

# THE 2008 DISABILITY POLICY SEMINAR

THE ARC, AAIDD, AUCD,  
UCP AND NACDD

## FACT SHEET

---

### MEDICAID: LONG TERM SERVICES AND SUPPORTS

#### Background

Our nation faces a crisis in the availability of quality home and community based long term services and supports. The need for increased home and community services is expected to sharply increase with the aging of the baby boomers. The federal/state Medicaid system has borne the bulk of responsibility for meeting those needs, often after individuals and families have had to impoverish themselves in order to qualify. People with disabilities and their families have sought improved access to home and community services so that they may remain active and included in their own homes and communities. Many face long waiting lists and no real access to needed services and supports.

The new home and community based services option in the Medicaid program needs some amendments to better meet the needs of people with disabilities. Additional changes are necessary in the Medicaid program to ensure that community based services are a real choice for people with disabilities.

#### Home and Community-Based Services Option

The Deficit Reduction Act of 2005 (DRA) included a number of provisions affecting long term services and supports. A provision of key interest to people with disabilities is Section 6086, Expanded Access to Home and Community-Based Services for the Elderly and Disabled, which became effective on January 1, 2007. This new option is in Section 1915(i) of the Social Security Act.

Section 1915(i) establishes a new option for states to provide home- and community-based services (HCBS) without requiring that states use a waiver process. To add this new option to its state Medicaid plan, a state would have to file a Medicaid state plan amendment. The new option also requires states to establish stricter eligibility criteria (level of care) for institutional services than for community-based services. For the first time, a state will be able to offer HCBS services to people who would not otherwise qualify for the institutional services in that state.

While the new option has many good features, there are some limitations in the way it was drafted. Sec. 1915(i) allows states to provide some, but not all, of the services now covered under HCBS waivers. It also limits services to people with incomes below 150 percent of the federal poverty rate. Further, Sec. 1915(i) allows states to cap the number of people to be served under the new home and community services Medicaid option, to provide these services in limited areas of the state, and to maintain waiting lists for these services. Current HCBS beneficiaries who do not meet any new criteria established by the state in the future would have grandfathering protection for as little as only one year.

To ensure that the HCBS option can provide optimal coverage for home and community-based services, advocates are pushing for changes to achieve the following:

- Remove the authority for states to cap services and maintain waiting lists;
- Allow states to provide the full range of services that can currently be provided under the HCBS waiver (including other services approved by the Secretary);
- Remove the limit on coverage of people with incomes up to 150 percent of poverty and allow the full range of income eligibility allowed for people in facility-based settings; and
- Eliminate the states' ability to limit services to certain sections of the state.

#### The Community Choice Act

Senator Tom Harkin (D-IA) and Rep. Danny Davis (D-IL) introduced the Community Choice Act (S. 799; H.R. 1621). This legislation would amend Medicaid (Title XIX of the Social Security Act) to mandate state Medicaid plan coverage of community-based attendant services and supports for certain Medicaid-eligible individuals. States would receive an enhanced federal matching rate for meeting certain benchmarks and for serving people whose costs exceed 150 percent of average nursing home costs.

The support available under this bill would include services to assist in accomplishing activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing. ADLs cover eating, toileting, grooming, dressing, bathing, and transferring. IADLs include meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone and other media; and traveling around and participating in the community. Health-related tasks are defined as those tasks that can be delegated or assigned by licensed health-care professionals under state law to be performed by an attendant. Services also include assistance in learning the skills necessary for the individual to accomplish these tasks him/herself. Services must be provided in a home or community setting based on a written plan.

States would be required to establish a Development and Implementation Council to work with the state in developing and implementing the state plan amendment necessary in order to provide the services. The Council must have as a majority of its members people with disabilities, elderly individuals, or representatives of such individuals, and must collaborate with providers and advocates. Services must be made available statewide and must be provided in the most integrated setting appropriate for the individual.

### **Action Taken by Congress and the Administration**

The Senate Finance Committee held a hearing in September 2007 regarding home and community based services. The House Energy and Commerce Subcommittee on Health held a hearing in January 2008 which addressed the Community Choice Act and other long term services and supports issues. The Community Choice Act and the home and community services option issues were addressed in both hearings.

Senator Kerry is expected to introduce a bill soon that will address the issues regarding the Home and Community Based Services Option. Changes to the Sec. 1915(i) HCBS option could be addressed in a budget reconciliation bill if such a bill is authorized by the Budget Resolution for FY 2009.

### **Recommendations**

The 110<sup>th</sup> Congress should work with advocates to amend Sec. 1915(i) so that it will better address the needs of people with disabilities as outlined above. Members of Congress should co-sponsor and pass the Community Choice Act.

### **Relevant Committees**

Senate Finance Committee

House Energy and Commerce Committee (Subcommittee on Health)

For more information, please contact The Arc and United Cerebral Palsy Disability Policy Collaboration (202-783-2229), Association of University Centers on Disabilities (301-588-8252), American Association on Intellectual and Developmental Disabilities (202-387-1968), or National Association of Councils on Developmental Disabilities (703-739-4400).

2/19/08