

Home and Community-Based Services (HCBS) Final Rule: Monitoring and Compliance



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Home & Community Based Services- HCBS Final Rule

- Katie Beckett- Diagnosed with viral encephalitis and through years of advocacy led to Ronald Reagan creating the Medicaid Waiver or the “Katie Becket Waiver”.
- Olmstead V. LC- Found that unjustified institutionalization of individuals with disabilities by a public entity is a form of discrimination under ADA of 1990.
- In 2014 Centers for Medicare & Medicaid Services (CMS) finalized the HCBS settings rule to require that states **are only able to use federal Medicaid (in CA Medi-Cal)** to pay for services that are community based and **do not** have *institutional characteristics*



HCBS Final Rule Applies To:

- **Residential Settings**
 - Service Codes: 096, 113, 904, 905, 910,915, 920
- **Day Programs and other day-type services**
 - Service Codes: 028, 055, 063, 475, 505, 510, 515, 855
- **Employment-Group & Work Activity Programs**
 - Service Codes: 950 & 954



Federal Requirements

1. Access to the Community
2. Choice of Setting
3. Right to be Treated Well
4. Independence
5. Choice of Services & Supports
6. Residential Agreement
7. Privacy
8. Schedule & Access to Food
9. Rights to Visitors
10. Accessibility

Note: All 10 Federal Requirements apply to residential providers. Non-residential providers are responsible for Federal Requirements 1-5 and 10.



California Statewide Transition Plan

- The California Statewide Transition Plan (STP) outlines the steps that the State will take to be in alignment with the HCBS Final Rule.
 - Self-Assessment
 - Virtual Site Assessment (VSA)
 - Validation or Remediation
 - Compliance



HCBS Compliance

- September 28th, 2023 California received approval of their Corrective Action Plan (CAP) which details on-going HCBS assessments to be completed in person, lays out milestones, and includes a deadline for completion of December 30th, 2024.
 - <https://www.medicaid.gov/sites/default/files/2023-09/ca-appvd-cap.pdf>
- DDS has until December 31st, 2024 to submit all compliance information to CMS.
- Regional Centers have to conduct on-site visits to monitor and ensure that service providers are in full HCBS compliance by meeting the following milestones:
 - **25% of site visits by February 29th, 2024,**
 - **50% by April 30th, 2024,**
 - **75% by June 2024, with 100% completion of all HCBS assessments by August 30th, 2024**
- December 1st 2023 Department of Developmental Services (DDS) issued a directive to support regional centers in fully implementing the federal requirements for HCBS settings, which includes residential, day programs, and employment (work activity programs & group) services.



On-Site Visit Expectations

- Our Provider Relations Specialist (PRS) team is beginning to schedule visits for this week.
 - The visit may be announced or unannounced.
- PRS will be utilizing HRC's HCBS Compliance Tool.
- The review will consist of:
 - Reviewing documentation that supports and meets HCBS implementation & compliance
 - Individual & staff interviews
- Based on the documentation review and interviews, PRS will determine whether or not service provider is in compliance with each applicable Federal Requirement (FR).
- If the service provider is not in full compliance with a FR, the HCBS Compliance tool will list specific action item/s that must be completed to meet fully meet the FR.
- Service providers will receive a signed and dated copy of the HCBS Compliance tool.



HRC HCBS Supports

- Office Hours
 - **HCBS OFFICE HOURS:** HCBS office hours are scheduled every Tuesday & Wednesday from 1:00 p.m.-2:00 p.m. To register please contact HCBS Specialist, Brian Carrillo at brian.carrillo@harborrc.org. HCBS Office Hours are to support HRC's service providers and answer questions.
- Training
- 1:1 Consults
- Site Visits
- Documentation/ Procedure/ Policy Reviews
- Program Design Support



Upcoming Trainings and Events

- **January 23rd 2024- Communication: The Foundation Workshop:** Will be held at the HRC Torrance office from 10:00 a.m.- 2:00 p.m., in rooms A1/A2. This training will focus on the development of communication strategies that service providers can utilize to help facilitate HCBS conversations with individuals and families and solutions for capturing the communication in documentation.
- **January 23rd 2024- HCBS Sip and Chat:** Will be held at HRC Torrance from 5:30-7:00 in A1/A2. For further information, please see link below:
<https://www.harborrc.org/special-event/hcbs-sip-and-chat-cafe-y-charla-sobre-hcbs-1>
- **January 26th 2024- DSP Stipend Info Session:** Will be over Zoom on January 26th from 10:00-11:00. For further information please see the HRC website for registration.
https://us06web.zoom.us/meeting/register/tZlId-qsqzwvHNMOOnEFgzs4-3z_0k7ZB_oww?_x_zm_rtaid=39boonUmRQuXS8z1Fi9PEQ.1704407421066.ab7cfff1b3299b0c5f90130067871e7e&_x_zm_rtaid=58#/registration
- **February 6th-16th- Person-Centered Training with IntellectAbility:** Will be held at HRC Torrance office from 9:00 a.m.-5:00 p.m. in A1/A2. This is a 2 day training.

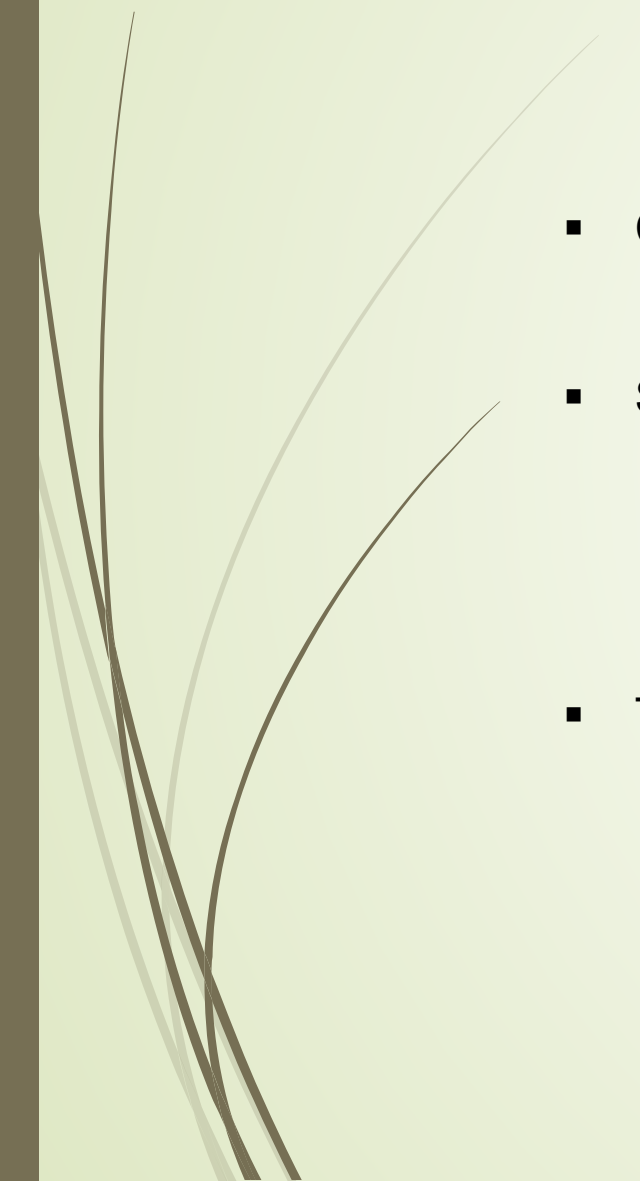


Upcoming Trainings and Events


- **A Future Including Employment-** Thursday, February 22nd, 2024 from 12:30-3:00 PM, HRC Torrance. This is a Train the Trainer event and there will be a Keynote Speaker, Sean Roy from Transcen. During his presentation he will offer new ways to help families work through apprehensions about competitive employment, play a role in skill building and finding opportunities for community based experiences, and establish a better understanding of the experience of families.
- **Transition to Adulthood-** Thursday February 22nd 2024 from 4:00-7:30 at HRC Torrance. Please join us for our semi-annual transition event with an employment-g geared focus. You will be able to hear from a Key Note Speaker, Sean Roy, who will provide an employment workshop. You will also have the opportunity to set up booths and interact with parents who are interested in employment services.



Ramifications of Non-Compliance

- Corrective Action Plan (CAP)
 - Sanctions
 - Moratorium
 - 50% monetary withholding
 - Termination of vendorization
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Corrective Action Plan (CAP)



Per the 12/1/23 DDS Directive HOME AND COMMUNITY-BASED SERVICES (HCBS) FINAL RULE: MONITORING AND 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”.

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CAP will describe the following:

- 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.
- 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.
- 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

Per the 12/1/23 DDS Directive HOME AND COMMUNITY-BASED SERVICES (HCBS) FINAL RULE: MONITORING AND CORRECTIVE ACTION, “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:

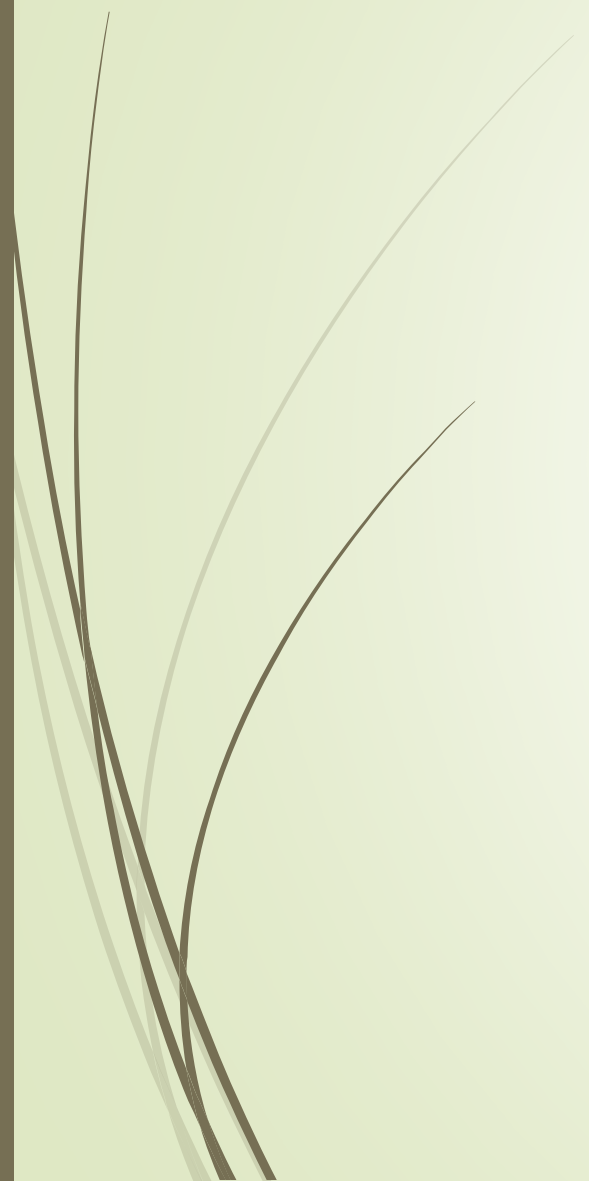
- Issue an immediate moratorium on referrals and authorizations for new referrals for the service provided by a vendor that has failed to complete the required corrective action.
- Meet with each individual who is receiving services in the setting, or the individual’s authorized representative, to discuss 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”.

Monetary Withholding

- Per the 12/1/23 DDS Directive HOME AND COMMUNITY-BASED SERVICES (HCBS) FINAL RULE: MONITORING AND CORRECTIVE ACTION, “If the provider remains noncompliant after taking the previous 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.
- 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”.

APPEAL PROCESS

- Per the 12/1/23 DDS Directive HOME AND COMMUNITY-BASED SERVICES (HCBS) FINAL RULE: MONITORING AND CORRECTIVE ACTION, “ 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”.



QUESTIONS ?