

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

HCBS 101: Access to Home & Community-Based Care for Older Adults

Amber Christ, Directing Attorney
Natalie Kean, Senior Staff Attorney

March 16, 2021

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been denied and excluded from justice, such as older women, older adults of color, LGBTQ older adults, and older immigrants and older adults with limited English proficiency.

To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination
- Address the enduring negative effects of racism and differential treatment
- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to trainings@justiceinaging.org.
- Find materials for this training and past trainings by searching the [Resource Library](https://justiceinaging.org/resource-library), justiceinaging.org/resource-library. A recording will be posted to [Justice in Aging's Vimeo page](https://Justice%20in%20Aging's%20Vimeo%20page) at the conclusion of the presentation, vimeo.com/justiceinaging.

Today's Agenda

- History of Medicaid HCBS & the Institutional Bias
- How do States Offer HCBS
- Financial Eligibility for HCBS
- Gaps & Inequities in Access to HCBS

Poll Question 1

- What is your experience with Medicaid home and community based services?
 - Attorney or advocate for people accessing HCBS
 - Self-advocate who receives HCBS
 - Provider of HCBS
 - No prior experience with HCBS
 - Other

What are Medicaid Home & Community-Based Services (HCBS)

- HCBS: long-term health care, services, and supports provided to an individual in their own home or in a more integrated community-based setting.
- Examples:
 - Home health, personal care to assist with activities of daily living, transportation, homemaker & chore services, case management, financial and legal services, home repairs & modifications, adult day care or group or center-based day supports, etc.

History of HCBS & the Institutional Bias

- States are required to provide nursing facility coverage & coverage in other institutional settings
- 1980s states given the *option* to offer HCBS as an alternative to nursing facility & other institutional care
- HCBS Growth
 - *Olmstead v. L.C.*
 - Rebalancing
 - Inequities

What About Medicare?

- Medicare coverage of long-term services and supports is very limited
 - Nursing Facility Stays – after a qualifying hospital stay; only up to 100 days
 - Home Health
 - Medicare does not cover other HCBS
 - Exception: Medicare Advantage plans are now permitted to offer supplemental benefits – some plans are offering HCBS type services
- **Medicaid** is the largest payer of both HCBS and institutional long-term care

How States Offer HCBS

- All 50 states and DC offer HCBS to adults 65 and older
 - **HCBS through State Medicaid Plan**
 - Medicaid Home Health (the only required benefit)
 - Personal care
 - Must be offered statewide
 - **HCBS Waivers**
 - 1915(c); 1115, etc.
 - Can include caps on enrollment and be limited to certain geographic areas
 - More generous financial eligibility

Financial Eligibility for Waiver Services

- Varies state to state/program to program
- Income Limit: Generally eligible if you have income up to 3x the SSI Rate - \$2,382 in 2021 ($\794×3)
 - Post eligibility obligation: may have to spend some portion of your income towards care
- Resource/Asset Limits: generally \$2,000 individual/\$3,000 couple

Spousal Impoverishment Protections

- Applies to nursing facilities permanently and for HCBS through September 2023
- Allows the spouse of person receiving Medicaid HCBS (or institutional care) to keep modest income and assets to live on
- Allows “community spouse” to maintain
 - Higher amount in resources
 - Up to \$130,380 in 2021
 - Higher income up to specific amounts
 - \$2,155 – \$3,259.50 in 2021

HCBS: Functional Eligibility

- Functional criteria: typically defined by everyday activities an individual is unable to perform without assistance due to an underlying physical or mental health impairment
 - Activities of Daily Living (ADLs) – eating, bathing, dressing, toileting, transferring from bed, etc.
 - Instrumental ADLs (IADLs)– housework, laundry, meal preparation, transportation, grocery shopping, medication management, money management
- For federally mandated services, two criteria
 - Medically necessary
 - Utilization controls
- For optional services, no federal requirements.
 - Must be equally available to all recipients who satisfy the service criteria set

HCBS: State Plan Examples

- Personal Care Services
 - 33 states and DC have amended their state plans to offer personal care services in addition to home health
 - Example: California's In Home Supportive Services (IHSS)
- Community First Choice – 1915(k)
 - 8 states have implemented (CA, CT, MD, MT, NY, OR, TX, WA)
 - States must provide
 - Typical HCBS
 - Services that assist person in acquiring or maintaining ability to perform activities of daily living
 - Back-up system to ensure continuity of services
 - Training on tasks of participant direction
 - Can also cover costs of transitioning to the community
- 1915(i) State Plan HCBS
 - 3 states serve older adults through 1915(i) programs (CT, DC, NV)

HCBS: Waiver Examples

- 1915(c) waivers
 - 41 states and DC serve older adults through 1915(c) waivers
 - Examples:
 - Elderly and Disabled with Consumer Direction Waiver (EDCD)
 - Alzheimer's Assisted Living Waiver (AAL)
 - Individual and Family Developmental Disabilities Supports Waiver (DD)
 - Day Support Waiver (DS)
- 1115 waivers
 - 12 states use 1115 waivers for their HCBS programs
 - Arizona's entire HCBS system is under an 1115 waiver

Self-Directed/Participant-Directed Services

- Gives enrollee employer & budget authority, to train, hire, fire, and decide how to spend allocated funds
- Financial management services provide logistical safeguard
- Often limited to specific waivers or populations

HCBS Must be Integrated

- HCBS Settings Rule: requires every state to ensure that services delivered in the community meet minimum standards for integration, access to community life, choice, and autonomy
 - Right to control own schedule
 - Right to visitors at any time
 - Privacy
 - No isolation from broader community
- State compliance deadline has been extended to March 2023

How States Pay for HCBS

- Pay providers directly through fee-for-service
- Managed care
 - **MLTSS: Managed Long-Term Services & Supports**
 - 25 states use MLTSS for some or all of their HCBS programs
 - **PACE: Program of All-Inclusive Care for the Elderly**
 - 50,000 participants across 31 states
 - **Other Capitated Models**

Money Follows the Person

- Federal grants to states to fund transition services out of institutional settings into the community
 - 41 states and DC operate programs
 - Success of programs vary greatly from state to state
 - In 2019, there were 4,174 transitions across all programs
 - Older adults proportionately represent fewer transitions
- Program set to expire September 2023

Gaps in Access to HCBS

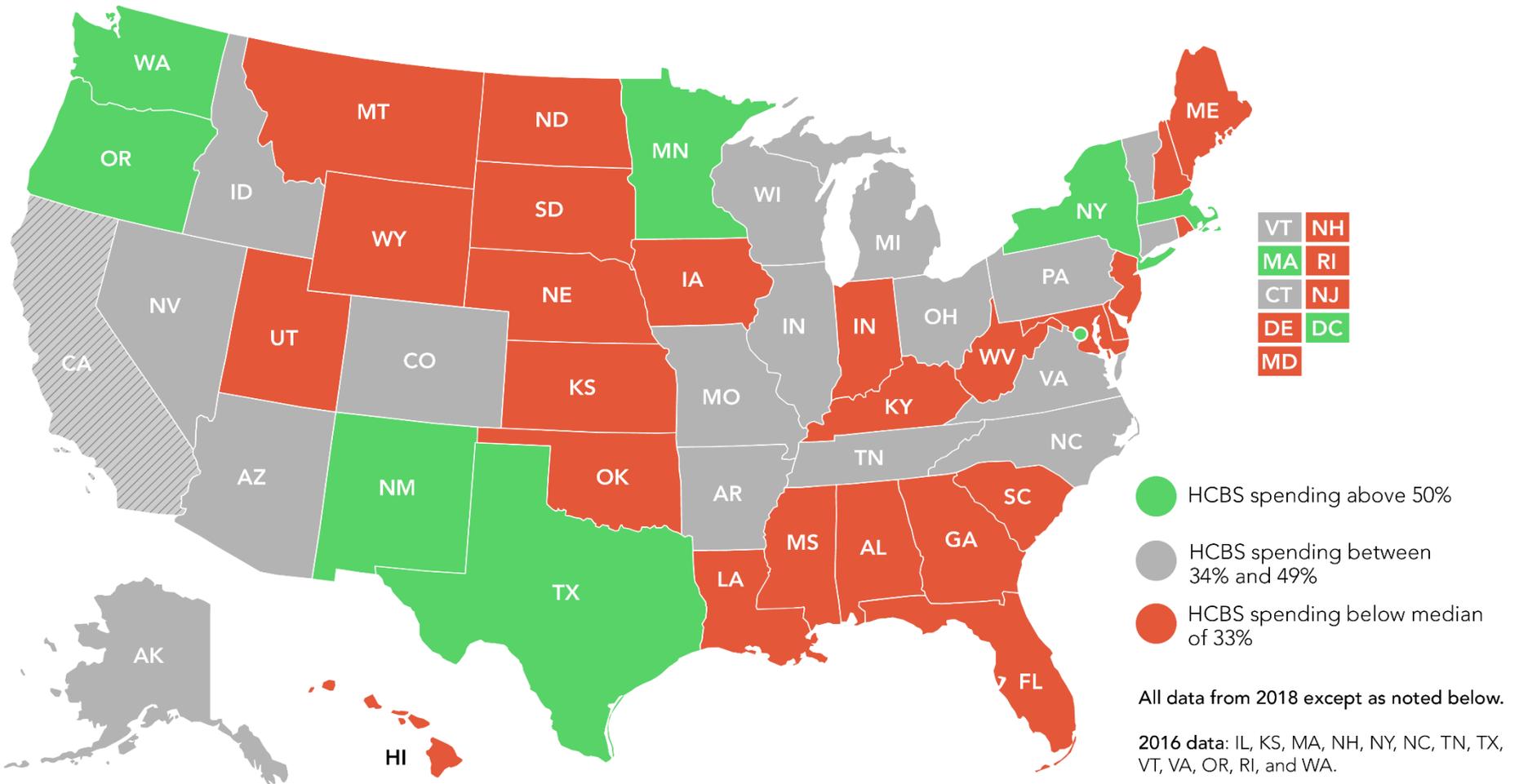
- Because HCBS is an optional & not required Medicaid benefit, there are significant gaps in access to services:
 - Wide variation from state to state
 - Waitlists
 - Over 800,000 people waiting for HCBS, including 188,000 seniors and people with physical disabilities
 - Inequities
 - Population-based inequities
 - State-based inequities
 - Race-based inequities

Inequities in Access to HCBS

- Population-based inequities:
 - Half of states spend 2x as much on institutional care for older adults as they do on HCBS
 - States spend an average of 35% of all LTSS dollars for older adults on HCBS, compared to an average of 56% on HCBS across all populations
- State-based inequities:
 - Only 8 states spend more than 50% of LTSS dollars on HCBS for older adults
 - The lowest spending on HCBS for older adults is 10% (IA) and the highest is above 70% (WA, MN, OR)
- Race-based inequities:
 - Growth in nursing homes declining among white older adults, but growing among communities of color
 - Access to HCBS more limited

HCBS Spending on Older Adults

by state as a percentage of LTSS spending



All data from 2018 except as noted below.

2016 data: IL, KS, MA, NH, NY, NC, TN, TX, VT, VA, OR, RI, and WA.

2017 data: PA.

Note: no data available for any years for CA.

Justice in Aging's HCBS Advocacy Join Us! (1 of 2)

- Invest in & expand HCBS
 - American Rescue Plan includes 10% Medicaid funding increase to states
 - Improve HCBS infrastructure to increase access to services and eliminate waitlists
 - Make Money Follows the Person & spousal impoverishment protections permanent
 - **Make HCBS a required Medicaid benefit**
 - Expand access to community-based LTSS through Medicare

Justice in Aging's HCBS Advocacy Join Us! (2 of 2)

- Address Disparities
 - Improve data collection
 - Create benchmarks/targets for “rebalancing” to ensure older adults and People of Color are included
 - Ensure new demonstrations are equity-centered
 - Incorporate equity into quality measures
 - Increase and integrate access to housing
 - End Medicaid estate recovery

Resources

- [Medicaid and Medicare Home and Community Based Services Policy Priorities for the New Administration](#)
- Coming Soon: HCBS Primer—watch your inbox!
- [Key State Policy Choices About Medicaid Home and Community-Based Services](#), Kaiser Family Foundation

Poll Question 2

- Is there an advocates' guide to HCBS in your state that you use?
 - Yes
 - No



Questions?

Amber Christ,
achrist@justiceinaging.org

Natalie Kean,
nkean@justiceinaging.org



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