



**New York StateWide Senior Action Council, Inc**

*Improving The Lives of Senior Citizens & Families in NY State*

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**THE AFFORDABLE CARE ACT  
HOME & COMMUNITY BASED SERVICES (HCBS)**

Traditionally, long term care was furnished almost entirely in nursing homes. However, in recent years, more and more people have been seeking long term care outside of the nursing home setting. Home and community-based long-term services (HCBS) refers to assistance with daily activities that generally helps people to remain in their homes or in less institutional settings than a traditional nursing home (such as assisted living).

There are a variety of types of HCBS programs. Depending upon the program, a variety of care may be covered, including activities of daily living (ADLs) such as bathing, dressing, and using the toilet, or instrumental activities of daily living (IADLs) such as shopping, managing money or medications, and doing laundry. In addition to the types of services covered, HCBS programs can vary in who may qualify as a beneficiary. For instance, a specific HCBS program may limit coverage based on an individual's income level or geographic location.

**Following are the major developments in HCBS resulting from the Affordable Care Act.**

**Community First Choice Option [Medicaid 1915(K)] (§ 2401)**

This is a new program established under the Affordable Care Act (ACA) that permits states to provide home and community based services to all consumers who are eligible for Medicaid, as long as their incomes do not exceed 150% of the poverty level, and as long as they meet the state functional eligibility requirements for institutional care. It will provide a six percent enhanced federal payment under Medicaid for certain types of home and community-based services and supports.

The option is designed to expand on existing personal care services, including consumer-directed services and home and community based service waiver programs. In order for states to be approved under the program, states must offer the program statewide, regardless of age, disability, or type of services required. Assistance in this option includes: activities of daily living (ADLs); back-up systems, such as beepers; and training for hiring (and firing) assistants.

The Community First Choice option expands on New York's current Consumer-Directed Personal Assistance Program (CDPAP), in which Medicaid patients are supported in their desire

to live in their community by specifying the types of care and support they require. CDPAP is a statewide Medicaid program that allows the "consumer" or the family member, friend or guardian to direct the hiring, training, supervising, and – if need be – terminating the employment of persons providing the services..

#### State Balancing Incentives Payment Program (§ 10202)

This four year-long program under the Affordable Care Act provides enhanced federal matching payments (FMAPs) for states that increase the amount of Medicaid long-term services and supports money that goes toward home and community-based services. States can receive this money if they have Medicaid HCBS programs in place, such as HCBS waivers and self-directed personal assistance services. States that are eligible and do apply must fulfill certain consumer-oriented requirements in order to receive funding. First, they must implement a single entry point system (also known as "No Wrong Door") for the consumers across the state; a standardized assessment for eligibility for HCBS in Medicaid; and conflict-free case management services. Second, they must meet one of two thresholds for Medicaid long-term care spending on HCBS. If they spent less than 25% of this budget on HCBS in 2009, they must reach 25% by October 1, 2015. If they spent more than 25% but less than 50% in 2009, they must reach 50% by October 1, 2015. Finally, states have to implement certain HCBS services, based on a person-centered plan of service and under an agency-provider or other model. In other words, the recipient or recipient's representative manages his or her attendant services to the maximum possible extent. The states must maintain the HCBS eligibility requirements that they had as of December 31<sup>st</sup>, 2010.

For states that do participate, Medicaid recipients who are already eligible to receive HCBS in Medicaid through, for example, waiver services, Personal Care Services, or through the HCBS State Plan Option (described below), may receive the expanded coverage in the State Balancing Incentives Payment Program.

This program becomes available October 1<sup>st</sup>, 2011. New York currently meets the eligibility requirements described above (and already has a Single Entry Point in place, called NY Connects), but it is unclear whether New York intends to apply for the program.

#### Spousal Impoverishment for HCBS (§ 2404)

Under the Affordable Care Act, if a spouse is receiving long term care in an HCBS program, the state must allow the other spouse to keep a certain amount of income and assets without affecting the Medicaid eligibility of the spouse needing care. This program goes into effect in 2014 and lasts for five years. By including spousal impoverishment protections in HCBS in Medicaid, this program eliminates the need to put the spouse requiring care in a nursing home to prevent the other spouse from becoming impoverished.

Traditionally, when one member of a couple enters a nursing facility or other medical institution and is expected to remain there for at least 30 days, the state is required to protect the other member of the couple from impoverishment through income and asset protections.

When the couple applies for this protection, an assessment of their combined resources is made and used to determine the Spousal Share, which is one-half of the couple's combined resources. States are not required to implement this program under the Affordable Care Act, but it becomes an option for them.

On April 8<sup>th</sup>, 2010, the Centers for Medicare and Medicaid Services (CMS) approved a demonstration group in New York called the Home and Community Based Expansion Program (HCBS Expansion Program). For several years, CMS had done away with the spousal impoverishment protection under the Lombardi waiver or Long Term Home Health Care Waiver (LTHHCW). Under this program, however, New York can continue to use post eligibility spousal impoverishment rules for certain medically needy individuals enrolled in or applying for the LTHHCW.

#### Money Follows the Person Rebalancing Demonstration (§ 2403)

This program was first implemented in 2005 as part of the Deficit Reduction Act of 2005. The Affordable Care Act extends it another five years, until 2016, and allows states to provide assistance to nursing home residents who want to leave the nursing home to transition back to their homes or another community based setting. The program allows for both assistance with transition and ongoing care services in the community. States that facilitate transitions from institutional to community-based care receive FMAP funding, which they must channel into their Long Term Care services to expand community-based options. By reducing the time requirement for nursing home residency, the program will allow more people to be eligible for HCBS in Medicaid sooner. They may also make a smoother transition from institutionalized care to care in the community.

In order to be eligible for the program, participants must be enrolled in Medicaid, and must have resided in a Nursing Home for at least 90 consecutive days. This requirement has been reduced, under the ACA, from 180 days.

New York was awarded a small amount of grant money to implement this program in 2010. The state has indicated its intent to use the FMAP funding for certain initiatives that will facilitate transition to HCBS. Among these initiatives are: improved communication with nursing home residents regarding the transition; creating a Housing Task Force to address housing obstacles to transition; and a program to loan assistive devices, through a partnership with Technology Related Assistance for Individuals with Disabilities.

#### HCBS State Plan Option Changes [Medicaid 1915(i)] (§ 2402)

This option, under the Affordable Care Act, affords flexibility to states to expand their HCBS benefits via state amendment rather than waiver. States may pay for home care for individuals with income up to 150% of the federal poverty level, who would otherwise be in nursing homes. It also allows states to offer eligibility for the HCBS waiver to people with incomes up to 300% of Supplemental Security Income. They may offer targeted services, approved by the Centers for Medicare and Medicaid, to specific populations for the first five years of the program. The option also protects individuals by keeping them in the program even if a state

changes its income or need-based eligibility levels. Finally, states can no longer set a limit on the number of people eligible for the program (or create a wait-list) and must administer it state-wide. States have been limited, until now, by the income restrictions for eligibility. The new options offered by this program allows more people to participate, protects people's eligibility should the program change; and aligns HCBS in Medicaid with general Medicaid (non-HCBS) state plan requirements. This program went into effect October 2010.

It is important to note that this is a state Medicaid plan amendment, rather than a waiver. Under a waiver, a state must show that Medicaid costs will not increase due to proposed changes, otherwise known as achieving budget neutrality. Medicaid 1915(i), as an amendment, does not require budget neutrality. While this makes it easier for states to adopt the program, the elimination of the eligibility requirement makes the program less appealing. New York has not yet implemented this program.

#### Aging and Disability Resource Centers (§ 2405)

This program provides funding through grants, amounting to \$68 million, in the Affordable Care Act, to states to help them develop their state and local aging and disability programs. The grants are meant to help states, territories, tribal and community-based organizations better equip seniors, individuals with disabilities, and caregivers to make decisions about their health and long-term care options. The funds will be targeted at the following initiatives with regard to these individuals: understanding their Medicare and Medicaid benefits; navigating options for long term care, including community-based services; and easing the transition from institutionalized care back home. New York has recently eliminated NY Connects, its Aging and Disability Resource program.

#### Co-Pays for Duals (§ 3309)

As of April 2011, under the Affordable Care Act (as implemented by CMS), individuals who belong to Medicare Advantage and section 1876 cost plans will no longer have to pay co-payments or other cost-sharing for many products and services. These include Medicare-covered in-network preventive services, chemotherapy administration, renal dialysis, skilled nursing care, and the cost of drugs for dual eligible Medicare-Medicaid patients (mostly the disabled) who receive care in the home or community rather than an institution.

#### Resources for Further Information:

Families USA, "Health Reform Provisions that Expand Access to Home-and Community-Based Services (HCBS)," In *Understanding the New Health Reform Law*. September 2010,  
<http://www.familiesusa.org/assets/pdfs/health-reform/Long-Term-Services-Expanding-Access.pdf>.

Corporation for Supportive Housing, "Summary of the Improved 1915i Medicaid Home and Community Based State Plan Amendment Option," December 2010,  
[http://documents.csh.org/documents/policy/HCBS\\_fact\\_sheet\\_2010.pdf](http://documents.csh.org/documents/policy/HCBS_fact_sheet_2010.pdf).