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DIRECTOR

State of California—Health and Human Services Agency
Department of Developmental Services
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GAVIN NEWSOM
GOVERNOR

December 1, 2023

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: HOME AND COMMUNITY-BASED SERVICES (HCBS) FINAL RULE:
MONITORING AND CORRECTIVE ACTION

This supersedes the November 22, 2023 directive regarding this subject.

In accordance with Welfare and Institutions Code Section 4685.10, the Department of Developmental Services (Department) is issuing this directive to support regional centers in fully implementing the federal requirements for HCBS settings. The purpose of this directive is to: a) establish a monitoring timeline for completion of required on-site reviews to confirm that all HCBS settings have compliant policies and that the implementation of those policies is occurring through the setting's practices in compliance with the HCBS settings requirements, and b) outline the steps to address vendored service providers found to not be in compliance.

Monitoring

Regional centers shall complete an on-site review of all HCBS settings (Enclosure) to verify their full compliance and implementation of the HCBS settings requirements by August 31, 2024. During the on-site review, regional centers must verify all relevant [federal requirements](#) are satisfied. Training and information, including prior assessment tools, can be found at <https://www.dds.ca.gov/initiatives/cms-hcbs-regulations/assessment-information/>. If the regional center chooses to use a different tool, that tool shall be posted to the regional center's website and training provided for service providers to understand what to expect during the visit.

Regional centers should work collaboratively with service providers to make efforts to immediately remediate any findings during the monitoring visit such as seeking input from individuals served on how areas of noncompliance may be corrected, completing training and/or training staff on the federal requirements and person-centered service planning, or updating any conflicting documentation to support full implementation of the federal requirements.

Corrective Action

Should remediation efforts at the time of the monitoring visit still result in a provider being found to not be in compliance with any of the federal HCBS requirements, further remediation efforts will align with the existing Corrective Action Plan (CAP) processes used in [California Code of Regulations, Title 17 section 56056](#) for residential facilities, which include the provision of vendor appeal rights. As such, the regional center shall work with the provider to develop and deliver a written CAP within 10 working days of any finding(s). The CAP shall address the steps the provider must take to remediate any findings of noncompliance. The written CAP shall describe all of the following:

- (1) The federal requirement(s) for which noncompliance is identified and provide information to the service provider of the right to appeal the findings as well as possible sanctions that will be enforced if the provider does not comply with the CAP.
- (2) The method(s) by which the service provider is to remediate the finding(s), including review and discussion with individuals receiving services in the setting.
- (3) The timeframe with which the service provider must remediate the finding(s), which shall not exceed 30 days from the date the written CAP is issued, unless the regional center and service provider determine that remediation will require additional time.

The provider shall return the signed and dated CAP to the regional center within seven days of its receipt, with any areas of disagreement noted in writing. The regional center issuing the CAP shall provide a copy of the signed CAP to the provider and to any other regional center which has individuals receiving services at the setting. Regional centers shall issue all CAPs no later than September 30, 2024.

Sanctions

If a provider does not complete the actions listed in their CAP within the specified timeframe, and does not file an appeal, the regional center shall pursue the following sanctions progressively:

- (1) Issue an immediate moratorium on referrals and authorizations for new referrals for the service provided by a vendor that has failed to complete the required corrective action.
- (2) Meet with each individual who is receiving services in the setting, or the individual's authorized representative, to discuss the situation and offer alternate options if the provider does not remediate. Individuals served, or their authorized representative, may elect to meet with the regional center via remote technology.

If the provider remains noncompliant after taking the above steps, the regional center shall implement a temporary payment withhold of 50% for services provided. This temporary payment withhold will remain in effect until the regional center has verified the provider has complied with the CAP, at which time any funds withheld will be released to the provider. A temporary payment withhold may not extend beyond a four-month period without the regional center concurrently pursuing the termination of vendorization when a provider continues to be noncompliant with the CAP.

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Regional centers must report to the Department a list of providers for which the regional center is a) implementing a temporary payment withhold, and/or b) pursuing termination of vendorization. Notice of such shall be sent from the regional center issuing the CAP to the Department at hcbsregs@dds.ca.gov, within 10 days of such sanction. Regional centers must also notify any provider impacted by a temporary payment withhold or any action towards the termination of vendorization in advance and must include the date either action takes effect.

Provider Appeals

Should a provider disagree with a regional center's determination that they are not in full compliance with the HCBS federal requirements, the provider may appeal in writing to the director of the vendoring regional center within 30 days after the receipt of written notification of the regional center's determination of noncompliance. Provider appeals for HCBS compliance shall follow the same process as described in [California Code of Regulations, Title 17 section 54380 et seq.](#)

Guidelines for regional centers reporting monitoring activities and compliance data to the Department will be forthcoming.

If you are an individual receiving services from the regional center and have questions about this correspondence, please contact your service coordinator. If you are a regional center and have questions, please contact hcbsregs@dds.ca.gov. Service providers may contact the Department via telephone at 1 (833) 396-4337.

Sincerely,

Original Signed by:

VICKI L. SMITH, Ph.D.
Deputy Director
Policy and Program Development Division

Enclosure

cc: See next page.

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cc: Regional Center Administrators
 Regional Center Directors of Consumer Services
 Regional Center Community Services Directors
 Regional Center HCBS Program Evaluators
 Association of Regional Center Agencies
 State Council on Developmental Disabilities
 Nancy Bargmann, Department of Developmental Services
 Brian Winfield, Department of Developmental Services
 Carla Castañeda, Department of Developmental Services
 Jim Knight, Department of Developmental Services
 Ernie Cruz, Department of Developmental Services
 Suzy Requarth, Department of Developmental Services
 Susan Crow, Department of Developmental Services

Home and Community-Based Services Settings

- Adult Residential Facility
- Adult Residential Facility for Persons with Special Health Care Needs:
DSS Licensed Specialized Residential Facility
- Certified Family Home; Foster Family Home
- Child Day Care Facility; Child Day Care Center
- Children's Residential Facility; Group Home; Foster Family Home; Small Family Home
- 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)
- Enhanced Behavioral Support Homes (EBSH) and Community Crisis Homes (CCH)
- Family Home Agency: Adult Family Home/Family Teaching Home
- Residential Care Facility for the Elderly
- Supported Employment (Group Services)
- Work Activity Program