



October 17, 2014

Toby Douglas, Director
Department of Health Care Services
Sacramento, CA

Re: Comments on the California HCBS Statewide Transition Plan

Dear Director Douglas,

The SCAN Foundation welcomes the opportunity to review and comment on California's Home and Community-Based Settings (HCBS) Statewide Transition Plan (plan) to evaluate compliance with the Center for Medicare and Medicaid Services (CMS) new HCBS rules. The current plan presented by DHCS moves the state in the right direction to comply with the new HCBS rules. While there are some specific items in the plan, many items remain vague until the state gathers additional information through assessment of state rules and regulations and evaluation of HCBS settings. In addition, we encourage you to use this as an opportunity to convey the California vision of what it means to deliver quality home and community based services to seniors and people with disabilities of all ages. We look forward to additional details specifying how the state will accomplish this transition.

Evaluation of non-residential HCBS settings

The new HCBS rules define community-based settings for both residential and non-residential HCBS waiver services. However, the state's plan includes evaluation of only residential settings. While the state is awaiting further guidance from CMS on how to apply the new rules to non-residential settings such as Community-Based Adult Services, the plan should specify how the state expects to proceed. Specifically, we recommend that the plan for non-residential settings includes: 1) whether the state will be pursuing guidance from CMS; 2) an explanation as to how guidance from CMS would be incorporated into the plan; and 3) a list of the non-residential settings the state would expect to evaluate with regard to compliance to the new HCBS rules. Additionally, we recommend an additional 30-day comment period be provided when the state develops its plan for non-residential HCBS settings.

Stakeholder engagement

We recognize the considerable effort placed on engaging stakeholders throughout the transition process. We recommend the following elements also be included.

- **State/Stakeholder Implementation Work Group:** While stakeholders have been provided an important opportunity to comment on the state’s assessment of HCBS rules, regulations and other requirements to make sure they align with federal regulations, we recommend establishing an ongoing work group comprised of both external stakeholders and state staff. This work group would provide a forum for focused discussion to bring forth issue identification and resolution.
- **On-site Survey Teams:** We commend the state for including external stakeholders as potential members of the on-site evaluation teams. The current language of the plan is vague about the number and definitive composition of these teams. We recommend that the state further define the state survey teams to include at least 4 people and consist of the following stakeholder composition: one or more state personnel, at least one service recipient, family member, or consumer advocate, and at least one provider.

Expertise for on-site evaluation of compliance with the ADA

A common practice for the State determining a provider’s compliance with the Americans with Disabilities Act is the inclusion of an assertion of compliance by the provider within the contractual agreement. Due to the complexities of conducting a review of physical accessibility, we recommend that the HCBS program sites use [individuals trained and certified in this field](#) by the Office of the State Architect to offer documentation to the State’s review team regarding ADA compliance. In the case that no certified specialists are available to conduct the assessment of ADA compliance, providers should at a minimum conduct a self-evaluation utilizing tools available on the [U.S. Department of Justice website](#).

Support for providers and individuals receiving services during the transition

The plan indicates that HCBS settings will be subject to surveys, with the findings outlining required improvements for compliance with the new HCBS rules. We recommend that as part of this process, the state provide technical assistance or capacity building support to HCBS providers as part of the compliance process. In addition, there may be providers who do not make the necessary changes to be in compliance with the new HCBS rules. We recommend the state outline its plan for transitioning individuals to new providers/settings while ensuring choice and continuity of care. The plan should specify the process for supporting the needs of both the providers and individuals receiving services through this transition.

Ongoing evaluation of HCBS settings

The current transition plan focuses on initial compliance, but does not address how on-going compliance will be monitored and enforced. We recommend that the HCBS transition be monitored on an on-going basis at both the individual and provider level. For evaluation at the individual level,

we recommend using California’s universal assessment for long-term services and supports (LTSS), which includes HCBS waiver services. Universal Assessment is a critical component to ensuring there is: 1) reliable and person-centered information to facilitate better care coordination; 2) consistent information available to evaluate population level needs; and 3) widespread data to inform the development of HCBS quality measures. The Legislature authorized establishment of a Universal Assessment process as a pilot project of the 2012-13 budget, through the Coordinated Care Initiative (CCI). However, current statute only places the “intent” of the Legislature to develop this tool and process, with its pilot in two to four CCI counties. We recommend the state consider the use of the universal assessment and/or care plan process as an opportunity to evaluate compliance with HCBS rules. Further, we recommend that the state work with the Legislature to remove the 2017 sunset and commit the Universal Assessment process to statute as a project implemented in all CCI counties, with eventual statewide expansion.

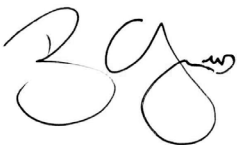
Accountability structure

California’s long-term services and supports system is undergoing several structural changes, most notably through the CCI. The state must look at the new HCBS rules in the context of an integrated system, and clearly outline the accountability structure. With specified LTSS transitioning to managed care, it is important to indicate the accountability for compliance across entities including the state, health plans, and provider groups, etc. To this end, we recommend a plan to clearly communicate expectations of all stakeholders involved in the HCBS system as a whole, including the managed LTSS system.

Additionally, the current plan states an appeals process for HCBS settings will be developed to dispute compliance or requirements. However it does not include mention of a process for individuals receiving services to report a violation of their rights or noncompliance by HCBS settings. Structures may already be in place for individuals to report concerns, and we recommend that those processes be evaluated in terms of the new HCBS rules. We also recommend the state develop a plan outlining how individuals will be informed of these new rules, their rights, and how to report violations.

Thank you again for the opportunity to comment on California’s HCBS Statewide Transition Plan. We look forward to providing additional comment as the state updates its plan.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Chernof", with a stylized flourish at the end.

Bruce A. Chernof, M.D.
President and CEO