

Implementation Guide: Medicaid State Plan Eligibility Individuals Receiving Home and Community-Based Waiver Services under Institutional Rules

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Individuals Receiving Home and Community-Based Waiver Services under Institutional Rules

POLICY CITATION

Statute: 1902(a)(10)(A)(ii)(VI)

Regulations: 42 C.F.R. §435.217 and §436.217

BACKGROUND

Overview

This reviewable unit (RU) describes the optional Medicaid eligibility group for individuals who would be eligible for Medicaid if they were living in an institution and who, were it not for the receipt of home and community-based services (HCBS), would require the level of care furnished in an institution. It provides the criteria under which individuals may be covered under this group, as well as the income and resource standards used.

Section 1915(c) of the Social Security Act (the Act) permits states to include in the definition of “medical assistance,” HCBS delivered through “HCBS waivers” or “1915(c) waivers.” These waivers allow Medicaid beneficiaries to receive services in their own home or community rather than in an institution. In its 1915(c) waiver application, a state must specify who is served, including:

1. The level of institutional care that individuals must need in order to be considered for the waiver;
2. The specific target population(s) (individuals age 65 or older and/or individuals who have a disability, individuals with intellectual disabilities and/or developmental disabilities, or persons with mental illness); and
3. The Medicaid eligibility groups to which waiver services are furnished.

Many individuals have income and/or resources too high to qualify for Medicaid unless they are living in an institution. The Individuals Receiving Home and Community-Based Waiver Services under Institutional Rules group (hereafter referred to as the HCBS waiver group) gives states the option to make HCBS waiver participants eligible for Medicaid as if they are living in an institution, even though these individuals are actually residing in the community.

NOTE: while this eligibility group includes individuals receiving HCBS waiver services under sections 1915(c), (d) and (e), because states rarely use 1915(d) and (e), and for convenience, this guidance will refer only to section 1915(c).

Characteristics

The HCBS waiver group is an optional eligibility group established by section 1902(a)(10)(A)(ii)(VI) of the Act. This eligibility group covers individuals who:

- Would be eligible for Medicaid if living in an institution;

- Will receive HCBS under a 1915(c) waiver; and
- In the absence of such HCBS, would require the level of care furnished by a hospital, nursing facility or intermediate care facility for individuals with intellectual disabilities (ICF-IID).

Institutional Eligibility

The HCBS waiver group does not have income and resource requirements of its own. Instead, financial eligibility is derived from other eligibility groups (referred to here as the “principal” groups), which are identified in each 1915(c) waiver. Some of these principal eligibility groups are specific to individuals living in an institution, such as the Individuals in Institutions Eligible under a Special Income Level group (the special income level group), and others cover individuals living in the community, like the Ticket to Work groups. In either case, eligibility for the HCBS waiver group is determined using the hypothetical assumption that the individual is in an institution.

This is important because of the deeming rules that generally apply to institutionalized individuals. As required by section 1902(a)(17) of the Act and described at 42 C.F.R. §§435.602 and 436.602, when spouses live together in the community, the income and resources of one spouse are generally counted when determining the eligibility of the other spouse, even if the first spouse is not applying for eligibility. Similarly, when children live with their parents, the income and resources of the parents are counted when determining the financial eligibility of the child. This is called “deeming.” Conversely, under standard cash assistance-based methodologies, where an applicant is living alone, the income and resources of other individuals are not deemed available to the applicant, even where the income and resources of such other individuals would be deemed available to the applicant if they were living together. Generally, an individual in an institution is considered to be living alone, which means that the income and resources of other individuals are not included in determining eligibility for an institutionalized individual.

For the HCBS waiver group, under which eligibility may be granted where an individual *would be eligible* if institutionalized, this means that an applicant’s financial eligibility is evaluated without regard to the income or resources of a spouse or parent who may actually be living with the applicant, because the income and resources of these individuals would not be deemed to the applicant if the applicant was in an institution. For example, a state that elects to serve the HCBS waiver group, and further elects to make the special income level group a principal group, would determine eligibility for an applicant by comparing only the applicant’s income to the state’s income standard for the special income level group (which in most cases will be 300% of the SSI FBR), even if the spouse or parent(s) of the applicant is living with the applicant.

Many states elect to cover the special income level group, but states do not have to cover the special income level group in order to cover the HCBS waiver group. Additionally, even if a state covers the special income level group, it does not have to make the group the principal group to the HCBS waiver group. For example, a state that covers both the special income level group and the Age and Disability-Related Poverty Level group could choose to make only the poverty level group the principal group to the HCBS waiver group. In this case, eligibility for the HCBS waiver group would be limited in the state to individuals who are 65 and older or who

have a disability and whose own income (i.e., not including the income of others) is at or below the poverty level.

Receipt of HCBS

To be eligible for the HCBS waiver group, an individual must be able to receive HCBS under an approved 1915(c) waiver. However, because section 1915(c) waivers must be cost neutral, waiting lists exist for individuals seeking access to waiver services. Individuals on a waiting list are not eligible for the HCBS waiver group. To be eligible for this eligibility group, an individual must meet the financial and nonfinancial requirements for Medicaid eligibility, and must meet the level-of-care criteria for the relevant 1915(c) waiver. Additionally, the state must develop a plan of care for the individual, and must identify an available waiver slot for placement.

Financial Eligibility

As noted above, the HCBS waiver group does not have its own income or resource standards or methodologies. Instead, to determine eligibility for the HCBS waiver group, a state uses the standards and methodologies for the principal group or groups the state elects to align with the HCBS waiver group. This includes application of any income or resource disregards applied to the principal eligibility group under section 1902(r)(2) authority.

Option: Less Restrictive Methodologies. States have the option to establish additional income and resource disregards exclusive to the HCBS waiver group. These less restrictive methodologies would create a higher effective income or resource standard for the HCBS waiver group compared to the principal group. Additional information on less restrictive income and resource counting methodologies can be found in the implementation guides that accompany the **Less Restrictive Income Methodologies under 1902(r)(2)** screen and the **Less Restrictive Resource Methodologies under 1902(r)(2)** screen.

INSTRUCTIONS

A. Characteristics

There are statements (A.1. through A.3.) describing the characteristics of this eligibility group.

B. Income and Resource Methodologies

- At B.1., there is a statement that the income and resource methodologies used for this group are those used to determine eligibility for a state plan group under which the individual would be eligible if in an institution.
- At B.2., select *Yes* or *No*, to indicate if less restrictive methodologies are used in calculating countable income.
 - If *Yes* is selected, click on the **Add/Modify Less Restrictive Methodologies** button.
 - When you have completed these screens, the less restrictive methodologies selected will be inserted into the **Individuals Receiving Home and Community-Based Waiver Services under Institutional Rules RU**. (See the implementation guides, **Less Restrictive Income Methodologies – Selection** and **Less Restrictive Income Methodologies** for how to complete these screens.)
- At B.3., select *Yes* or *No*, to indicate if less restrictive methodologies are used in calculating countable resources.
 - If *Yes* is selected, click on the **Add/Modify Less Restrictive Methodologies** button.
 - When you have completed these screens, the less restrictive methodologies selected will be inserted into the **Individuals Receiving Home and Community-Based Waiver Services under Institutional Rules RU**. (See the implementation guides, **Less Restrictive Resource Methodologies – Selection** and **Less Restrictive Resource Methodologies** for how to complete these screens.)

C. Income and Resource Standards

There is a statement that the income and resource standards used for this group are those used to determine eligibility for a state plan group under which the individual would be eligible if in an institution.

D. Additional Information (Optional)

Except in limited circumstances, this field remains blank. Please consult with CMS before adding any additional information concerning this RU.

REVIEW CRITERIA

The less restrictive methodologies entered must be sufficiently clear, detailed and complete to permit the reviewer to determine that the state's description meets applicable federal statutory, regulatory and policy requirements.