

HCBS Waivers - Section 1915 (c)

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States may offer a variety of services to consumers under an HCBS waiver program and the number of services that can be provided is not limited. These programs may provide a combination of both traditional medical services (i.e. dental services, skilled nursing services) as well as non-medical services (i.e. respite, case management, environmental modifications). Family members and friends may be providers of waiver services if they meet the specified provider qualifications. However, in general spouses and parents of minor children cannot be paid providers of waiver services.

States have the discretion to choose the number of consumers to serve in a HCBS waiver program. Once approved by CMS, a state is held to the number of persons estimated in its application but has the flexibility to serve greater or fewer numbers of consumers by submitting an amendment to CMS for approval.

APPLICATION & APPROVAL PROCESS

The State Medicaid agency must submit to CMS for review and approval an application for an HCBS waiver, and the State Medicaid Agency has the ultimate responsibility for an HCBS waiver program, although it may delegate the day-to-day operation of the program to another entity. Initial HCBS waivers are approved for a three-year period, and waivers are renewed for five-year intervals.

PROVISIONS WAIVED

Section 1902(a)(1), regarding statewideness. This allows states to target waivers to particular areas of the state where the need is greatest, or perhaps where certain types of providers are available.

Section 1902(a)(10)(B), regarding comparability of services. This allows states to make waiver services available to people at risk of institutionalization, without being required to make waiver services available to the Medicaid population at large. States use this authority to target services to particular groups, such as elderly individuals, technology-dependent children, or persons with mental retardation or developmental disabilities. States may also target services on the basis of disease or condition, such as Acquired Immune Deficiency Syndrome.

Section 1902(a)(10)(C)(i)(III), regarding income and resource rules applicable in the community. This allows states to provide Medicaid to persons who would otherwise be eligible only in an institutional setting, often due to the income and resources of a spouse or parent. States may also use spousal impoverishment rules to determine financial eligibility for waiver services.

PROGRAM REQUIREMENTS

Within the parameters of broad Federal guidelines, States have the flexibility to develop HCBS waiver programs designed to meet the specific needs of targeted populations. Federal requirements for states choosing to implement an HCBS waiver program include:

- Demonstrating that providing waiver services to a target population is no more costly than the cost of services these individuals would receive in an institution.
- Ensuring that measures will be taken to protect the health and welfare of consumers.
- Providing adequate and reasonable provider standards to meet the needs of the target population.
- Ensuring that services are provided in accordance with a plan of care.

OLMSTEAD & HCBS WAIVERS

In the 1999 Olmstead v. L.C. decision, the Supreme Court affirmed the right of individuals with disabilities to receive public benefits and services in the most integrated setting appropriate to their needs. The Olmstead v. L.C. decision interpreted Title II of the American with Disabilities Act (ADA) and its implementing regulations. Medicaid can be an important resource to assist states in fulfilling their obligations under ADA. The HCBS waiver program in particular is a viable option for states to use to provide integrated community-based long-term care services and supports to qualified Medicaid eligible recipients.

CURRENT STATUS

Forty-eight States and the District of Columbia offer services through HCBS waivers, and Arizona operates a similar program under section 1115 research and demonstration authority. There is no federal requirement limiting the number of HCBS waiver programs a state may operate at any

given time, and currently there are approximately 287 active HCBS waiver programs in operation throughout the country.

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