
Home and Community-Based Services Waivers

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The history and current status of the Medicaid Home and Community-Based Services Waiver Program are presented. The article discusses the States' role in developing and implementing creative alternatives to institutional care for individuals who are Medicaid eligible. Also described are services that may be provided under the waiver program and populations served.

BACKGROUND

The growth of home and community-based services (HCBS) under Medicaid can be traced to the early 1980s when it was found that:

- A disproportionate percentage of Medicaid resources were being used for institutional long-term care (Davidson, 1980; Grannemann and Pauly, 1983; Holahan, 1975; Spiegel and Podair, 1975).
- Several studies documented that at least one-third of persons residing in nursing facilities that were Medicaid funded would have been capable of living at home or in community residential settings if additional supportive services were available (Fox and Clauser, 1980; Kraus, et al., 1978; Pegels, 1980; Weissert, 1986).
- A contributing cause of unnecessary use of Medicaid institutional care was an "institutional bias" in the Medicaid benefit and eligibility structure (Grannemann and Pauly, 1983; Holahan, 1975; Leonard, Brust, and Choi, 1989; Weissert and Scanlon, 1985).

- Residents in both nursing facilities and intermediate care facilities for the mentally retarded frequently reported an unsatisfactory quality of life (de Silva and Faflak, 1976; Gardner, 1977; Lakin and Hall, 1990; Scheerenberger, 1976).
- A number of court cases resulted in court orders to deinstitutionalize persons with developmental disabilities.¹

The HCBS waiver program was established by Section 2176 of the Omnibus Budget Reconciliation Act of 1981 and was incorporated into the Social Security Act (the Act) at Section 1915(c). Under the HCBS waiver program, States can elect to furnish under Medicaid, as an alternative to institutional care, a broad array of services (excluding room and board) that are not otherwise covered under the Medicaid program. Passage of this statute represented a first step towards recognizing that many individuals at risk of institutionalization can be supported in their homes and communities, thereby preserving their independence and bonds to family and friends, at a cost not higher than institutional care (Health Care Financing Administration, 1996).

The Act lists seven specific services that may be provided under the HCBS waiver program. They are:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health care services.
- Habilitation services.

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¹ *Kentucky Association for Retarded Citizens, Inc. v. Connecticut, 1982; Homeward Bound, Inc. v. Hissom Memorial Center, 1987; Garrity v. Gallen, 1981; Lynch v. Maher, 1981; Halderman v. Pennhurst State School and Hospital, 1981.*

- Respite care services (Health Care Financing Administration, 1996).

Although not specified in the Act, other services may be provided at the request of the State if approved by HCFA. Such services must be cost effective and necessary for waiver participants to avoid institutionalization. For example, these services may include transportation, in-home support services, meal services, special communication services, minor home modifications, and adult day care (Health Care Financing Administration, 1996). HCBS waiver services may be provided to individuals who are elderly and disabled, physically disabled, developmentally disabled or mentally retarded, or mentally ill. HCBS waiver services may also be targeted to individuals with a specific illness or condition, such as children who are technology-dependent or individuals with AIDS (Health Care Financing Administration, 1996). In the absence of the HCBS waiver these individuals would require the level of care offered in a hospital, nursing facility, or intermediate care facility for the mentally retarded.

States have a great deal of flexibility in designing their own unique HCBS waiver program(s). This enables a State to identify a specific population and target services to that population to meet the population's unique needs. Each waiver must be reviewed and approved by HCFA.

ADVANTAGES OF HCBS WAIVERS

As previously noted, the HCBS waiver program gives States the flexibility to develop and implement creative alternatives to institutional care for individuals who are Medicaid eligible. This flexibility is advantageous to the States as it allows States to tailor their programs to the specific needs of the populations they wish to serve. For example, under the HCBS waiver a State may:

- Provide services in the home or community as a cost-effective alternative to institutional care.
- Divert or prevent extended institutionalization of individuals.
- Target services to a specific group by waiving Section 1902(a)(10)(B) of the Act which relates to the comparability requirement.
- Limit services to a specific geographic area by waiving Section 1902(a)(1) of the Act which relates to the statewideness requirement.
- Request services not otherwise available under its Medicaid plan.
- Request an exception to the deeming rules under the Social Security Administration's Supplemental Security Income Program, thereby the eligibility determination for an individual in the community on an HCBS waiver is made using institutional versus community deeming rules.

The Medicaid HCBS waivers are an important tool for States to meet the requirements of the Americans with Disabilities Act (ADA) as defined by the U.S. Supreme Court in the *Olmstead v. L.C.* decision. In the *Olmstead* decision, the Court found that "unjustified isolation...is properly regarded as discrimination based on disability" in violation of the provisions of the ADA. The Court affirmed the policy that the ADA supports access to community living for persons with disabilities by obliging States to administer their services, programs, and activities "in the most integrated setting appropriate to the needs of the qualified individuals with disabilities." In addition, the Court found that institutionalization severely limits a person's ability to interact with family and friends, to work, and to make a life for himself or herself.

To help States comply with the Court's ruling, HCFA and the Department of Health and Human Services' Office for Civil Rights have begun working with States and the disability community toward the goals of promoting HCBS and honoring individual choice in service provision.

CURRENT STATUS

Since enactment in 1981, the HCBS waiver program has experienced significant growth. Estimated total Medicaid expenditures for the HCBS waiver program for 1998 were over \$9 billion for an estimated 606,953 participants (Harrington et al., 1999). States continue to renew existing HCBS waivers, as well as request new HCBS waivers. Presently, there are 250 approved waiver programs operating in 49 States. (Arizona provides similar services under the authority of a section 1115 demonstration waiver rather than a section 1915(c) waiver [Harrington et al., 1999].)

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