



March 1, 2018

Mari Cantwell, Chief Deputy Director Health Care Programs
Department of Health Care Services
PO Box 997413
Sacramento, California 95899

Re: Medicaid Managed Care Rates and In Lieu of Services in Coordinated Care Initiative
Counties

Dear Ms. Cantwell,

It is our understanding that the Department of Health Care Services (DHCS) is currently considering changes to the rate structure for Medi-Cal Long-Term Services and Supports (MLTSS) and Cal MediConnect plans in the Coordinated Care Initiative (CCI) counties to both address 1) the removal of In-Home Supportive Services (IHSS) as a managed care benefit; and 2) the extension of the duals demonstration from a three-year pilot to a five-year pilot. We write to encourage the Department to take this opportunity to implement a new rate structure that would further incentivize the provision of services in home and community based settings.

First, we encourage the Department to restructure rates that would allow plans to transition beneficiaries from skilled nursing facilities to a lower level care setting or into the community. While *Olmstead*¹ requires that states ensure that beneficiaries receive services in the most integrated setting appropriate to their needs, many beneficiaries residing in a skilled nursing facilities who could transition to lower levels of care, like a residential care facility for the elderly, remain institutionalized because the current rate structure does not adequately fund lower level care settings. We advocate for a policy and rate structure that allows managed care plans to pay

¹ *Olmstead v. LC*, 527 U.S. 581 (1999).

for support services these beneficiaries need at lower levels of care. Beneficiaries would pay their own room and board; plans would provide funding for support services that maintain health and wellness. These support services should be considered In Lieu of Services (see below), as they are provided “in lieu of” care in a skilled nursing facility.

Second, the Department must provide In Lieu of Services – currently described as Care Plan Options (CPO) services² under the CCI - to be included in the Rate Development Template (RDT). From the outset of the CCI, we advocated for the inclusion of additional home and community based services (HCBS) in the covered benefit package. A former health plan executive once noted that the difference between a covered and non-covered benefit in managed care is traditionally “a fairly bright line, and if it is not our service, if the service or product in question is not a benefit, then it is highly unlikely that managed care will provide it.”³ To a large extent this has been the experience thus far in the CCI.⁴

Today, not only are CPO services not included in the rates plans receive, but as currently structured, plans are actually disincentivized from offering CPO services. This is because the RDT does not include the investment plans make in these services, causing the plans’ rates to be reduced over time while increasing their costs.⁵ Ideally, ILOS/CPO services would be included in the covered benefit package. Short of that, the Department must include ILOS/CPO services in the plans’ RDT. Furthermore, the new Medicaid Managed Care rule specifically requires the inclusion of the utilization and actual costs of In Lieu of Services in setting the plans’ capitated rates.⁶ The provision of and inclusion in the RDT must apply to both Cal MediConnect plans and MLTSS plans.

Additionally, to ensure ILOS/CPO services are being delivered fairly, plans must be directed to track the kinds of services that are requested, needed, and most utilized. Plans must also be required to provide ongoing and meaningful notice and education to beneficiaries and their families to ensure that beneficiaries are fully informed of their home and community-based options.

² “Coordinated Care Initiative (CCI) Cal MediConnect Policy for Care Plan Option services (CPO services),” June 2013, available at <http://calduals.org/wp-content/uploads/2013/06/Demo-CPO-services-Paper-6.3.13.pdf>.

³ Bruce Chernof, The SCAN Foundation, “TSF Webinar: Managed Care 101 – Presenting the Fundamentals of Integrating Long-Term Services and Supports into a Managed Care Model,” Dec. 14, 2012.

⁴ See, University of California San Francisco and Berkeley, “*Provision of Home and Community Based Services through Cal MediConnect Health Plans*,” November 2017, available at http://www.thescanfoundation.org/sites/default/files/ucb_researchbrief_hcbs_final.pdf.

⁵ See, University of California San Francisco and Berkeley, “*The Impact of Cal MediConnect on Transitions from Institutional to Community-Based Settings*,” May 2017, available at http://www.thescanfoundation.org/sites/default/files/the_impact_of_cal_mediconnect_on_transitions_from_institutional_to_community-based_settings_may_2017.pdf.

⁶ 42 CFR § 438.3(e)(2)(iv).

Provision of ILOS/CPO services are instrumental in ensuring “successful community living” pursuant to *Olmstead*⁷ and avoiding hospitalization and institutionalization, and therefore, must be accordingly prioritized.

We strongly urge the Department to include these changes in the newly developed rate structure. Please feel free to reach out to us to discuss these recommendations in more detail.

Sincerely,

Justice in Aging

California Advocates for Nursing Home Reform

California Health Advocates

Disability Rights California

Disability Rights Education & Defense Fund

Health Consumer Alliance - *The Health Consumer Alliance (HCA) is a statewide collaborative of consumer assistance programs operated by community-based legal services organizations, which includes: Bay Area Legal Aid, California Rural Legal Assistance, Central California Legal Services, Greater Bakersfield Legal Assistance, Legal Aid Society of Orange County, Legal Aid Society of San Diego, Legal Aid Society of San Mateo, Legal Services of Northern California, Neighborhood Legal Services of Los Angeles County, the National Health Law Program, and the Western Center on Law and Poverty.*

⁷ *Olmstead* at 28.