



State Council on Developmental Disabilities



STATE OF CALIFORNIA  
Gavin Newsom, Governor

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Department of Health Care Services  
Integrated Systems of Care Division  
1501 Capitol Avenue, MS 4502  
P.O. Box 997437  
Sacramento, CA 95899-7413

Subject: Statewide Transition Plan (STP) Public Comment

To Whom It May Concern:

Thank you for giving the State Council the opportunity to comment on California's Statewide Transition Plan (STP) for implementation and compliance with the Final HCBS Settings Rule (Final Rule).

As you are aware, several vendors are not prepared to meet the March 2023 deadline. Less than half of all service providers currently report they are meeting all federal requirements, through both site inspection and self-reporting. As an example, a recent survey in September found that more than 1700 service providers do not currently meet the federal requirement to have documentation showing the ways in which they ensure an individual's right to privacy, dignity, and freedom from coercion or restraint ("The Right to be Treated Well")<sup>1</sup>. This is, quite plainly, unacceptable.

As is true for all states, bringing California's large number of service providers into federal compliance has been slowed by the pandemic; however, the current deadline has been known for some time, and the STP has been in place in similar forms for nearly five years. The service providers can and must be better prepared for the change, and all our community partners, including the Departments, need to do better to serve Californians through our current and future vendors.

The State Council has recently received and reviewed the Department's November 8, 2022 guidance letter to the regional center executive directors, regarding current service providers' non-compliance with the updated Federal Rule. This guidance letter and the related draft notice of non-compliance provide new timelines for corrective action, monitored and reported

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<sup>1</sup> HCBS Final Rule Compliance Report, September 19, 2002.

*"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."*

by the regional centers, and reported to the Department for further corrective action as necessary. Still, exactly how the corrective action plans will be implemented, or if they will be successful, is not known at this time.

The State Council agrees this is a necessary step towards full Final Rule compliance, which should result in increased response and action by the service providers. However, the Department, working with community partners, can and should strive to do more to ensure all service providers can comply with the Final Rule. We all owe it to the hundreds of thousands of HCBS consumers to lead the nation in this effort, and to provide a model for states to navigate the federal updates, while still striving for excellent services to our population.

The STP also provides several corrective action steps and resources that will be used for the service providers to bring them into compliance, including trainings and technical assistance. This again is a necessary first step. A continuous conversation with other stakeholders could only improve the focus of these tools to bring California in full compliance into the next year. The State Council welcomes any invitation to participate in that process.

Several advocacy groups in California have proposed a working group be formed, tasked with ensuring that the STP implementation advances the mandates of inclusion and community integration under *Olmstead*<sup>2</sup>. The State Council also supports several other solutions suggested by these groups: including a clear appeal process for both HCBS consumers and providers that includes clear timelines and targets, enhanced notice requirements, administrative law judge training, improved data collection and transparency measures, more detailed corrective action plans for lagging service providers, and transition supports, among others.

A working group addressing the above is necessary to ensure that the causes for lagging compliance by some service providers be avoided in 2023 and beyond. The State Council would be happy to join in any discussions or working groups to achieve this important goal.

The State Council is aware of the size of this task, with the March 2023 deadline looming for the service providers. But California has shown time and again it is prepared to create a framework to maximize community integration, while maintaining rigorous standards for our service providers. We owe no less to our citizens.

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<sup>2</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Thank you again for the opportunity to comment on the Statewide Transition Plan. If you have any questions or would like to discuss this matter further, please do not hesitate me.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a horizontal line and a vertical line that loops back to the top of the 'A'.

Aaron Carruthers  
Executive Director  
State Council on Developmental Disabilities