.18 12:58:06  
-08'00'

David L. Meacham, Director  
Division of HCBS Operations and Oversight

Enclosure

cc:

Amanda Font, DHCS

Angeli Lee, DHCS

Michele Weller, DBC, CMCS

Kathleen Creggett, DHCBSO, CMCS

Cynthia Nanes, DHCBSO, CMCS

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL  
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 0 — 0 0 38

2. STATE

California

3. PROGRAM IDENTIFICATION:

Title XIX of the Social Security Act (Medicaid)

TO: REGIONAL ADMINISTRATOR  
CENTERS FOR MEDICARE & MEDICAID SERVICES  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

July 1, 2020

5. TYPE OF PLAN MATERIAL (*Check One*)

NEW STATE PLAN

AMENDMENT TO BE CONSIDERED AS NEW PLAN

AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION

1915(k) 42 CFR § 441.510

7. FEDERAL BUDGET IMPACT

a. FFY 2020 \$ n/a  
b. FFY n/a \$ n/a

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 3.1k pages ~~1-2~~ **1-1a**

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (*If Applicable*)

Attachment 3.1k pages ~~1-2~~ **1-1a**

10. SUBJECT OF AMENDMENT

Allow permanent waiver of the annual recertification of level of care requirement in accordance with 441.510(c)(1) & (2) and allow a temporary waiver for other specific situations.

11. GOVERNOR'S REVIEW (*Check One*)

GOVERNOR'S OFFICE REPORTED NO COMMENT

OTHER, AS SPECIFIED

COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL

[Redacted Signature]

13. TYPED NAME  
Jacey Cooper

14. TITLE  
State Medicaid Director

15. DATE SUBMITTED  
September 23, 2020

16. RETURN TO

Department of Health Care Services  
Attn: Director's Office  
P.O. Box 997413, MS 0000  
Sacramento, CA 95899-7413

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED 9/23/2020

18. DATE APPROVED 12/17/2020

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL  
7/1/2020

20. SIGNATURE OF REGIONAL OFFICIAL  
[Redacted Signature] Digitally signed by David L. Meacham -S  
Date: 2020.12.18 12:58:45

21. TYPED NAME  
David Meacham

22. TITLE  
-08'00'  
Director of HCBS Operations and Oversight

23. REMARKS

For Box 11 "Other, As Specified," Please note: The Governor's Office does not wish to review the State Plan Amendment.

**Pen & Ink made to box 8 and 9 to correct submitted and approved pages**

## State Plan Under Title XIX of the Social Security Act

STATE/TERRITORY: CALIFORNIA

Notwithstanding anything else in this State Plan provision, the coverage will be subject to such other requirements that are promulgated by CMS through interpretive issuance or final regulation.

**i. Eligibility**

The State determines eligibility for CFCO services in the manner as prescribed in Social Security Act §1915(k)(1) and 42 CFR section 441.510. Effective on July 1, 2013, to receive CFCO, an individual must meet the following requirements:

- (a) Be eligible for medical assistance under the State plan;
- (b) As determined annually—
  - (1) Be in an eligibility group under the State plan that includes nursing facility services; or
  - (2) If in an eligibility group under the State plan that does not include such nursing facility services, have an income that is at or below 150 percent of the Federal poverty level (FPL). In determining whether the 150 percent of the FPL requirement is met, the State must apply the same methodologies as would apply under the Medicaid State plan, including the same income disregards in accordance with section 1902(r)(2) of the Act; and,
- (c) Receive a determination, at least annually, that in the absence of the home and community-based attendant services and supports provided under this subpart, the individual would otherwise require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, if the cost could be reimbursed under the State plan.
  - (1) The annual recertification requirement may be permanently waived for an individual if:
    - (A) It is determined that there is no reasonable expectation of improvement or significant change in the individual's condition because of the severity of a chronic condition or the degree of impairment of functional capacity; and
    - (B) The county retains documentation of the reason for permanently waiving the annual recertification requirement.

State Plan Under Title XIX of the Social Security Act

STATE/TERRITORY: CALIFORNIA

(d) For purposes of meeting the criterion under paragraph (b) of this section, individuals who qualify for medical assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act must meet all section 1915(c) requirements and receive at least one home and community-based waiver service per month.

**ii. Service Delivery Models**

X Agency Model - The Agency Model is based on the person-centered assessment of need. The Agency Model is a delivery method in which the services and supports are provided by entities under a contract.

X Self-Directed Model with service budget – This Model is one in which the individual has both a service plan and service budget based on the person-centered assessment of need.

X Direct Cash

     Vouchers

X Financial Management Services in accordance with 441.545(b)(1).

Provider qualifications for the self-directed model are designed to ensure necessary safeguards have been taken to protect the health and welfare of participants, including criminal background checks (including finger printing) and an orientation designed to ensure providers are capable of safely providing required services.

Providers convicted of fraud are excluded under the federal regulations as specified in 42 CFR section 1001.101 and those convicted of elder and specified child abuse are also excluded as allowed under federal law pursuant to 42 CFR 1002.2. The recipient may hire their provider of choice regardless of any other felony convictions utilizing the statutory waiver process where applicable.