



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

GOVERNOR'S COUNCIL ON DISABILITIES
& SPECIAL EDUCATION
Patrick Reinhart, Executive Director

3601 C Street, Suite 740
Anchorage, Alaska 99503-5924
Main: 907.269.8990
Toll Free: 1.888.269.8990
Fax: 907.269.8995

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RE: Alaska Medicaid Transition Plan on Settings – Version 3

The Governor's Council on Disabilities and Special Education (the "Council") fills a variety of federal and state roles, including serving as the State Council on Developmental Disabilities (SCDD) under the Developmental Disabilities Assistance and Bill of Rights Act. As the state DD Council, we work with Senior and Disabilities Services (SDS) and other state agencies to ensure that people with intellectual and developmental disabilities and their families receive the services and supports that they need, as well as participate in the planning and design of those services. One of the duties of the state DD Council is providing comments on proposed recommendations that may have an impact on individuals with intellectual and/or developmental disabilities and their families.

The Council is pleased to see progress on the Alaska transition plan on home and community-based (HCB) settings. We are the only stakeholder agency that has provided comments on all previous versions of the transition plan, and as such we were thrilled to see most of our suggestions addressed in this third version. However, we have a few further concerns regarding this latest version, detailed below.

Accessibility to the General Public:

1. Tracking Changes. As previously stated in a recently submitted public comment letter (on conflict-free care coordination provider certification, dated 3-7-16), the Council is delighted that SDS has increased their outreach to the general public on regulation changes. Although we applaud SDS for holding a recorded webinar to walk the public through the latest version of the transition plan and take any questions and public comment, we believe this process would have been smoother if the version 3 document had visible "tracked changes." Version 2 of the transition plan clearly demarcated new text, edits, additions, and omissions using blue text,

underlining, and strikethroughs, which are all standard, accessible, and easily understood editing mark-ups. The current version 3 of the plan does not visually identify such changes, making it more difficult for waiver recipients to understand what is different about this latest version of the transition plan, which is already an extremely difficult document to digest. We suggest tracking changes in all future revised versions or, at a minimum, providing a separate “crosswalk” document that walks people through the new changes.

2. *Settings Transition Webpage.* On page 9 the Council is very pleased to see an expanded analysis of residential and non-residential settings, as was suggested in our previous two comment letters. We are also relieved to see the checklist was included in this version of the transition plan (appendix B, which was omitted from the version 2 plan that went out for public comment). However, page 11 is confusing for the public because it lists several items relevant to the Version 2 plan which are no longer easily accessible on the SDS website: it has been moved into the News Archives. The Council recommends that SDS create an entirely new page devoted to the transition on settings. Such a page would include all previous versions of the transition plan, a link to the Medicaid Final Rule, FAQ documents prepared by SDS, the provider self-assessment instrument, links to training webinars/PowerPoint presentations, and any other relevant information.

Clarify Language. The Council has further specific feedback that we wish to see incorporated into Version 3 before it is submitted to CMS. On page 7, the language “1915(c) waivers” is used when describing the purpose of the Interagency Settings Compliance Committee (ISCC). Because SDS is doing significant work towards transitioning to 1915(i) and (k) state plans that will cover many of our HCB services, we believe this language should be more generic to include such possible changes. If “1915(c) waivers” could be changed to “Home and Community-Based Services” throughout the document, this would mitigate potential future confusion.

Provider Self-Assessment. The Council is also pleased to see the expanded efforts to capture and validate provider information in the mandatory self-assessment survey (pages 12-15). However, we believe calling this a “survey” diminishes the importance of the self-assessment and implies that it is voluntary or a feedback tool. Referring to this tool as a “mandatory self-assessment” instead, connotes that providers are required to complete the instrument.

Classifying Settings Compliance. Council members agree that this self-assessment has excellent questions; however, we are a little unclear on the connection between provider responses and how SDS will be making compliance determinations based on those answers. Is there a scoring system that will be used to classify settings into the 4 categories as outlined on page 13? Page 19 of the transition plan states that a project will begin in July to amend regulations, based on federal settings requirements. As we stated in both of our previous comment letters on the transition plan versions, we strongly believe the state needs to clarify and define how compliance determinations on settings will be made as soon as possible. We were disappointed to find that SDS did not believe that the phrase, “the same degree of access as individuals not receiving Medicaid HCBS” needed to be defined when reviewing our past comments (as stated on page 25). We would like to restate that this definition does need to be stated in this third version of the transition plan before submission to CMS, and before the regulation project begins in July. As we also stated in our previous comment letters, some other states defined what it means to have the same degree of access as individuals not receiving Medicaid HCBS in their very first transition plan draft (i.e. Utah). That Alaska still does not have its decision-making system outlined is troubling for the Council because we are falling behind the work of other states.

Transitioning Recipients. We request that the transition plan include details about SDS’s relocation procedures when closure action is taken against a provider (pg. 18), since those procedures will be used to transition recipients from non-compliant settings. The current transition plan does not actually clarify any of its recipient relocation procedures.

Time Frames. This timeline includes a more substantial length of time for SDS to incorporate public comment into version 3 before it is submitted to CMS, a major prior issue for the Council in the past two plan versions. This timeline also indicates that initial remediation plans will be submitted to SDS by September 30, 2016 and that SDS will approve remediation plans in June of 2017 (pages 21-23). The Council is wondering why SDS expects a 9 month turn-around time for reviewing these plans.

Personal Freedoms. Personal freedoms are a very important topic for the Council, where parents and waiver recipients have told us that house rules limiting personal freedoms make them feel as though they are being treated like children. The Council is especially concerned with language on page 26 in response to our comment letter on version 2 of the plan. It is stated here that SDS is not in a position to affect assisted living home regulations regarding house rules to allow for personal freedoms; however, this is an absolute requirement of the final rule from CMS. The Council advises that SDS work with the

state offices that regulate licensing and facility regulations to be sure that Alaska is in compliance with this extremely important aspect of the final rule. It is stated elsewhere in the current plan that SDS will work closely with these offices to add settings assessments into their current site survey processes (pg. 17), so we ask that SDS leads the way to create changes to prohibit them from allowing house rules that restrict personal freedoms. It will be too cumbersome and discriminatory for residential facilities to implement personal freedoms only for those HCBS recipients while continuing to restrict the freedoms of their other residents. In the interest of inclusion and equality for all Alaskans with disabilities, we insist that state offices discontinue to allow house rules when licensing state and local assisted living homes. Truly inclusive residential settings, that have the same degree of access as individuals not receiving Medicaid HCBS, would not restrict the movements and personal freedoms of their residents. To this effect, the statutes [AS 47.33.060](#) on house rules and [AS 47.33.300](#) on residents rights will also need to be amended to comply with federal settings requirements. The Council would like to partner with SDS and other state licensing entities on outreach, education, and training for providers on inclusiveness, individual freedoms, and self-determination.

Employment. The Council was pleased to see plans for a new supported employment regulation on competitive and integrated settings (pg. 30). This is a great step towards integrating Alaska’s Employment First law into SDS regulation and the Council stands ready to assist with the regulation development process and gathering stakeholder feedback.

Collaborative Efforts:

1. ISCC. We would like to see the “Governor’s Council on Disabilities and Special Education” listed as a member organization in the ISCC (pg. 7). During the webinar on this plan, SDS staff indicated that the Governor’s Council would be representing waiver recipients and stakeholders, so we wish to see our agency specifically listed as a member organization of the ISCC.
2. Settings Compliance Monitoring. The transition plan states that the Governor’s Council will be trained to evaluate settings compliance and report issues of non-compliance through Central Intake for possible investigation or remediation with providers (pg. 18). However, the Council is not volunteering for such a role, nor are we allowed to accept such duties, as the DD Act prohibits us from being assigned duties by SDS, as the state DD agency ([SEC 124.c.5.K](#)). Please remove our agency from this list of partner agencies regarding ongoing monitoring. Instead, the

Council is well suited to offer assistance with outreach, training, and providing assistance to providers and families on compliance with the settings rule through partnerships with the Center for Human Development and the Disability Law Center.

3. Program Administrator Training. The Council noticed a correction that needs to be made on the bottom of page 21, where item “SDS develops Program Administrator training...” should have a date of “February 2016,” not “January 2016,” as Council staff were part of this webinar. We truly thank SDS for including us in their efforts to field-test the provider self-assessment training webinar. By strengthening our inter-agency collaborations, SDS is able to include stakeholder interests much earlier in the process.

The Council appreciates all of the work SDS has done to include the voice of the most vulnerable Alaskans. We truly appreciate the opportunities to both give comment and feedback on proposed regulations, and to provide input during the regulation formation process. As always, we will assist in any way that we can to improve the lives of Alaskans who experience intellectual and developmental disabilities.

Sincerely,



Dean Gates, Chair
Medicaid ad hoc Committee



Jeanne Gerhardt-Cyrus, Chair
Developmental Disabilities Committee &
FASD Workgroup