**DEPARTMENT OF HEALTH & HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

Region 10
2201 Sixth Avenue, MS/RX 43
Seattle, Washington 98121

JUN 26 2009

Bill Hogan, Commissioner
Department of Health and Social Services
Post Office Box 110601
Juneau, Alaska 99811-0601

**RE: Centers for Medicare & Medicaid Services (CMS) Review of Alaska's Home and Community Based Services (HCBS) Waivers and Personal Care Services - Preliminary Observations, Findings and Required Corrective Action**

Dear Mr. Hogan:

This letter is a follow up to the letter you received from the Centers for Medicare & Medicaid Services (CMS) dated April 16, 2009. The purpose of the letter is to: 1) report preliminary observations and findings based on a focused review conducted by CMS staff in Anchorage the week of May 4, and a review of documents and evidence submitted by the State; and 2) to specify required corrective action. As indicated in my April 16th letter, the comprehensive review of the home and community based-services (HCBS) waivers will continue in upcoming months, and a final report will be issued at the completion of the comprehensive review.

Based on a review of documents to date and CMS' focused review, we have significant concerns regarding the implementation and State oversight of Alaska's four currently approved 1915(c) HCBS waivers, as well as the provision of State plan personal care services (PCS) via the Personal Care Attendant program (PCA). Because of those concerns, we are providing this information as the first step toward working in partnership with the State to develop and implement a strategy to address them.

In summary, based on our review of information provided to us by the State and other stakeholders, CMS has concerns in the following general areas:

1) Federal regulations at 42 CFR 441.302(a) specify that the Medicaid agency must satisfactorily provide CMS with the assurance that "necessary safeguards have been taken to protect the health and welfare of the recipients of the services." The Alaska State Medicaid Agency has not provided CMS sufficient assurance that those necessary safeguards are currently in place and/or being followed.

2) The State is providing PCS in a way that is not compliant with its currently approved State plan.

The culmination of these issues has significant potential to negatively impact the health and welfare of many Alaska residents who are eligible for Medicaid.

JUN 26 2009

CMS is responsible for federal oversight of waiver and State plan programs, including assuring that states maintain administrative authority over these programs and provide sufficient operational and programmatic oversight. Based on our review of information provided to date, insufficient evidence exists to assure CMS that Alaska is operating the HCBS waivers and providing State plan PCS in ways which ensure the safety of the waiver and other program participants. A description of our preliminary observations and findings are specified in Attachment A, along with required corrective actions (*enclosed*). In order for CMS to consider renewal of Alaska's four HCBS waivers prior to their expiration in June 2011, the State must demonstrate substantial improvement in the administration and operation of these waivers. Examples of improvements which CMS expects the State to demonstrate include revised Quality Improvement Strategies, and submittal of the waiver renewals in Version 3.5 of the waiver application.

The required corrective action is also specified in Attachment A. In general, CMS requires that the State develop and submit to CMS an action plan and timeline to respond to the detailed items found in this correspondence by September 1, 2009. Once CMS approves the State's corrective action plan, the State must begin implementing it immediately. Further, the State must schedule monthly conference calls with CMS in which it reports on implementation progress on the action plan/timeline. Written progress reports must be submitted to CMS at least seven (7) days in advance of the meetings. An agreed upon dissemination group will be copied on all materials. Finally, CMS requires that the State work with the National Quality Enterprise (NQE) and CMS on all steps in this process. Toward that end, the NQE will work together with CMS in developing and specifying parameters for the technical assistance to be provided, advising the State, and working jointly to assure effective oversight as the State moves forward in the development and implementation of its corrective action plan.

Highlights of the required corrective action include the following:

- CMS is imposing a moratorium on new admissions or enrollments into Alaska's four HCBS waiver programs;

- The State must direct all staff and managers responsible for operation of the HCBS and PCA programs to attend basic HCBS training, as well as to actively engage in CMS-mandated technical assistance to be provided by NQE; and

- The State must either revise its PCA program or amend its Medicaid State plan to assure compliance with federal rules in the delivery of PCS, in order to continue claiming these costs on the CMS-64.

In addition, CMS recommends that:

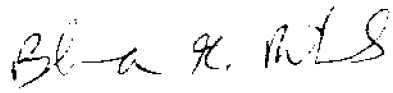
1) The State not submit any new HCBS waiver application(s) until the State can demonstrate that it is compliant with federal rules regarding the administration of its existing waivers; and

2) The State consider including mortality reviews in its critical incident reporting system.

CMS appreciates the time that the Alaska Division of Senior and Disabilities Services (SDS) contributed toward this review. If you either disagree with or have questions about the preliminary findings as specified in this letter and enclosure, please contact me as soon as possible. As stated above, the review will continue, and during the process CMS will provide interim feedback to the State. A final report will be provided to you following the conclusion of a comprehensive review of the waiver(s), and PCS State plan services, including details to be included in a corrective action plan.

If additional information is needed please contact me at (206) 615-2267, or have your staff contact Lydia Skeen at (206) 615-2339 or Lydia.Skeen@cms.hhs.gov.

Sincerely,



Barbara K. Richards
Associate Regional Administrator
Division of Medicaid and Children's Health Operations

Enclosure

**Attachment A**

**Centers for Medicare & Medicaid Services (CMS) Review of Alaska's Home Community Based-Services (HCBS) and Personal Care Attendant (PCA) Programs: Preliminary Observations, Findings and Required Corrective Action**

**Background:**

Alaska currently operates four Centers for Medicare & Medicaid Services (CMS)-approved home community based-services (HCBS) waiver programs designed to serve the following populations: Older Alaskans (OA); aged and disabled (APD); individuals with mental retardation and/or developmental disabilities (MR/DD); and children with complex medical conditions (CCMC). The expiration date for all four waivers is June 30, 2011. In addition, the State operates a Personal Care Attendant (PCA) program through which personal care services (PCS) are authorized and provided. The Division of Seniors and Disabilities Services (SDS) is the division within the State agency responsible for implementation and oversight of these programs.

A focused review was conducted the week of May 4, 2009, by a CMS review team. The purpose of the review was to determine:

- The degree to which the health and welfare of HCBS eligible beneficiaries are at risk;
- The degree to which the State is implementing its HCBS waiver programs consistent with its approved waivers; and
- The degree to which the State is providing adequate oversight of the waiver operations consistent with federal and statutory regulations.

The review covered the years 2006 through April of 2009, and was initiated in response to information provided by the state to the CMS Regional Office (RO) regarding:

- The delay in approximately 2,000 required initial assessments and annual re-assessments for individuals eligible for the Alaska's HCBS waivers; and
- The reporting of "several" lawsuits initiated against the State related to provision of PCS.

The methods used during the review included analysis of documentation and interviews of state staff, advocates and other stakeholders.

Evidence provided by the State on June 1, 2009, in response to the CMS Request for Evidence for all four HCBS waivers, was considered by the review team as well.

**Preliminary Observations and Findings - HCBS Waiver Compliance and State Oversight Issues**:

I. State Conducts Level of Care (LOC) Determinations Consistent with the Need for Institutionalization

| Sub Assurances | CMS Expectations | Preliminary Observations & Findings | CMS Review Activities |
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| An evaluation for level of care (LOC) is provided to all applicants for whom there is reasonable indication that services may be needed in the future. | State submits evidence that it has reviewed applicant files to verify that individual levels of care evaluations are conducted. | • Appendix B of the approved Older Alaskans (OA) and aged and disabled (APD) waiver renewals, effective 7/1/06, require that the State conduct initial and reassessments annually, unless required more frequently based on an enrollees change in health status. As of March 2009, between the OA, APD and Personal Care Attendant (PCA) programs, more than 2,000 initial and reassessments had not been conducted on time. During the CMS on-site focused review, the state staff provided a document called, "Staffing Analysis-Catch-up on Backlogged Reassessments," revised 3/15/09, which supported an earlier verbal report. Although the State is working to reduce this backlog, the CMS review of State documents used to track the timeliness of the initial and reassessments, and acknowledgement from interviews with the State staff indicate that the backlog dates back to, at least, 2006. | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| The LOC of enrolled participants is reevaluated at least annually or as specified in its approved waiver. | State submits evidence that it regularly reviews participant files to verify that reevaluations of LOC are conducted at least annually or as specified in the approved waiver. | | |
| The process and instruments described in the approved waiver are applied appropriately and according to the approved description to determine participant LOC. | State submits that it regularly reviews participant files to verify that the instrument described in approved waiver is used in all LOC redeterminations, the person(s) who implement LOC determinations are those specified in approved waiver, and the process/instruments are applied appropriately. | | |
| | | • The mental retardation and/or developmental disabilities (MR/DD) waiver agreement in Appendix B-6: g, effective 7/1/06, indicates that the LOC reassessments are to be conducted annually using the Instrument for Client and Agency Planning (ICAP) by qualified mental retardation professionals (QMRPs). However, interviews with State staff revealed that currently, the ICAPS are conducted every three years. In addition, the State informed the CMS reviewers that it does not require that the waiver participant be present during the LOC reassessments. CMS review of State documents used to track the timeliness of the initial and reassessments provides evidence which | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |

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| | | supports the reports of assessments being conducted every three years.<br><br>• Limited information was provided regarding initial and reassessments for children enrolled in the CCMC waiver. While further review of the status for this population is needed, the preliminary evidence shows that in general, the initial and reassessments are done more timely. However, some delays exist for this population as well. Additional concerns exist for this population, since the LOC determination process for these children is performed by paid assessors from the provider agencies, who also develop the Plans of Care (POC). This appears to constitute a conflict of interest, and may be impacting freedom of choice of service providers, since the same agencies that provide services conduct the LOC determinations and POC.<br><br>***CMS Finding***: The State is substantially out of compliance with the requirements related to Assurance 1 for all waivers. | Review of documents submitted and interviews with State staff. Evidence provided by the state is insufficient to demonstrate compliance with this assurance. |

II. Service Plans are Responsive to Waiver Participant Needs

| Sub Assurances | CMS Expectations | Preliminary Observations & Findings | CMS Review Activities |
|---|---|---|---|
| Service plans address all participants' assessed needs (including health and safety risk factors) and personal goals, either by waiver services or through other means. | State demonstrates that service plans are reviewed periodically to assure that all of participant needs are addressed and preferences considered. | • POC "cookie cutter" in nature and not person-centered, which is required by terms of OA, APD and MR/DD waivers. | Interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| The State monitors service plan development in accordance with its policies and procedures. | State submits evidence of its monitoring process for service plan development and any corrective action taken when service plans were not developed according to policies and procedures. | • Insufficient evidence was provided to show that the State monitors the appropriateness of services, the provision of services against the defined plan of care, or provides active monitoring or oversight of POC. | Interviews with providers and State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| Service plans are updated/revised at least annually or when warranted by changes in the waiver participant's needs. | State submits evidence of its monitoring process for service plan update/revision including service plan updates when a participant's needs changed and corrective actions taken when service plans were not updated/revised according to policies and procedures. | • Due to backlog of reassessments, previous POC are being used for OA and APD waiver enrollees and amendments are being made to them. Service providers are recommending changes to service plans, which may constitute a conflict of interest, since the same agencies that provide services also conduct LOC and POC determinations. | Review of data, interviews with State staff. Evidence provided by the state is insufficient to demonstrate compliance with this assurance. |
| Services are delivered in accordance with the service plan, including in the type, scope, amount, and frequency specified in the service plan. | State submits evidence of the results of its monitoring process for ensuring the services identified in the service plan are implemented. | ***CMS Finding***: The State is substantially out of compliance with the requirements related to Assurance II for all waivers. | |
| Participants are afforded choice:<br>1) Between waiver services and institutional care; and<br>2) Between/among waivers services and providers. | State submits evidence of the results of its monitoring process for ensuring the services identified in the service plan are implemented. | | |

III. Qualified Providers Serve Waiver Participants

| Sub Assurances | CMS Expectations | Preliminary Observations & Findings | CMS Review Activities |
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| The State verifies that providers initially and continually meet required licensure and/or certification standards and adhere to other state standards prior to their furnishing waiver services. | State provides documentation of periodic review by licensing/certification entity. | • No evidence was provided that the State is actively monitoring or has an adequate system to facilitate the monitoring of providers. Further, the state could not provide any evidence of performance standards for the providers, nor a system for reasonable sampling, remedial action, or other quality assurance functions related to monitoring of providers. | Interviews with State staff. Evidence provided by the state is insufficient to demonstrate compliance with this sub-assurance. |
| The State monitors non-licensed/non-certified providers to assure adherence to waiver requirements. | State provides documentation that non-licensed/non-certified providers are monitored on a periodic basis sufficient to provide protections to waiver participants. | | |
| The State implements its policies and procedures for verifying that provider training is conducted in accordance with State requirements and the approved waiver. | State provides documentation of monitoring of training and actions it has taken when providers have not met requirements (e.g., technical assistance, training). | • As a part of a State Departmental Quality Assurance review, it was reported that it reviewed 80 out of approximately 8,000 Medicaid providers, or 1 percent. The State was unable to demonstrate how using this sample size was statistically significant or adequate to draw any reasonable conclusions specific to compliance with this assurance. It was reported that "only good providers" were sampled until the state feels more comfortable in the review process, although staff were unable to specify what measurably constitutes a "good" provider. In addition, staff reported that if provider issues were identified, the State allowed a three-year period of time for correction. Follow-up oversight by the State was most often not conducted. The CMS review team was informed that for now, the State must "trust" that the providers are doing their jobs.<br><br>***CMS Finding***: The State is substantially out of compliance with the requirements related to Assurance III for all waivers. | Interviews with State staff. Evidence provided by the state is insufficient to demonstrate compliance with this sub-assurance. |

IV. Health and Welfare of Waiver Participants

| Sub Assurances | CMS Expectations | Preliminary Observations & Findings | CMS Review Activities |
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| The State, on an ongoing basis, identifies, addresses, and seeks to prevent the occurrence of abuse, neglect and exploitation. | State demonstrates that, on an ongoing basis, abuse, neglect and exploitation are identified, appropriate actions have been taken when the health or welfare of a participant has not been safeguarded, and an analysis is conducted of abuse, neglect and exploitation trends and strategies it has implemented for prevention. | • The State does not have an effective, overall system to identify or remediate existing problems and prevent future problems, i.e., systems improvement. The State does not have an adequate Quality Improvement Strategy (QIS) which includes the use of significant sample sizes and methodologies. For example, as part of the data submitted to CMS along with the initial plan of correction, documents show the State used a 1% sample for quality reviews for the OA, APD and MR/DD waivers. These were discussed during the CMS on-site review and it was reported these have been paper/desk reviews. No evidence of State follow up, tracking or trending of critical incidents was provided. | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • The State has used the Participant Experience Survey (PES), but since 2006, they have completed approximately 260 of the 700 survey sample the State established to gather reliable information and feedback. In addition, the State reported that only adults are surveyed, since there is not a PES for children. No evidence of alternative methods for surveying children and their families was provided. | Interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • No trending or evidence was provided that the State followed up on any critical incident reports that were previously submitted. In addition, Alaska Medicaid providers have submitted written information to CMS regarding the state's lack of responsiveness to their reporting of health and welfare issues. Some of those written documents include allegations that the State's lack of an effective QIS has resulted in the death(s) of the active clients. | Review of documents submitted and interviews with State staff and providers. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |

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| | | • In addition, from October 2006 to May 2009, for the OA and APD waivers, and the PCA program, the State reported there were 27 deaths for people waiting for initial assessments and 227 deaths for people waiting to be reassessed.<br><br>• The State was not able to provide any information on the nature and causes of the reported deaths. They did not have any evidence that these deaths were investigated, nor did they have a critical incident reporting policy and procedure in place at the start of the CMS review. Although the State indicated some of the deaths may have been reported on incident reports, the State clarified that only deaths that occurred during care had to be reported. Thus, if someone passed away because a PCA did not show up, for example, there was no indication this would have been reported or investigated.<br><br>• No data were available for deaths of individuals receiving services through the MR/DD and children's waivers.<br><br>***CMS Finding***: The State is substantially out of compliance with the requirements related to Assurance IV for all waivers. | Interviews with State staff. Evidence provided by the state is insufficient to demonstrate compliance with this assurance.<br><br>Interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |

V. State Medicaid Agency Retains Administrative Authority Over the Waiver Program

| Sub Assurances | CMS Expectations | Preliminary Observations & Findings | CMS Review Activities |
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| The Medicaid agency retains ultimate administrative authority and responsibility for the operation of the waiver program by exercising oversight of the performance of waiver functions by other State and local/regional non-State agencies (if appropriate) and contracted entities. | State submits evidence of its monitoring of all delegated functions, and implementation of policies/procedures related to its administrative authority over the waiver program, including: memoranda of agreements, description of roles and responsibilities relative to program operations, monitoring, and remediation or system improvements instituted when problems are identified in the operation of the waiver program. | • The State is not implementing its waivers in accordance with the approved OA, APD, MR/DD waiver agreements. For example, the State is using numerous contractors that are not referenced in the waiver agreements, and it was not made clear whether Memorandums of Understanding (MOU) are in effect for all contractors nor what oversight is in place to monitor contractor activities. | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • The State appears to be operating a waiver within a waiver. For example, the State provides coverage of habilitation services in the APD waiver, yet this service is limited to individuals with a MR/DD diagnosis. This violates waiver comparability [citation Olmstead Letter #4: SMD # 01006, Olmstead Update #4, Attachment 4, January 10, 2001]. A MR/DD diagnosis is not an approved targeting criterion for APD waiver eligibility. | Interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • The QIS appears to be inadequate, including its remediation and system improvement activities, provision for quality reviews, and a lack of statistically significant and random sampling. There is reportedly an extensive use of contractors for these activities, but no mention of them in the waiver or QIS. State oversight of monitoring by contractors, as well as of the health and welfare activities are extremely limited. | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • Questions exist regarding the sufficiency and effective use of State staff and resources. For example, the State reportedly has a shortage of nurse assessors, which has allegedly added to the backlog of LOC initial and reassessments. The approved waivers | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |

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| | | permit the state to use medical social workers, trained to the standards as a nurse licensed in AK, to work for SDS and to make the LOC determination. However, the State indicated that its own State regulations only allow nurse assessors to make the LOC determinations. No evidence was provided to demonstrate SDS efforts to implement an emergency change in State regulation to change this policy, in spite of a significant backlog that has existed for over two years. This change could reportedly have been initiated in about 30 days, thereby increasing the pool of people qualified to conduct initial and/or reassessments. In addition, during this period, the State made a decision to re-classify nurses, reportedly causing a reduction in pay compared to other nurses, which affected efforts to recruit and retain state nurse assessors. | |
| | | • The State appears to have duplicative measures to monitor its own staff such as the use of peer reviews described as "checkers checking the checkers." These are reportedly activities focused on desk review of paperwork that are a result of numerous lawsuits lodged against the State. The State was not able to demonstrate that it is administering and operating the waivers in accordance with the approved waiver agreements to assure compliance with the six assurances required for waiver approval. | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • Review of required CMS 372 reports submitted by the State, illustrates that there appears to be underutilization of waiver slots for unduplicated recipients in the OA and APD waivers. At the same time, a waiting list exists for the MR/DD waiver of over 850 individuals. Although a state decision, the appropriation of waiver funds to balance utilization across all waivers based on | Review of documents submitted and interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |

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| | | need is in question.<br><br>***CMS Finding***: The State is substantially out of compliance with the requirements related to Assurance V for all waivers. | |

VI. State Provides Financial Accountability for the Waiver

| Sub Assurances | CMS Expectations | Preliminary Observations & Findings | CMS Review Activities |
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| State financial oversight exists to assure that claims are coded and paid for in accordance with the reimbursement methodology specified in the approved waiver. | State submits results of its financial monitoring process for verifying maintenance of appropriate financial records as specified in approved waiver.<br><br>State submits results of its review of waiver participant claims to verify that they are coded and paid in accordance with the waiver reimbursement methodology.<br><br>State demonstrates that interviews with State staff and providers are periodically conducted to verify that any identified financial irregularities are addressed.<br><br>State demonstrates that site visits are conducted with providers to verify that they maintain financial records according to provider agreements/contracts. | • Evidence was not provided assuring that the State has a uniform rate methodology across all waivers and all services. In fact it was reported that the rates for all MR/DD services are negotiated separately for each and every client, and in many instances per provider. Only some of the waiver services are standardized and posted on the SDS website. | Review of documents as provided, interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • Evidence was not provided that it monitored the claims against the services rendered. | Review of documents as provided, interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • The State is conducting financial reviews. However, the sample sizes of financial reviews appear to be statistically insignificant. | Review of documents as provided, interviews with state staff. Evidence provided by the state is insufficient to demonstrate compliance with this assurance. |
| | | • Evidence was not provided that it monitored the claims against the services rendered. | Review of documents as provided, interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • The State initiated an Operations Integrity Unit in November of 2008. However, the State has developed reports that serve as the basis on which staff is | Review of documents as provided, interviews with State staff. Evidence provided by the State is insufficient to demonstrate |

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| | | being allocated to monitor POC costs. This process has not resulted in meaningful data. | compliance with this assurance. |
| | | • Implementation of the ICD-10 coding system, currently scheduled to be complete in 2013, is expected to greatly expand the specificity of medical coding. There is a strong likelihood it will affect many of the state's systems, e.g., eligibility, claims, authorization, etc. It was not clear to CMS the degree to which the state and providers are aware of, and planning for, the ICD-10 system and the potential impact on their operations. | Interviews with State staff and providers. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | • Some question exists regarding the State's Mental Health Trust Fund. Based on information received during this review, the degree to which the State is using this money as part of its State share, and the extent to which the Fund is used for waiver and State Plan services could not be determined and requires further review and clarification. | Interviews with State staff. Evidence provided by the State is insufficient to demonstrate compliance with this assurance. |
| | | ***CMS Finding***: The State is substantially out of compliance with the requirements related to Assurance VI for all waivers. | |

**PCA Program: Preliminary Observations and Findings:**

In and around April of 2006, in an effort "to control and reduce costs related to provision of the PCA program," as noted in HB0067, the State implemented a screening process for all Alaska Medicaid eligibles, via the use of a LOC assessment, for persons who would otherwise require hospitalization or nursing home care. The state began using the PCAT, similar to the Consumer Assessment Tool (CAT) used for the OA and APD HCBS waivers.

Per State regulations, and as confirmed during interviews, only registered nurse assessors could evaluate consumers needing or requesting state plan PCS using this tool. In November 2007, the State took over the LOC initial and reassessments based on what they described in its Assessment Backlog Plan of Correction dated 4/24/09, in part because of reported difficulties working with the previous contractor, and because there were no responses to the contract renewal Request for Proposals. At that time, the State reported there were about 1,000 overdue assessments that included the OA, APD waivers and PCA program.

Since the implementation of the PCA Program changes, the following occurred:

1) As of 3/13/09, the State reported a backlog of 1,970 assessments; 1,033 of them were for the PCA program, i.e., more than half;

2) Reportedly, 80-85 percent of the approximate 3,000 Fair Hearings requests received by the State involve the PCA program;

3) Six out of the 8 lawsuits against the Division of Senior and Disabilities Services (SDS) involve the PCA program. It should be noted that the Department of Health and Social Services is the defendant in 30 lawsuits with, as noted, 8 of them specifically against SDS. The main complaint was that the PCA eligibility criteria were "arbitrary and capricious."

4) The current approved Alaska State Plan does not reflect any limitations or description of the use of the PCAT as it applies to access to PCS, nor has a State Plan Amendment (SPA) been submitted as result of the legislative directive.

***CMS Finding***. The State is not providing PCS to Medicaid eligibles in a method consistent with its currently-approved State plan, which is a federal statutory requirement specified in sections 1902(a)(4), 1902(a)(30)(A) and 1903(a) of the Social Security Act.

**Corrective Action Required:**

Based on the information outlined, CMS is requiring the following corrective action, which is to be implemented in phases.

Phase 1 – Immediate Action

1. The State must immediately stop enrolling or admitting individuals into its four currently approved HCBS waivers and PCA programs. CMS is imposing a moratorium on new admissions or enrollments. The moratorium is effective beginning on the date you receive this letter and will remain in place until such time as CMS sends the State specific written notice that the moratorium has been lifted.

2. The State must direct all staff and managers responsible for operation of the HCBS and PCA programs to attend basic HCBS waiver training. This training will be provided via two components. The first will be a CMS-sponsored training which is web-based. The State staff has two dates from which to choose, one on August 18th, and a repeat on October 13th. The second component will be face-to-face training provided by CMS on location in the Anchorage state offices as soon as practicable. The focus of each training will be specified by CMS in subsequent communications.

3. The State is directed to either submit a SPA specific to the provision of PCS, or to cease submitting claims for the costs of the PCS services on the CMS-64 for Federal match. If the State chooses to submit a SPA, the submission must revise the section on PCS so that it is consistent with the services as currently provided, including the use of the PCAT as a screening/authorization tool, and it must be submitted for CMS review and approval no later than September 30, 2009. If the State chooses not to submit a SPA, claims on the CMS-64 must reflect the reduction related to the removal of costs for PCS services with the next quarterly submission.

4. The State must continue efforts to complete all required initial assessments and re-assessments for individuals in all four HCBS waivers.

5. The State must comply with all subsequent CMS review requests and activities.

Phase 2 – Summer 2009

6. Once the CMS basic HCBS training is complete, the State must actively engage in the development of a work plan and timeline to develop a revised quality improvement strategy for the four waivers. Mandatory technical assistance will be provided by NQE. In addition, the State's progress in identified tasks will be monitored jointly by CMS, and include monthly meetings in which the State provides written updates to CMS on its progress related to this activity.

7. By September 1, 2009, the State will develop, submit to CMS for approval, and begin implementation of a Corrective Action Plan (CAP) to include at a minimum:

- Development of a comprehensive new quality assurance plan including state-level quality committee, methods, sampling, problem identification, performance measures, remediation, and follow-up;

- A new timeline(s) for becoming current on assessments and reassessments, which reflects system changes;

- Immediate development and implementation and oversight of a critical incident reporting system (e.g., review and trending of critical incidents, mortality reviews, etc.);

- Development and execution of contracts, MOUs, and other agreements with providers;

- Development and implementation of a uniform rate methodology for all services in all waivers;

- Development and immediate implementation of a program to monitor the health and welfare of waiver participants, with a priority on those individuals whose assessments are behind schedule;

- Implementation and oversight of an annual assessment for LOC, for individuals served under the state's MR/DD waiver;

- Implementation of a system for oversight of providers by the state;

- Implementation of a system which will assure avoidance of conflict of interest, delays or inappropriate incentives in the system, including (but not limited to) those to care coordinators and/or providers of services for assessing clients, determining LOC and developing or revising client POC;

- Development and implementation of a strategy to identify and address any weaknesses or gaps in the adequacy and appropriateness of State staffing, with a focus on assuring levels of management and staff sufficient to provide adequate program operations and oversight;

- Timely submission of required reports. The State will develop a monthly monitoring report, in conjunction with the State's CAP, which will be required.

<u>Phase 3 –September 1, 2009</u>

8. Implement new strategies which focus on keeping all required assessments and POC current for new and existing clients;

9. Provide CMS a monthly status report for all HCBS waivers and the PCA program, including, but not limited to, information on new applicants, LOCs complete, existing enrollees, reassessments performed, and POC modifications required and completed;

10. In any month the State is out of compliance with the program requirements and/or State plan requirements, it may be subject to a CMS compliance action for non-conformance in practice, 42 CFR 430.35(2)(c). This will affect all expenses relevant to the waivers from July 1, 2006, through the current quarter, and all State Plan expenses associated with the PCA program. This action may include deferrals and/or disallowance of program expenses.

Phase 4: Prior to December 31, 2009

11. The State will provide to the CMS a detailed analysis of the impact of the backlog in assessments and/or reassessments on the problems identified in the CMS 372 underutilization.