

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

# **Statewide Transition Plan for Compliance with Home and Community Based Settings Rules**

November 23, 2016



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## **Background**

### 1915(c) Waivers

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

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 members.

Throughout the Statewide Transition Plan (STP), recipients of HCBS will be referred to as members, which includes all Medi-Cal eligible beneficiaries, participants, consumers, etc., who are enrolled in any of the HCBS programs.

### 1915(j) State Plan Program

Starting January 1, 2007, the Deficit Reduction Act of 2005 (DRA) gave states a new option to provide HCBS through their State Plans. Once approved by CMS, State Plans do not need to be renewed nor are they subject to some of the same requirements of waivers. 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.

#### 1915(k) Community First Choice (CFC) State Plan Program

CFC services are provided in the member's private residence (see Private Residence Presumed to be in Compliance section below). The provision of community-based services and supports are the most integrated setting appropriate to the individuals' needs without regard to age, type or nature of disability, severity of disability or the form of home and community-based services and supports that the individual requires in order to lead an independent life.

By being in the community and self-directing care, the individual is able to control their environment to the maximum extent consistent with their capabilities and needs. 1915(k) members have the ability to be active in their community and are able to seek employment by utilizing any available resources. These resources could be their CFC provider or their local community that they reside in.

CFC members select their residential setting of a home or abode of their own choosing. The CFC member chooses who their provider will be and that the services will be provided in the home of the individual or a residential setting, such as an apartment where the individual pays rent through a landlord / occupant agreement, or if the individual is living in a home owned by their family. Settings in which CFC services may be provided are unlicensed, private residences. CFC services are not provided in licensed Community Care Facilities (CCF), a Community Care Licensing term for licensed residential facilities.

#### Community-Based Adult Services (CBAS) 1115 Waiver

See **Attachment I** – Revised Draft CBAS Home and Community Based (HCB) Settings Transition Plan

#### New Home and Community-Based Setting Requirements

In January 2014, CMS announced it had finalized important rules that affect HCBS waiver programs and 1915(i) and 1915(k) State Plan programs provided through Medicaid/Medi-Cal, and subsequently published regulations in the Federal Register on January 16, 2014. The rules became effective 60 days from publication, or March 17, 2014. These final regulations are CMS 2249-F and CMS 2296-F.

Prior to the final rule, home and community based (HCB) setting requirements were based on location, geography, or physical characteristics. The final rules define HCB settings as more process and outcome-oriented, guided by the member'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 Medicaid/Medi-Cal provider-owned or controlled HCB residential settings, the provider must offer:

6. 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.
7. Privacy in units including lockable doors, choice of roommates and freedom to furnish and decorate units.
8. Options for individuals to control their own schedules including access to food at any time.
9. Individual's freedom to have visitors at any time.
10. A physically accessible setting.

Any modification(s) of the new requirements can only be made in provider-owned or controlled settings and on an individual basis, 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.

## **HCBS Programs in California Affected by the Final Rules**

### Program Responsibilities

California's HCBS programs, which are the focus of this Statewide Transition Plan (STP) are either directly administered or overseen by the Department of Health Care Services (DHCS) as the single state agency for Medicaid/Medi-Cal. However, several of the HCBS waivers and the 1915(i) State Plan program are administered jointly by DHCS and the State or local entity with program responsibility. Administrative teams comprised of employees from the State department/entity with program responsibility exist at DHCS, the California Department of Public Health (CDPH), the Department of Developmental Services (DDS), the California Department of Aging (CDA), and the San Francisco Department of Public Health (SFDPH). The SFDPH administers a HCBS Waiver program in accordance with terms of an Agreement with DHCS.

Existing 1915(c) HCBS Waivers and the corresponding State department/entity with program responsibility 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

The existing 1915(i) State Plan Amendment (SPA) is administered by DDS and utilizes the same provider types as the HCBS Waiver for Persons with Developmental Disabilities (DD Waiver).

#### California's HCBS 1915(c), 1915(k), 1115 Waiver – CBAS Program, and 1915(i) State Plan Program

California currently has an approved 1915(i) State Plan program that allows 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 the following eight 1915(c) HCBS Waivers:

- *Multipurpose Senior Services Program (MSSP) Waiver.* The objective of this program is to provide opportunities for frail older adults to maintain their independence and dignity in community settings by preventing or delaying avoidable nursing facility placement. 38 MSSP sites perform Care management, which is the cornerstone of this waiver and involves beneficiary assessment; person-centered care planning; service arrangement, delivery and monitoring; and coordinating use of existing community resources. The waiver was approved on July 1, 2014 for five years, through June 30, 2019.

MSSP Waiver provider types include all of the following:

- Adult Day Program
  - 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
  - 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. Services include, but are not limited to, enhanced care management, homemaker and attendant care services, nutritional counseling and supplements, psychotherapy, and non-emergency medical transportation. The current waiver was approved on January 1, 2012 for five years, through December 31, 2016.

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

- Building Contractor or Handyman
  - Clinical Psychologist
  - Specialized Medical Supplies
  - Non-Emergency Transportation
  - Foster Parent
  - Home Health Agency
  - Home Health Aide
  - Homemaker
  - Licensed Clinical Social Worker
  - Licensed Vocational Nurse
  - Local Pharmacy or Vendor
  - Marriage and Family Therapist
  - Master's Degree Nurse; Psychiatric and Mental Health
  - Clinical Nurse Specialist or Psychiatric and Mental Health Nurse Practitioner
  - Private Nonprofit or Proprietary Agency
  - Registered Dietician
  - Registered Nurse
  - Social Work Case Manager
  - Waiver Agency with Exception Approved by CDPH/Office of Aids
  - Residential Care Facilities for the Chronically Ill
  - Foster Family Homes (Specialized)
- *HCBS Waiver for Persons with Developmental Disabilities (DD Waiver).* The purpose of this waiver is to serve individuals 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 requirement. DD Waiver beneficiaries live in the setting of their choice, such as with their families, in their own homes or apartments, or in licensed settings. The current waiver was approved on March 29, 2012 for five years, through March 28, 2017.

DD Waiver provider types include all of the following:

- Adaptive Skills Trainer
- Adult Residential Facility (CCF)
- Adult Residential Facility for Persons with Special Health Care Needs (CCF)
- Associate Behavior Analyst
- Behavior Analyst
- Behavior Management Consultant
- Behavioral Technician/Paraprofessional
- Building Contractor or Handyman
- Camping Services
- Certified Family Home; Foster Family Home
- Child Day Care Facility; Child Day Care Center; Family Child Care Home
- Client/Parent Support Behavior Intervention Training
- Clinical Psychologist
- Contractor
- Creative Arts Program
- Crisis Intervention Facility
- Crisis Team – Evaluation and Behavioral Intervention
- Day-Type Services (Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community-Based Training Provider, Socialization Training Program; Community Integration Training Program; Community Activities Support Service)
- 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
- Marriage Family Therapist
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Orthotic 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 (CCF)
- Residential Facility – Out of State (CCF)
- Respite Agency
- Small Family Home
- Social Recreation Program
- Special Olympics Trainer
- Speech Pathologist
- Sports Club, e.g., YMCA, Community Parks and Recreation Program; Community-Based Recreation Program
- Supported Employment
- Supported Living Provider
- Translator/Interpreter
- Transportation Provider
- 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 independent Publicly Subsidized Housing (PSH) private residences with Home Health Agency services as alternatives to long-term institutional placement. The majority of Publicly Subsidized Housing units serve low-income applicants, while a percentage of units are designated for ALW members. 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, 2014 for five years, through February 28, 2019.

ALW provider types include the following:

- Care Coordination Agency
- Home Health Agency in Public Subsidized Housing
- Residential Care Facility for the Elderly

- *Nursing Facility/Acute Hospital (NF/AH) – Transition and Diversion Waiver.* This 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 for five years, through December 31, 2016.

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

- Behavioral Therapist
- Durable Medical Equipment Provider
- Employment Agency
- Home and Community-Based Continuous Care Facility
- Home Health Agency
- Home Health Aide
- In-Home Support Services Public Authority
- Intermediate Care Facility for the Developmentally Disabled – Continuous Nursing Care
- Licensed Clinical Social Worker
- Licensed Psychologist
- Licensed Vocational Nurse
- Marriage Family Therapist
- Non-Profit or Proprietary Agency
- Personal Care Agency
- Private Nonprofit or Proprietary Agency
- Professional Corporation
- Registered Nurse
- Waiver Personal Care Services Provider

- *In-Home Operations (IHO) Waiver.* This Waiver was originally developed for those individuals who had been continuously enrolled in a DHCS administered waiver prior to January 1, 2002 and who primarily receive direct-care services rendered by a licensed nurse. This waiver offers services in the home to Medi-Cal beneficiaries with long-term medical conditions in their home or home-like setting in the community in lieu of institutionalization. The current waiver was approved on January 1, 2015 for five years, through December 31, 2019.

IHO Waiver provider types include all of the following:

- Associate Clinical Social Worker (ACSW)
- Durable Medical Equipment Provider
- Employment Agency
- Home and Community-Based Continuous Care Facility
- Home Health Agency
- Home Health Aide
- In-Home Support Services Public Authority
- Licensed Clinical Social Worker
- Licensed Psychologist
- Licensed Vocational Nurse
- Marriage Family Therapist
- Personal Care Agency
- Private Nonprofit or Proprietary Agency
- Professional Corporation

- Registered Nurse
- 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 CCFs or Direct Access to Housing (DAH) sites, also known as PSH (e.g., private residences). 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 (CCF)
- 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 (CCF)
- 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
- Licensed Vocational Nurse
- Masters Level Social Worker
- Massage Therapist
- Music Therapist
- Registered Nurse

*1915(k) Community First Choice (CFC)– In-Home Supportive Services (IHSS).* The goal of the IHSS program is to allow members to live safely in their own home and avoid the need for out of home care. Services are provided in the members’ private residence. This could be a house, apartment, or the home of a relative. The members’ home is the only setting in CFC – IHSS may be provided. Members residing in a licensed, provider-owned/controlled residential setting may not receive IHSS services.

1915(k) CFC services include:

- Personal care services like dressing, bathing, feeding, toileting
  - Paramedical services like helping with injections, wound care, colostomy and catheter care under the direction of a licensed medical professional
  - House cleaning
  - Cooking
  - Shopping
  - Laundry
  - Accompaniment to and from medical appointments
- *1115 Community-Based Adult Services Program (CBAS).* See **Attachment I** of the STP for details.

## **Monitoring and Oversight Process**

In keeping with state laws and regulations, and CMS approved Waiver and State Plan commitments, California’s HCBS programs currently conduct periodic reviews of their care-management entities, providers, and residences of program members. Prior to implementation of the HCB Settings Final Rule, HCBS programs were required to conduct site visits to monitor and assess federal assurance compliance. Among the activities conducted during these on-site visits are member record reviews, member and staff interviews, home visits, person-centered plan review, and special incidents review,

In order to assess current settings and ensure ongoing compliance with the HCB Setting Final Rule, the State has expanded its current processes to include activities that will ensure compliance with the Final Rule, and remediation strategies to achieve compliance in the event a setting does not meet the HCB criteria. The state has developed an at-a-glance view of California’s monitoring and oversight process demonstrating each programs approach to on-site assessments and compliance with the HCB Settings Final Rule (see **Attachment VI – Setting Assessment Process**).

## **Private Residences Presumed to be in Compliance**

CMS issued home and community-based (HCB) settings regulations which define HCB settings based on individual experience and outcomes with the purpose of maximizing the

opportunities for members receiving Medicaid HCB services to receive those services in integrated settings. In formulating a plan to implement these regulations, California has determined that the following types of non-provider owned or controlled private residential settings qualify as HCB settings:

1. Private residences owned, leased or rented by the member, a relative of the member, a conservator, or any other individual legally authorized to represent the member.
2. Private residences may take a variety of forms provided they still afford members with access to the community as required by the new HCBS definitions. A private residence may be a single family home, apartment, rental unit or any other space in the greater community.
3. Private residences where the member pays for part or all of the lease costs with the assistance of federal, State, or local funding. Examples include:
  - Affordable Housing Apartment Complexes funded by a combination of Low Income Tax Housing Credits, California State Housing and Bond initiatives, Housing and Urban Development, City and County local and federal funds, and bank financing, where residential eligibility is income based.
  - Housing and Urban Development (HUD) Section 8 Housing Choice Vouchers, which can be used to pay for housing anywhere that accepts vouchers. This includes the Medi-Cal partnership with the Housing Authority of the City of Los Angeles (HACLA), for section 8 vouchers for Medi-Cal seniors residing in skilled nursing facilities (SNFs) who would like to return to the community. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
  - HUD Non-Elderly Disabled Vouchers, which can be used by disabled individuals to live in any residence of their choice that accepts these vouchers. These vouchers do not require that the residences are limited to disabled residents. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
  - HUD Shelter Plus Care and Continuum of Care Vouchers, issued to people experiencing homelessness. This program provides case management supportive services to the homeless but do not require the residence be restricted to the homeless. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.

- HUD Section 811 Project Rental Assistance Demonstration Program. For this program, no more than 25% of the units can be set-aside for 811 tenants, which results in a mix of tenant types. All units must meet the applicable Housing Quality Standards (HQS) set forth in 24 C.F.R. § 982.401.
- Veterans Affairs Supportive Housing vouchers issued to homeless veterans and disabled veterans to help them pay for housing.
- Veteran Housing and Homeless Prevention Program, which acquires, constructs, rehabilitates and preserves affordable multifamily housing for veterans and their families.
- HUD Section 202 Senior Housing rent subsidies for very low-income households with at least one person who is at least 62 years old.
- LA Department of Health, Housing for Health, rental subsidies and supportive services for persons who are homeless, for use in a variety of community-based housing options such as non-profit owned supportive housing with units dedicated to serving homeless individuals and/or families, long term leases of privately owned buildings, and scattered site housing units rented from private landlords.

Consistent with CMS' HCB settings rules, California presumes that these non-provider-owned or controlled private residential home settings qualify as HCB settings. The members realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings. The State presumes these settings do not isolate the member from the broader community, and do not have the characteristics of an institution. These settings do not control the personal resources of the member, or utilize interventions or restrictions that exist in institutional settings.

HCB Settings will be determined compliant through existing monitoring and oversight practices, if the individual's person-centered service plan addresses their unique needs and the required setting characteristics. If it is discovered through the course of normal reviews that an individual's person-centered service plan does not address an individual's unique needs for HCB Setting qualities and a setting is non-compliant, members will have access to: 1) compliant settings, 2) settings of their choice, and 3) not lose federally funded HCBS while waiting for compliant settings; via standard corrective action processes which typically last 60 days but are no longer than 90 days. Only when a setting, including a private residence, does not fully demonstrate HCB Settings remediation on the 90<sup>th</sup> day will an individual have to choose between:

- 1) Remaining in a non-compliant setting and loss of HCBS with referrals to other services, or



2) Relocating to a compliant setting with continuity of HCBS. Relocation to a compliant setting may take an additional 90 days in which case, a member will continue to have access to HCBS.

In the event of conflict between the final rule and additional guidance issued by CMS, the final rule will solely be followed.

Individuals living in these settings, or utilizing the described subsidies or vouchers to pay for rent in non-provider owned and controlled dwellings, personally select their homes that include non-disability specific settings and options for a private unit in a residential community setting. The individual decides whether or not to share a room with a person of their choice. Residents in these settings who are receiving HCB services are treated with the same respect and dignity as persons not receiving HCB services. The settings do not restrict the member from interaction with other non-disabled people or other persons with disabilities in the broader community. These settings do not restrict the member's independence in making life choices. The settings do not restrict the member's choice of HCB services and supports or who can provide those services.

Notably, California law governs all of these private residences in ways that makes them meet the minimum qualifications for HCB settings. Residential rental agreements are subject to fundamental Code limitations. Several provisions in residential rental agreements are deemed invalid as contrary to public policy and, if included, will be unenforceable. These statutory limitations demonstrate the legislative recognition of the unequal bargaining power historically typifying residential landlord-tenant relationships. The codes help prevent the unknowing signing away of valuable rights by tenants who may not fully understand the rental agreement. (*See Jaramillo v. JH Real Estate Partners, Inc.* (2003) 111 CA4th 394, 402-403.) A member living in these settings has a legally enforceable agreement for the housing which ensures the member's rights of privacy, dignity and respect, and freedom from coercion and restraint. Residential rental agreements cannot waive or modify any of the following tenant rights:

- Tenant's right to return of security deposit under Civil Code sections 1950.5(m) and 1953(a)(1);
- Tenant's right to protection under the implied warranty of habitability under Civil Code section 1942.1;
- Tenant's statutory protection against "retaliatory eviction" by the landlord under Civil Code section 1942.5;
- The tenant's right to have the landlord exercise a lawfully-imposed duty of care to prevent personal injury or property damage, under Civil Code section 1953(a)(5);



- Statutory limitations on the landlord’s right to access the rented unit during the lease term under Civil Code § 1953(a)(1). The rights of a Landlord to enter a dwelling are limited to certain conditions under Civil Code section 1954;
- Tenant’s right to assert a cause of action against the landlord under Civil Code section 1953(a)(2);
- Tenant’s right to legally-required notice and hearing, including three or 30/60-day notice to terminate the tenancy, filing of a response to an unlawful detainer complaint, and an unlawful detainer trial, under Civil Code section 1953(a)(3) and (4). The non-waivable right to three-day notice also applies to federally-subsidized (HUD) rental housing. In federally-subsidized “Section 8” housing, landlords are required to give 90 days’ written notice under Civil Code section 1954.535 and specify “good cause” to evict. In rent control jurisdictions, some form of “eviction control” restricts the grounds upon which tenancies may be terminated. Some local controls are quite extensive and others very selective.
- A landlord must allow a tenant with a disability to make reasonable modifications to the rental unit to the extent necessary to allow the tenant “full enjoyment of the premises.” (Civil Code § 54.1(b)(3)(A).)
- Landlords of “buildings intended for human habitation” must install dead bolt locks on each “main swinging entry door of a dwelling unit” and exterior doors that provide ingress or egress to common areas with access to dwelling units in multifamily developments (Civil Code § 1941.3(a).) Any dwelling unit which lacks a proper lavatory or kitchen sink, bathtub shower, or less room or space dimensions than required by code, to an extent that endangers the life, limb, health, property, safety, or welfare of the occupant, is deemed substandard. (Health & Safety Code § 17920.3) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. (Civil Code §1940(c).) Landlords are responsible for installing at least “one usable telephone jack” and the placement, maintenance and repair of inside telephone wiring “in good working order.” (Civil Code § 1941.4.)
- A residential rental agreement compelling binding arbitration of disputes over a tenant’s rights or obligations falls within the section 1953(a)(4) bar, and thus is void, because inherent in an arbitration agreement is the waiver of any right to a jury trial. (*Jaramillo v. JH Real Estate Partners, Inc., supra*, 111 CA4th at 403-404.)
- As a matter of state constitutional law, a contractual provision waiving the right to a jury trial in advance of pending litigation is unenforceable because it is not one of the ways the Legislature has directed that a jury may be waived. (Cal. Const. Art. I, § 16; Code of Civil Pro. § 631(d)).

- The California Fair Employment and Housing Act effectively makes protection from unlawful housing discrimination a non-waivable tenant right. (Gov. Code §§ 12920, 12955; *see also* Gov. Code § 12921(b).)

## **Other Residential Settings**

The State presumes private residences meet the HCB settings requirements and are deemed in compliance; however, as required by CMS, California will assess all residential setting types that are not identified above as presumed compliant with the HCB Setting requirements through provider and on-site assessments. The State will not disallow settings with disability-friendly and supporting amenities and programmatic aspects. The Final Rule states that disability-specific housing and congregate settings are permissible, and that there is no singular definition of home-and-community based. HCBS recipients will be able to choose from all residential settings, including those designed specifically for HCBS recipients, that meet the HCB Settings requirements by March 2019.

## **California's Statewide Transition Plan**

This STP identifies the framework and strategy for achieving and maintaining compliance with the federal requirements for HCB settings in California.

California's HCBS waiver and 1915(i) State Plan program differ significantly in the populations they serve, their size and complexities, and their statutory and regulatory structures, among other differences. The largest and most complex are the DD Waiver and the 1915(i) State Plan program, where the programs serve approximately 130,000 members in the provision of a vast array of residential and nonresidential services that are separately licensed and/or regulated. Participation in the DD Waiver is not required to access the State's full array of available developmental services. Providers are not separately identified for DD Waiver or 1915(i) State Plan program purposes; therefore, all providers potentially utilized for HCBS must be in compliance with the HCB setting requirements. For the developmental services system over 300,000 members, are potentially affected by the new requirements.

In contrast, the SFCLSB Waiver, with 17 beneficiaries, represents the smallest 1915(c) waiver in California. Eligibility is open only to San Francisco residents who meet level of care eligibility and require at least one of six available services.

This STP identifies at a high level the commitments and requirements that each of the eight HCBS waivers, 1915(i) and 1915(k) State Plan programs, and 1115 waiver will meet. The specific approach and details of each program's transition process will reflect the input and guidance of the particular program's stakeholders, and the unique structure and

organization of the program itself. The complexity of each task will vary significantly across programs.

Resources to address and implement the many changes necessary to be in compliance with the regulations are and will continue to be limited. When resources are needed, they must be raised and vetted through the annual legislative budget process, which only allows for new resources prospectively, typically in the upcoming state budget year. Therefore, careful thought and analysis must go into every aspect of implementation in an effort to achieve compliance as cost effectively as possible. Since program systems and processes have long been established in California, standard processes will be considered for modification to bring about and ensure ongoing compliance, such as revising existing monitoring and oversight protocols to incorporate the regulatory requirements, utilizing available data, such as the National Core Indicator (NCI) and expanding existing complaint and appeal processes to allow for member and/or provider due process when disputes arise.

## **Stakeholder Input**

To achieve compliance, California will strongly emphasize inclusive stakeholder processes that analyze and guide implementation. Essential involvement will come from members. Their input concerning how they experience community inclusion and freedom of choice will be critical for system changes and implementation strategies. Also essential is provider input. Providers are the backbone of the system, ensuring that services and choices are available to members. How the regulations are implemented may affect the viability of providers as sustainable businesses. Stakeholder processes will also include entities and experts who are impacted by, or are knowledgeable about, the various topics, particularly, the California Department of Social Services as the licensing agency (Community Care Licensing [CCL]) for many of the HCB settings.

As the State continues this process, stakeholder input will evolve over time as implementation phases progress, as described below. With the stakeholder input, specificity will be added and/or modifications will be made to the various components identified in the STP.

Following is a summary of California's efforts to elicit stakeholder input and subsequent comments received to date on the STP. Please note: the Revised Draft CBAS Home and Community-Based (HCB) Settings Transition Plan details a separate stakeholder engagement process.

DHCS posted the first STP draft to the DHCS website on September 19, 2014, followed by a 30-day stakeholder input period, and the second STP draft on November 7, 2014, followed by another 30-day stakeholder input period. In addition, DHCS posted general public interest notices about impending public comment periods and meetings regarding development of the STP in the California Regulatory Notice Register on March 3, 2014 and April 25, 2014. The Register is available in print at public libraries as well as other public

places. DHCS also posted a general public interest notice to inform stakeholders of a conference call on July 13, 2015, to discuss the revisions made to the STP, as well as to discuss comments received on the On-Site Assessment Tools and Provider Self-Survey Tools. Other notices were sent by the individual departments with responsibility for specific waivers; e.g., CDPH communicated directly with HIV/AIDS Waiver stakeholders; CDA with MSSP sites and CBAS centers; and DDS with Regional Centers.

DHCS received CMS feedback on the previously submitted STP on November 16, 2015. The letter can be found [here](#). CMS hosted a series of conference calls with the State to discuss CMS feedback and clarify the STP requirements outlined in the letter. The current STP draft, which addresses CMS' requirements, was posted to the DHCS website on August 29, 2016 for public review and input. Public comment was analyzed and incorporated into the STP, and is summarized in **Appendix A**. DHCS also hosted a stakeholder conference call on September 27, 2016, to discuss revisions to the STP and respond to questions or concerns.

## **Implementation of the HCB Setting Requirements**

Following is a description of the various phases of implementation that California will undertake to achieve compliance with the HCB setting requirements. California will move forward concurrently with many of the components listed below. As described previously, the details of implementation will vary significantly across the HCBS Waiver, 1915(i) and 1915(k) SPAs, and 1115 Waiver, program and be integrally guided by stakeholders. As remedial strategies are solidified, actions and timelines will be identified to track progress against objectives based on resources available.

Consistent with the above, additional State resources must be requested via the State legislative and budget processes. To ensure awareness of these needs, staff from the California Department of Finance and the State Legislature are invited to attend ongoing stakeholder meetings.

### Education, Outreach, and Training

As an important early step, information and education on the requirements of the HCB setting requirements and the regulations generally has been provided to State departments/entities, members and families, care-coordination agencies, regional centers, providers, advocacy groups and other interested stakeholders throughout the State on a continuous and ongoing basis. California has used website postings, conference calls, webinars, and public hearings as methods for getting information about the Final Rules widely disbursed. Additionally, all affected parties will be informed of the ongoing methods for providing input, being involved and staying informed as implementation progresses. Ongoing communication methods will be developed with stakeholder input. DHCS will coordinate with sister departments to produce and disseminate additional

outreach and educational materials as needed to continuously update and provide information to the public.

California is utilizing several methods for communicating information about the HCBS rules and how the state's transition plan assures their effective implementation. Major efforts include:

- Developing and widely disseminating general informational fliers to members and their families, providers, managed care plans, regional centers and other care coordination agencies, as well as the broader communities where members live and the general public.
- Conducting webinars and face-to-face or online training sessions specifically tailored to members and their families, providers, and care coordination agencies.
- Regularly posting and updating informational documents and FAQs about the HCBS rules on department websites.
- Seeking ongoing input from stakeholder groups convened by the several departments.
- Providing program policy and operational instructions through official correspondence, provider bulletins and regulatory changes.

The initial rollout of these education and outreach activities is taking place through Spring 2017. As various aspects of HCBS implementation proceed throughout 2017 and 2018, California will continuously update and disseminate information through department websites, official correspondence, advocacy groups and HCBS Advisory Committees. Feedback and comments from the various stakeholders will validate the efficacy of the state's outreach and training strategy.

### Systemic Assessment of Statutes, Regulations, Policies and Other Requirements

DHCS and the State departments/entities responsible for operating each HCBS Waiver, 1915(i) and 1915(k) State Plan programs, and 1115 Waiver reviewed and analyzed the applicable statutes, regulations, and policies governing residential and nonresidential HCB settings to determine the extent to which they comply with federal regulations.

Departments requested stakeholder participation for input into the systemic assessment process to determine whether each standard is in compliance, out of compliance or whether the standard is silent on the federal requirement. Beginning early in 2015 the State engaged assistance from stakeholders who are required to adhere daily to California law, program regulations, and program policies.

Each department convened stakeholders via webinar, teleconference, and/or face-to-face meetings, and encouraged stakeholder input either directly during the meetings, by email, USPS mail, and telephone. Stakeholder involvement in review and analysis of statutes, regulations, and policies varied by program. For example, the sheer number of residential and non-residential HCB settings available to persons with developmental disabilities through the HCBS waiver and State Plan benefits required an extensive process to consider, deliberate, and validate existing State standards and policies.

The initial draft systemic assessment process was completed July 1, 2015, and following incorporation of public input, finalized August 6, 2015. To address issues CMS identified in the systemic assessment in its letter dated November 16, 2015, the State reexamined its findings. During a series of meetings among the State departments, and as a result of discussions with CMS teams, updates have been made to the August 6, 2015 version. The revised systemic assessment indicates where specific programs will take action to bring their statutes, regulations and policy documents in conformance with the federal requirements. Given the amount of time required to effect statutory or regulatory changes in California, programs will develop and implement any needed changes during 2017 and 2018.

A revised summary of results including hyperlinks to applicable statute, regulations, policies and other source documents can be found in **Appendix B**. Please note that the systemic assessment is an indication of compliance, but does not preclude settings from further compliance determination processes, such as Provider Self-Surveys, Beneficiary Self-Surveys, and On-Site Assessments.

The State believes there is opportunity to implement policies and strategies in alignment with the HCB Settings Final Rule that will enhance and strengthen existing local practice during the upcoming legislative cycle. The Department of Developmental Services is considering what, if any, statutory changes may be needed to allow for the department to administer and release timely and appropriate policies for implementing STP activities.

#### Compliance Determination Process for HCB Settings

The State departments/entities will be responsible for ensuring appropriate provision of HCBS by all providers that serve, or may serve Medi-Cal members. California's assessment of HCBS providers will involve several distinct sets of activities that will feed into one another. All of these activities require large amounts of data in the planning stages, and will produce similar amounts of data needed for ongoing operations, program reporting to state management and CMS, and evaluation and program improvement. Some of the initial types and sources of data include member eligibility files, provider certification and payment files, program administration files, sampling, selection criteria, and validation protocols.

Following is the listing of HCB settings that have been assessed [see page numbers below] through the systemic assessment process for inclusion in the compliance determination process:

- Adult Day Program [Pg. 49]
- Adult Family Home/Family Teaching Home [Pg. 51]
- Adult Residential Facility - Assisted Living Waiver; San Francisco Community Living Supports Benefit Waiver [Pg. 54]
- Adult Residential Facility (Includes Adult Residential Facility for Persons with Special Health Care Needs); Residential Care Facility for the Elderly; Group Home;



Small Family Home – HCBS Waiver for Californians with Developmental Disabilities and 1915(i) State Plan [Pg. 58]

- Certified Family Home; Foster Family Home [Pg. 62]
- Child Day Care Facility; Child Day Care Center; Family Child Care Home [Pg. 64]
- Community-Based Adult Services [See **Attachment I** - Community-Based Adult Services Program Transition Plan – Appendix V]
- Congregate Living Health Facility [Pg. 65]
- Congregate Meal Site [Pg. 70]
- Day-Type Services (Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community-Based Training Provider, Socialization Training Program; Community Integration Training Program; Community Activities Support Service) [Pg. 73]
- Residential Care Facility for the Chronically Ill [Pg. 75]
- Residential Care Facility for the Elderly - Assisted Living Waiver; San Francisco Community Living Supports Benefit Waiver [Pg. 78]
- Work Activity Program [Pg. 83]

The first set of activities centers around provider self-surveys of their existing operations compared to the new requirements in the federal regulations. DHCS and State departments have developed an agency-wide core Provider Self-Survey Tool, which will be forwarded to all HCB settings for completion. The Residential and non-Residential Provider Self-Survey Tools are found in **Attachment IV and V**, respectively. The core survey tool may be modified, including guidance and instructions, to address specific provider types and programs.

The different HCBS programs may use both electronic and mail distribution processes to send the survey instruments and guidelines to providers. Additionally, California will host training webinars on the provider self-survey process and expectations, and will post follow up information on program websites. The survey distribution and training processes generally will begin the fourth quarter of 2016 and continue through the second quarter of 2017 (See **Attachment VII** - Statewide Transition Plan Milestones and Timeline for detailed timeline).

Depending on provider type, providers will have up to 60 days to complete and return their self-surveys. Programs will follow up with providers with reminder emails and phone calls. The outcome for not completing and returning the Provider Self-Survey varies by provider type. Some settings that fail to complete and return the Provider Self-Survey will be subject to an on-site assessment. Other settings such as CBAS require the Provider Self-Assessment to be completed as part of the certification renewal process and failure to do so could result in their not being re-certified. Completion of provider self-surveys is targeted for the third quarter of 2017, except for programs such as CBAS which is integrating the provider self-surveys with other information required in preparation for their biennial

certification visits through 2018. See **Attachment VII** - Statewide Transition Plan Milestones and Timeline for detailed timeline.

Program staff, or care coordination agencies and regional centers, will analyze returned self-surveys and identify them according to whether or not they meet the CMS readiness criteria. As appropriate, departments may review returned Provider Self-Surveys to validate results and promote consistency in determinations. Providers whose self-surveys do not indicate that they fully meet the criteria will be further categorized by the type and level of remediation needed to achieve compliance. Those needing corrective action through technical assistance (e.g., documenting procedures, staff training on the new requirements, reiterating rights and responsibilities to members and their representatives, etc.) will implement corrective action, monitored by program staff, care coordination agencies and regional centers. Those needing more extensive corrective action may be scheduled for on-site assessments.

Secondly, surveys of members will pose non-threatening questions to effectively elicit members' thoughts and feelings about the HCBS they receive, their ability to actively participate in life decision making, and any problems they encounter. Member survey instruments also need to be tailored to the several different types of populations receiving HCBS—the elderly; persons with developmental disabilities, cognitive impairments, or mental illness; the physically disabled; AIDS patients; children needing palliative care in addition to treatment for acute diseases.

DHCS will develop Member Survey core questions and elicit feedback from advocates and stakeholders prior to finalizing the survey. These core questions will be incorporated in existing policies and procedures used by the various programs for member interviews, service planning, and complaint investigations.

Conducting member surveys will take many different forms during 2017. To avoid confusion and to assure the consistency and reliability of member input, California will not distribute member surveys in mass through the mail or electronic media. Instead HCBS programs will conduct face-to-face interviews with members or their authorized representatives as often as possible. For example, HCBS programs which use periodic recertification of member eligibility or reassessment of need for services may add the core questions to their recertification or reassessment processes. Programs which make on-site visits to HCBS providers or to member homes may interview members during these visits. Complaint investigations will include the opportunity to ascertain how members see their ability to access community resources.

Since many members receive HCBS from more than one provider, the focus will be on the HCBS provider(s) with which the member resides or spends a significant amount of time



(i.e., 4 hours) on a regular basis. Member input can be linked to identified providers through each program's system for storing provider information.

In addition to corroborating information garnered from provider self-surveys and on-site assessments, member input will play an essential role in quality assurance and program improvement efforts. Its impact is felt in the scope and duration of HCBS that programs offer, the types and qualifications of providers used, and how services are financed.

On-site assessments are the litmus test for ascertaining provider compliance with the federal settings requirements. These assessments will confirm compliance or identify areas for remediation. DHCS and State departments have developed an agency-wide core On-Site Assessment Tool, for use in the On-Site Assessments of HCB settings. The Residential and non-Residential On-Site Assessment Tools are found in **Attachment II and III**, respectively. The core assessment tool includes questions that relate to each new federal requirement that will be used to determine if the HCB setting meets or does not meet the required federal rule. The core assessment tool may be modified to address specific provider types, including guidance and instructions, and will become the assessment tools utilized by the appropriate State departments/entities administering the program.

The responsibility for ensuring completion of On-Site Assessments rests with the State department/entity responsible for the program as specified under "HCBS Programs in California Affected by the Final Rules" section of this document. On-Site Assessments will be conducted by a survey team that includes, but is not limited to, representation from any or a combination of the following: State personnel, case managers or other representatives of case management entities, and licensing entities.

Depending upon the HCBS program's size and diversity of provider types, the selection of providers for on-site assessments can be done on the basis of several factors that may include:

- Statistically valid samples
- Annual or biennial regularly scheduled site visits for licensing or certification purposes
- The responses to the provider self-surveys, member input, and other factors like staff's knowledge of provider operations, including a history of site visits, complaints, and corrective actions
- The provider's location being on or adjacent to institutional settings.

On-Site Assessments and Member Surveys will be used to validate Provider Self-Surveys for a sample of settings by provider type category. In the event that the results of a Provider Self-Survey differ from information gathered through validation activities, an in-depth review will occur to determine the reason for the discrepancy and identify the appropriate course of action, which could include, but not be limited to additional provider

education, surveying additional members, or an additional On-Site assessment. Similarly, if a general pattern of Provider Self Survey and validation discrepancy is found across a provider type category, the State will conduct an in-depth review to identify the source of the discrepancy. Follow-up actions in this case could include, but not be limited to increasing the number of planned On-Site Assessments and Member Surveys to validate the results of the Provider Self Surveys. On-Site Assessments and Member Surveys will be ongoing until remedial strategies are identified and implemented. On-Site Assessments and Member Surveys will be incorporated into ongoing monitoring protocols as a part of existing processes.

There are HCBS providers which may serve members from several different HCBS programs. To ensure consistency and avoid duplication of effort, the program which has primary responsibility for monitoring and oversight of the providers will conduct any necessary on-site assessments. Other programs may rely on the findings of the responsible agency as to the providers' compliance with the federal requirements.

Like the analysis of provider self-surveys, on-site assessments will determine if a specific provider is in compliance with the federal settings requirements, or needs to implement corrective action to achieve compliance. The written results of each On-Site Assessment will be forwarded back to the HCB setting with specific information regarding improvements that will be required in order for the setting to come into compliance with the federal requirements and a timeline for completion. Remedial actions will be developed to include timelines, milestones and a description of the monitoring process to ensure timelines and milestones are met. Follow up of the compliance issues will be the responsibility of the administering State department/entity. Completed assessments, including documentation of any required follow-up actions as a result of the On-Site Assessments, will be maintained by the appropriate department

The following is a count of settings to be assessed, by program, and their corresponding sample size for validation, which was calculated using the Raosoft Sample Size Calculator:

**Assisted Living Waiver: Total settings = 245; sample size is 150.**

Residential Care Facility for the Elderly - 239

Adult Residential Facility - 6 settings

**Nursing Facility/Acute Hospital Waiver:**

Congregate Living Health Facility - 54 settings, sample size is 48.

**Multipurpose Senior Services Program: Total settings = 41 with 100% validation.**

Adult Day Program – 33

Congregate Meal Sites – 8

**Community Based Adult Services Program:**

CBAS Centers - 240 with 100% validation.

**HIV/AIDS Waiver:**

Residential Care Facilities for the Chronically Ill – 4 settings with 100% validation.

All providers of services in the settings below will be required to complete a provider self-survey. Additionally, a statistically valid sample (with no less than a 95% confidence level and no more than a 5% margin of error) of providers within the categories below will be selected for an on-site assessment. The sample within each category will be representative based on the types of services within each category and geographically. The total number of settings as well as the statistically valid number of settings that will receive on-site assessments is reflected below.

**DD Waiver and 1915i State Plan:****Residential – Total settings = 6,363; sample size is 363**

- Adult Family Home – 1,209
- Family Teaching Home - 14
- Adult Residential Facility - 4773 (Includes 40 Adult Residential Facilities for Persons with Special Health Care Needs)
- Certified Family Home/Foster Family Home/Small Family Home - 146
- Group Home - 134
- Residential Care Facility for the Elderly - 87

**Child Day Care – Total settings = 512; sample size is 220**

- Child Day Care Facility/Child Day Care Center/Family Child Care Home - 512

**Day-Type Services – Total settings = 1,891; sample size is 320**

- Activity Center - 139
- Adult Day Care Facility - 37
- Adult Development Center - 638
- Behavior Management Program - 344
- Community-Based Training Provider - 3
- Socialization Training Program - 124
- Community Integration Training Program - 488
- Community Activities Support Service - 118

**Work Activity Programs – Total settings = 107; sample size is 84**

The State recognizes the need for reasonable and sound methodology(ies) early in the assessment design and implementation process. Given stakeholder comments on the need for a vendor to perform these functions, the State is evaluating how to implement these provisions of the plan.

The final report of the compliance determination process will detail the number of HCB settings that are fully compliant with the requirements, partially compliant with the requirements and will require modifications, cannot meet the requirements and require

withdrawal from the program, and the number of settings that require going through the heightened scrutiny process. Once completed, this report will be included in an updated STP.

### Heightened Scrutiny Process

The State must identify settings that are presumed to have institutional qualities. These settings include those that: are in a publicly or privately-owned facility that provide inpatient treatment; are on the grounds of, or immediately adjacent to, a public institution; or settings that have the effect of isolating individuals receiving Medi-Cal funded HCBS services. Settings that have one or more of these characteristics must be approved by CMS to continue to receive Medi-Cal HCBS funding. The State must demonstrate, through evidence presented by the State and public input, that the setting meets the HCB setting requirements.

**Settings that may have the effect of isolating HCBS members** are settings designed to provide members with multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities. These settings provide little or no interaction with the broader community and use interventions or restrictions that are used in institutional settings. The State will identify specific characteristics of settings that tend to isolate through a stakeholder engagement process.

Using Provider Self-Surveys, On-Site Assessments and other monitoring activities, Member Surveys and stakeholder input, the State will identify settings that are in publicly or privately owned facilities that provide inpatient treatment; are on the grounds of, or immediately adjacent to, public institutions; or have the effect of isolating individuals receiving Medi-Cal funded HCBS services. These settings will be required to submit evidence to the State to demonstrate how they have the qualities of HCBS, which the State will then review and submit to CMS if the setting is believed to overcome the institutional presumption. The evidence should focus on the qualities of the setting and how it is integrated in and supports full access to the community. Specific evidence to be submitted may include:

1. Licensure requirements or other state regulations that clearly distinguish a presumed institutional setting from licensure or regulations of institutions;
2. Provider qualifications for staff employed in the setting that indicate training or certification for HCBS, and that demonstrate the staff is trained specifically for HCBS in a manner consistent with the HCB setting requirements;
3. Procedures that indicate support for activities in the greater community according to the individual's preferences and interests; and
4. Description of the proximity to avenues of available public transportation or an explanation of how transportation is provided when desired by the member.

All settings submitted for heightened scrutiny must complete a Provider Self-Survey and will be subject to an On-Site Assessment where Member Surveys will be conducted. The State's heightened scrutiny review process will consist of:

- A review of evidence provided by the setting;
- A review of the setting's policies and services;
- An on-site visit and an assessment of the physical characteristics;
- A review of policies and procedures governing person-centered plan development and implementation;
- Member interviews and observation;
- Collection of evidence to submit to CMS in order to overcome the institutional presumption.

The State must determine, using input from the public, members, stakeholders, and providers whether or not it believes the setting overcomes the institutional presumption. The evidence required to overcome institutional presumptions must be submitted to the settings' contractor (e.g. care coordination agencies or regional centers) within forty-five (45) days of its identification for the heightened scrutiny process. The contractor will review the evidence submitted, follow up with the setting for any necessary documentation, and make a recommendation to the corresponding State agency overseeing the program. The State agency will review the evidence, follow up with the contractor to request missing documentation, and recommend to DHCS a compliance determination. DHCS will review evidence and recommendations and will follow up if necessary with an On-Site Assessment and Member Survey to ensure all necessary information is obtained before making a determination of whether or not the setting overcomes the institutional presumption.

The State will work with settings when necessary to develop remediation strategies and timelines specific to each setting to achieve full compliance with the final rule. In the event that a setting cannot achieve compliance with the HCB settings rule, the transition of members will be conducted as described under the STP section "Changes in Services or Providers for Members."

### Changes in Members' Services or Providers

Currently California's HCBS programs have policies and procedures, which allow for changes in members' services or providers. These changes may occur due to several factors including:

- Changes in a member's need for specific types or intensity of services
- The member's selection of different service options available to meet needs
- The member's dissatisfaction with a provider's services or personnel
- Changes in a provider's staffing, hours of operation, or location
- Provider closure
- Provider withdrawal or suspension from the Medi-Cal program

Written notification to the member and the provider is given at least 30 calendar days in advance of the effective date of the change, identifying the specific reason(s) for the change. This notification also informs the member of their right to a fair hearing under Medi-Cal, including Aid Paid Pending if timely requested.

The initial steps in addressing the impending change include reviewing the member's person-centered service plan; reevaluating the goals and objectives, needs, preferences and choices of the member; and identifying the options available. The person-centered service plan meeting would include the member, involved family members, conservators, authorized representatives, advocates, the care management agency or regional center coordinator, and provider staff who know the member well. To ensure a smooth transition from one provider to another, a transition plan outlining the specific transition activities, including any necessary supports and services needed to ensure a successful and person-centered transition, is incorporated into the person-centered service plan.

When one of California's HCBS programs determines that a setting is not in compliance with the HCB settings requirements, the first order of business is the setting's development of a workable remediation plan to come into full compliance with the HCBS Settings Rules over a reasonable timeframe. However, if the provider owned and operated residence or day program provider cannot come into compliance with the HCBS Settings Rule by March 2019, the program will initiate its policies and procedures to transition, if possible, affected members to compliant settings so they can continue to receive federally funded HCBS.

When choosing provider owned and operated residences, members have the opportunity to explore integrated living options that match their identified service and support needs and choices. Considerations may include:

- Exploring the variety and types of community living options currently available (e.g., non-disability settings, supported living, small group homes, family home agencies)
- Proximity to services in the community
- Employment opportunities
- Needed medical services

Until California completes the process of assessing provider settings and determines appropriate remediation plans, it cannot estimate the number of individuals that may need to be transitioned eventually to other settings.

## Milestones and Timeline

In order to illustrate the variety of compliance determination activities the State has performed, or will perform, California has developed a comprehensive milestones and timeline document for stakeholders to reference. It provides a convenient view of the milestone activities described in detail throughout the STP, and their associated timelines for completion (see **Attachment VII**).

## Role of Person-Centered Planning

Even though implementation of the new federal regulations affecting the person-centered service planning process is not technically part of this STP, person-centered service planning is inextricably linked to the HCB setting requirements. The State department/entity responsible for program administration will use a stakeholder process to evaluate the role of person-centered service planning as it relates to determining compliance with the federal regulations, assessing member satisfaction with the setting options, and other possible community integration issues. Strategies may be developed to utilize information from the person-centered service planning process to improve service delivery under the federal regulations.

Public comment supports the idea of the State's understanding regarding home-like and community integration within a persons' individual plan of care and basic civil right. DHCS believes community is not the mere physical presence of other buildings and people. It includes a safe and purposeful environment where individuals have needed support and safety, and the greatest freedom to live productive, connected lives according to their own desires.

The person-centered service plan documents the member's choice of settings and services based on the needs and preferences of the member. The State will take into account the options provided and choice of the member or their parent or legal guardian when determining HCB settings compliance, thus keeping the end goal of optimizing autonomy, independence, and member choice in mind. The State is committed to participating in all opportunities to enhance person-centered HCBS and increasing monitoring, oversight and enforcement of person-centered service planning. Person-centered service planning activities will be performed outside the purview of the STP.

The State will ensure through STP activities and ongoing monitoring and oversight that the person-centered service plan documents member choice, needs, preferences, and goals. Any modification to the HCBS setting requirements must be documented and supported by the person-centered service plan and will only be made on an individual basis. For example, certain HCBS members will have a documented need to reside in a setting utilizing delayed egress and/or secured perimeters. State statute and regulation clearly identify the policies and procedures for implementing such interventions<sup>1</sup>.

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<sup>1</sup> Health and Safety Code Section 1584; 17 CCR 56068 – 56074, 56101, 56620 – 56625; 22 CCR 87705.



## Appeal Processes

As the State assesses HCBS settings for compliance with the Final Rule, providers and members will have an opportunity appeal compliance determinations made that result in loss of funding for providers or loss of service and/or member relocation of residence. In addition to the appeals and grievance policies that exist for each individual program, and department, providers and members may utilize existing state processes to file an appeal. There are two distinct processes that providers and members may use to file appeals with the State.

### *Provider Appeals:*

In the event that a setting is determined non-compliant and cannot or will not address issues of non-compliance through remediation, the provider has the option of filing an appeal through the Office of Administrative Hearings and Appeals (OAHA). OAHA is an independent hearing office created by DHCS to provide an appeals process for enrolled Medi-Cal providers to dispute actions taken by the Department. Providers looking to file an appeal related to HCBS setting compliance can find more information at <http://www.dhcs.ca.gov/formsandpubs/laws/Pages/The-Office-of-Administrative-Hearings-and-Appeals.aspx>

### *Member Appeals:*

Members looking to dispute an HCBS setting determination by the State resulting in a loss of services and/or unwanted relocation of residence may file an appeal through the Medi-Cal Fair Hearing process. For more information regarding the Fair Hearing process, members may visit <http://www.dhcs.ca.gov/services/medi-cal/Pages/Medi-CalFairHearing.aspx>.

## Compliance Monitoring

Each HCBS Waiver and 1915(i) State Plan program, in consultation with stakeholders, will use the self-surveys, On-Site Assessments and/or other data collection methods, to develop remedial strategies and monitor progress toward compliance with the federal regulations. All State-level and individual-setting level remedial actions will be completed no later than March 17, 2019.

The State will ensure that HCB settings remain in compliance with the new requirements by utilizing current ongoing licensing and/or certification processes for both residential and non-residential settings, as well as weaving compliance reviews into current monitoring and oversight processes (**See Attachment VI – Setting Assessment Process**).

## Plan Updates and CMS Reporting

During the implementation period, progress on this STP will be continuously monitored and reported to CMS, as needed.



## Appendix A – Stakeholder Input

The State submitted a draft STP for public comment on December 19, 2014, followed by a second draft for public comment submitted July 1, 2015. On August 14, 2015, the State submitted its STP for CMS review, which included a summary of public comment and state responses. To review public comment and state responses on the previous STP submission, please visit:

[http://www.dhcs.ca.gov/services/ltc/Documents/STP\\_Final%20August%2014%202015.pdf](http://www.dhcs.ca.gov/services/ltc/Documents/STP_Final%20August%2014%202015.pdf)

The August 29, 2016, revised STP incorporates stakeholder input from previous STP versions, and addresses CMS feedback received November 16, 2015. The letter can be found [here](#). DHCS posted the revised STP draft to the DHCS website on August 29, 2016, followed by a 30-day stakeholder input period. DHCS also hosted a webinar on September 27, 2016, to discuss changes made to the STP and the CBAS Transition Plan. More than 80 members, providers, advocates, and other stakeholders participated in the stakeholder calls combined. DHCS established a dedicated email box to receive stakeholder input. DHCS received 81 emails of stakeholder input, and two mailed letters. Approximately 60% of stakeholder input was received directly from members and their families, 15% was received from providers, and 25% from advocates. We received valuable feedback during this stakeholder input process and have summarized these comments in the following pages. California believes it has captured the intent of comments received in the summary below; however, the original content of all stakeholder comments will be posted on the DHCS STP website for public viewing.

### Stakeholder Input on Revised Draft STP Posted August 29, 2016 (Bold text indicates frequently received comments.)

As an overview of comments received, beneficiaries and their family members were most concerned with the choice of homes and programs, including disability-specific and congregate housing. They fear the STP will violate the Americans with Disabilities Act by reducing or eliminating desired housing and program options. Advocates have concerns about the STPs assessment of private residences and that the assessment process is unclear. Advocates also assert that the State must redouble its education and outreach efforts and provide funding for remediation activities. Providers have commented that the STP must be implemented in a uniform manner.

### State Response Reference Key:

- (1)** No action to be taken; outside of STP purview.
- (2)** Comment logged for continuous consideration through transition process.
- (3)** Language in the Statewide Transition Plan has been added or modified due to stakeholder input.
- (4)** Compliance determination will be made once the Provider Self-Survey, Beneficiary Self-Survey, and On-Site Assessment have been completed.
- (5)** The State will continue its education and outreach to meet the needs of agencies, stakeholders, and beneficiaries as the Statewide Transition Plan is implemented.

### Consumer and Family:

**(1)** Where will individuals with developmental disability, who are aging out of schools, live and how will they be care for when their parents are gone?

**(1)** Housing in CA is outrageously expensive – especially for those with DD receiving SSI as their primary source of funds.

**(1)** Presently, over 6,000 persons with autism are turning 18 each year – less than 10% are finding homes in the community.

**(1)** Without adequate staff support for DD/autistic adults with significant behaviors, the goals and focus of the community based, person centered programs will not come anywhere near even minimal fulfillment.

**(2)** We urge you to consider the needs of individuals like our son who do not do anything that involves sitting, does not watch TV or use the computer and for whom the group home model is not workable to meet his needs. Communities with a focus on outdoor physical work are not institutions and serve the needs of many individuals like our son.

**(2)** All monitoring and oversight should ensure safety of those with developmental disabilities and freedom of choice based on personal outcomes and reasonable costs.

**(2)** Agencies sometimes issue a document purporting to be an interpretive rule, but which in fact creates new law, rights, or obligations. Indeed, as the notice and comment rulemaking process has become more onerous over time, agencies have a strong incentive to avoid the burdens of rulemaking if possible. If an agency issues a policy or guidance document that amounts to legislation without going through notice and comment rulemaking, the agency's action may be vacated. A legislative rule promulgated without proper notice and comment rulemaking is "procedurally invalid."

**(2)** Prohibiting autism-friendly housing or subjecting it to "heightened scrutiny" is disability discrimination

(2) I implore you to consider carefully how you proceed with the STP. We need ALL options to be available. We need more help, not more restrictions. The situation is desperate. We are aging, and our kids will never be independent.

(2) In fact, for some people, co-living and working with many people of like-minds is the best way to help them integrate with others, to nurture their emotional well-being, their sense of connection and belonging.

whether it is not and cannot become compliant as if deemed institutional in nature. CMS has inappropriately singled out these two settings among the thousands of homes providing residences for developmentally disabled adults in California.

(2) CMS has not placed a limit on the number of DD persons who can occupy a setting. On page 2967 of the rule, CMS also stated that “we do not believe there is a maximum number beneath which we could determine with certainty that the setting would meet the requirements of HCB settings.” The focus should be on the experience of the individual in the setting.

(2) Living in a setting with others of the same disabilities does NOT limit integration and interaction with a larger community of non-disabled citizens.

(2) People with disabilities vary greatly in their needs and preferences. There must not be a “one size fits all” approach to housing options.

**(2) (3) CMS issued a subsequent Informational Bulletin entitled "Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community" which conflicts with the original intent of CMS which was derived from years of public comment. In the event of conflict between the final rules and this Bulletin, the final rules should be followed first and foremost as they have legal standing.**

(2) (3) The sentence that reads “dwellings are not limited to or designed specifically for people with disabilities” does not make any logical sense. First, it implies that someone with DD cannot choose to live with other DD persons. And second, it suggests that homes cannot be designed for people with DD. Neither of these is legal or desirable. DD individuals can choose to live with any number of DD persons as they choose – especially in private, non-licensed residences. The language, as written, violates ADA regulations.

(2) (3) The notion that disability-specific settings are undesirable is directly contrary to the new CMS rules. As mentioned earlier, CMS intentionally removed this limiting language in Page 2973-74 of the rules by stating “we have revised the rule to remove the term “disability-specific housing complex”.

**(2) (3)** The second paragraph under the Heighted Scrutiny is language that is NOT contained in the new rules and is contrary to the intent of the rules. This language comes directly from the subsequent CMS Informational Bulletin entitled "Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community". It violates the language of the approved regulations and, therefore, should be null and void. The public also had no opportunity to comment on this guidance which is rule-making in disguise.

**(2) (3)** The implication that a housing model that is 100% occupied or designed for individuals with developmental disabilities is subject to further review, scrutiny or does not fall under the automatic presumption is troubling at best, likely illegal, and contradicts CMS' own rules. Simply put, a setting that is occupied by 100% of residents with disabilities is entitled to the same presumption of HCBS compliance that a setting that is occupied by 75% of residents with disabilities. Moreover, the current language promotes the indefensible assumption that living with individuals without disabilities is superior to the alternative. Please eliminate the language under Heightened Scrutiny that comes from the CMS Informational Bulletin "Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community." The public has had no opportunity to comment on this and it violates the language of the earlier approved regulations.

**(2) (3) (4) If DD member wants to live with his peers and they are offered access to the community to the extent they desire, I believe HCBS should support and encourage this and not limit choice. It seems a grave potential injustice to suggest that if a person with I/DD chooses to live with, work or socialize with others with I/DD they would be denied access to needed support services under HCBS implementation.**

**(2) (3) (4)** Allow Private residences of all sizes and types, including homes, condos, apartments, shared living, and rural options such as farms. This is very important to our community of families facing the housing dilemma.

**(2) (3) (4)** Although we want to limit 'institutionalizations', options should be phrased to emphasize goals – access to community, access to friends and family, opportunities for choice versus trying to specify exclusions. One person's view of limits may be exactly what another chooses and/or needs for safety and/or health reasons. Living in a setting with others of the same disabilities does NOT limit integration and interaction with a larger community of non-disabled citizens. And, indeed may enhance interaction by providing a site for interaction and safe base within a larger, integrated community.

**(2) (4) Limitations regarding how "integrated" the program is to the community and who is allowed to participate in a program will eliminate resources and prevent**

**people from being able to make actual choices. Housing options designed for certain groups results in more efficient coordination, greater choice of quality providers and a reduction in overall costs.**

**(2) (4)** According to the new HCBS rules, states have sole jurisdiction in determining which settings are submitted for heightened scrutiny. In that letter, CMS went to extreme and unauthorized lengths to direct DHCS to examine 2 specific settings for heightened scrutiny (FYI – one name was wrong and the other setting does not even exist yet). Also, these settings would be deemed private residences anyway and receive no HCBS funds whatsoever. By asking for scrutiny of 2 specific settings, CMS has overstepped its jurisdiction and undermined the authority that CMS has given the DHCS to identify and assess settings for compliance. The state has the authority to draw its own conclusion as to whether a setting can become compliant with modifications, whether it must undergo heightened scrutiny, or

**(2) (4)** DD individuals should not be shamed if they opt to live with others who have DD in private residences. The language as written promotes an abilist ideal that living with non-DD peers is superior to having housemates with DD.

**(2) (4)** Disability-specific design is precisely what many DD persons require “as appropriate to their needs.” Design items might be for safety or a mere matter of convenience to allow DD persons to live the most-unrestricted lives. This might be secure access gates for safety or something as simple as additional soundproofing for individuals with sensory processing issues. All DD persons are entitled to reasonable accommodations from a landlord under ADA in any event.

**(2) (4)** HCBS regulations must not presume that living with non-disabled people is always preferable to living with other people with disabilities. This must be a matter of choice and of finding the optimal way to meet an individual’s needs. For example, there must not be an automatic assumption that living alone in a city is preferable to living communally on a farm or rural setting with others who have developmental or other disabilities. By the same token, those individuals who prefer to live in a neurotypical setting must be given the full support they need to do so successfully.

**(2) (4)** DHCS should also be mindful that it lacks legal authority to require private residential landlords who are not HCBS providers to submit information to DHCS or CMS regarding their tenants, their property or their business operations. All inquiries regarding qualities of one's private residence and whether his or her private home “supports access” to the community must be made at the level of the developmentally disabled individual’s person-centered plan. DHCS has no jurisdiction to impose this inquiry a priori on private residences.

**(2) (5)** Regarding Person-Centered Planning – As a general comment, California should consider developing a standardized form for the IPP. In the DDS system, regional centers all have different formats which makes it difficult for DD consumers who transfer between regions.

**(2) (5)** Regarding Stakeholder Input, California needs to ensure that voices of California residents and consumers are used exclusively in revising and implementing the STP. Unfortunately, there is a small but vocal group of professional advocates, lobbying firms and non-state residents that often inject their opinions and agendas without knowing the laws of California or the needs of its DD persons. Many do not have offices in California and most certainly do not speak for the more-challenged end of the DD spectrum.

**(2) (5)** Need increased funding and more highly skilled supported living options. Concerns about writing into IPP that there are health and safety reasons to override some of the HCBS voluntary and choice requirements; must be specific to circumstance and setting. STP should clarify how conservators can decide what the choice of an individual will be and what is still left up to that individual in choosing housing or services. Need more general public education and understanding.

**(3) (4) More residential and non-residential settings needed. Must expand provider and privately controlled residential options. CMS has no authority to conducted system-wide inspections of private residences or impose heightened scrutiny on those homes. Assessment of compliance must be made through person-centered plan, not by unauthorized private property review.**

**(3) (4) (5)** Regional Centers must implement the STP uniformly. Who comprises heightened scrutiny review committee? Is there an advocate who represents the DD consumer? HCB Setting criteria and assessments should not be based on physical characteristics, such as population density of waiver recipients or proximity to other services. HCB settings should be individually assessed for quality based on feedback from the member.

**(4)** It violates ADA Sections 35.130(a), (b) and (g). CMS cannot deny HCBS services to a DD individual solely because the other person with whom they associate (either in residential or employment setting) has a DD.

**(4)** DD consumers need a spectrum of services and one size does not fill all. Attaching labels and or stigmas to types of settings often results in the individual needs of a consumer not being met. The term "appropriate to their needs" should be kept in the forefront of all decisions.

**(4)** California should NOT create barricades to living solutions with language that limits choices

**(4)** No two persons are alike and each setting must be examined through the lens of the individual's choices and needs. "Community" means different things to different people.

**(4)** The Americans with Disabilities Act protects my daughter. CMS may NOT withhold HCBS funding to her merely because she has chosen to live with other women with autism. This violates ADA in multiple ways.

**(4)** My young adult son, who has cerebral palsy and other DD, needs and wants to be part of a community that includes his friends, many of whom also have DD. His choices should not be restricted in order for him to have access to services that are essential for his survival. He and his friends want to live together and share a home base from which to explore the wider community. Please don't restrict his choices by forbidding community-building out of a fear of institutions.

**(4)** Under 1915(k) Community First Choice (CFC) State Plan Program, CFC members select their residential setting. If this choice is one that includes living with others who share the same disability, so be it as it is the member's choice.

**(4)** Adult Residential Facilities (CCF) are currently included in the list of DD Waiver providers and should continue to be an option, past March 28, 2017. Living in a setting with others of the same disabilities does NOT limit integration and interaction with a larger community of non-disabled citizens.

**(4) Available solutions must include:**

- **Center-based programs addressing the often intensive needs adults with autism**
- **Group homes of varying sizes and structures to address a broad spectrum of support needs**
- **Private residences of all sizes and types, including homes, condos, apartments, shared living, and rural options such as farms.**
- **Residential options that include intentionally autism-friendly and supportive elements, including safety and recreational and space amenities, must be made available, as may be required by individual needs. Just because a property has intentionally disability-friendly amenities does not render it "institutional."**

**(4) (5) Parents would like to band together with friends to buy land and build homes to give children a rural environment in which to flourish. Does the STP exclude this type of arrangement?**

**(4) (5)** Policies and regulations that cater to "higher-functioning" people with DD risk preventing other people from living and receiving services in settings that are best for them. Furthermore, when a conserved person with DD does not have full ability to express



preferences, the STP must acknowledge the power of a conservator "to fix the residence or specific dwelling of the limited conservatee."

Advocates:

**(1)** Transition Plan should include from Project-Based to Tenant-Based (Section 8 Voucher) Programs. Baby boomers should live close to their children/relatives/friends.

**(2)** Choice does not justify non-compliant setting. Not "restricting" access to community does not mean supporting full access.

**(2)** CHOICES made through the person centered planning process on behalf of every regional centers client while, at the same time setting arbitrary program limitations regarding how "integrated" the program is to the community and who is allowed to participate in a program or activity will seriously limit or eliminate resources and prevent people from being allowed to make actual CHOICES.

**(2)** We absolutely support and advocate integration of persons with developmental disabilities into our communities. This transition plan, based upon what appears to be either a naive attempt at forced integration or a means to reduce CMS costs for CMS funded waiver services that can be denied based on arbitrary location and participants is ridiculous.

**(2)** Completing needed changes to laws and regulations governing settings included in the DD Waiver during the 4th Quarter of 2018 is too late to expect full compliance by March 2019. This is particularly true for allowing lockable interior doors as local Fire Marshalls will need to adapt to this change.

**(2)** Person Centered Planning processes need revision to comply with federal rules.

**(2)** We recommend that the state clearly define and establish standards for PCP as it relates to broader concepts of person-centered care.

**(2)** We recommend that the state finalize and implement the UA [Universal Assessment] to identify LTSS needs and help inform the PCP process in accordance with W&I Code section 14186.36(b)-(i).

**(2) (3) (4) (5) Providers need financial support to ensure that services will be available to consumers consistent with individual choice in integrated settings.** State needs to set rules and guiding principles for sorting out questions related to settings under the CMS regulations, including what is compliant and what is not. More specific timetable and appeals processes. A functional review of current decision making and case management systems to assure members and family choices and person centered plans are conducted properly and used to guide decisions. Need clarity on who is "deemed"



compliant currently. Placing additional restrictions of licensing on providers would be inconsistent and unproductive in ensuring consumers are safe and adequately supported in the community. CCL, with authority to promulgate and enforce regulations, is a critical player in the state coming into compliance. DSS and DOR must work hand in hand with DDS to ensure compliance by 2019. Regarding Private Residences Presumed compliant, STP should expand section to include non-residential programs presumed to be in compliance. The State must begin now to commit the necessary resources through the state budget process to fund the structural and programmatic changes that will be required for compliance by 2019, across all affected programs. Current STP timeline does not provide sufficient time to modify programs. STP inconsistent with Provider and On-Site assessments: Pg 22 states all settings will receive surveys, Attachment VI pg. 8 says statistically valid sample. California is behind on education and outreach. Providers lack understanding of individual rights and privacy.

**(2) (4)** STP ignores ICFDD residents receiving adult day services. Plan should identify a process to ensure that every individual who receives HCBS lives in an HCB compliant setting.

**(2) (4)** In an effort to integrate there seems to be a bias against those with disabilities when “community” is defined in such a way as to exclude communities of the disabled. Universities separate students from graduate students, fraternities from sororities, etc. Yet the disabled individuals are devalued as a community and are punished with the loss of services if housing and community is built to accommodate them. Eliminate restrictions upon housing which meets the needs of any particular group by removing the language which defines private housing as that which is not designed for or limited to people with disabilities. Stop defining "people from the community" as only those who are not disabled, as if they are the most appropriate members of our society and the disabled are not. Define private housing as simply privately owned property without restrictions and vague language regarding design and intergration with “others from the community” as if DD peers are not part of our society or are to be prevented or not counted as appropriate.

**(2) (4) CMS simply lacks legal authority to regulate private residential property. CMS provides subsidies to states to help them provide services and supports for some of their residents with disabilities. While the states, following CMS rules, may regulate the providers of the services (including group homes, for example), CMS lacks jurisdiction over private residences. This new HCBS mandate is a novel sideways attempt to regulate these homes**

**(2) (5)** Input from families, in addition to members, should be considered when assessing settings. Include training for families and members to understand the transition and purpose of assessment. Develop protocols for protections for members against coercion. Develop communications plan with stakeholders. Training initiative for understanding the transition plan. Training for direct support professionals. Publicly post member

assessments and provider progress in remediating during heightened scrutiny. Incorporate licensing and credentialing information into the decision of on-site assessments. RE: "Changes in Member Services," language should not be prescriptive of who will be in a members' person centered plan meeting. Language should not presume the state will remove a service from a members individualized program plan. This section should describe the informed choice process instead. Transition Plan should acknowledge that additional incentive funding will be necessary to bring settings into compliance, such as Work Activity Programs.

**(2) (5) State must take act immediately and proactively to make necessary legislative and regulatory changes; funding commitments; and concrete outreach, education, and assessment efforts.**

**(3)** Proposed heightened scrutiny process is incomplete and unreasonable. Timeline does not support gathering meaningful data.

**(3)** State misstates the heightened scrutiny process. States must submit evidence to CMS only for settings it believes overcomes the institutional presumption.

**(3)** STP misstates that all requirements can be modified if need is identified in person centered plan. This only applies to provider owned or controlled settings.

**(3) (4) STP must identify mechanisms to ensure that every individual who receives HCBS is living in an HCB compliant setting.**

**(4)** State fails to acknowledge scope of change needed to bring work activity programs into compliance.

**(4)** The STP should clarify the role of Licensing and expand on explanations of how they will support the move to changing the service provision mind-set away from program driven and institutional driven models. STP should clarify steps, sample sizes, and remedial strategies. Adults who participate in HCBS work or day activities but reside in an ICF or other institution must be assessed.

**(4)** In its November 16, 2015 letter to California, CMS indicated that the state may presume the compliance of private homes but "the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services..." The draft STP does not address how California will make this assurance for communities comprised entirely of Waiver recipients.

**(5)** Add link to STP website on front page of DHCS website until March 2019. Person centered planning process is critical when allowing for any health and safety exceptions for an individual. Include need for training on person centered planning for state agencies,

contracted entities responsible for eligibility, and people who receive services. Add details regarding heightened scrutiny in the STP. Publicly post heightened scrutiny decisions, corrective actions, and details on what settings will not be considered compliant.

Providers:

**(1)** I know that you are working on the DC Task Force for rate reform and at the same time doing your best to have an approved State Transition Plan which is very difficult to do. The rate structure will need to do away with ratios unless you are dealing specifically in an area of safety and security. This will allow programs the freedom to have clients that can truly choose their setting of choice.

**(2)** Short time frame to move toward compliance, made shorter due to bureaucracy. Assessment forms use bureaucratic and federal language, which will be a barrier to encourage the community to help in this process. Legislative/regulatory remedial strategies targeted for 4<sup>th</sup> quarter of 2018 unlikely to be completed before end of transition period.

**(2)** We believe it's critical to incentivize creative options to expand and maximize housing resources by honoring individual's choice and autonomy, and not restricting the options of where, how or with whom individuals with developmental disabilities should live.

**(2)** Please ensure that the regional centers have the flexibility needed, and are willing to use that flexibility in order to help providers make changes necessary for the transition of programs that are not in compliance with the new rule.

**(2)** We recommend that the state develop safeguards to ensure members can express opinions and respond to surveys in confidence, without provider involvement.

**(2)** We recommend that the state clearly define and establish standards for PCP as it relates to broader concepts of person-centered care.

**(3)** There is a lot of confusion around what "provider owned or controlled" means. Please clarify whether "provider" in the STP means a Medicaid/Medicare or Waiver (i.e. DD Waiver) services provider to HCB Services recipients or includes other types of providers. For example, is a private pay service provider who receives no HCBS funding considered "provider" in this context?

**(3)** P. 22, 3<sup>rd</sup> paragraph – change to 30-60 days to 90-120 days with goal of having self-assessments by 180 days.

**(3) (5) Please ensure that the regional centers are administering the roll-out of the STP for the transition of the programs not currently in compliance in the same way so that there are not 21 different variations.**

**(4)** Some jurisdictions and public funding sources encourage and favor universal design to enable aging in place for the elderly and people with disabilities. In fact, some public funding opportunities are contingent upon this design. If the developers must rely on these major public funding sources and implement universal design and set aside a majority of the units for people with developmental disabilities, how is it that individuals with developmental disabilities are to be punished with the loss of funding for much needed services regardless of the outcome of their life experiences?

**(4)** The focus should be on whether the dwellings could properly support the individual's need and allow the individual an opportunity to integrate and have access to the greater community. Please remove any restrictive standard that focuses on physical characteristics of a setting.

**(5)** We recommend that the state provide additional detail regarding the stakeholder process throughout STP implementation. We believe that stakeholder workgroups/committees provide a useful forum for focused discussion on implementation issue identification and resolution.

**(5)** The STP should include additional information about the opportunities for Waiver participants (self-advocates) and their family members to play an active role in shaping California's response to the HCBS Final Rule. Their voices are crucial to ensuring that service systems not only comply with federal expectations but also provide them with opportunities to pursue individual goals.

**(5)** RC consumers receive services from different providers. A consumer in a day program might make choices their parents do not honor, and the program cannot implement those choices. More education needed for providers, families, and members. Direct service workers are the real "implementers" of the HCB settings rule. Providers need skilled workers with good communication skills, can document and think critically. More funding needed for better workers.

## Evidence of Public Notice

The following public notice was published in the California Register, which is distributed to public institutions and subscribers statewide.



### **FINAL RULES, CMS-2249-F, REQUIRE HOME AND COMMUNITY – BASED (HCB) SETTING COMPLIANCE Statewide Transition Plan Resubmission**

**Purpose:**

The California Department of Health Care Services (DHCS) gives notice that the revised Statewide Transition Plan (STP) will be resubmitted to the Centers for Medicaid and Medicare (CMS) in October, 2016, for approval. The Community-Based Adult Services (CBAS) Transition Plan is an attachment to the STP. This revised STP describes California's plan to ensure approved Home and Community-Based Services (HCBS) waivers comply with the new federal HCBS setting rules. DHCS, state partners and stakeholders have updated the STP based on the CMS guidance letter, which can be found at: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/ca/cmia.pdf>.

DHCS invites all interested parties to review the STP, including the CBAS Transition Plan, and provide public input. The public comment period will begin August 29, and end September 29, 2016. Public comments on the STP should be input onto the STP Public Comment Template, which will be available on the DHCS website listed below. The DHCS website will provide a link to the CBAS Transition Plan and the CBAS Plan's Public Comment Template.

Please mail or email public comments using the contact information below. DHCS will review all feedback and incorporate into the STP as appropriate. Public input is essential to the development and implementation of the STP, and will assist the state to achieve approval of the STP and compliance with the HCBS Settings Final Rule.

DHCS will host a statewide conference call in mid-September to discuss the revised STP, milestones and timelines, state strategies for HCBS setting compliance, and any questions or concerns raised by the public. Please check the STP website below for the date, time, call-in number, and agenda.

The STP and public comment template including a link to the CBAS Transition Plan and its public comment template can be found at:  
<http://www.dhcs.ca.gov/services/ltr/Pages/HCBSStatewideTransitionPlan.aspx>

More information about the new federal rules is available at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>.

For Further Information on the STP, contact  
STP@dhcs.ca.gov  
Department of Health Care Services  
Long-Term Care Division  
1501 Capitol Avenue, MS 4502  
P.O. Box 997437  
Sacramento, CA 95899-7413

For additional information on the CBAS Transition Plan, contact  
[cbascda@aging.ca.gov](mailto:cbascda@aging.ca.gov); (916) 419-7545  
California Department of Aging  
1300 National Drive, Suite 200  
Sacramento, CA 95834

## **Appendix B - Systemic Assessment Summary**

The following is an assessment summary, by setting type, of the statutes, regulations, policies and other requirements for all HCB settings listed in the “Compliance Determination Process for HCB Settings” section. The complete assessment of findings is available upon request. Please note that the systemic assessment is an indication of compliance, but does not preclude settings from further compliance determination processes, such as Provider Self-Surveys, Beneficiary Self-Surveys, and On-Site Assessments. For reference, the HCB Setting Requirement numbers in the tables below correspond to the following:

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 Medicaid/Medi-Cal provider-owned or controlled HCB residential settings, the provider must offer:

6. 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.
7. Privacy in units including lockable doors, choice of roommates and freedom to furnish and decorate units.
8. Options for individuals to control their own schedules including access to food at any time.
9. Individuals the freedom to have visitors at any time.
10. A physically accessible setting.

**Provider Setting Type - Adult Day Program**

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
1	<b>Met</b> <a href="#">22 CCR Section 82022</a> <a href="#">22 CCR Section 82025</a> <a href="#">22 CCR Section 82026</a> <a href="#">22 CCR Section 82068</a> <a href="#">22 CCR Section 82072</a> <a href="#">22 CCR Section 82079</a> <a href="#">22 CCR Section 82087.3</a> <a href="#">22 CCR Section 82088</a>	None	Not Applicable
2	<b>Silent</b>	Client has choice of adult day program during person-centered planning.	Not Applicable
3	<b>Met</b> <a href="#">22 CCR Section 82072</a> <a href="#">22 CCR Section 82075</a> <a href="#">22 CCR Section 82077.2</a> <a href="#">22 CCR Section 82077.4</a> <a href="#">22 CCR Section 82088</a> <a href="#">22 CCR Section 82092.4</a> <a href="#">22 CCR Section 82092.5</a> <a href="#">22 CCR Section 82092.6</a>	None	Not Applicable
4	<b>Met</b> <a href="#">22 CCR Section 82068.2</a> <a href="#">22 CCR Section 82072</a> <a href="#">22 CCR Section 82077.2</a> <a href="#">22 CCR Section 82079</a> <a href="#">22 CCR Section 82088</a>	None	Not Applicable



HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
5	<b>Met</b> <a href="#">22 CCR Section 82072</a> <a href="#">22 CCR Section 82079</a>	None	Not Applicable
6	<b>Met</b> <a href="#">22 CCR Section 82068</a> <a href="#">22 CCR Section 82068.3</a> <a href="#">22 CCR Section 82068.5</a>	None	Not Applicable
7	<b>Met</b> <a href="#">22 CCR Section 82068</a> <a href="#">22 CCR Section 82072</a> <a href="#">22 CCR Section 82088</a>	None	Not Applicable
8	<b>Met</b> <a href="#">22 CCR Section 82072</a> <a href="#">22 CCR Section 82076</a>	None	Not Applicable
9	<b>Met</b> <a href="#">22 CCR Section 82072</a>	None	Not Applicable
10	<b>Met</b> <a href="#">22 CCR Section 82087</a> <a href="#">22 CCR Section 82088</a>	None	Not Applicable

**Provider Setting Type – Adult Family Home; Family Teaching Home**

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502, 4646, 4689.1(e)</a></p> <p><b>Partially Met</b>                      Members’ control of personal resources - <a href="#">T17 Section 56091</a></p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to control of personal resources.	Fourth Quarter 2018
2	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502.1, 4512(b), 4646, 4689.1(e)</a></p> <p><b>Silent</b>                      Option for private unit                      Documentation of setting options</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for private unit and documentation of setting options.	Fourth Quarter 2018
3	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502(b)(2), 4502.1, 4646, 4689.1(e)</a></p>	None	Not Applicable
4	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502(b)(2), 4646, 4689.1(e)(8)(B)&amp;(C)</a></p>	None	Not Applicable
5	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502(b), 4646, 4689.1(e)(8)(B)&amp;(C)</a>  <a href="#">T17 Section 56084(a)(2)</a></p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
6	<b>Met</b> <a href="#">T17 Section 56076, 56090(e), 56094</a>	The State will seek legislative authority or modify statute and/ or regulations as appropriate to align with the federal requirement related to privacy in living units, lockable doors, choice of roommates and furnishing sleeping units.	Fourth Quarter 2018
7	<b>Silent</b> Privacy in living unit Lockable doors Choice of roommates Furnish sleeping units	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to privacy in living units, lockable doors, choice of roommates and furnishing sleeping units.	Fourth Quarter 2018
8	<b>Met</b> <a href="#">W&amp;I Code Section 4502(b)(10), 4502.1, 4689.1(e)(8)(B-E)</a>  <b>Silent</b> Access to food at any time.	None	Not Applicable
9	<b>Silent</b> Visitors any time	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal	Fourth Quarter 2018

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
		requirement related to visitors at any time.	
10	<b>Met</b> <a href="#">W&amp;I Code Section 4646</a> <a href="#">T17 Section 56087(C)</a>	None	Not Applicable

**Provider Setting Type - Adult Residential Facility - Assisted Living Waiver; San Francisco Community Living Supports Benefit Waiver**

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
1	<p><b>Met</b>  <a href="#">22 CCR Section 80022</a>  <a href="#">22 CCR Section 80025</a>  <a href="#">22 CCR Section 85072</a>  <a href="#">22 CCR Section 85079</a>  <a href="#">22 CCR Section 85087</a></p> <p>Waiver Language:                      As subcontracted waiver providers, participating DHCS-approved ARFs will demonstrate, by inclusion in the CCP that they optimize participant independence and community integration, promote initiative and choice in daily living, and facilitate full access to community services.</p>	None	Not Applicable
2	<p><b>Met</b>  <a href="#">22 CCR Section 85068.2</a>  <a href="#">22 CCR Section 85072</a>  <a href="#">22 CCR Section 85087</a>  <a href="#">22 CCR Section 85088</a></p> <p>Waiver Language:                      As part of the Freedom of Choice process, applicants are provided with information regarding all HCBS waivers and programs</p>	None	Not Applicable
3	<p><b>Met</b>  <a href="#">22 CCR Section 85088</a></p> <p>Waiver Language:</p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	The DHCS-approved ARFs must offer a residential setting that permits each resident to: Freedom to come and go from the residence at will		
4	<b>Met</b> <a href="#">22 CCR Section 85072</a> <a href="#">22 CCR Section 85079</a> <a href="#">22 CCR Section 85068.2</a>	None	Not Applicable
5	<b>Met</b> <a href="#">22 CCR Section 85068.1</a> <a href="#">22 CCR Section 85068.2</a> <a href="#">22 CCR Section 85079</a>  Waiver Language: The DHCS-approved ARFs must offer a residential setting that permits each resident to: Freedom to elect whether or not to participate in any communal activities.	None.	Not Applicable
6	<b>Met</b> <a href="#">22 CCR Section 80068</a> <a href="#">22 CCR Section 85068.1</a>  Waiver Language: DHCS-approved ARFs must provide each resident with a lease that specifies the resident's rights to use and occupy the property, the time period the lease is in effect, the rights of termination of the lease by the resident and by the property owner and the provision for termination, the services that will be provided, and an affirmative statement that the residential setting meets all Federal and State Fair Housing Law requirements.	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
7	<p><b>Met</b>  <a href="#">22 CCR Section 85087</a>  <a href="#">22 CCR Section 85088</a></p> <p>Waiver Language:  The DHCS-approved ARFs must offer a residential setting that permits each resident to: Control access and egress to his/her living area, this includes the ability to secure their rooms, based on their CCP</p>	None.	Not Applicable
8	<p><b>Met</b>  <a href="#">22 CCR Section 80072</a>  <a href="#">22 CCR Section 85072</a>  <a href="#">22 CCR Section 85079</a>  <a href="#">22 CCR Section 86176</a></p> <p>Waiver Language:  The DHCS-approved ARFs must offer a residential setting that permits each resident to: Have free choice of meals including choice among any meals offered to all residents (family style dining) or choice of an individual meal</p>	None	Not Applicable
9	<p><b>Met</b>  <a href="#">22 CCR Section 85072</a></p> <p>Waiver Language:  The DHCS-approved ARFs must offer a residential setting that permits each resident to: Control their daily routine, including having visitors of their choosing at any time.</p>	None	Not Applicable
10	<p><b>Met</b>  <a href="#">22 CCR Section 85087</a>  <a href="#">22 CCR Section 85087.2</a></p>	None	Not Applicable



HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	The DHCS-approved ARFs must offer a residential setting that permits each resident to: Freedom to come and go from the residence at will.		

**Provider Setting Type - Adult Residential Facility, Adult Residential Facility for Persons with Special Health Care Needs, Residential Care Facility for the Elderly, Group Home and Small Family Home – HCBS Waiver for Californians with Developmental Disabilities and 1915(i) State Plan**

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
1	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502</a> (All setting types)  <a href="#">22 CCR Section 85072(b)(7)</a> (Adult Residential Facility)  <a href="#">22 CCR Section 87468</a> (Residential Care Facility for the Elderly)</p> <p><b>Partially Met</b>  <a href="#">22 CCR Section 80026</a> (Adult Residential Facility, Adult Residential Facility for Persons with Special Health Care Needs, Group Home, and Small Family Home)</p>	<p>The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to control of personal resources.</p>	<p>Fourth Quarter 2018</p>
2	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502</a></p> <p><b>Silent:</b>                      Option for private unit                      Documentation of identified setting options not selected by consumer</p>	<p>The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirements related to option for private unit and documentation of setting options.</p>	<p>Fourth Quarter 2018</p>

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
3	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502(b)(2)&amp;(8)</a>  <a href="#">22 CCR Section 80072(a)(3)</a></p>	None	Not Applicable
4	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502</a></p>	None	Not Applicable
5	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4512(b)</a></p> <p><b>Silent</b>  Consumers' choice of provider of services</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirements related choice of provider of services.	Fourth Quarter 2018
6	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4741</a>  <a href="#">22 CCR Section 80068</a>  SPA 09-023A, Services, 1.A)7.i)  DD Waiver: Appendix C-2, Facility Specifications</p>	None	Not Applicable
7	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502(b)(2)</a>  <a href="#">T17 Section 50510(a)(2)</a></p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to	Fourth Quarter 2018

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	<p><b>Conflicting</b> Lockable entrance doors for individuals that are bedridden</p> <p><b>Silent:</b> Privacy in sleeping or living unit Lockable entrance doors Choice of Roommate Freedom to furnish and decorate sleeping or living units</p>	align with the federal requirement related to lockable entrance doors.	
8	<p><b>Met</b> <a href="#">W&amp;I Code Section 4502(b)(2)</a> <a href="#">22 CCR Section 80072, 80076(4)</a></p> <p><b>Silent</b> Access to food at any time</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related access to food at any time.	Fourth Quarter 2018
9	<p><b>Silent</b> Visitors each day, any time</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to visitors at any time.	Fourth Quarter 2018
10	<p><b>Met</b> <a href="#">W&amp;I Code Section 4646</a></p>	The State will seek legislative authority or modify statute	Fourth Quarter 2018

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	<a href="#">22 CCR Section 80087, 80088</a>  <b>Silent</b> Physically accessible setting	and/or regulations as appropriate to align with the federal requirement related to full access.	

**Provider Setting Type – Certified Family Home; Foster Family Home**

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502, 4646</a>   <a href="#">22 CCR Section 89372</a></p>	None	Not Applicable
2	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502, 4502.1, 4512(b), 4646,</a>   <a href="#">22 CCR Section 89372</a></p> <p><b>Silent</b>                      Documentation of identified setting options not selected by consumer</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for private unit and documentation of setting options.	Fourth Quarter 2018
3	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502, 4646</a>   <a href="#">22 CCR Section 89372</a></p>	None	Not Applicable
4	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502, 4646</a>   <a href="#">22 CCR Section 89372</a></p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
5	<b>Met</b> <a href="#">W&amp;I Code Section 4512(b), 4646</a>	None	Not Applicable
6	<b>Met</b> 1915(c)–Appendix C-2: Facility Specifications 1915(i)–Services, 1.A)7.i)	None	Not Applicable
7	<b>Silent</b> Privacy in living unit Lockable doors Choice of roommates Furnish sleeping units	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to privacy in living units, lockable doors, choice of roommates and furnishing sleeping units.	Fourth Quarter 2018
8	<b>Partially Met</b> <a href="#">W&amp;I Code Section 4501, 4502, 4502.1, 4646</a> <a href="#">22 CCR Section 89376</a>	None	Fourth Quarter 2018
9	<b>Partially Met</b> W&I Code Section 4501, 4502, 4502.1, 4646 <a href="#">22 CCR Section 89372</a>	None	Fourth Quarter 2018
10	<b>Partially Met</b> <a href="#">W&amp;I Code Section 4502, 4646</a> <a href="#">22 CCR Section 80087, 80088</a>	None	Fourth Quarter 2018



**Provider Setting Type – Child Day Care Facility; Child Day Care Center; Family Child Care Home**

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<b>Met</b> <a href="#">W&amp;I Code Section 4501, 4502, 4646</a>	None	Not Applicable
2	<b>Met</b> <a href="#">W&amp;I Code Section 4502, 4512(b), 4646</a>  <b>Silent</b> Documentation of identified setting options not selected by consumer.	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for private unit and documentation of setting options.	Fourth Quarter 2018
3	<b>Met</b> <a href="#">W&amp;I Code Section 4502, 4646</a>  <a href="#">22 CCR Section 101223, 102423</a>	None	Not Applicable
4	<b>Met</b> <a href="#">W&amp;I Code Section 4501, 4502, 4646</a>	None	Not Applicable
5	<b>Met</b> <a href="#">W&amp;I Code Section 4512(b), 4646</a>	None	Not Applicable

**Provider Setting Type - Congregate Living Health Facility**

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<p><b>Met</b>  <a href="#">H &amp; S Section 1250</a></p> <p>Waiver Language:            In addition to the skilled nursing services and pursuant to H&amp;S code sections 1250(i) and 1267.13, a CLHF will provide or arrange for the following basic services to be provided to individuals enrolled in the Waiver, as part of the per diem rate paid to CLHF Waiver providers:</p> <ul style="list-style-type: none"> <li>• Medical supervision</li> <li>• Case Management</li> <li>• Pharmacy consultation</li> <li>• Dietary consultation</li> <li>• Social Services</li> <li>• Recreational Services</li> <li>• Transportation to and from medical appointments</li> <li>• Housekeeping and laundry services</li> <li>• Cooking and shopping</li> </ul>	None	Not Applicable
2	<p><b>Met</b>  <a href="#">H &amp; S Section 1267.13</a>   <a href="#">22 CCR Section 51344</a></p> <p>Waiver Language:            Common areas in addition to the space allotted for the resident’s sleeping quarters, shall be provided in sufficient</p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	quantity to promote the socialization and recreational activities of the residents in a homelike and communal manner		
3	<p><b>Met</b>  <a href="#">H &amp; S Section 1265.7</a></p> <p>Waiver Language:  Bathrooms of sufficient space and quality shall be provided to allow for the hygiene needs of each resident and the ability of the staff to render care without spatial limitations or compromise. No bathroom shall be accessed only through a resident's bedroom.</p> <p><b>Partially Met</b>  <a href="#">H &amp; S Section 1267.13</a></p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement.	Fourth Quarter 2018
4	<p><b>Met</b>  <a href="#">H &amp; S Section 1250 (i) (5)</a>  <a href="#">H &amp; S Section 1267.13. (d)</a></p> <p>Waiver Language  Common areas in addition to the space allotted for the resident's sleeping quarters, shall be provided in sufficient quantity to promote the socialization and recreational activities of the residents in a homelike and communal manner.</p>	None.	Not Applicable
5	<p><b>Met</b>  <a href="#">22 CCR Section 51343.2</a></p> <p>Waiver Language:</p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	<p>As a Waiver service provider, each NF/AH Waiver enrolled individual will be assessed for needed or required services as identified by the individual, their legal representative/legally responsible adult(s), primary care physician, family, caregivers, and/or other individuals at the request of the individual. The CLHF will establish a POT to address how these services will be provided, the frequency of the services and identify the provider for those services that are not included in the CLHF's per diem rate under this Waiver. The CLHF will be responsible for arranging for the following services, which may include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Counseling services provided by a Licensed Clinical Social Worker;</li> <li>• Occupational therapy provided by an Occupational Therapist</li> <li>• Physical therapy provided by a Physical Therapist</li> <li>• Speech therapy provided by a Speech Therapist</li> <li>• Education and training of the Waiver participant to self-direct his/her care needs and/or the education and training of their identified caregivers (who are not CLHF employees) on their care needs</li> <li>• Assessment for and repair of Durable Medical Equipment and</li> <li>• State Plan Personal Care Services or WPCS as described in the approved Waiver when off site from the CLHF if such care is not duplicative of care required to be provided to the waiver participant by the CLHF (i.e., not for care to and from medical appointments). State Plan or WPCS providers will not be paid for care that is duplicative of the care being provided by the CLHF.</li> </ul>		

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
6	All CLHF residents sign a legally enforceable lease agreement with the residential setting provider, however Health and Safety Code is silent on this protocol.	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement.	Fourth Quarter 2018
7	<p><b>Met</b>  <a href="#">H &amp; S Section 1267.13</a></p> <p>The facility shall be in a homelike, residential setting. The facility shall provide sufficient space to allow for the comfort and privacy of each resident and adequate space for the staff to complete their tasks.</p> <p>The residents' individual sleeping quarters will allow sufficient space for safe storage of their property, possessions, and furnishings and still permit access for the staff to complete their necessary health care functions. Not more than two residents shall share a bedroom.</p>	None	Not Applicable
8	<b>Silent</b>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement.	Fourth Quarter 2018
9	<p><b>Met</b>  <a href="#">H &amp; S Section 1267.13</a></p>	None	Not Applicable

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
10	Met <a href="#">H &amp; S Section 1267.13</a>	None	Not Applicable

**Provider Setting Type - Congregate Meal Site**

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<p><b>Met</b>  <a href="#">45 CFR 1321.53(b)(3)</a>                       CDA Terms and Conditions Exhibit A. Article1.(7)   <a href="#">OAA 315(b)(4)</a></p>	None	Not Applicable
2	<p><b>Met</b>  <a href="#">Older Americans Act (OAA) Section 339.(2)(E)</a>                       MSSP Waiver Section 6 Additional Requirements, Section E. In accordance with <a href="#">42 CFR §431.151</a>, a participant may select any willing and qualified provider to furnish waiver services.                       MSSP Waiver Appendix D-1, d. Service Development Process- The waiver participant is involved in the development of the care plan and has a choice in service selection.</p>	None	Not Applicable
3	<p><b>Met</b>  <a href="#">WIC9103.1(a)</a>   <a href="#">22 CCR Section 7636.7(d)</a>  <a href="#">22 CCR Section 7500 (b)</a>   <a href="#">OAA §315 (b)(1)</a>   <a href="#">22 CCR Section 7636.1(b)(9)</a></p>	None	Not Applicable



HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
4	<p><b>Met</b>  <a href="#">45 CFR Section 1321.53(b)(3)</a>  <a href="#">22 CCR Section 7638.5 (d)</a></p> <p>Waiver Language:            In accordance with 42 CFR §431.151, a participant may select any willing and qualified provider to furnish waiver services included in the service plan unless the State has received approval to limit the number of providers under the provisions of §1915(b) or another provision of the Act .</p> <p>Waiver Language:            The waiver participant is involved in the development of the care plan and has a choice in service selection.</p>	None.	Not Applicable
5	<p><b>Met</b>  <a href="#">22 CCR Section 7638.5 (d)</a>  <a href="#">22 CCR Section 7636.9(a)(4)</a></p>	None	Not Applicable
6	Not Applicable	None	Not Applicable
7	Not Applicable	None	Not Applicable
8	Not Applicable	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
9	<b>Met</b> <a href="#">22 CCR Section 7638.7 (a)</a> <a href="#">22 CCR Section 7638.9(c)</a>	None.	Not Applicable
10	<b>Met</b> <a href="#">22 CCR Section 7638 (b)(3)</a>  <a href="#">ADA [42U.S.C. Section 12101 et seq.]</a>  CDA Terms and Conditions Exhibit D. Article II. (C)(3)	None	Not Applicable

**Provider Setting Type – Day-Type Services\***

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502(a), 4512(b), 4688.21</a></p> <p><b>Silent</b>                      Consumer’s control of personal resources                      Integrated in and supports full access...to the greater community</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to control of personal resources, integration, and support of full access.	Fourth Quarter 2018
2	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4512(b)</a></p> <p><b>Silent</b>                      Documentation of identified setting options not selected by consumer.</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to option for documentation of setting options.	Fourth Quarter 2018
3	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502(b)(2)&amp;(8)</a>   <a href="#">22 CCR Section 82072(a)(1-4)</a></p>	None	Not Applicable

4	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502(b)(1)&amp;(6)&amp;(7), 4688.21</a></p> <p><b>Silent</b>  Optimizes, but does not regiment</p>	The State will discuss the impacts of this characteristic during the Waiver renewal process.	Fourth Quarter 2018
5	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4512(b), 4688.21</a></p>	None	Not Applicable

\* Day-Type Services in the HCBS Waiver for Californians with Developmental Disabilities and 1915(i) State Plan include Activity Center, Adult Day Care Facility, Adult Development Center, Behavior Management Program, Community-Based Training Provider, Socialization Training Program; Community Integration Training Program; Community Activities Support Service.

**Provider Setting Type –Residential Care Facility for the Chronically Ill**

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
1	<b>Met</b> <a href="#">22 CCR Section 87872</a> <a href="#">22 CCR Section 87887</a> <a href="#">22 CCR Section 87888</a> <a href="#">22 CCR Section 87896</a>	None	Not Applicable
2	<b>Met</b> <a href="#">22 CCR Section 87872</a> <a href="#">22 CCR Section 87887</a> <a href="#">22 CCR Section 87888</a> <a href="#">22 CCR Section 87896</a>	None	Not Applicable
3	<b>Met</b> <a href="#">22 CCR Section 87872</a> <a href="#">22 CCR Section 87888</a> <a href="#">22 CCR Section 87898</a> <a href="#">22 CCR Section 87899</a> <a href="#">22 CCR Section 87900</a> <a href="#">22 CCR Section 87901</a> <a href="#">22 CCR Section 87902</a>	None	Not Applicable
4	<b>Met</b> <a href="#">22 CCR Section 87870</a> <a href="#">22 CCR Section 87872</a>	None	Not Applicable

	<a href="#">22 CCR Section 87896</a>		
5	<b>Met</b> <a href="#">22 CCR Section 87870</a> <a href="#">22 CCR Section 87872</a> <a href="#">22 CCR Section 87896</a>	None	Not Applicable
6	<b>Met</b> 22 CCR comparable to characteristics:  <a href="#">22 CCR Section 87868</a> <a href="#">22 CCR Section 87868.1</a> <a href="#">22 CCR Section 87868.2</a> <a href="#">22 CCR Section 87868.3</a> <a href="#">22 CCR Section 87868.4</a>	None	Not Applicable
7	<b>Met</b> <a href="#">22 CCR Section 87868</a> <a href="#">22 CCR Section 87872</a> <a href="#">22 CCR Section 87887</a> <a href="#">22 CCR Section 87888</a>  <b>Silent</b> Lockable Doors	An All Project Director's Letter will provide guidance regarding lockable doors.	Q4 2016
8	<b>Met</b> <a href="#">22 CCR Section 87872</a> <a href="#">22 CCR Section 87876</a>	None	Not Applicable
9	<b>Met</b> <a href="#">22 CCR Section 87872</a>	None	Not Applicable

<b>10</b>	<b>Met</b> <a href="#">22 CCR Section 87887</a>	None	Not Applicable
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**Provider Setting Type - Residential Care Facility for the Elderly – Assisted Living Waiver; San Francisco Community Living Supports Benefit**

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
1	<p><b>Met</b>  <a href="#">H&amp;S Code Section 1569.269</a>   <a href="#">22 CCR Section 87464</a>  <a href="#">22 CCR Section 87467</a>  <a href="#">22 CCR Section 87468</a></p> <p>Waiver Language:                      The setting is integrated in, and facilitates the individual’s 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, in the same manner as individuals without disabilities.</p>	None.	Not Applicable
2	<p><b>Met</b>  <a href="#">22 CCR Section 87464</a>  <a href="#">22 CCR Section 87467</a>  <a href="#">22 CCR Section 87468</a></p> <p>Waiver Language:                      The setting is selected by the individual from among all available alternatives and is identified in the person-centered service plan. The participant has the right to choose the provider they prefer. This applies to the CCA, the RCF and where to the extent that options are available, the HHA in PSH.</p>	None	Not Applicable



HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	<p>Participants are provided with information regarding the available providers in the county of interest upon request, and via the DHCS website:  <a href="http://www.dhcs.ca.gov/services/ltc/Pages/ALWPP.aspx">http://www.dhcs.ca.gov/services/ltc/Pages/ALWPP.aspx</a></p> <p>The CCA provide the participant with the choices available to them in lieu of the ALW. The participant signs the Freedom of Choice document indicating his or her choice of the ALW as the preferred option for the delivery of services. The participant has the right to decline the waiver services at any time.</p>		
3	<p><b>Met</b>  <a href="#">H&amp;S Code Section 1569.269</a>   <a href="#">22 CCR Section 87468</a></p> <p>Waiver Language:  An individual’s essential personal rights of privacy, dignity and respect, and freedom from coercion and restraint are protected.</p>	None.	Not Applicable
4	<p><b>Met</b>  <a href="#">22 CCR Section 87462</a>  <a href="#">22 CCR Section 87464</a>  <a href="#">22 CCR Section 87468</a></p> <p>Waiver Language:  Facilities participating as ALW HCBS settings are required to have the following qualities: Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact are optimized and not regimented.</p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
5	<p><b>Met</b>  <a href="#">22 CCR Section 87219</a>  <a href="#">22 CCR Section 87467</a></p> <p>Waiver Language:  Individual choice regarding services and supports, and who provides them, is facilitated.</p>	None	Not Applicable
6	<p><b>Met</b>  <a href="#">22 CCR Section 87224</a></p> <p>Waiver Language:  The unit or room is a specific physical place that can be owned, rented or occupied under another legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the State’s landlord tenant law.</p>	None	Not Applicable
7	<p><b>Met</b>  <a href="#">22 CCR Section 87307</a></p> <p>Waiver Language:  Each individual has privacy in their sleeping or living unit:  (1) Units have lockable entrance doors, with appropriate staff having keys to doors;  (2) Individuals share units only at the individual’s choice; and  (3) Individuals have the freedom to furnish and decorate their sleeping or living units.</p> <p>ALW RCFE Provider Manual: Section C. Program Requirements.  (1) Resident Privacy</p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
	<p>(a) ALW benefits are furnished to residents who reside in private residency units. While all waiver residents must be offered a private unit, residents may ask to share a residence with a roommate of their choice.</p> <p>(i) Sharing a residence may not be a requirement of program participation.</p> <p>(ii) The ISP must reflect the choice of the resident to share a residence.</p> <p>(iii) Residents who wish to share a residence must initiate and submit their request to their Care Coordinator who will forward the request to the housing provider. If the resident is cognitively impaired, the request may be initiated and submitted to the Care Coordinator by the resident’s responsible party.</p> <p>(b) All residences shall have kitchenettes and private or semi-private bathrooms not shared by more than one other resident.</p> <p>(c) All ALW residents have a right to privacy. Residences may be locked at the discretion of the resident, except when a physician or mental health professional has certified in writing that the resident is sufficiently cognitively impaired as to be a danger to self or others if given the opportunity to lock the door. (This requirement does not apply where it conflicts with the fire code.)</p>		
8	<p><b>Met</b></p> <p><a href="#">22 CCR Section 87219</a>  <a href="#">22 CCR Section 87464</a>  <a href="#">22 CCR Section 87555</a></p> <p>Waiver Language:  Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p>	None	Not Applicable

HCBS Setting Requirement #	Requirement Met, Partially Met, Conflicting, Silent	Remedial Strategy	Timeline for Completion
9	<p><b>Met</b>  <a href="#">H&amp;S Code Section 1569.269</a>   <a href="#">22 CCR Section 87464</a>  <a href="#">22 CCR Section 87468</a></p> <p>Waiver Language:  Individuals are able to have visitors of their choosing at any time.</p>	None	Not Applicable
10	<p><b>Met</b>  <a href="#">22 CCR Section 87219</a>  <a href="#">22 CCR Section 87307</a>  <a href="#">22 CCR Section 87705</a></p>	None	Not Applicable

**Provider Setting Type – Work Activity Program**

<b>HCBS Setting Requirement #</b>	<b>Requirement Met, Partially Met, Conflicting, Silent</b>	<b>Remedial Strategy</b>	<b>Timeline for Completion</b>
1	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502, 4512(b)</a></p> <p><b>Conflicting</b>            Setting is integrated in and supports full access to the greater community- <a href="#">W&amp;I Code Section 4851(e)</a></p> <p><b>Silent</b>            Members’ control of personal resources</p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement related to integration, support of full access, and control of personal resources.	Fourth Quarter 2018
2	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4512(b), 4646</a></p> <p><b>Silent</b>            Documentation of identified setting options not selected by consumer</p>	None	Fourth Quarter 2018
3	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4502(a)&amp;(b)(2)&amp;(8)</a></p>	None	Not Applicable
4	<p><b>Met</b>  <a href="#">W&amp;I Code Section 4501, 4502, 4646</a></p> <p>Conflicting            Does not regiment - <a href="#">W&amp;I Code Section 4862(a)</a></p>	The State will seek legislative authority or modify statute and/or regulations as appropriate to align with the federal requirement	Fourth Quarter 2018

		related to regimentation.	
5	Met <a href="#">W&amp;I Code Section 4512(b), 4646</a>	None	Not Applicable

**1915(k), 1915(c) HCBS Waiver IHO Settings**

The setting utilized for these programs are the members' private residence; therefore, the state presumes the settings meet the requirements of the HCB Settings Final Rule.