



NATIONAL ASSOCIATION
OF STATE HEAD INJURY
ADMINISTRATORS

NASHIA Celebrates the 23rd Anniversary of the Olmstead Decision

Correction: HCBS Settings Rule Deadline for Compliance is March 17, 2023

Dear NASHIA Member,

On June 22, 1999, the U.S. Supreme Court handed down the Olmstead Decision recognizing 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, and North Dakota).

Since the Olmstead Decision, Congress and the federal government have funded and implemented several program incentives to help States expand their community options for LTSS. Most recently, the American Rescue Plan Act of 2021 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 -- which recently the funding has been extended to March 31, 2025. Read more about this below and how States are including activities to enhance and expand brain injury HCBS in their spending plans.

Meanwhile, the deadline for State compliance of the 2014 HCBS Settings Rule is **March 17, 2023**. The "settings rule" came about to ensure States were spending HCBS designed for community services in lieu of institutional settings. To comply, States are to develop a State Transition Plans (STP) to assure that providers are meeting characteristics as intended. While States should be able to assure the Centers for Medicare and Medicaid Services (CMS) that providers meet the "settings rule" by the extended deadline, [a State may submit a Corrective Action Plan to request additional time if related to the direct care workforce crisis due to the pandemic](#). CMS strongly encourages all States that do not currently have final STP approval to ensure submission of a draft STP for CMS review no later than July 31, 2022. You may review your State's plan(s) [here](#).

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/stakeholder meetings sponsored by the State Medicaid agency; partner and collaborate with other disability councils and associations who have similar issues; and to educate policymakers as to how Medicaid can be providing needed HCBS for individuals with brain injury. The State Medicaid agency includes stakeholder input in their ARP spending plans, as well as amendments to their State Plans and waiver applications.

Relief Bill Offers Opportunities for Persons with Brain Injury Needing HCBS

CMS Extends ARP Spending Deadline

On June 3, 2022, the Centers for Medicare & Medicaid Services (CMS) notified States that they now have an additional year — through March 31, 2025 — to use funding made available by the American Rescue Plan (ARP) to enhance, expand, and strengthen home- and community-based services (HCBS) for people with Medicaid who need long-term services and supports. [Section 9817 of the American Rescue Plan](#) provides States with a temporary 10 percentage point increase to the federal medical assistance percentage (FMAP) for certain Medicaid expenditures for HCBS. States originally had a three-year period — from April 1, 2021 through March 31, 2024 — to use the available increased FMAP on activities to enhance, expand, or strengthen HCBS in Medicaid. The additional year, however, will allow Medicaid beneficiaries to remain in the setting of their choice — whether it is their home or another setting — and remain a valued part of their communities.

State ARP Spending Plans and Brain Injury

States are expanding HCBS using various federal statutory authorities, such as section 1915(c) waivers, State Plan Amendments, or section 1115 demonstrations; implementing pilot programs; implementing efforts to reduce waitlists, increase access to services, and/or exploring new service models for individuals with complex conditions. Spending plans often include proposals that apply to all Medicaid HCBS programs across the board, such as provider increases for all HCBS programs, including HCBS programs for individuals living with brain injury.

Below are examples of States' spending plans that specifically address Medicaid HCBS for persons living with brain injury. Most of the information is taken from the initial spending plan that was submitted by States a year ago, with some information taken from 2022 quarterly updates submitted by States. You may view additional information on the CMS [website](#), including an infographic of how States are spending the enhanced match. If you have corrections, additions or updates, please do not hesitate to send to publicpolicy@nashia.org.

Direct Support Staff Recruitment and Retention

The **Maine** Department of Health and Human Services (DHHS) announced in April 2022, it planned to award \$11 million in federal funds to HCBS providers early this summer, of which \$5 million to HCBS providers is to support their compliance with federal and State rules designed to ensure that individuals have access to and benefits of community living as people without disabilities, including community and work supports for people with brain injury. The biennial and supplemental

This would be an operational change rather than addition of services or change in eligibility of these populations.

Rhode Island will increase and diversify services to individuals with TBI/ABI within their community of choice in lieu of out of State placements. **Rhode Island** also proposed to establish an assistive technology fund for waiver participants, including individuals with brain injury, with a one-time purchase of assistive devices to address impairments in memory, abstract thinking, executive

budgets for fiscal years 2022 and 2023 invested \$159.1 million to increase MaineCare rates for HCBS waiver services for older adults, people with disabilities, and persons with brain injury.

Georgia is to increase reimbursement rates and specialized payments for HCBS waiver programs, including the Independent Care Waiver, which serves individuals with brain injury.

Iowa proposed provider payments to assist qualified HCBS providers to fund recruitment and retention of direct support professionals.

West Virginia is to increase TBI waiver rates by 50% to be passed on to direct-care workers in the form of compensation increases, as well as other incentive, which may include retention bonuses, hiring bonuses, raise in wages, increased benefit packages and other inducements. In addition to rate increases, the State intends to expand Environmental Accessibility Adaptation (EAA) under the TBI waiver program.

TBI/ABI Training

Connecticut plans to provide training and workforce development for ABI and other waiver providers. Training sessions are to include behavioral issues; independent living skills training; substance use; and Certification of Brain Injury Specialists (CBIS) training. The State is planning to develop a sustainability plan, such as train-the-trainer model and self-guided web-based curricula.

Iowa's spending plan includes funding to purchase provider training modules and content which will include such topics as serving individuals with brain injury. Grants for HCBS providers must be used to cover costs related to training and education that is expected to lead to career advancement with the provider or in the HCBS field. Potential uses of scholarship funding include Certified Brain Injury Specialist (CBIS) certification.

Caregiver Support

Indiana will provide training for caregivers of TBI Waiver participants. Training mentors will also support caregivers in uplifting the individual's voice and fostering self-determination.

Building TBI Provider Capacity and Services Expansion

functioning, task sequencing, motor, and/or adaptive behavior, which would allow for increased independence.

The **New Hampshire** spending plan includes a "Club House-Like Model" Pilot to provide greater opportunity for psychosocial rehabilitation for the Acquired Brain Disorder (ABD) and/or TBI to support employment, housing tenancy, quality of life, and a higher level of wellness and functional status. The estimated pilot is to support 12 members and expected to serve up to 25.

Iowa proposes to develop one or more pilots to serve children with neurobehavioral needs related to brain injury in a residential setting to avoid out of State placement and hospitalization. This service will be delivered in community-based settings. With regard to the long-term, the plan is for the pilot to be adopted under the State Plan Community-based Neurobehavioral Rehabilitation services. After age eighteen, children would transition to the HCBS BI Waiver Supported Community Living (SCL) service or to the residential community-based neurobehavioral residential service for adults, if the individual requires additional treatment to prepare for transition to SCL.

California's spending plan expands the capacity of the Department of Rehabilitation's (DOR) TBI Program of six existing TBI sites and to award up to six additional TBI sites in unserved/underserved areas to increase independent living skills to maximize the ability of individuals with TBI to live independently in a community of their choice.

Infrastructure for LTSS Redesign

Texas proposes to develop critical infrastructure to support the operation of a pilot program to inform the future transition of 1915(c) waivers to managed care. The pilot will test the delivery of LTSS through managed care, including for people with TBI that occurred after age 21. Funds will be used for information technology system changes needed to start the pilot, automation of a person-centered assessment, and automation of a service planning tool. This project is to be completed by August 31, 2022.

Iowa is requesting a portion of funds to address gaps or barriers to access and quality as part of the system evaluation. Iowa plans to provide assistance with the waiver application process to ensure people are applying for the

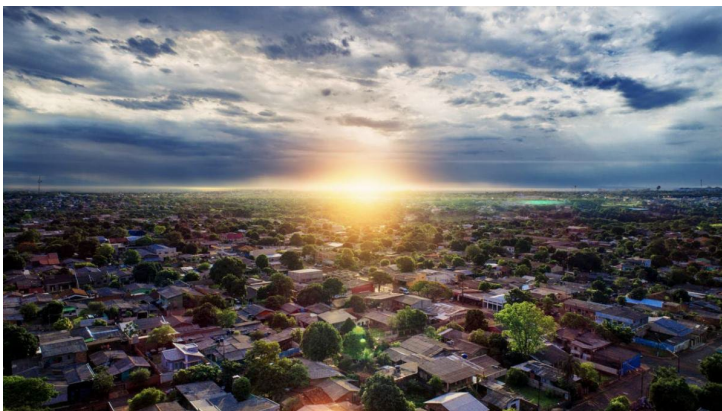
North Carolina is prioritizing the joint expansion of waiver slots and reduction of waitlists for four of Medicaid's 1915(c) HCBS programs that include the TBI waiver.

The Intellectual and Developmental Disabilities (I/DD) Unified Innovations and TBI Waiver Waitlist project seeks to develop a State waitlist database for persons with I/DD and survivors of TBI services for both State operated and funded services and Medicaid waiver-funded services to understand the demographics of people who require services and may shift between programs.

correct waiver based on their needs and assist with care coordination and referral to service tasks as needed.

The intent is to provide an intake function, single point of entry, appropriate waiver application, obtaining the necessary documentation to support level of care (LOC), and connecting to other DHS services such as in home health related care (IHHR), childcare assistance, supplemental nutrition benefits and rental assistance etc.

HCBS Settings Rule Deadline is March 17, 2023



State compliance of the 2014 Home and Community-Based (HCBS) settings rule is **March 17, 2023**. The 2014 rule established requirements for HCBS settings in Medicaid HCBS programs operated under sections 1915(c), 1915(i), and 1915(k) of the Medicaid law. The rule creates a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics. Initially, States were to submit a Statewide Transition Plan (STP) to the Centers for Medicare and Medicaid Services (CMS) by March 17, 2015. CMS extended the timeframe for compliance requirement to 2017 due to reform efforts within States, then to March 17, 2022, and now the deadline is March 17, 2023.

The State Transition Plan is to provide assurances that individuals receiving HCBS Waiver services have the same degree of access and choice as individuals not receiving Medicaid HCBS Waiver services. Prior to submitting their plans to CMS, States are expected to make them available for public comment and incorporate public feedback. States have flexibility in how they evaluate settings and they must establish in their STP how they will continue overseeing the settings for ongoing compliance after the transition period.

Qualities that HCBS settings should have to promote community integration based on an individual's needs, as indicated in the person-centered service plan are:

- **Integrated** in and support full access of individuals receiving Medicaid HCBS to the greater community;
- **Selected by the individual** among a variety of settings;
- **Ensure individual rights** of privacy, dignity and respect, and freedom from coercion and restraint;
- **Optimize individual autonomy** in making life choices including activities of daily living, environment, and with whom to interact; and
- **Facilitate individual choice** in services and providers.

If a residential setting is provider-owned or controlled, it must:

- **Consist** of a specific, physical place that can be owned, rented, or occupied under a legally enforceable agreement, which provides

CMS implemented the “heightened scrutiny” process to allow States to justify why certain settings should be eligible for continued participation in Medicaid despite what might be considered institutional characteristics. Settings that may be subject to heightened scrutiny include those located in a public or private institutional building, in a building adjacent to or on the grounds of a public institution, or those with other characteristics that have the effect of isolating individuals who use HCBS from the broader community.

A State may submit a Corrective Action Plan to request additional time if related to the direct care workforce crisis due to the pandemic. However, CMS strongly encourages all States that do not currently have final STP approval to ensure submission of a draft STP for CMS review no later than July 31, 2022.



the same responsibilities and protections from evictions that tenants have under the laws of the jurisdiction;

- **Give individuals privacy** in their sleeping or living unit;
- **Provide** individuals with freedom and support to control their schedules and activities, including having food available at any time;
- **Allow individuals to have visitors** of their choice at any time;
- **Be physically accessible** to the individual; and
- **Support modifications** of the first four conditions above with an assessed need which is justified and documented in the person-centered service plan, which must also contain additional information regarding this modification.

[Visit our website for resources.](#)

The National Association of State Head Injury Administrators assists State government in promoting partnerships and building systems to meet the needs of individuals with brain injuries and their families.

Support States. Grow Leaders. Connect Partners.