

October 31, 2024

# Timely Access to Home- and Community-Based Services


*Provisional Plans of Care*

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# Overview

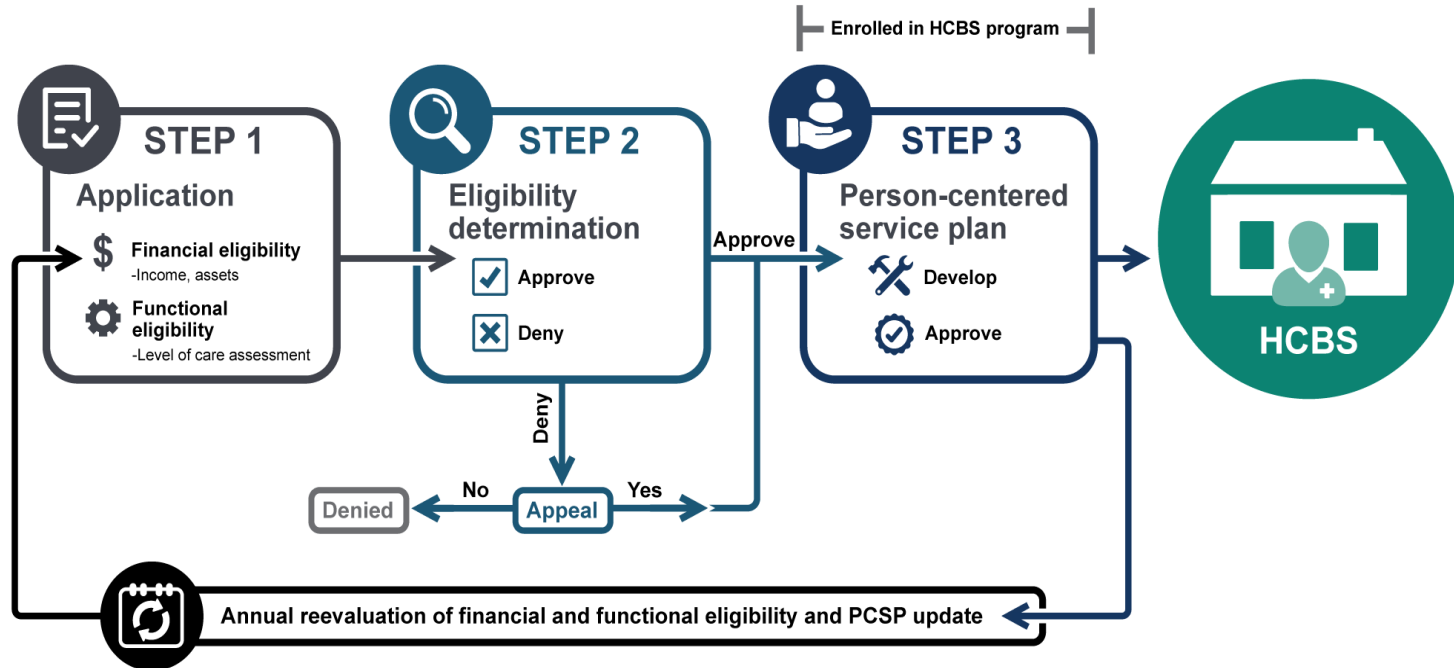
- Background
- Results of waiver review
- Findings from stakeholder interviews
- Next steps



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**Background**

# Eligibility Process and Requirements for Individuals Seeking Medicaid Home- and Community-Based Services



**Notes:** HCBS is home- and community-based services. PCSP is person-centered service plan.  
**Source:** 42 CFR 441.301, 441.303, 441.535, 441.540, 441.720, 441.725, 435.907, 435.916.

# Provisional Plans of Care

- Also called interim service plans
- Allowed since 2000, when described in Centers for Medicare & Medicaid Services (CMS) guidance known as Olmstead Letter #3

“To facilitate expeditious initiation of waiver services, we will accept as meeting the requirements of the law a provisional written plan of care which identifies the essential Medicaid services that will be provided in the person's first 60 days of waiver eligibility, while a fuller plan of care is being developed and implemented. A comprehensive plan of care must be in place in order for waiver services to continue beyond the first 60 days.”

**Source:** Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2000. Letter from Timothy Westmoreland to state Medicaid directors regarding “Olmstead Update No: 3.” July 25, 2000. Baltimore, MD: CMS.  
<https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/downloads/smd072500b.pdf>.

- States must document in Appendix D-1 of their Section 1915(c) waivers if they allow the use of provisional plans of care

# Results of Waiver Review

# Review of Section 1915(c) Waivers

- Based on the results of our environmental scan and information provided to us by CMS, we found that 23 states allow for the use of provisional plans of care, across 57 Section 1915(c) waiver programs
  - 23 percent (57 of 251) of all Section 1915(c) waivers have language allowing for the use of provisional plans of care

# State Use of Provisional Plans of Care, September 2024

| State                | Number of Section 1915(c) waivers with provisional plans of care | Total number of Section 1915(c) waivers in state | Percentage of Section 1915(c) waivers with provisional plans of care |
|----------------------|--|--|--|
| <b>Total</b>         | <b>57</b>  | <b>137</b>                                       | <b>42%</b>   |
| Alabama              | 1  | 7  | 14   |
| California           | 1  | 5  | 20   |
| Colorado             | 10   | 10   | 100  |
| Delaware             | 1  | 1  | 100  |
| District of Columbia | 3  | 3  | 100  |
| Illinois             | 4  | 8  | 50   |
| Indiana              | 1  | 4  | 25   |
| Kansas               | 1  | 7  | 14   |
| Maryland             | 1  | 8  | 13   |
| Massachusetts        | 3  | 10   | 30   |
| Michigan             | 2  | 5  | 40   |
| Missouri             | 6  | 11   | 55   |
| Montana              | 2  | 3  | 67   |
| New York             | 1  | 4  | 25   |
| North Carolina       | 1  | 4  | 25   |
| North Dakota         | 1  | 4  | 25   |
| Ohio                 | 6  | 6  | 100  |
| Oregon               | 6  | 6  | 100  |
| Pennsylvania         | 1  | 7  | 14   |
| South Carolina       | 1  | 8  | 13   |
| South Dakota         | 1  | 4  | 25   |
| Washington           | 1  | 8  | 13   |
| West Virginia        | 2  | 4  | 50   |

**Source:** The Lewin Group analysis, 2024, under contract with MACPAC; CMS 2024.



# State Use of Provisional Plans of Care in Section 1915(c) Waivers by Target Population, September 2024

| Target population             | Count of waivers |
|-------------------------------|------------------|
| Aged                          | 16               |
| Disabled (physical)           | 17               |
| Disabled (other)              | 5                |
| Brain injury                  | 3                |
| HIV/AIDS                      | 1                |
| Medically fragile             | 4                |
| Technology dependent          | 1                |
| Autism                        | 6                |
| Developmental disability      | 22               |
| Intellectual disability       | 23               |
| Mental illness                | 2                |
| Serious emotional disturbance | 1                |

**Source:** The Lewin Group analysis, 2024, under contract with MACPAC; CMS 2024.

# Findings from Stakeholder Interviews

# Methods

- From June through August 2024, MACPAC staff conducted interviews with officials in 5 states, CMS officials, and national experts
  - 1 state had language on the use of provisional plans of care in all of its Section 1915(c) waivers
  - 2 states had language in half of their waivers
  - 2 states had language in one or two waivers

# Use of Provisional Plans of Care in Emergency Situations

- State officials and national experts all said that provisional plans of care are most often used for emergency situations, such as natural disasters or hospitalizations
  - For example, one state said that they implemented the use of interim service plans at a time when the state was experiencing multiple wildfires

# Provisional Plans of Care are Rarely Used

- Of the four national organizations we spoke with, none of them were aware of any states using provisional plans of care
- Of the states we spoke with, one state said they are not currently using this flexibility, two specifically told us that they rarely use them, and two were unsure
- The two states who said they rarely use them were able to provide us with some data on the percentage of new waiver participants per year that had a provisional plan of care:
  - One state provided data for four of its waivers, reporting that the percentages were 0, 3, less than 5, and 6 percent
  - Another state reported that for one of its waivers the percentage was between 1 and 2 percent

# Use of Provisional Plans of Care in Presumptive Eligibility

- States using Section 1115 demonstrations to offer presumptive eligibility for non-MAGI populations are often designing those programs similar to how a provisional plan of care operates but have some additional flexibility
  - For example, one state that offers a limited benefit package during the period of presumptive eligibility allows for services to be available for up to 90 days or until an applicant's eligibility decision is rendered, whichever comes first. For Section 1915(c) waivers, a provisional plan of care may only be in place for 60 days.

# Guidance

- Aside from a brief mention in the Section 1915(c) technical guide, there has been no additional guidance on the use of provisional plans of care since Olmstead Letter #3 was published in 2000
- Lack of consensus among interviewees about the need for additional CMS guidance
  - Of the two states that noted they occasionally use interim service plans, they did not express a need for additional guidance
  - Among experts, there was a general feeling that additional CMS guidance might encourage more states to take up this flexibility and use it as a routine practice
- CMS indicated that they do not plan on releasing additional guidance, but rather have been trying to promote the use of provisional plans of care through other avenues
  - CMS instructs states interested in using this flexibility to submit a waiver amendment

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# Next Steps



## Next Steps

- For this session, staff welcome Commissioner feedback and questions specifically on the use of provisional plans of care
- We will return at the January 2025 meeting with a draft chapter for the March 2025 report to Congress
- Future work on level of care assessments and person-centered planning processes for non-MAGI groups

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