

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services



Center for Medicaid and State Operations

7500 Security Boulevard
Baltimore, MD 21244-1850

October 14, 1997

Dear State Medicaid Director:

On August 5, 1997, President Clinton signed into law the Balanced Budget Act of 1997, Public Law 105-33. Section 4743 of that Act deleted the requirement for prior institutionalization in a NF or ICF/MR before a recipient is eligible for expanded habilitation services (prevocational, educational and supported employment) under a home and community-based services waiver. Thus, effective October 1, 1997, you may furnish expanded habilitation services to any individual served under your home and community-based services waiver(s) targeted to individuals with mental retardation/developmental disabilities that include habilitation services in the approved waiver.

To receive Federal financial participation for the expanded habilitation services provided to individuals previously excluded because of the prior institutionalization requirement, you will need to amend your waiver to include habilitation services (if not already included in the approved waiver request) and to delete the prior institutionalization requirement. If you anticipate that additional costs for prevocational, educational and supported employment services would be incurred because of the change, a revised estimate of waiver costs (factor D of the waiver formula) also would be required for the remaining term of the approved waiver. Changes to waiver costs should also reflect decreases in other waiver service costs (e.g. day habilitation) no longer provided due to the provision of expanded habilitation. If no additional costs or changes to waiver costs would be attributable to the addition of expanded habilitation services in the waiver, your waiver amendment request should include a statement to that effect explaining why no additional costs will be incurred.

The statute continues to specify that the expanded habilitation services may be provided only if they are unavailable to a recipient through special education or vocation rehabilitation services (1915(c)(5)(C)(i) and (ii)). These restrictions and corresponding assurances provided in your approved waiver still apply.

We will be revising the Federal regulations at 42 CFR 440.180 and 42 CFR 441.300-441.310, the State Medicaid Manual, and the streamlined waiver format in the near future to reflect the statutory change. The revised Appendix B of the streamlined format will be forwarded to you as soon as it is developed.

Sincerely yours,

/s/

Sally K. Richardson

Director

Center for Medicaid and State Operations

cc:

All HCFA Regional Administrators

All HCFA Associate Regional Administrators for Medicaid and State Operations

Lee Partridge - American Public Welfare Association

Joy Wilson - National Conference of State Legislatures

Jennifer Baxendell - National Governors' Association