



Highlights of 2005-2006 State Legislation Impacting Brain Injury

The National Association of State Head Injury Administrators (NASHIA) has published a full report on State legislation affecting traumatic brain injury (TBI) that was signed into law or vetoed during the 2005 and 2006 legislative sessions as reported in past issues of *State Watch*, produced by the TBI Technical Assistance Center at NASHIA. The 119-page report also contains sample legislation. **For a copy of the report, *Summary of 2005-2006 State Legislation and Other Public Policy Initiatives Impacting Individuals with Traumatic Brain Injury and Their Families*, go to the NASHIA Store at <http://www.nashia.org/store/index.aspx>.**

Overview

Since the 1980s, advocates have pushed for State legislation to create TBI programs, funding, registries, prevention, and systems planning to improve service delivery.

State efforts have also been influenced by Federal policies and litigation, including the TBI Act of 1996, as amended; the Deficit Reduction Act of 2005; SAFETEA-LU, and the 1999 Supreme Court Olmstead Decision. In 2005-2006, States addressed the following issues.

BILLS SIGNED INTO LAW

Core Components

As the result of the TBI Act of 1996 the Health Resources and Services Administration (HRSA) Federal TBI Program has identified four core components necessary for service delivery: advisory board; State needs and resources assessment process; State action plan and lead State agency. State legislation that passed that reflects these efforts include:

- Advisory Boards (**MD, NH, NV** and **RI**)
- Designated Lead Agency (**IA** and **ME**)

Funding for TBI Services

In at least two States (**MO** and **VA**) lawmakers appropriated additional general revenue for their TBI State program, while in other States, legislators created or expanded funding capacity through these methods:

- Created TBI HCBS Medicaid Waiver (**MT** and **NM**)
- Expanded existing TBI HCBS Waiver slots (**IA** and **NH**)
- Disability and Other Waivers (**CT** and **MS**)
- Increased Trust Fund Revenue (**TN**)

Connecticut lawmakers established a group home pilot program for older adults with ABI/TBI.

Expanding Service Systems

States continue to add TBI to statutes governing education, disability, or long-term care services that may serve a broader constituency than just TBI. Both **Kentucky** and **Utah** added brain injury to the list of disabilities eligible for services provided by their developmental disabilities services agencies. Other efforts include:

- Establishing a separate nursing facility rate for individuals with TBI who require extensive care (**CT**)
- Adding TBI to the list of disabilities eligible for special education services, in keeping with the Federal special education law (**OR**)

Quality Assurance/ Licensure Standards

States passed bills directing agencies to address quality standards for services and other supports for persons with TBI (**IA, LA, and VA**).

- **Arkansas** passed the Adult and Long-term Care Facility Resident Maltreatment Act to report known or suspected abuse of residents with brain injury in long-term care facilities.
- **Rhode Island** lawmakers authorized the Department of Mental Health, Retardation and Hospitals to license residential and other support programs designed specifically for persons with “cognitive disabilities, such as brain injury.”

Medicaid State Plan Changes/ Reform

The Medicaid program is the major provider of health coverage and long-term care for persons with disabilities. It is the second largest expenditure, next to education, in State government. Each State sets its own guidelines regarding eligibility and services.

The Deficit Reduction Act (DRA) of 2005, signed into law February 8, 2006, reduces Medicaid spending and gives States increased flexibility. As a result, States are changing their State Medicaid programs through legislation, State plan amendments, and 1115 Demonstration Waivers.

These changes may impact health, community and long-term care services available for TBI. In **Maryland** a bill passed requiring individuals with brain injuries to be added to the membership of the Medicaid Advisory Committee (2006).

States have passed bills to reorganize their Medicaid program within State government and to make significant changes to the program overall, for example:

- **Kansas** reorganized its Medicaid agency.
- **Missouri** enacted a law (2005) that imposed stricter eligibility requirements and eliminated “optional services” for adults, including the comprehensive day rehabilitation program for individuals with TBI.
- **Rhode Island** lawmakers passed the Health Care for Elderly and Disabled Residents Act to extend eligibility for categorically needy medical assistance and added “persons with cognitive disabilities, such as brain injuries,” as being eligible for State plan services including community residence, day treatment program, and habilitation services.

1115 Demonstration Waivers

Through Section 1115 Medicaid Demonstration Waivers, States can make broad changes in eligibility, benefits or cost sharing for a group of people that otherwise would not be allowed under Federal law. States that passed legislation in 2005 to allow their Medicaid agency to submit an 1115 waiver include **Florida** and **Iowa**. Both States submitted waivers accordingly.

Other States that have submitted 1115 Medicaid Demonstration Waivers in 2005-2006 include:

- **Arkansas**
- **Hawaii**
- **Vermont**
- **Oklahoma**
- **Kentucky**
- **West Virginia**

Idaho submitted a State Plan Amendment (2006) to target a specific package of benefits to specific categories of enrollees—resulting in different benefits for children, people with disabilities and dual-eligible beneficiaries. The enhanced

benefit package covers benefits previously in the TBI HCBS waiver.

Olmstead Initiatives

The 1999 Olmstead Decision (*Olmstead v. L.C. and E.W.*) directs States to initiate efforts to offer individuals with disabilities community choices in lieu of institutional services. The President has created the New Freedom Initiatives resulting in Federal grants to help States rebalance their long-term care and community services options. States have passed bills for:

- Consumer choice or self-directed care options under HCBS waivers (**CO, OK**)
- Money Follows the Person (**NM**)
- Re-balancing long-term care services (**NJ, RI, and VT**)

Vermont was authorized to implement the Long-term Care Medicaid 1115 Demonstration Waiver and was the first in the nation, to restructure long-term care Medicaid services.

New Freedom Grants

Real Choices Systems Change Grant

In 2006 Centers for Medicare and Medicaid (CMS) awarded Real Choice Systems Change Grants for Community Living to “rebalance” their long-term support (**CA, KS, MI, NC, NJ, NY, RI and VA**).

ADRC Grants

In 2006 the Department of Health and Human Services awarded nearly \$6 million in additional funding to 22 States through Aging and Disability Resource Center (ADRC) grants to establish single entry points to long-term care.

Ticket to Work and Work Incentives Act

In Fiscal Year 2006 CMS awarded \$25 million in grants to 43 States and the District of Columbia to help people with disabilities work without losing their health benefits. Under this program, 31 States have implemented Medicaid Buy-In programs that

ensure health coverage for people enrolled in the program who work.

Eight States (**DC, HI, KS, LA, MN, MS, TX, and RI**) have been awarded Demonstrations to Maintain Independence and Employment (DMIE) grants that assist States in providing health care and other services early in the progression of a disease may help a person remain self-sufficient.

Independence Plus Initiative

The *Independence Plus* Initiative assists States to request waivers or demonstrations that offer individuals or their families opportunities to direct their own services. There are 11 approved *Independence Plus* programs in ten States (**CA, CT, DE, FL, LA, MD, NC (2), NH, NJ, and SC**). In 2005, **Maryland** and **California** waivers became effective and **Connecticut’s** was approved.

Over the years, CMS has awarded \$5.4 million in Real Choice Systems Change grants to 12 States to develop *Independence Plus* programs (**CO, CT, FL, GA, ID, LA, MA, ME, MI, MO, MT and OH**).

State Government Reorganization

State governments continue to reorganize human, disability, and health services. **Indiana** and **Colorado** reorganized their aging and Medicaid services agencies.

In 2005 **Arkansas** legislation was enacted establishing a time table for the review and potential abolishment of all existing State agencies, commissions, and councils.

Prevention **Traffic Safety**

As the result of increased efforts to reduce traffic fatalities and injuries, States may be eligible for Federal funds from the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which authorizes the Federal surface transportation programs for highways, highway safety, and transit.

Bicycle Helmet Use

On June 15, 2005, **New Hampshire** Governor John Lynch signed H.B. 118 mandating the use of bicycle helmets for children 16 years of age or younger, joining 20 other States with some type of a bicycle helmet law.

DWI

On August 21, 2006, **North Carolina** Governor Mike Easley signed new legislation that will make it extremely difficult for drunk drivers to escape conviction.

Child Safety Restraints/Booster Seats

In 2006 **Hawaii, Kansas, Missouri,** and **Wisconsin** adopted the optimal law covering children up to age 8, while **Alabama** enacted a law covering children up to age 5.

Primary Enforcement

During the 2005-2006 legislative sessions, only **South Carolina** was successful in 2005 and three (**AK, KY,** and **MS**) in 2006 in passing primary seat belt laws which allow law enforcement officers to ticket a driver for not wearing a seat belt.

Shaken Baby Syndrome

Several States have taken a proactive stance in 2005-2006 regarding the prevention of shaken baby syndrome: **Illinois, Massachusetts, New York, Rhode Island,** and **Wisconsin.**

Public Awareness

A number of State legislatures introduced resolutions recognizing March as Brain Injury Awareness Month. **Oklahoma** adopted a resolution recognizing volunteers who work with individuals with TBI.

Registry

In 2006 **Nebraska** lawmakers expanded its brain injury registry requirements to include the rehabilitation centers. **Georgia** passed a bill that revised the definitions of TBI and spinal cord injury and increased the reporting timeframe.

BILLS VETOED

- **Michigan**, S.B. 297, that would have repealed the State's 37-year old all-rider motorcycle helmet law.
- **Hawaii**, S.B. 2727, to allow money from the neurotrauma special fund to be used for direct services.
- **New York**, A.B. 11650, which would have created the self-directed personal assistance services (PAS) program in statute.
- **California**, A.B. 2108, establishing the booster seat law.

NASHIA was organized by State government employees to help one another plan, implement, and administer public programs and services for individuals with brain injuries and their families.

NASHIA tracks State and Federal public policy and legislation and produces updates and reports on these activities. For further information contact NASHIA at:

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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 injury and their families.