

Medicaid and Medicare Home and Community-Based Services Policy Priorities for the New Administration

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About Justice in Aging

Justice in Aging is a national nonprofit organization that uses the power of law to fight senior poverty by securing access to affordable health care and economic security for older adults with limited resources. We focus our efforts on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, people with disabilities, and people with limited English proficiency. We are committed to advocacy to address the long-standing, pervasive, ongoing, systemic racism that infects our culture, government, and systems of power.

We are asking the Biden Administration to prioritize ensuring that low-income older adults and people with disabilities have access to the care they need to remain living in their homes and communities. Every day, 10,000 people turn 65, and by 2050, older adults over 65 will double and older adults over 85 will triple. Over half will develop a disability that will require long-term services and supports (LTSS), with greater percentages of older adults of color requiring LTSS due to compounding inequities over the lifespan. Overwhelmingly, older adults prefer to receive LTSS in their own homes and communities. Yet, too many low-income older adults are forced into institutional settings to receive the care they need, particularly women, communities of color, and individuals with Alzheimer's or other dementias. While nursing home use has steadily been declining among white older adults, for example, use has increased among Hispanic, Asian, and Black older adults, in part due to the fact that communities of color have less access to home and community-based services (HCBS).

Increasing equitable and quality access to HCBS will require the Administration to uplift this work as a priority across all divisions of Health and Human Services, increase coordination among divisions and with Housing and Urban Development and other agencies, and require leadership to have expertise in LTSS and HCBS. We look forward to working with the Administration to implement the HCBS priorities listed below as well as other initiatives the Administration identifies. For a full summary of Justice in Aging's health care priorities, see [Health Policy Priorities for the New Administration and Congress](#).

Prioritize Expanding Access to HCBS in the COVID-19 Response

COVID-19 has put residents in congregate care settings at high risk for serious illness and death, with facilities that have more residents of color at highest risk. It is imperative that the Administration take immediate steps to equitably increase access to HCBS by taking the following urgent actions.

- Prioritize HCBS providers for existing and future emergency relief funds.
- Facilitate access to PPE, testing, and vaccination for HCBS recipients, direct care workers, and family caregivers, along with robust and culturally competent education and outreach about COVID-19 safety and vaccination.
- Expand and strengthen CMS oversight and enforcement in all residential congregate care settings including nursing homes, assisted living, and other group settings.
- Expand data collection and reporting to include race, ethnicity, and other demographic data across all group settings.
- Work across Medicare and Medicaid to implement a strategy to transition older adults and people with disabilities out of institutional settings and, equally as important, divert their initial admission, particularly when being discharged from the hospital or post-acute care. This strategy should include working with Congress to make the Money Follows the Person (MFP) program and HCBS spousal impoverishment protections permanent, and expanding MFP to every state.
- Support legislative efforts to increase the Federal Medical Assistance Percentage (FMAP) for Medicaid funding to states, including targeted additional increases for HCBS.
- Review and maintain Appendix K public health emergency flexibilities that increase access to HCBS including, for example, permitting payment for HCBS in hospital settings and Appendix K retainer payments.
- Ensure individuals receiving HCBS have equal access to telehealth services that is accessible and supports interpretation and translation needs.

Eliminate the Historical Bias Toward Institutional Care

Medicaid

While significant progress has been made to increase Medicaid funding spent on HCBS, 55% of Medicaid LTSS expenditures continue to go to nursing homes for older adults and people with physical disabilities. There are significant steps the Administration can take to end the institutional bias and equitably increase access to HCBS in Medicaid.

- Support legislative efforts to make HCBS a required Medicaid benefit available throughout every state without any arbitrary limits on enrollment.
- Collect intersectional data that includes age, race, ethnicity, primary language, urban/rural location, and other demographic factors.

- Ensure equitable access to currently available HCBS waiver services through state and federal oversight that includes interventions to stop and prevent discrimination based on age, race, ethnicity, primary language, sex, sexual orientation, gender identity, or other demographic factors.
- Permit retroactive HCBS coverage up to three months prior to date of application as already permitted for Medicaid nursing facility coverage.
- Strengthen the Money Follows the Person program by encouraging states to expand or implement the program and ensuring that transition services are equitably available to all Medicaid enrollees, starting with collecting and reporting intersectional data.
- Ensure states are fully implementing the spousal impoverishment protections for HCBS.
- Encourage and incentivize states to expand access to housing-related services through Medicaid and increase access to HCBS for individuals experiencing homelessness.
- Encourage states to enact more expansive allowance for home maintenance provisions that would increase a nursing home resident's ability to maintain their home or apartment during short-term stays in nursing facilities and transition back to the community.
- Prioritize the full implementation of the HCBS Settings Rule, and ensure strong coordination between ACL and CMS as they work with all stakeholders on implementation.
- Encourage states to eliminate or limit Medicaid estate recovery.

Medicare

In order to meet LTSS needs that are both unmet and increasing, we need to leverage Medicare. In particular, because Medicare is nearly universal for people age 65 and older, it is important that it provide primary coverage of basic LTSS. This starts with taking immediate steps to ensure that Medicare beneficiaries have access to home-based services that is at least equal to skilled nursing facility coverage.

- Evaluate telehealth expansions under the public health emergency and maintain flexibilities that increase and strengthen equitable access.
- Enforce the *Jimmo* settlement so that nursing facilities and home health providers are using the proper standard for skilled nursing and therapy services under Medicare.
- Evaluate the current Medicare payment system to incentivize home health providers to provide all services currently available under Medicare.
- Eliminate Medicare's "home bound" definition for home health care, building off of the expanded definition being utilized in the public health emergency and leveraging demonstration authority.
- Make supplemental HCBS Medicare benefits equally available to those in fee-for-service as in Medicare Advantage.
- Expand and leverage lessons learned from models that expand access to HCBS for those dually enrolled in Medicare and Medicaid including, for example, the Program for All Inclusive Care for the Elderly and the Financial Alignment Initiative.