

A SUMMARY OF MEDICAID WAIVER PROGRAMS
AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS
AND THEIR FAMILIES IN NEW YORK STATE
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Elder Law Section

Under Section 1915(c) of the Social Security Act, Medicaid law authorizes the Secretary of the U.S. Department of Health and Human Services to waive certain Medicaid statutory requirements. These waivers enable New York State to cover a broad array of home and community-based services (HCBS) for targeted populations as an alternative to institutionalization.

This summary is intended to serve as a reference for practitioners in identifying Medicaid funded programs which may be available and appropriate for individuals with special needs and their families, the eligibility criteria for these programs and references that are available to explain these programs in greater detail.

This summary will identify and discuss 6 different Waiver Programs available in New York state to serve individuals with disabilities (including mental illness) and their families.

WAIVERS ADMINISTERED BY THE OFFICE OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITY (OMRDD)

A. CARE AT HOME (CAH) WAIVERS

OMRDD operates three Care at Home (CAH) Medicaid Home and Community Based Waivers (known in New York as CAH Waivers III, IV & VI) which have the purpose of providing medical assistance to families with children living at home who have severe disabilities and/or complex medical conditions and thereby avoiding placement in intermediate care facilities for the developmentally disabled.

Eligibility

To be eligible the child must be all of the following criteria:

1. Under the age of 18;
2. have a developmental disability as defined below;
3. demonstrate complex health care needs;
4. require an intermediate level of care;

5. not be hospitalized; and
6. be Medicaid eligible without consideration of parents income and resources

Medicaid Income & Resource Allowances and Budgeting

A single child participating in one of the OMRDD CAH Waivers will be considered Medicaid eligible if he or she has less than \$13,800 in countable resources and no more than \$767 per month (+\$20) in income.

Waiver Openings

There are approximately 600 slots for children among the three Waivers.

Services

Case Management;
Respite Care; and
Assistive Technologies and home modifications/adaptations

Waiver Renewals

Each CAH Waiver is renewed by the Center for Medicare and Medicaid Services (CMS) every 5 years. CAH IV and VI were renewed in 2007 and CAH III is currently in the process of being renewed.

Comprehensive information about the eligibility process and the OMRDD CAH Waiver programs can be found at:

http://www.health.state.ny.us/facilities/long_term_care/docs/manual.pdf

B. HOME & COMMUNITY BASED SERVICES (HCBS) WAIVER

OMRDD operates one HCBS Waiver which provides services and supports for adults and children of all ages and their families to enable individuals with disabilities to remain at home or in community residential settings.

Eligibility

A person must meet the following criteria:

1. Must be diagnosed with mental retardation or a developmental disability as defined below;
2. Must meet the intermediate care facility (ICF) for the mentally retarded or developmentally disabled level of care eligibility criteria;
3. Must be Medicaid eligible; and

4. Must live at home, or in an OMRDD sponsored Individualized Residential Alternative (IRA), Community Residence or Family Care home.

Definition of Developmental Disability

OMRDD uses the definition found at Section 1.03(22) of the Mental Hygiene Law as the legal basis for eligibility.

Section 1.03(22) defines “Developmental Disability” as a disability of a person that is:

- (a)
 - (1) is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;
 - (2) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such person; or
 - (3) is attributable to dyslexia resulting from a disability described in subparagraph (1) or (2) of this paragraph;
- (b) originates before such person attains age twenty-two;
- (c) has continued or can be expected to continue indefinitely; and
- (d) constitutes a substantial handicap to such person's ability to function normally in society.

Please note items in Section (a) only one of the three needs to be evident; but at least one of the three must occur in combination with the requirements of (b),(c) and (d).

Medicaid Income & Resource Allowances and Budgeting

Community budgeting applies to OMRDD HCBS Waiver Participants.

Income: \$767 per month (+\$20) for single applicants. If the applicant is married, and the household is considered a household of two then the couple will be entitled to \$1,117 a month in income.

Resources: A/R individual (or spouse) in marital situations is entitled to keep \$13,800. If the A/R is married, and the household is considered a household of two then the couple will be entitled to a combined \$20,100 in resources in 2010, in addition to other resource disregards.

There are provisions for both Income and Resource Spend-Down in this program.

Waiver Openings

The OMRDD HCBS Waiver services approximately 60,000 New York State residents.

Core Services of OMRDD HCBS Waiver

Residential Habilitation;

Day Habilitation;

Supported Employment;

Prevocational Services;

Respite;

Adaptive Devices;

Environmental Modifications (home);

Plan of Care Support Services;

Family Education and Training;

Self-Determination using consolidated supports and services.

Waiver Renewal

On September 24, 2009, CMS approved operation of the HCBS Waiver for a five year period beginning October 1, 2009 through September 30, 2014. In addition to approving the operation of all of the Waivers core services through September 30, 2014, the renewal provides OMRDD with authority to develop and implement new and modified waiver services, including, Intensive Behavioral Services, Community Habilitation, Pathway to Employment, Community Transition Services, and Self Directed Service Options.

Comprehensive information about the eligibility process and the OMRDD HCBS Waiver program itself can be found at:

http://www.omr.state.ny.us/wp/images/Resource_Guide_NYS_OMRDD_feb_09.pdf

WAIVER ADMINISTERED BY THE OFFICE OF MENTAL HEALTH (OMH)

A. HOME & COMMUNITY BASED SERVICES (HCBS) WAIVER FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE

The Office of Mental Health administers a HCBS Waiver to serve children between the ages 5 to 21 who have been diagnosed with a severe mental illness and who are at risk of an out-of-home placement. To be served, the child must be enrolled in the Waiver prior to his or her 18th Birthday.

Eligibility Determination

3 Pronged Determination – (1) Clinical, (2) Medicaid; & (3) Fiscal. The applicant must be eligible at all three levels.

1. **Clinical** The child must:
 - a. Have a serious emotional disturbance;
 - b. Be between the ages of 5 and 18 on the effective date of enrollment;
 - c. Demonstrate complex health and mental health needs;
 - d. Require institutional Level of Care or must have a need for continued psychiatric hospitalization;
 - e. Have service and support needs that can not be met by just one agency or system;
 - f. Be capable of being cared for in the community if Waiver Services are Provided; and
 - g. Have a viable and consistent living environment with parents/guardians who are willing and able to participate in the OMH HCBS Waiver and support the child in the home and the community.
2. **Medicaid Requirements**
 - a. Child's own income and resources must be less than current Medicaid exemption standard for a Household of one. (Income \$767 (+\$20) /Resources \$13,800).
 - b. Parental Deeming Waived.
 - c. Pursuant to Department of Health GIS 09 MA/005 dated March 12, 2009, children with excess income are now permitted to spend-down in order to maintain Waiver eligibility.
 - d. Child's Medicaid Coverage must be in a county which is participating in the OMH HCBS Waiver.
 - i. Currently operating in all 5 boroughs and 40 other Counties – See www.omh.state.ny.us/omhweb/epb/HCBS_directory.htm

3. Fiscal

- a. Child must be capable of being served in the community within the federally-approved cost of institutional care and within NYS OMH and division of the Budget approved caps.

Waiver Openings

The OMH HCBS Waiver has approximately 1200 openings statewide.

Core Services of OMH HCBS Waiver

Individualized Care coordination;
Intensive in-home services;
Respite Care;
Family Support Services;
Crisis response services; and
Skill building services

Waiver Renewal

On January 1, 2009 the OMH HCBS Waiver was renewed for a 5-year period and has been approved through December 31, 2014.

Comprehensive information about the eligibility process and about the OMH HCBS Waiver in general can be found at:

<http://www.omh.state.ny.us/omhweb/guidance/hcbs/>.

WAIVERS ADMINISTERED BY THE DEPARTMENT OF HEALTH (DOH)

A. TRAUMATIC BRAIN INJURY (TBI) HOME & COMMUNITY BASED SERVICES (HCBS) WAIVER

The New York State Department of Health administers the TBI/HCBS Waiver in an effort to serve individuals between the ages of 18 and 64 who have been diagnosed with a TBI or related condition to prevent unnecessary entrances into nursing homes and to help individuals leave nursing homes to live in the community. To be served, the injury must have occurred after reaching the age of 18.

Eligibility Determination

An individual applying to participate in the waiver must meet all of the following criteria:

1. Be a Medicaid recipient.
2. Have a diagnosis of traumatic brain injury (TBI) or related condition.

(Individuals with gestational or birth difficulties such as cerebral palsy or autism or who have a degenerative disease, are not eligible for the waiver.)
3. Be between the ages of 18 and 64 upon application to the waiver.
4. Be assessed to need a nursing home level of care as a direct result of the TBI. Nursing home eligibility is determined by the Hospital and Community Patient Review Instrument and SCREEN.
5. Choose to participate in the waiver rather than reside in a nursing facility and execute Freedom of Choice Form to that effect.
6. Identify the residence in which the waiver participant will be living when receiving waiver services.
7. Complete an Initial Service Plan and Application Packet in cooperation with a Service Coordinator and approved by the RRDS (Regional Resource Development Specialist). This Plan must describe why the individual is at risk for nursing home placement without the services of the waiver and indicate how the available supports and

requested waiver services identified in the Plan will support the health and welfare of the potential participant.

8. Have a completed Plan for Protective Oversight (PPO).

Medicaid Income & Resource Allowances and Budgeting

Per GIS 08 MA/024 issued August 26, 2008 and effective as of September 1, 2008

Income: \$767 per month (+\$20). If the applicant is married, only the income of the A/R spouse counts, the non-applicant spouse's income is disregarded.

Spousal impoverishment budgeting has been eliminated in the TBI Waiver. (i.e. excess income of the A/R spouse cannot be applied to the non-applicant spouse to bring the non-applicant spouse's income up to the MMMNA (\$1821 until 7/1/10).

Income spend-downs are permitted in this program.

Resources: A/R individual (or spouse) in marital situations is entitled to keep \$13,800. If the A/R is married, the non-A/R spouse is entitled to the Community Spouse Resource Allowance, up to \$109,560 in 2010, in addition to other resource disregards.

Core Services of TBI/HCBS Waiver

Independent Life Skills Training and Development;
Structured Day Program Services;
Substance Abuse Program Services;
Intensive Behavioral Program;
Community Integration Counseling Service;
Home & Community Support Services;
Respite Care Services;
E-Mods Service (modifications to home or vehicle);
Assistive Technology Services;
Transportation; and
Community Transitional Services

****More comprehensive information about the eligibility process and the TBI Waiver program itself can be found at**

http://www.health.state.ny.us/health_care/medicaid/reference/tbi/docs/tbiprovidermanual2009.pdf

B. CARE AT HOME (CAH) WAIVER

DOH operates two Care at Home (CAH) Medicaid Home and Community Based Waivers (known in New York as CAH Waivers I & II) which have the purpose of providing medical assistance to families with children living at home who have severe disabilities and/or complex medical conditions and thereby avoiding placement in a hospital or nursing home.

CAH I is designated for children who require a nursing home level of care. CAH II is for children who require a hospital level of care which is paired with a requirement for frequent or prolonged device-based nutritional, respiratory or other vital body function support, with nursing care for disability.

Eligibility

To be eligible the child must be all of the following criteria:

1. Under the age of 18 and unmarried;
2. be physically disabled according to the SSI Program criteria;
3. require a level of care provided by a skilled nursing facility or hospital; and
4. be capable of being cared for safely in the community.

Medicaid Income & Resource Allowances and Budgeting

Any child who meets the criteria set forth above may apply for services under the CAH Waivers I & II, without regard to waived Medicaid eligibility. *See GIS OLTC 004.*

Waiver Openings

There are approximately 200 slots for children in each of the DOH CAH Waivers.

Services

Case Management;
Respite Care; and
Assistive Technologies and home modifications/adaptations

Waiver Renewals

Each CAH Waiver is renewed by the Center for Medicare and Medicaid Services (CMS) every 5 years. CAH I and II were renewed on December 1, 2008 and will remain in effect until November 30, 2013.

Comprehensive information about the eligibility process and the DOH CAH Waiver programs can be found at:

http://www.health.state.ny.us/facilities/long_term_care/docs/manual.pdf

C. BRIDGES TO HEALTH (B2H) WAIVER

Effective January 1, 2008 the Department of Health and the New York State Office of Children and Family Services received approval for three Waivers serving children in foster care or Division of Juvenile Justice and Opportunities for Youth residential care. The three Waivers are B2H for children with serious emotional disturbances, B2H for children with developmental disabilities and B2H for medically fragile children.

Eligibility Determination

To be eligible to participate in the B2H Waiver, a child must meet all of the following criteria:

1. Be in the custody of a Local Department of Social Services (LDSS) Commissioner or the custody of the Office of Children and Family Services (OCFS) Commissioner in the Division of Juvenile Justice and Opportunities for Youth (DJJOY);
2. be Medicaid eligible;
3. have an appropriate and documented qualifying diagnosis of Serious Emotional Disturbance, Developmental Disability or Medical Fragility;
4. be eligible for admission to a medical institution and assessed to meet the level of care criteria for one of the waivers in the B2H Waiver program;
5. be willing to enroll in the B2H Waiver Program and live in an environment where caregivers are willing to cooperate and support the child as a B2H Waiver participant;
6. be able to benefit from services offered through the B2H Waiver;
7. be able to be cared for in the community if provided access to B2H Waiver services;
8. be under the age of 21;
9. have the Application for Enrollment packet completed on their behalf; and

10. choose to participate in the B2H Waiver rather than reside in a medical institution which the child/medical consentor acknowledges by signing the Freedom of Choice Form.

Medicaid Income & Resource Allowances and Budgeting

Income: \$767 per month (+\$20) for single applicants.

Resources: A/R individual is entitled to keep \$13,800.

There are provisions for both Income and Resource Spend-Down in this program.

Waiver Openings

The Implementation Plan of the B2H Waiver calls for 3305 waiver openings by the end of 2010. 2688 of these openings are intended for children with serious emotional disturbances, 541 of these openings are intended for children with developmental disabilities and 76 are intended for children who are medically fragile.

Services

Health Care Integration;
Family/Caregiver Supports and Services;
Skill Building;
Day Habilitation;
Special Needs Community Advocacy and Support;
Prevocational Services;
Supported Employment;
Planned Respite;
Crisis Avoidance Management and Training;
Immediate Crisis Response Services;
Intensive In Home Supports;
Crisis Respite;
Adaptive and Assistive Equipment; and
Accessibility Modifications

Waiver Renewals

The B2H Waiver was first approved effective January 1, 2008 and will be effective through December 31, 2012.

Comprehensive information about the eligibility process and the DOH CAH Waiver programs can be found at:

[HTTP://WWW.OCFS.STATE.NY.US/MAIN/B2H/B2H%20PROGRAM%20MANUAL%20FINAL.PDF](http://www.ocfs.state.ny.us/main/B2H/B2H%20PROGRAM%20MANUAL%20FINAL.PDF)

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