



## Innovative Strategies for Using Medicaid State Plan and Waiver Options to Promote Integrated Employment of People with Disabilities

CMS is committed to the importance of work for Medicaid recipients with disabilities, which has been reflected in the agency's issuance of a variety of policy communications on the topic, continual delivery of technical assistance support through key CMS initiatives focused on individuals with disabilities that include an employment dimension, and the ongoing availability of financial incentives to promote States' efforts to increase integrated employment<sup>1</sup> opportunities for individuals with disabilities. CMS articulated the agency's strong commitment to promoting employment and socioeconomic advancement of individuals with disabilities in 2011.<sup>2</sup>

Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work has also been associated with positive physical and mental health benefits and is a part of building a healthy lifestyle as a contributing member of society. Because it is so essential to people's economic self-sufficiency, as well as self-esteem and well-being, people with disabilities and older adults with chronic conditions who want to work should be provided the opportunity and support to work competitively within the general workforce in their pursuit of health, wealth and happiness. All individuals, regardless of disability and age, can work – and work optimally with opportunity, training, and support that build on each person's strengths and interests. Individually tailored and preference based job development, training, and support should recognize each person's employability and potential contributions to the labor market.

The following Frequently Asked Question fact sheet reflects inquiries received from States participating in ODEP's Employment First initiatives. This informational resource was developed

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<sup>1</sup> ODEP defines **integrated employment** as work paid directly by employers at the greater of minimum or prevailing wages with related health and employment benefits, occurring in a typical work setting where the employee with a disability interacts or has the opportunity to interact continuously with non-disabled co-workers, has an opportunity for advancement and mobility, and is preferably engaged full time.

<sup>2</sup> Extrapolated from Page 1 of the CMCS Informational Bulletin entitled *Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding Employment and Employment-related Services* dated September 16, 2011. <http://downloads.cms.gov/cmmsgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf>

by ODEP in collaboration with CMS, and is intended to further reinforce strategies that State governments can deploy to promote integrated employment outcomes for individuals with disabilities through State Medicaid plans and waiver options.<sup>3</sup>

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<sup>3</sup> On February 20, 2014 the U.S. Department of Labor’s Office of Disability Employment Policy (ODEP), in collaboration with the Centers for Medicare and Medicaid Services (CMS) and the National LEAD Center, hosted the first in a two-part educational webinar series entitled, [\*“Innovative Strategies for Using Medicaid State Plan and Waiver Options to Promote Integrated Employment of People with Disabilities”\*](#). Leading experts from CMS’s Disability & Elderly Public Health Group presented information about recent CMS policy guidance issued around this topic and responded to questions posed by webinar participants. The following publication reflects inquiries made during this webinar presentation as well as subsequent requests for additional information submitted at the end of this educational series.



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## Q1: Which Medicaid authorities can be used to support employment?

### 1915(c) home and community-based waivers

Established in 1981, 1915(c) waivers provide home and community based services to individuals who require in institutional level of care in a nursing facility, hospital or Intermediate Care Facility (ICF) for people with Intellectual Disabilities (ICF/IID). Each waiver can serve a limited number of individuals. Once the limit is reached, an applicant is usually placed on a waiting list.

States have the option to offer various employment-related services, including: habilitation, prevocational employment, individual supported employment, group supported employment and career planning. Most of the 340 current 1915(c) waivers include at least some of these services.

In 2011, CMS issued 1915(c) technical guidance revisions via an [informational bulletin](#)<sup>4</sup> that clarified and strengthened guidelines around permissible waiver options to promote employment of people with disabilities and individuals who are elderly.

### 1915(i) State plan option for home and community-based services

Section 1915(i), modified through section 2402 of the Affordable care Act, allows States to expand access to home and community-based services to specific populations who may not meet the institutional level of care required under 1915(c). Like 1915(c), the program can be targeted to a specific population group or a specific functional need. Unlike 1915(c), once the program is established it must be available state-wide with no enrollment caps.

This option gives States the opportunity to provide employment services and supports to the mental health population who often cannot be served under the 1915(c) program because the need for an institutional level of care in a mental health facility does not qualify an individual for 1915(c).

### 1915(j) Self-Directed Personal Assistance Services Program State Plan Option

1915(j), established in 2007, provides States an option to include self-directed personal assistance services (PAS) for individuals receiving services under State plan personal care services benefits, and/or HCBS waiver services.

PAS can include:

- Personal care or related services;

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<sup>4</sup> CMCS Informational Bulletin entitled *Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding Employment and Employment-related Services* dated September 16, 2011.



- Home and community-based services under and approved 1915(c) waiver program such as supported employment; and
- At State's discretion, items that increase and individual's independence or substitute for human assistance, to the extent that the expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies.

### **1915(k) Community First Choice Option**

Established in Section 2401 of the Affordable Care Act, 1915(k) allows States to provide personal assistance service as part of their State plan to individuals who would otherwise require an institutional level of care. This allows States to provide community-based attendant services and support with no enrollment caps. States can receive enhanced matching funds (up to a 6 percentage point increase depending on their existing State/Federal matching rate) for expenditures related to this option. The benefit can be used to fund a variety of services that support an individual's full engagement in the community, including integrated employment and community-based activities. As of Jan 2014 CMS has approved 1915(k) options in two States (California and Oregon).

### **1115 Demonstrations**

The 1115 Demonstration authority permits the Secretary of HHS to consider and approve experimental pilot or demonstration projects. States can define demonstration-eligible populations and services. These services may include supported employment, career planning, and other employment-related services.

## **Q2: What additional Medicaid-related programs and initiatives can be used by State governments to support employment?**

### **Medicaid Infrastructure Grant**

The Medicaid Infrastructure Grants (MIGs), established as part of the Ticket to Work and Work Incentives Improvement Act of 1999 were designed to help States develop and implement a Medicaid buy-in option for workers with disabilities. Additionally, the MIGs allowed State Medicaid agencies to initiate cross-systems change efforts focused on coordinating services and resources with other systems to encourage increased employment outcomes for common customers with disabilities. Although the grant ended in 2012 and all extensions ended in 2013, 44 States have sustainability plans in place to continue the work initiated by the MIGs.

### **The Medicaid Buy-In**

The Medicaid Buy-In program gives States the option to allow individuals with disabilities to work and earn more than otherwise would be possible without losing their access to Medicaid benefits, including acute health care and long-term supports and services. The fear of losing access to health care and long-term supports and services is often one of the greatest barriers



discouraging individuals with disabilities from seeking and/or maximizing employment opportunities. Medicaid Buy-In programs are a solid programmatic response by State governments to address this barrier. Typically, States allow individuals to buy access to the Medicaid program by paying premiums based on their income. States had flexibility to set their own income and asset limits or even eliminate such limitations altogether. 46 States operate Medicaid Buy-In programs using authorities granted by the Balanced Budget Act of 1997 (BBA-97), Ticket to Work and Work Incentive Improvement Act and 1115 Research and Demonstrations authority. As of 2014, the programs serve 200,000 enrollees annually.

## Money Follows the Person

Money Follows the Person (MFP) was designed to help States rebalance their Medicaid funds by moving people who are institutionalized in nursing facilities ICFs/IID into home and community-based settings.

Originally authorized in Deficit Reduction Act of 2005 (DRA), it provided 1.75 billion in grant funds over 5 years through award in 2011. The Affordable Care Act (ACA) amended the DRA and provided an additional 2.25 billion through FY 2016. Any unused portion of a State grant award made in 2016 would be available to the State until 2020. 44 States including the District of Columbia have received grant funding and as of December 2013, States have transitioned 35,000 from institutional to community based settings.

The grant program includes two types of opportunities for States to address employment.

1. MFP gives States the option to provide a range of employment services and supports that individuals can access after transitioning to the community. States offer employment specialists, job training, supported employment services, and a range of other community-based services. More information about these opportunities to promote and support employment within MFP through Policies and Services can be found in three Letters from CMS to State Medicaid Directors: [SMDL#03-008](#), [SMDL #4-005](#) and [SMDL #10-012](#)
2. The financial savings from moving an individual from an institution to a less costly community accrues to the State in the form of “rebalancing funds.” This provides an opportunity for States to increase slots in their waiver programs, develop needs assessment tools or increase funding for other community-based services including employment services.

## Balancing Incentive Program

The Balancing Incentive program was designed to help States transform their long term care systems by lowering costs through improved systems performance and efficiency, creating tools to help consumers with care planning and assessment and improving quality measurement and oversight.



The program increases the Federal matching assistance percentage (FMAP) to States that make the following structural reform to increase access to non-institutional long term care services and reduce the number of placements into nursing homes/skilled nursing facilities or other institutional settings. Participating States must take steps to structurally implement the following key strategies:

- No wrong door-single point of entry system
- Conflict free case management
- Core standardized assessment instruments

Conflict-free case management is a particularly important component in transforming employment systems. Without this provision, an agency could serve as both a case manager and a provider. This scenario leads to a potential provider organization having undue influence over an individual's goals and compromises the participant's choice of services by introducing a direct conflict of interest. For example, the case manager could refer the client to their own services rather than offer a range of services or the agency may have a financial interest in retaining the individual as a client to receive services in a facility-based setting rather than promoting other services provided by other entities that could facilitate greater independence and community engagement for the individual.

The program was created by Affordable Care Act. Total funding from 2011 to 2015 is not to exceed \$3 billion in additional matching payment.

More information can be found at:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Balancing/Balancing-Incentive-Program.html>

### Q3: How can I get more information about CMS's rules regarding employment supports?

On September 16, 2011, CMS issued an [informational bulletin](#) (IB) that describes its current policies on employment support as it relates to the provision of home and community based services under the 1915(c) waiver option.<sup>5</sup> The September 2011 IB underscores CMS's commitment to the importance of work for waiver participants, articulates approaches that CMS considers best practices and provides technical guidance to States:

**Commitment:** CMS believes that all participants with disabilities regardless of the severity of disability can work and should be provided with the support that they need in order to achieve

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<sup>5</sup> CMCS Informational Bulletin entitled *Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding Employment and Employment-related Services* dated September 16, 2011. <http://www.cms.gov/CMCSBulletins/downloads/CIB-9-16-11.pdf>.



employment outcomes. The agency supports State efforts to increase employment opportunities and meaningful community integration for waiver participants. CMS emphasizes that person centered planning is key to achieving employment outcomes.

**Best Practices:** The document highlights peer support, self-directed delivery models, customized employment, co-worker support models and supported employment as evidence-based practices that States should consider including as eligible services by which waiver funds can be expended and prioritized. Additionally, the IB clarifies CMS guidance regarding several traditional core service definitions and adds several new core service definitions which infuse these best practices and that can now be included in 1915(c) waivers. States can either use CMS's wording of core service definitions or create their own providing that it complies with the tenants of CMS's definitions.

**Technical Guidance:** The guidelines do not represent a change in policy but rather a clarification and strengthening of guidance around permissible waiver options. The goal of the clarifications is to give States more flexibility in the way that they provide services.

## **Q4: How does CMS define Prevocational Service, Supported Employment and Career Planning?**

The Informational Bulletin dated 9/16/2011 clarifies these definitions. An overview of these definitions is provided below. For more information and detailed technical guidance see <http://www.medicaid.gov/federal-policy-guidance/downloads/CIB-09-16-2011.pdf>

### **Pre-vocational Services**

The purpose of pre-vocational services is to gain skills and move on to competitive, integrated employment. Pre-vocational services are considered by CMS to be a ***time-limited activity***, but has left it to the discretion of State Medicaid programs to determine the period of time individuals can receive prevocational services based on an individual's person-centered plan. However, it is no longer acceptable for people to be in prevocational services for many years with no progress transitioning to competitive, integrated employment.

Pre-vocational employment can include volunteer work and other unpaid work activities. It is important to note that these are considered pre-vocational services rather than “supported employment services.” CMS recognizes the importance of volunteer work; however, volunteerism should not be classified as supported employment because the person is not earning the greater of prevailing or minimum wage for the work performed.



## Supported Employment-Individual and Small Group Employment Support

CMS recognizes that supported employment services (SES) may be appropriate for many waiver populations. Research has confirmed the effectiveness of supported employment and yet supported employment services are often unavailable.

Supported employment may include assessment, supportive counseling, benefits planning and assistance, job development, and on-the- job supports. It is split into two core service definitions—individual and small group.

**Individual SES:** Individual supported employment services are ongoing supports for participants who, because of their disabilities, need intensive on-going support to obtain and maintain employment. The services can be provided through a variety of service models (eg . evidence-based supported employment for individuals with mental illness, customized employment for individuals with significant disabilities or others that the State may define). The outcome of these services should be paid employment at or above the minimum wage in which the participant is be compensated at the same rate as those individuals do not have disabilities.

These supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development, negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, benefits support, training and planning, transportation, asset development and career advancement services, and other workplace support services including services not specifically related to job skill training that enable the waiver participant successfully integrate into the job setting.

Individual supported employment services may also include support to establish or maintain self-employment, including home-based self-employment

**Small Group SES:** Small Group SES includes services and training activities provided in regular business, industry and community settings for groups of two to eight workers with disabilities. Examples include enclaves, mobile crews and other business-based workgroups employing small groups of workers with disabilities in employment in the community. Supported employment small group employment support must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces.

It is also the view of CMS that small group SES should be time-limited and is meant to be a training opportunity from which people move to individual competitive employment.



Volunteer and other work activities that are not in an integrated setting at least minimum wage cannot be billed as supported employments. These activities are still allowable under the waiver but they should be billed appropriately as “prevocational service.”



## Career Planning

Career planning is a person-centered, comprehensive employment planning and support service that provides assistance for waiver program participants to obtain, maintain or advance in competitive employment or self-employment. It is a focused, time-limited service engaging a participant in identifying a career direction and developing a plan for achieving competitive, integrated employment at or above the State's minimum wage. The outcome of this service is documentation of the participant's stated career objective and a career plan that can be used to guide individual employment services.

Because CMS believes it is such an important service, they have added new core service code for career planning.

Career planning can be a stand-alone service or can be combined with other services such as day habilitation, prevocational or supported employment services.

### **Q5: Can a provider receive payment through the Ticket to Work program and Medicaid for the same client?**

The 9/16/11 Informational bulletin specifies that a provider agency **can** receive payment from both systems for an individual client. Because the Ticket to Work is an outcome-based payment, and the services for Medicaid are paid for services rendered, TTW milestone payments are not in conflict with Medicaid payments. Thus, providers that choose to become an Employment Network (EN) through the Ticket to Work program can also receive a CMS Medicaid payment for provision of specific services.

### **Q6: How can States comply with Federal regulations while adopting a policy of no new entrants to facility-based prevocational services for existing 1915(c) waivers?**

Federal regulations require that all waiver services must be available to all waiver participants. As a result, if a State wants to prohibit new entrants to a sheltered workshop, it is essentially excluding that group from being able to access the service and thus violating the Federal regulation.

CMS recognizes that closing the front door to new entrants to facility-based services such as sheltered workshops may be a good strategy for shifting services to the community, and the agency is looking into the issue.



## **Q7: What strategies can States use to allow personal care assistance services to assist people in the workplace?**

CMS has approved several waivers that allow personal care assistance in the workplace. A personal care assistant (PCA) can be used for personal care tasks in addition to a job coach who is addressing employment issues. For example, the PCA may go to the individual's home to help prepare them for the work day—help them get up, get dressed, eat and access transportation to go to work. The PCA can then meet them on the jobs site at a later time for a bathroom break, feeding, changing, positioning or other needed personal care tasks.

The State can bill personal assistance services as a sub-component of an employment service such as prevocational or supported employment. Thus, a supported employment service may include PCA services for a certain number of hours of the day and job coaching services for a certain number of hours of the day. States with daily billing will need to develop an alternate approach since they do not break up the day into different billing units.

## **Q8: Can career planning services be expanded to include work incentives advisement and other financial planning services?**

States can request that work incentives and other financial planning services be included in their waiver. However, CMS will want to ensure that the service is not available through other sources such as the local WIPA. If it is not available elsewhere, it could be considered a 1915(c) service within career planning or as a stand-alone category.

## **Q9: How can HCBS services support and integrate but not supplant Vocational Rehabilitation services?**

Generally HCBS services may be furnished to a waiver participant only to the extent that they are not available as vocational rehabilitation (VR) services. In some cases, VR may provide some part of the service while Medicaid provides another. The key is to avoid duplication, and to ensure that both systems are being used synergistically to pay for services that neither the other system nor any other publicly-funded entity will pay for at the individual level.

There are several examples of how VR agencies have partnered with State entities responsible for implementing HCBS waivers either at a local/county level or statewide to leverage funds from both agencies and ensure proper service coordination. For example, in some states waiver recipients are automatically deemed eligible to receive supported employment services under VR, and as a result are dually enrolled and may receive short-term upfront job coaching and job development from VR and longer term service delivery from I/DD, mental health or other systems that provide long term supports and services (LTSS) with funding from an HCBS



waiver. In another example, VR may provide the upfront job coaching and the HCBS entity may provide transportation. The key for States is to make sure that funded services are well-coordinated to ensure that common customers are receiving a comprehensive package of services based on their individual needs without gap or interruption, and that such services are not duplicative across systems.

Maryland is a good example of best practice in this area. The Maryland Department of Health and Mental Hygiene and Department of Rehabilitation Services have developed a Memorandum of Understanding outlining joint funding of supported employment that braids funding from Medicaid, State general funds and RSA funds. They have a shared data base that allows clients to enter the service system from either agency allows the agencies to track who is providing and paying for each service on each day. This scenario has been expanded to now include similar partnerships between the Maryland Department of Health and Mental Hygiene and the Department of Education and other State agencies.

In 2011, the Assistance Secretary for Planning and Evaluation Office (ASPE), Office of Disability, Aging and Long-term Care Policy released a [report](#) that provides an overview of the financial integration issues and case studies of four States (Illinois, Kansas, Maryland and Washington) that have successfully combined funding sources.<sup>6</sup>

## **Q10: How can the different waiver and State plan options be used to support the employment-related transportation needs of individuals with disabilities?**

All States include non-emergency transportation as an optional service in their Medicaid State plans. However, this service tends to be limited to transportation to and from healthcare appointments and cannot be used for transportation to work or day services.

Transportation can be provided in 3 ways under HCBS waivers:

- Transportation can be linked with another service. For example, day habilitation, prevocational or supported services can include transportation.
- Transportation to and from employment services or a place of employment (including integrated employment) can be provided as a separate service under a waiver. States have some flexibility in how the transportation is provided. Some States pay for taxi fare, bus vouchers or services of other commercial entities.
- People who are self-directing individual budgets can use the budget to pay for any type of transportation, including paying a neighbor or co-worker for shared commuting. It is important to establish that the provider is not billing the individual for transportation in

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<sup>6</sup> The report is available <http://www.dol.gov/odep/pdf/FFSECEPMI.pdf>.



addition to accepting Medicaid payments. In other words, whatever level of reimbursement the State Medicaid agency pays for transportation services is considered payment in full.

## **Q11: Can States develop an outcome-based provider payment system?**

The current CMS technical guidance policy allows a State to build a rate structure that is outcome-based. For example, for supported employment services, a payment may be made when a career plan is completed, another when a job is developed and another when the person increases their work hours from the original employment agreement.

There are two approaches to including milestone payments an HCBS waiver:

1. the State can build subcomponents within the supported employment billing code that would list the various different outcomes; or
2. the State can bill the outcomes under supplemental payments (this option is under Appendix I of the updated 1915(c) waiver application).

CMS will consider outcome-based payment proposals on a case by case basis. In order to approve an outcome based system, CMS will require a very specific proposal. In addition to listing the outcomes, CMS will want to know, for example, what the quality standards are for each of the outcomes; why the State chose particular outcomes over others and how the decision was made; and, what criteria the State will use to determine if a job qualifies as a placement.

## **Q12: How can States ensure that individuals who are transitioned from a segregated setting (eg. prevocational or day habilitation) will have access to qualified employment vendors who have the knowledge and expertise necessary to help them find and sustain employment in the community?**

Developing a cadre of good qualified providers requires a great deal of training and technical assistance. Generally, community rehabilitation providers need to be mentored or shadowed for a period of time before they can help clients find and sustain integrated employment. There are a number of Federal agencies providing State governments with technical assistance and training to help develop the capacity of existing provider networks to provide day and employment services in integrated settings within the community. For example, [ODEP's](#)



[Employment First State Leadership Mentoring Program \(EFSLMP\)](#)<sup>7</sup> and [AIDD's Partnerships in Employment Systems Change Grants](#)<sup>8</sup> are but two examples. Additionally, State governments are encouraged to invest in the infrastructure of their provider networks and to involve CRPs in developing sustained professional development programming and ongoing training support for direct support professionals.

### **Q13: What employment strategies can States use within the individual supported employment definition from the 9/16/11 bulletin?**

**Customized Employment:** In customized employment, the relationship between the employee and the employer is individualized in a way that meets the needs of both. It is based on an individualized determination of the participant's strengths, needs and interests and the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability.

**Co-worker Supports:** Co-worker models of support rely on regular employees within the work setting to provide on the job training and ongoing support to the waiver participant that is beyond what is typically provided as part of supervision or training to employees. While co-worker supports may be delivered on a volunteer basis, the State may provide additional compensation to the co-worker above what they receive in the course of their typical job responsibilities.

**Self-directed Models:** In a self-directed model, an individual can hire the person of their choice (eg. a neighbor, a coworker, professional provider) to provide job coaching and other employment supports rather than relying exclusively on agency based staffing models.

**Peer Support:** Peer support provides participants with opportunities to learn and share coping skills and strategies, move into more active assistance and away from passive roles, and to build and/or enhance self-esteem and self-confidence. This support has proven to be an excellent model, most specifically for people with mental illness, for successful community living and employment.

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<sup>7</sup> More information on EFSLMP can be found at: <http://www.dol.gov/odep/topics/EmploymentFirst.htm>.

<sup>8</sup> Additional information on PIE can be found at: <http://www.acl.gov/Programs/AIDD/Programs/PNS/Resources/PartnershipsInEmplSystemsChangeGrants.aspx>.



While peer support has been used predominantly for people with mental health and substance abuse issue, other population groups could benefit from similar consumer-operated services. CMS will support States that wish to consider additional employment supports that draw on peer support models that are coordinated within the context of a comprehensive individualized plan. Additional information concerning peer support services is contained in the August 15, 2007 [State Medicaid Director letter #07-011](#) at

**Self-employment:** The CMS definitions of customized employment and supported employment allow States to provide services that support the individual to become self-employed and/or run a small business. For example, supported employment may include services and supports that assist the participant in achieving self-employment through the operation of a business such as (a) aiding the participant to identify potential business opportunities; (b) assistance in the development of a business plan, including potential sources of business financing and other assistance in including potential sources of business financing and other assistance in developing and launching a business; (c) identification of the supports that are necessary in order for the participant to operate the business; and (d) ongoing assistance, counseling and guidance once the business has been launched.

## Q14: How does the new “Settings Rule” impact employment programs?

In January 2014 CMS issued Final Rule: CMS 2249-F and CMS 2296-F [Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice \(Section 1915\(k\) of the Act\) and Home and Community-Based Services \(HCBS\) Waivers \(Section 1915\(c\) of the Act\)](#)

The rule establishes requirements for the qualities of settings that are eligible for reimbursement for the Medicaid home and community-based services (HCBS). They reinforce CMS’s commitment to fund only those services that are provided in the most integrated way possible.

The new definitions apply to both residential services and nonresidential services such as supported employment, prevocational work and day habilitation that are provided through any of three Medicaid HCBS authorities: 1915(c) —Home and Community Based Service (HCBS) Waivers; 1915(k)—Community First Choice Act; and, 1915(i)—HCBS state plan option.

In December 2014, CMS issued [Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service \(HCBS\) Settings](#) to assist states in assessing whether their services meet the new HCB setting requirements.

Under the new rule settings fall into one of three groups:



## Home and community based

The rules establish requirements for a setting to be considered “Home and Community-based” that are based on an outcome oriented definition that focuses on the nature and quality of an individual’s experience.

A service is considered home and community based if it has the following characteristics:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and to work in competitive, integrated settings, engage in community life and control personal resources.
- Ensures that individuals receive services in the community to *the same degree of access* as individuals not receiving Medicaid home and community-based services.
- Is selected by the individual from among settings options. The settings options should include non-disability specific settings. The person centered service plan should document the options based on the individual’s needs, preferences.
- Ensures an individual's right to privacy, dignity, respect and freedom from coercion and restraint.
- Optimizes individual initiative, autonomy and independence in making life choices.
- Facilitates individual choice regarding services and supports, and who provides them.
- There are additional requirements for provider-owned or controlled residential settings which can be found in the [final rule](#)
- [See Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service \(HCBS\) Settings](#), CMS presents indicators that reflect the presence or absence of each on these qualities in work and non-work activities.

**Not Home and Community-Based:** Nursing facilities, institutions for mental disease (IMDs), Intermediate care for individuals with intellectual disabilities (ICF/IID) and hospitals cannot be billed as home and community-based services through Medicaid (except for institutional respite). Several have billing options for federal participation through other resources. For example, nursing facilities certainly can bill as a nursing facility and apply for federal reimbursement, but not through home and community-based services.

## Presumed not to be Home and Community-Based:

The following settings are presumed not to be home and community based.

- Setting in a publicly or privately owned facility providing inpatient treatment
- Settings on the grounds for adjacent to a public institution.
- Settings with the effects of isolating individuals from their broader community of individuals not receiving Medicaid HCBS.

These settings it cannot be included in a 1915 (c), 1915 (i), or 1915 (k) program unless:

- A state submits evidence (which goes through a public review process) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution, and



- The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution

If there is a *specific, assessed need for an individual (not for a disability type)*, the state can modify the requirement in a way that may be more restrictive for the individual. These modifications of the requirements must be justified and documented in the person centered plan.

The rule provides a transition period and specifies requirements for collecting and acting on public comments in the process of developing a transition plan. It is important that stakeholders participate in this public comment process.

### **Q15: Are AbilityOne contract jobs considered integrated employment and can waiver money be used to support these jobs?**

The AbilityOne Program is a Federal initiative in which nearly 600 nonprofit agencies hire individuals with disabilities to produce products or provide services that are sold to the Federal government. Some people argue that AbilityOne is “segregated employment” because the law requires that at least 75% of the direct labor be performed by workers with disabilities.

CMS does not take a position on AbilityOne contracts. Each State needs to look at the criteria that are listed in their core service definitions and determine whether a job placement that is supported via HCBS funds is integrated or segregated and whether the job should be classified as group supported employment or prevocational services.

Not all AbilityOne jobs may fit into the same category. For example, an AbilityOne contract in which the waiver participants are cleaning buildings when the buildings are closed are not interacting with individuals without disabilities. Thus, the job may be considered segregated prevocational services. In another AbilityOne contract, the cleaning may take place during the day where there are face-to-face interactions between the contract workers and individuals without disabilities. This situation may or may not be considered integrated employment by a State. State Medicaid agencies are encouraged to align criteria related to integrated employment settings with guidance on the topic included in various Federal statutes or issued by other Federal agencies beyond CMS.



## **Q16: What are some creative approaches that States are using to provide meaningful wraparound supports for individuals who are employed less than full-time?**

Waiver participants who are employed less than full-time often spend part of their day in segregated day habilitation or prevocational services.

CMS is currently gathering information to identify some good evidence-based practices of integrated meaningful wrap-around services that they can share with the States. For example, there are some services where individuals are in the community when they are not working. They may be spending time sharpening their work, social, or independent living skills. They may be meeting with friends, volunteering, working out at the gym or exploring other job opportunities. They are doing what people without disabilities would do if they had free time. The key to these programs is to assess each individual's circumstances to find the most integrated setting is for that particular person.

CMS has an internal working group that is drafting subregulatory guidance with additional clarity around what nonresidential services and approaches meet the [final rule on home and community based settings](#) issued on January 16, 2014.<sup>9</sup>

## **Q17: Who should I contact for more information?**

CMS welcomes the opportunity to address questions States may have about how to integrate employment supports into Medicaid HCBS waivers or that are interested in discussing potential strategies with CMS prior to including these ideas in a waiver proposal.

Colleen Gauruder (for questions related to the final rule on HCBS and 1915(c) waivers)

[Colleen.Gauruder@dms.hhs.gov](mailto:Colleen.Gauruder@dms.hhs.gov)

Jeffrey Clopein (for questions pertaining to the Money Follows the Person program)

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<sup>9</sup> A final rule issued by CMS on 01/16/2014 amends the Medicaid regulations to define and describe state plan section 1915(i) home and community-based services (HCBS) under the Social Security Act (the Act) amended by the Affordable Care Act. This rule offers states new flexibilities in providing necessary and appropriate services to elderly and disabled populations. This rule describes Medicaid coverage of the optional state plan benefit to furnish home and community based-services and draw Federal matching funds. A copy of the final rule, along with various informational resources about implementation of the rule, can be found at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>



[Jeffrey.Clopein@cms.hhs.gov](mailto:Jeffrey.Clopein@cms.hhs.gov)

Effie George (for questions pertaining to the Balancing Incentives Program)

[Effie.George@cms.hhs.gov](mailto:Effie.George@cms.hhs.gov)

[www.Medicaid.gov](http://www.Medicaid.gov)



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