



TOBY DOUGLAS
Director

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
Governor

JAN 10 2012

Ms. Gloria Nagle, PhD, M.P.A.
Associate Regional Administrator
Division of Medicaid & Children's Health Operations
Centers for Medicare & Medicaid Services, Region IX
90 7th Street, Suite, 5-300 (5W)
San Francisco, CA 94103-6707

RE: California Bridge to Reform Demonstration (No. 11-W-00193/9) Amendment

Dear Ms. Nagle:

The State of California proposes to amend the Special Terms and Conditions (STC) of Waiver 11-W-00193/9, "California Bridge to Reform Demonstration," pursuant to STC paragraph 7. The proposed amendments would provide: an additional benefit to Seniors and Persons with Disabilities (SPD) who are enrolled in managed care under the terms of the demonstration project, and to those who are dually-eligible for Medicaid and Medicare (dual-eligibles); and a fee-for-service benefit for individuals in those counties that have not yet implemented managed care, and individuals who do not qualify for, or receive exemptions from, managed care.

The amendment would provide Community Based Adult Services (CBAS) to individuals who are Medi-Cal eligible, meet specified medical necessity criteria, and:

- Meet "Nursing Facility Level of Care A" (NF-A) or above; or
- Have a moderate to severe cognitive impairment, including moderate to severe Alzheimer's Disease or other dementia; or
- Have a developmental disability; or
- Have a mild to moderate cognitive disability, including Alzheimer's or dementia, and need assistance or supervision with two of the following: bathing, dressing, self-feeding, toileting, ambulation, transferring, medication management, or hygiene; or
- Have a chronic mental illness or a brain injury, and need assistance or supervision with either:

- Two of the following: bathing, dressing, self-feeding, toileting, ambulation, transferring, medication management, or hygiene; or
- One need from the above list and one of the following: money management, accessing resources, meal preparation, or transportation.

For additional detail on these requirements, please see the attached Settlement Agreement, Sec. XI "Eligibility for CBAS Services" (Attachment A).¹

Many of these individuals have been receiving Adult Day Health Care (ADHC) services under the State Plan. However, that service has been eliminated from the State Plan, effective February 29, 2011. **We ask that CMS act on the requested amendment as quickly as possible so that affected individuals can transition from ADHC to CBAS without a gap in service.** The State is requesting that this waiver amendment have an effective date of February 29, 2011. In order to secure prompt approval of the amendment, the State is prepared to work with CMS and to provide whatever information CMS requires.

The Amendment would also provide Enhanced Case Management (ECM) for members of the Settlement class who are not eligible for CBAS. For additional detail about who is included in the Settlement Class, please see the attached Settlement Agreement, Sec. VII (Attachment A).

Proposed Amendments

Managed Care Services Provided to Beneficiaries

The Settlement Agreement and Draft CBAS Standards of Participation (SOPs) set forth the services provided to SPDs and dual-eligibles enrolled in a managed care system within the State, and a fee-for-service benefit for individuals in those counties that have not yet implemented managed care, and individuals who do not qualify for, or receive exemptions from, managed care. Beginning not sooner than July 1, 2012, California requests that Attachment N be amended to add the following:

¹A lawsuit was filed against the Department of Health Care Services (DHCS) challenging the elimination of the Adult Health Care (ADHC) benefit. The plaintiffs and DHCS jointly filed a signed settlement agreement on December 1, 2011, with the U.S. District Court for the Northern District of California to resolve the case. The Court preliminarily approved the settlement on December 13, 2011, and there is a hearing scheduled on January 24, 2012 to consider final approval of the agreement.

Service	State Plan Service Category	Definition	Covered in GMC	Covered in Two-Plan	COHS
Community-Based Adult Services (CBAS), as defined the attached Settlement Agreement and the attached CBAS SOPs (Attachment B).	Services not covered under the State Plan	An outpatient, facility based service program that delivers skilled nursing care, social services, therapies, personal care, family/caregiver training and support, meals and transportation to eligible Medi-Cal beneficiaries. Eligible beneficiaries are those that meet specified medical necessity criteria and: <ul style="list-style-type: none"> • Meet "Nursing Facility Level of Care A" (NF-A) or above, and; or • Have a moderate to severe cognitive impairment, including moderate to severe Alzheimer's Disease or other dementia; or • Have a developmental disability; or • Have a mild to moderate cognitive disability, including Alzheimer's or dementia, and need assistance or supervision with two of the following: bathing, dressing, self-feeding, toileting, ambulation, transferring, medication management, or hygiene; <u>or</u> • Have a chronic mental illness or a brain injury, and either: <ul style="list-style-type: none"> ○ need assistance or supervision with two of the following: bathing, dressing, self-feeding, toileting, ambulation, transferring, medication management, and hygiene; or ○ one need from the above list and one of the following: money management, accessing resources, meal preparation, and transportation. 	X	X	X

Service	State Plan Service Category	Definition	Covered in GMC	Covered in Two-Plan	COHS
Enhanced Case Management (ECM), as defined the attached Settlement Agreement (Attachment A).	Services not covered under the State Plan	<p>A service consisting of those "Complex Case Management" and "Person-Centered Planning" services as defined below, and including the coordination of beneficiaries' individual needs for needed long term care services and supports, whether or not covered under the Medical program, and periodic in-person consultation with the beneficiary and/or his or her designees. As used here:</p> <ul style="list-style-type: none"> • "Complex Case Management Services" means the systematic coordination and assessment of care and services provided to a subset of managed care enrollees in 2-Plan and GMC counties who require the extensive use of resources and who need help navigating the system to facilitate appropriate delivery of care and services. • "Person-Centered Planning" is a highly individualized and ongoing process to develop individualized care plans that focus on a person's abilities and preferences; person-centered planning includes consideration of the current and unique bio-psycho-social and medical needs and history of the individual member, as well as the member's functional level, support systems, and continuum of care needs. 	X *	X *	X *

[*] ECM is available only to non-CBAS-eligible members of the Settlement Class.

Populations Included in the Demonstration

Ultimately, the State intends for CBAS benefit to be available only to those individuals who, by mandate or by choice, are enrolled in a managed care plan, with exceptions based on unavailability of, ineligibility for, or exemptions from managed care. However, in light of the need for accelerated implementation of the CBAS program and the fact that managed care is being introduced for SPDs on a rolling basis over a 12 month period that began on June 1, 2011, the State requests that the following language be added to STC VIII.B (78) to address how the benefit will be provided during the managed care transition process:

- c. Community-Based Adult Services (CBAS) will be provided as follows, after July 1, 2012:

i. **Delivery System.**

- 1) **Counties That Have Implemented Managed Care:** CBAS will only be available to eligible individuals enrolled in managed care, except as set forth in (3) below.
- 2) **Counties That Have Not Yet Implemented Managed Care:** CBAS will be provided as fee-for-service benefits to all eligible individuals.
- 3) **Individuals Who Qualify For CBAS But Don't Qualify for, or who have been exempted from, Managed Care:** CBAS will be provided as fee-for-service benefits.

ii. **Payment.** Due to the accelerated implementation of the CBAS program, the current capitation rates will not reflect the addition of the CBAS service. Therefore, CBAS will initially be treated as a carved out service from the contracts and rates. The State will remain responsible for the service and will make payments for claims directly to the providers through the fee-for-service claims systems. No sooner than July 1, 2012, responsibility for the payment for these services will transition to the managed care plan and the payment will be built into the capitation rate through our actuarial rate determination, at which time the plans will be at risk for the payments and be required to make the payments.

Until its incorporation as part of the capitation rate, CBAS services will be reimbursed at least the rate described below minus 10%, except in exempted Medical Service Study Areas which will receive \$76.27. According to the Settlement, "Plans are required to reimburse CBAS Providers at the prevailing CBAS reimbursement rate per day."

HCPCS Code	Description	a. Rate *
H2000	Comprehensive multidisciplinary evaluation	\$ 80.08
S5102	Day care services, adult; per diem	76.27
T1023	Screening to determine the appropriateness of consideration of an individual for participation in a specified program, project or treatment protocol, per encounter	64.83

Assessment. Beginning on March 1, 2012, CBAS shall be provided to individuals who are assessed to be eligible to receive CBAS services, as specified in the attached Settlement Agreement and Draft CBAS SOPs, individuals who have not yet been assessed by the Department of Health Care Services for eligibility for CBAS services, and individuals who have been determined to be ineligible for CBAS but for whom a care plan has not been developed and/or acted upon. Individuals who are determined to be ineligible for CBAS services will receive enhanced case management services – not CBAS services.

ADHC clients who do not meet CBAS eligibility criteria will receive information about their option to receive “Enhanced Case Management” and other services through DHCS or their managed care plan, as well as a notice informing them of the right to challenge the denial of CBAS eligibility. The ADHC center shall be asked to complete a Discharge Plan and provide a copy of the Discharge Plan to the Class Member and either DHCS or the managed care plan that serves the Class Member.

Managed care plans shall be required to include a social worker on their assessment team, either in-house or by contract. If the requested level of service is for continuation at the same level of service, the managed care plan may approve the request via a paper review of the level of service recommendation and any supporting documentation provided by the CBAS provider.

Any denial or reduction in a requested level of service shall occur only after a face-to-face review, using the process described in the Settlement Agreement, Section XI.A.3 (Attachment A).

Enhanced Case Management Services (ECM)

ECM will be provided to eligible individuals through managed care for those enrolled in managed care and through fee for services for those not enrolled in managed care. ECM is not available to the entirety of the SPD population, but rather only to those Settlement Class members who are not eligible for CBAS. The State requests that the following language be added to STC VIII.B(78) to address the inclusion of ECM in the SPD Benefits Package:

d. Enhanced Case Management Services (ECM) will be provided as follows:

i. **Delivery System.**

1. **For Individuals Enrolled in Managed Care:** ECM will be available through each eligible individual’s managed care plan.
2. **For Individuals Not Enrolled in Managed Care:** ECM will be provided as a fee-for-service benefit to all eligible individuals.

- ii. **Payment.** For those individuals who do not receive ECM through managed care, the State will remain financially responsible for the service. For those individuals receiving ECM through managed care, plans will be at risk for the payments and be required to make payments directly to ECM providers. Prior to July 1, 2012, the payment for ECM will be built into the monthly plan capitation rate through an actuarial rate determination.

Eligibility. Prior to March 1, 2012, as specified in the attached Settlement Agreement, ECM will be provided to individual members of the Settlement Class who have been assessed to be ineligible for CBAS services by the Department of Health Care Services.

Waiver Authority

We believe the existing waivers for freedom of choice, statewideness, and comparability can encompass the proposed amendment. To the extent necessary, we ask that our authority to operate under these waivers add the following sentence: "To enable the State to provide Community Based Adult Services to adults who are enrolled in managed care and, only in counties without a managed care plan or for those not eligible to enroll in managed care or who are granted an exemption from enrollment in managed care, on a fee-for-service basis."

Expenditure Authority

We ask that California be granted an additional expenditure authority to cover the CBAS services, which is not otherwise covered by the state plan.

Public Notice

As required by STC paragraph 7 and 59 Fed. Reg. 49249 (Sept. 27, 1994), these proposed changes have been shared publicly, as follows:

- On November 17, 2011, upon reaching settlement of the lawsuit that challenged the elimination of the ADHC optional benefit, DHCS issued a press release announcing the Settlement Agreement. See News Release, DHCS, State Announces Settlement of ADHC Lawsuit (Nov. 17, 2011), available at <http://www.dhcs.ca.gov/formsandpubs/publications/opa/Documents/11-07%20CBAS%2011-17-11.pdf>.
- On December 1, 2011, DHCS posted a copy of the Settlement Agreement on the DHCS website. See <http://www.dhcs.ca.gov/Documents/Darling%20v.%20Douglas%20Settlement%20Agreement.pdf>.

- On December 12, 2011, DHCS conducted a webinar for stakeholders to review the terms of the settlement agreement and respond to initial questions about CBAS implementation. Webinar material is available on the DHCS website. See http://www.dhcs.ca.gov/services/medi-cal/Documents/ADHC%20Transition/CBAS%20Stakeholder%20Webinar%2020111212_Final.pdf
- On December 13, 2011 and December 14, 2011, DHCS, in conjunction with the California Department of Aging (CDA), and ADHC center representatives, provided training for ADHC centers and the state nurses that will be conducting CBAS eligibility determinations per the settlement agreement, regarding CBAS eligibility requirements and the eligibility determination process. Training materials are available on the DHCS website. See <http://www.dhcs.ca.gov/services/medi-cal/Pages/ADHC/ADHC.aspx>
- On December 29, 2011, DHCS and CDA released the CBAS provider application and the proposed CBAS SOPs to all ADHC center providers and DHCS stakeholders. These documents are available on the DHCS website. See <http://www.dhcs.ca.gov/services/medi-cal/Pages/ADHC/ADHC.aspx>
- On January 4, 2011, DHCS and CDA held a webinar for stakeholders to discuss the CBAS provider application and proposed SOPs.

In addition, pursuant to the tribal consultation requirements of Section 1902(a)(73) of the Social Security Act, 42 U.S.C. § 1396a(a)(73), as amended by Section 5006(e) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 § 5006(e)(2)(A)(iii), 123 Stat. 115, 505 (2009), California will solicit advice on these amendments from Federally recognized Indian tribes, Indian health programs, and Urban Indian organizations in the State. On December 15, 2011, DHCS held a telephone conference with tribal organizations to explain in detail how the State will provide CBAS services. There were no comments received during the 14 day comment period.

Analysis of Budget Neutrality

The State estimates that the cost of providing this service to the CBAS eligible population will be approximately \$916.60 per member per month in fiscal year 2011-12 and would increase each year by 3.16%. The State estimates that the cost of providing enhanced case management services to the non-CBAS eligible population will be \$10.00 per member month. This additional cost will not cause the State to exceed budget neutrality as the expenditures for the CBAS eligible population, under both with and without waiver components, are estimated to be the same. The State projects a significant savings related to the non-CBAS eligible population. An updated and revised budget neutrality analysis is attached as Attachment C.

CHIP Allotment Neutrality Worksheet

There is no need for a CHIP Allotment Neutrality Worksheet, since the proposed changes do not affect children.

Evaluation Design

The State proposes to modify its draft evaluation design to evaluate the health outcomes provided by the CBAS program. In addition, there are data collection, reporting, and quality assurance requirements that DHCS must meet as part of the Settlement Agreement. See Settlement Agreement, Sec. XVI "Data Collection, Reporting, and Quality Assurance."

Technical Amendments to Special Terms & Conditions

In addition to the amendments related to the CBAS program described above, DHCS has included in this amendment proposal two additional attachments with requested technical amendments to the Special Terms & Conditions (STC). The detail and justification for these amendments can be found in the attachments:

- Attachment D: Proposed STC technical amendments previously submitted through the technical correction process.
- Attachment E: Additional proposed STC amendment to STC 115 related to monitoring budget neutrality.
- Attachment F: Additional proposed STC amendment to STC 23 b. and f. related to the required Access Study and Plan.

Thank you for your assistance. If you have any questions, please contact Brian Hansen of my staff at (916) 440-7418. We are happy to assist you and your staff in any way as you review the changes we are proposing.

Sincerely,



Toby Douglas
Director

Attachments