Home and Community-Based Services Federal Legislative Update

NOVEMBER 2022

Medicaid home and community-based services (HCBS) is the only federally-funded program that covers the full range of supports older adults and people with disabilities need to live safely in their homes and connected to their communities. Despite the significant demand for HCBS, Congress has never funded these services at high enough levels. The pandemic highlighted the lack of services available, the low wages of the workers who provide those services, and the risks of institutionalization older adults and people with disabilities face without them. Since 2021, both the Biden-Harris Administration and Congress have supported access to HCBS with emergency short-term funding, but haven’t addressed the underlying structural problems with the program that lead to waiting lists, low wages for direct care workers, and inequitable access to in-home care based on race, geography, disability, and other factors.

Join us to win these policy changes so all Americans can live at home and age with dignity!

HERE’S WHERE WE’VE BEEN

The American Rescue Plan Act (ARPA)

This legislation, signed into law on March 11, 2021, provided states with enhanced federal dollars to expand and strengthen HCBS. States have until March 31, 2025, to spend these ARPA funds.

- **Why this matters:** These stopgap funds have supported states to weather the pandemic, address direct care workforce needs, and try new things to improve HCBS. Every state chose to take advantage of this temporary funding. This shows the huge need and bipartisan support for improving HCBS. With state re-investment, this was a more than $25 billion investment.

- **What was missing:** This funding was short-term, states do not have guaranteed funds to make long-term wage increases and meaningfully expand access to services.
**Biden’s Economic Recovery Package**

President Biden’s economic recovery plan, known as “Build Back Better,” started as the American Jobs Plan that included a proposed $400 billion investment to expand HCBS and improve direct care jobs.

The Better Care Better Jobs Act, led by Senator Casey (PA) and Representative Dingell (MI-12), aimed to implement the HCBS provisions of the Build Back Better plan.

- **Why this matters:** This bill served as the basis for the Build Back Better Act’s HCBS investments (see below) and had widespread support, with 150 cosponsors in the House and 39 cosponsors in the Senate.

The Build Back Better (BBB) Act was introduced in 2021 to combine the American Jobs Plan and the American Families Plan, a sweeping legislative package to move President Biden’s economic recovery plan forward through the budget reconciliation process, which allows certain bills to pass the Senate by a simple majority instead of 60 votes. It included many provisions including expanding access to paid leave, child care, and HCBS.

- **Why this matters:** Although this bill did not become law because of the narrow Democratic majority in the Senate, the President’s signature piece of legislation would have made a historic investment in HCBS. This set a precedent to make big investments in HCBS that we can build on in the next Congress.

**WHAT’S NEXT**

Building on the growing understanding in Congress that HCBS is long overdue for an investment, we will keep pushing for both incremental and transformational changes to our HCBS system. Here are the policies we want Congress to include in upcoming legislation, including government funding bills this year and next.

1. **Secure Additional Federal Funding for HCBS.**

   With the enhanced federal funding through ARPA, states have been able to address critical HCBS infrastructure needs. But this funding is temporary. We advocate for Congress to renew increased federal funding for HCBS, sustain HCBS infrastructure improvement initiatives, solve
the direct care workforce crisis, and support states’ efforts to expand access to more people eligible for HCBS.

2. **Make Money Follows the Person Program and Spousal Impoverishment Protections Permanent.**

The [Money Follows the Person Program (MFP)](https://www.justiceinaging.org/make-money-follows-the-person-program/) helps transition people out of nursing facilities and into the community, and federal [protections from spousal impoverishment](https://www.justiceinaging.org/make-money-follows-the-person-program/) for married persons receiving HCBS are critical measures to prevent people from being institutionalized unnecessarily and help them access HCBS. There is strong bipartisan support for both policies, and Congress has voted to extend them multiple times. They are currently set to expire [December 31, 2023](https://www.justiceinaging.org/make-money-follows-the-person-program/).

We support permanent authorization of these programs so they can benefit more older adults and people with disabilities and remove barriers, such as financial uncertainty, that discourage state uptake and expansion of programs.

3. **Ensure Prompt Access to HCBS.**

We advocate for [ensuring retroactive coverage of Medicaid HCBS](https://www.justiceinaging.org/make-money-follows-the-person-program/) so that older adults and people with disabilities can access services right away when the need arises. This would allow Medicaid to cover the costs of services provided before their application for benefits is formally approved, so people can receive services at home instead of being forced into an institution. Medicaid routinely provides retroactive coverage for institutional care, but not HCBS, which pushes people into institutions.

4. **Eliminate Estate Recovery.**

Medicaid Estate Recovery is a federal policy that requires states to recover certain Medicaid expenses from the heirs of a deceased Medicaid enrollee. We support the [Stop Unfair Medicaid Recoveries Act](https://www.justiceinaging.org/make-money-follows-the-person-program/) to eliminate this discriminatory policy—it stops families from escaping poverty, makes the racial wealth gap worse, and also keeps older adults and people with disabilities from getting the HCBS they need.

5. **Support Good Care Jobs.**

We support the [Healthy Families Act](https://www.justiceinaging.org/make-money-follows-the-person-program/) to guarantee earned sick time for all workers, including direct care workers, and the [Family and Medical Insurance Leave Act](https://www.justiceinaging.org/make-money-follows-the-person-program/) to make caregiving affordable and allow family caregivers to address their own health needs.

We support the [Domestic Workers Bill of Rights Act](https://www.justiceinaging.org/make-money-follows-the-person-program/) to extend basic federal workplace protections to domestic workers and the [Recognizing the Role of Direct Support Professionals Act](https://www.justiceinaging.org/make-money-follows-the-person-program/) to recognize the full scope of work performed by direct support professionals.

6. **End Medicaid’s Institutional Bias.**

Accessing HCBS can be challenging for older adults and people with disabilities because of an institutional bias: federal Medicaid law requires states to provide care in institutional settings, while providing HCBS remains optional. This means that a person’s access to home and
community-based services depends on which state they live in because states can cap services and eligibility. Many people cannot get the services they need when they need them due to waiting lists and arbitrary limits on enrollment. Our ultimate goal is to pass comprehensive legislation to end the institutional bias and create an HCBS system in every state that can meet the needs of its residents. We support legislation like the draft HCBS Access Act, which would:

- Make HCBS a mandatory service, and require states to provide HCBS
- Expand and streamline eligibility to ensure access to HCBS
- Create a set of guaranteed benefits across states, so that people with disabilities and aging adults can cross state lines more easily
- Support high-quality careers in the direct care field by increasing wages and benefits, protecting the right to organize, and providing funding for training

For more information about HCBS and other policy priorities related to older adults, people with disabilities, and the direct care workforce, please visit the Justice in Aging and Caring Across Generations websites. Join the Caring Across Generations email list here and the Justice in Aging email list here.