



**NATIONAL ASSOCIATION
OF STATE HEAD INJURY
ADMINISTRATORS**

NASHIA Celebrates the 22nd Anniversary of the Olmstead Decision

Learn About Medicaid Resources Available for HCBS for Persons with Brain Injury

Dear NASHIA Member,

Yesterday, June 22, marked the the 22nd anniversary of the Olmstead Decision handed down by the U.S. Supreme Court on June 22, 1999. This landmark decision recognized that people with disabilities, including individuals with brain injury, and older Americans, should have community options to meet their needs for long-term services and supports (LTSS). Lawsuits have been brought in a few States on behalf of individuals with brain injury living in institutional settings that have resulted in the development of community alternatives for individuals with brain injury who are Medicaid eligible (e.g., Massachusetts, Maryland, North Dakota).

To help States implement community alternatives, the federal government has funded initiatives to re-balance and increase community options for LTSS of choice. This includes the American Rescue Plan of 2021, which authorized a temporary 10% increase in FMAP (Federal Medical Assistance Percentages) to supplement existing Medicaid home-community-based services (HCBS) waiver and State Plan services that may have been impacted by the pandemic. Read more about this below and how two States are including activities to enhance and expand brain injury HCBS in their spending plans.

The Money Follows the Person (MFP) Demonstration Grant program, which provides enhanced federal funding for Medicaid services for beneficiaries who transition from institutions to the community, has also been used by States to transition individuals with brain injury who are Medicaid eligible from living in nursing home settings to community living. Read below to learn about MFP, as well as other Medicaid HCBS State Plan options that can support people with a brain injury to live in the community.

To learn more about ensuring that Medicaid initiatives in your State address the needs of individuals with brain injury, you may want to invite Medicaid representatives to your advisory board/council meetings; attend public forums sponsored by the State Medicaid agency; partner and collaborate with other disability councils and associations who have similar issues; and to educate policymakers how about Medicaid can be providing needed HCBS to individuals with brain injury.

Relief Bill Offers Enhanced FMAP for HCBS

ARP Provides Enhanced FMAP for State Plan and Waiver HCBS

On March 11, 2021 President Biden signed the American Rescue Act (PL 117-2), which Section 9817 authorized 10% increase in FMAP (Federal Medical Assistance Percentages) to supplement, not supplant existing Medicaid home-community-based services (HCBS) waiver and State Plan services, recognizing the disproportionate impact the pandemic has had on people with disabilities. Services eligible for the increased match are all HCBS authorized by a State Plan or waiver, as well as, home health care, personal care, case management, rehabilitative services and other services that may be specified by the Department of Health and Human Services (HHS). This is a temporary enhanced rate available from April 1, 2021 – March 20, 2022. Spending plans were due June 12.

A May 13 [guidance](#) from the Centers for Medicare and Medicaid Services (CMS) to the State Medicaid Directors explains that to meet this requirement, States must (1) maintain their HCBS eligibility standards, benefits (including amount, duration, and scope), and provider rates in effect on April 1, 2021; and (2) use the new funds to enhance, expand, or strengthen HCBS.

A recent KFF publication, "[Potential Impact of Additional Federal Funds for Medicaid HCBS for Seniors and People with Disabilities](#)," provides examples of activities that would be eligible, such as to:

- Facilitate COVID vaccine access, e.g., help with making vaccine appointments, transportation, in-home options;
- Reduce waiting lists; increase the number of slots;
- Provide specific services related to COVID-19 impact on HCBS, such as assistive technology; mental health and substance use disorder treatment; and rehabilitative services to regain skills lost during the public health emergency;

States Include Brain Injury HCBS Programs in Their Spending Plans

NASHIA is collecting information regarding how States are including brain injury HCBS programs and benefits in their spending plans to implement the provisions of the American Rescue Plan. If you have information to share, please send to publicpolicy@nashia.org. The following highlight spending plans of two States:

California's proposed ARP plan, the "Comeback Plan," includes \$10 million in their [spending plan](#) for enhanced federal funding to expand provider capacity with regard to the Department of Rehabilitation's (DOR) Traumatic Brain Injury (TBI) Program, which provides five core services designed to increase independent living skills to maximize the ability of individuals with TBI to live independently in a community of their choice. State law requires that 51% of the individuals served in the DOR TBI program must be Medical recipients.

The HCBS Expanding TBI Provider Capacity Proposal will expand six existing TBI sites and stand up six new sites in alignment with transition and diversion from being homelessness or institutional services through community reintegration, personal care service, supported living services, and other supportive services to improve functional capabilities of individuals with TBI in unserved/underserved areas.

Vermont's plan for use of the increased FMAP includes increasing the Brain Injury Program (BIP) provider rates, which will be a 3% increase in the Medicaid reimbursement rates. This funding will strengthen these essential HCBS providers by supporting employee recruitment and retention and are intended to be sustained through payment rates past the funding period .

The [Vermont's Proposal to Enhance, Expand, and Strengthen HCBS under the Medicaid Program](#) outlines several other areas for improving and enhancing HCBS services across populations that will also

- Build no wrong door systems, e.g., toll free phone lines, automated screening and assessment tools;
- Increase and expand services and add new populations; and
- Engage in worker recruitment and retention.

apply to the BIP, such as to strengthen assessment and person-centered planning process and improving care coordination and case management.



What is the Olmstead Decision?

On June 22, 1999, the United States Supreme Court ruled in *Olmstead v. L.C. that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA)*, which prohibits public entities, including State and local governments, from discriminating against "qualified individuals with disabilities" by excluding them from services and activities due to their disability.

Does the Olmstead Decision Impact Individuals with Brain Injury?

Yes. Under the ADA, a person with a disability is defined as a person: who has a physical or mental impairment that substantially limits one or more major life activities; who has a history or record of such an impairment; or who is perceived by others as having such an impairment.

Is Olmstead Limited to Residential Facilities?

No. Cases have been filed with regard to individuals with disabilities in sheltered workshop settings, facility-based day programs, and segregated educational program for students with behavior-related disabilities. Settlement agreements have been made accordingly to provide community alternatives, such as supported employment services in lieu of sheltered employment.

MFP Program Transitions People to Community Living

A May 26, 2021, [report](#) to Congress prepared by the Congressional Research Service provides a historical overview of the Money Follows the Person Rebalancing Demonstration Program (MFP) which is a competitive grant program available to States to transition Medicaid participants who reside in institutional settings that provide long-term services and supports (LTSS), such as nursing facilities, into community-based settings. The program was first enacted in 2006 and has been extended with additional mandatory funding over time.

Congress last extended the program in the Consolidated Appropriations Act of 2021 (P.L. 116-260) through September 30, 2021, and appropriated \$450 million in federal funding for each of FY2021, FY2022, and FY2023. CMS has authority to make grant awards to States through FY2023 for any appropriated funds. States who do not currently participate in the MFP program may be eligible. State grantees receive an enhanced federal match (FMAP) for certain HCBS expenditures and higher than usual payments for other MFP services for up to 12 months after transition.

Several States have taken advantage of this opportunity to transition individuals with brain injury from nursing homes to community living.



Other Medicaid State Plan HCBS Options . . .

To comply with the Olmstead Decision, States may offer Home and Community

1915(k): Community First Choice (CFC) Established by the Affordable Care Act, the

Based Services (HCBS) as part of their State Plan. These options include:

1915(i): State Plan HCBS Option

States can offer a variety of services under a State Plan Home and Community Based Services (HCBS) benefit. States can:

- Target the HCBS benefit to one or more specific populations.
- Establish separate additional needs-based criteria for individual HCBS.
- Establish a new Medicaid eligibility group for people who get State Plan HCBS.
- Define the HCBS included in the benefit, including State- defined and CMS-approved "other services" applicable to the population.
- Option to allow any or all HCBS to be self-directed.

North Dakota included persons with brain injury in its 1915(i) plan. Services include supports for housing, employment, education, transitions out of homelessness or institutional living, and peer support.

1915(j): Self-Directed Personal Assistant Services

Self-directed services refer to personal care and related services provided under the Medicaid State plan and/or section 1915(c) waivers the State already has in place. People enrolled in 1915(j) can:

- Hire legally liable relatives (such as parents or spouses).
- Manage a cash disbursement.
- Purchase goods, supports, services, or supplies that increase their independence or substitute for human help (to the extent they'd otherwise have to pay for human help).
- Use a discretionary amount of their budget to purchase items not otherwise listed in the budget or reserved for permissible purchases.

"Community First Choice Option" allows States to provide home and community-based attendant services and supports to eligible Medicaid enrollees under their State Plan. States receive an additional 6% FMAP for services.

Oregon, which refers to the plan as the "K Plan" or "K Option," is able to cover a range of HCBS to assist individuals with activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related related tasks. While this option cannot target certain populations, Oregon does provide HCBS for individuals with TBI complex needs that meet eligibility requirements.

Resources:

* "Funding State Traumatic Brain Injury Programs: A Primer on State Brain Injury Trust Fund and Medicaid Home and Community-Based Services (HCBS) Programs," prepared by NASHIA for the Administration for Community Living TBI State Partnership Grant Workgroup on Waivers and Trust Funds, which is available on NASHIA's [website](#).

* Centers for Medicare and Medicaid Services HCBS Plan Options [website](#)

* Medicaid Home and Community-Based Services Enrollment and Spending, [Issue Brief](#), KFF, Feb. 2020



