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Build Back Better Act: HCBS Improvement Plans

PLANNING GRANTS

In federal FY 2022, HHS will make $130 million in planning grants (which may not be used as matching funds) to states to develop HCBS Improvement Plans. States must submit a plan within 24 months that includes two major elements:

- The State's existing HCBS landscape, including:
  - Asset and income limits, eligibility pathways, available services, and utilization management standards);
  - Current availability and barriers to access of HCBS services, including the length of waitlists;
  - Current utilization of HCBS in the state;
  - Current service delivery structures for HCBS in the state;
  - A description of the State's direct care workforce in HCBS;
  - Current payment rates for HCBS, including an assessment of the relationship with workforce shortages and wait times;
  - The State's HCBS quality program;
  - The number of individuals who receive long-term institutional care;
  - The share that HCBS spending represents of overall Medicaid spending on LTSS in the state; and
  - Demographic data, as available.
- Goals for HCBS improvements, including how the State will:
  - Carry out planned activities to enhance HCBS;
  - Reduce barriers to and disparities in access to HCBS;
  - Monitor and report on access, expenditures (including as a share of overall LTSS spending), wages and benefits for the workforce, and the sufficiency of provider payment rates; and
  - Coordinate implementation of the plan among its agencies.

ENHANCED FMAP

Upon approval of a State's HCBS Improvement Plan, that State will be eligible for a 6 percentage point enhancement in its Federal Medical Assistance Percentage (FMAP) for its spending on HCBS. This enhancement will begin in the first quarter after plan approval and will continue indefinitely. HCBS are defined to include:

- Home health services;
- Personal care services;
- Private duty nursing in the home;
- Program of All-Inclusive Care for the Elderly (PACE) services;
- HCBS services provided through a 1915(c), or other Section 1915, waiver;

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- Case management services;
- Rehabilitative services, including those related to behavioral health; and
- Other services as specified by HHS.

This definition is aligned with the definition used for the temporary enhanced FMAP for HCBS in the American Rescue Plan.

Administrative Costs

States will also receive an 80 percent FMAP through October 1, 2031, for administrative costs related to enhancing HCBS. These may include:

- Enhancing Medicaid data and technology infrastructure;
- Modifying rate setting processes;
- Improving training programs for direct care workers;
- Carrying out ombudsman activities;
- Establishing unique identifiers for direct care workers; and
- Enhancing programs that register direct care workers or connect them to beneficiaries.

States will also receive an indefinite 80 percent FMAP for HCBS quality reporting activities.

Self-Directed Program

States may also choose to establish a program to facilitate self-directed HCBS care. Such States will be eligible to receive a further 2 percentage point increase in their FMAP for spending on HCBS for six quarters.

The self-direction program must include the following functions:

- Registering direct care workers and connecting them to beneficiaries;
- Recruiting and training independent providers in self-directed care (including training for beneficiaries);
- Ensuring safety and quality of services;
- Communicating with direct care workers on training, program requirements, and similar matters;
- Supporting beneficiary hiring of independent HCBS providers, including fiscal agent activities;
- Supporting beneficiary hiring of family caregivers, to the extent that the State permits such; and
- Ensuring that the program does not prevent labor union formation or discriminate against unions.

REQUIREMENTS

Supplement, Not Supplant

The State must ensure that funds supplement, not supplant, current HCBS funding. In particular, the State must maintain the same level of State funding on HCBS that is in effect when the State receives its planning grant to develop an Improvement Plan. States will have three years to spend accumulated unspent State funding attributable to the enhanced FMAP.

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Maintenance of Effort

States must meet maintenance of effort requirements, tied to the level of services available as of the date the State receives a planning grant. In particular, States may not:

- Reduce the amount, duration, and scope of available HCBS.
- Reduce payment rates for HCBS, including those assumed in managed care capitations; or
- Adopt more restrictive eligibility standards or scope for HCBS, including cost-sharing.

A State may request an exception from HHS to the second and third components above, but must show that their planned action will not:

- Result in fewer individuals, either overall or in particular eligibility groups, receiving HCBS (subject to demographic adjustment); or
- Cause increased cost-sharing (other than due to inflation).

Other Requirements

Once they start to receive enhanced FMAP, States must begin to implement activities by a date specified by HHS, that will improve HCBS access. This includes, among other items:

- Providing personal care coverage for all eligible individuals;
- Expediting eligibility for HCBS; and
- Newly providing coverage, or expanding existing criteria, for certain Medicaid Buy-In eligibility groups (i.e., working individuals with disabilities who would otherwise be eligible for SSI).

States must also take actions to strengthen and expand the HCBS workforce. In particular, States must update and, if appropriate, increase payment rates within two years of the HCBS Improvement Plan's approval, and every three years afterwards. They must also ensure that increased payment rates result in "a proportionate increase" to payments for direct care workers.

States must also designate an independent HCBS or long-term care ombudsman that provides direct assistance to HCBS recipients. Finally, a State must submit annual reporting on its progress implementing the HCBS Improvement Plan, starting at the end of the 5th quarter after it starts to receive enhanced FMAP, and every year afterwards.

Benchmarks to Demonstrate Improvements

Participating States must demonstrate improvements by their seventh annual HCBS Improvement Plan Report (i.e., the end of the 29th fiscal quarter after approval of their HCBS Improvement Plan). This must include demonstrating:

- HCBS availability has increased "above a marginal increase"; and
- The HCBS share of LTSS spending is least 50 percent (or, for states that already met this level, that the HCBS share of spending has not decreased).