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Federal Policy Framework for Beneficiary Health and Welfare in Self-Directed Home- and Community-Based Services (HCBS)

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Medicaid and CHIP Payment and Access Commission

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Overview

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Background

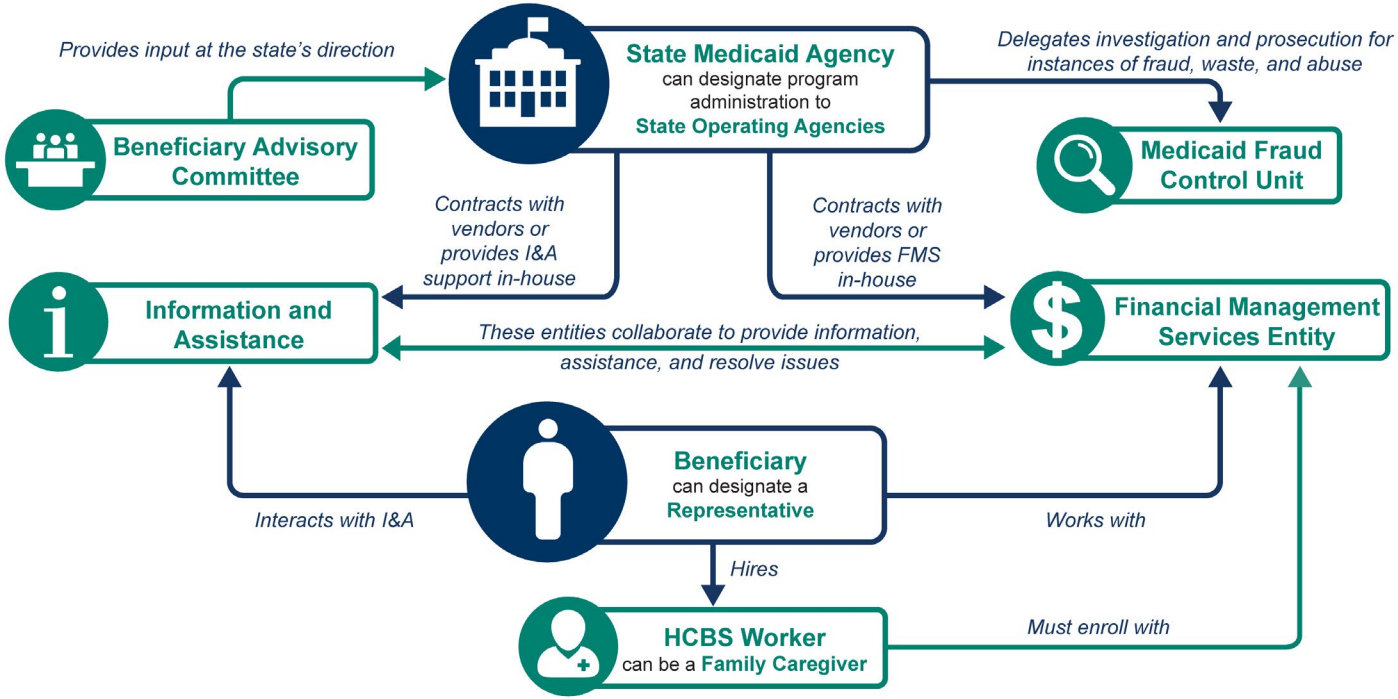
Medicaid Coverage of Self-Direction

- Self-direction is a Medicaid HCBS delivery model that allows individuals to choose their HCBS workers and have control over the amount, duration, and scope of services and supports in their person-centered service plan (PCSP)
- Federal requirements for self-direction models
  - Person-centered planning process and PCSP
  - Information and assistance (I&A) supports
  - Financial management services (FMS)
  - Quality assurance and continuous improvement system
  - Individualized budget

Findings from Phase One

- States have considerable flexibility in designing self-direction and often administer programs across multiple operating agencies
- I&A supports are critical in helping beneficiaries manage their self-directed services
- States vary in how they define and structure I&A supports and in their level of collaboration across support entities

Key Stakeholders in Program Administration



Note: I&A is information and assistance. FMS is financial management service. HCBS is home- and community-based services.
Sources: MACPAC compilation based on review of Sections 1915(c), 1915(i), 1915(j), 1915(k), and 1905(a) of the Act and the 2024 Section 1915(c) waiver technical guide. We also reviewed relevant regulatory guidance at 42 CFR 441 as well as evidence collected through interviews with experts.

Findings from Phase One, cont.

- The roles of I&A support entities often overlap and may be difficult to clearly distinguish from one another
- States leverage I&A roles and FMS entities to support quality reporting, monitoring, and oversight
- Existing data systems do not stratify program data by self-directed and agency-directed beneficiaries, which makes ensuring quality and conducting oversight difficult for self-direction
- The Commission expressed interest in continued policy research on protecting beneficiary health and welfare in self-direction

Health and Welfare in HCBS

- Since HCBS provide support for a uniquely vulnerable population, federal assurances exist to protect beneficiaries from potential bad actors
  - These assurances do not apply to other Medicaid services or populations
- The health and welfare assurance is a key federal requirement for HCBS operations and oversight
- This assurance protects beneficiaries by requiring states to establish systems enforcing health and welfare safeguards
  - State monitoring of program performance
  - Reporting and identification of safety issues
  - State and provider remediation of incidents
- These requirements apply to self-directed programs as well

Federal Policy Framework

Federal Policy Scan

- To better understand the health and welfare safeguards that states must establish, we conducted a federal policy scan to review federal requirements
  - Statutory
  - Regulatory
  - Subregulatory guidance
- The scan surfaced
  - Health and welfare safeguards across all HCBS authorities
  - Consistent features of certain safeguards across authorities
  - Variation in how safeguards specific to self-direction assure beneficiary health and welfare across authorities

Federal Health and Welfare Assurance

- States must provide satisfactory assurances that they safeguard HCBS beneficiaries by
  - Establishing standards for HCBS providers, such as state licensing or certification requirements
  - Ensuring services are provided in HCBS settings
  - Meeting the needs of beneficiary populations a state serves under a Section 1915(c) waiver
  - Operating an incident management system
- The 2024 Ensuring Access to Medicaid Services final rule (access rule) codified and expanded existing guidance from CMS, imposing minimum regulatory standards for incident management across authorities
- Additionally, states must meet conflict of interest standards to protect beneficiaries from abuse, neglect, and exploitation
- Specialized safeguards exist for self-direction programs and vary by authority

Focus for Phase Two

- Based on our findings from phase one–supporting quality reporting, monitoring, and oversight and using data systems to better understand self-direction programs–as well as Commissioner interest, we are focusing on these federal health and welfare safeguards for phase two
  - Incident management
  - Conflict of interest
  - Specialized safeguards for self-direction

Incident Management

Key Elements of Incident Management

Source: Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2022. Using data to inform and improve 1915(c) HCBS incident management systems. Baltimore, MD: CMS. https://www.medicaid.gov/medicaid/home-community-based-services/downloads/ims-using-data-oct-2022.pdf.

Incident Management: Pre-Access Rule

- CMS recommended states include the following in their definition of a critical incident
  - Accidental or unexplained death
  - Allegations of abuse including physical, psychological, emotional, verbal and sexual abuse, as well as neglect and exploitation
- For incident management systems in waivers, CMS required states to
  - Continually identify, address, and prevent instances of abuse, neglect, exploitation, and unexplained death
  - Demonstrate a system is in place that resolves incidents and prevents similar ones from occurring in the future
  - Follow state-established policies for restrictive interventions
  - Establish and monitor overall health care standards

Incident Management: Post-Access Rule

- CMS codified a health and welfare safeguard for incident management
  - States must operate and maintain an incident management system that identifies, reports, triages, investigates, resolves, tracks, and trends critical incidents
- The safeguard includes a minimum definition of a critical incident
  - Verbal, physical, sexual, psychological, or emotional abuse
  - Neglect or exploitation, including financial exploitation
  - Misuse or unauthorized use of restrictive interventions or seclusion
  - A medication error resulting in a call with a poison control center, an emergency department visit, an urgent care visit, or a hospitalization
  - An unexplained or unanticipated death, including a death caused by abuse or neglect

Incident Management: Post-Access Rule, cont.

- Incident management systems must be electronic
- Data must be shareable across investigating entities
- Investigators must report the resolution of investigations into a critical incident within the state's established timeframe
- HCBS providers must report critical incidents
- Claims data and data across state agencies must be leveraged to identify unreported critical incidents
- States must meet minimum performance standards and documentation requirements
  - 90 percent of critical incidents must be investigated, resolved, and undergo corrective action (as necessary) within the state's established timeframe

Incident Management: Post-Access Rule, cont.

- Provisions of the incident management safeguard must be implemented by July 2027
  - The provision mandating an electronic system must be implemented by July 2029
- These requirements apply to the HCBS authorities that offer self-direction and to HCBS delivered via managed care
  - Section 1905(a) authority is exempted
- Many states already meet some, or all, of these requirements, as CMS has recommended them for over 10 years

Conflict of Interest

Conflict of Interest

- All HCBS programs must adhere to conflict of interest standards and the standards vary by authority
- These standards protect the state and stakeholders from misaligned financial incentives and safeguard beneficiary health and welfare
- Required conflict of interest standards
  - Many HCBS authorities prohibit HCBS providers from developing the PCSP
  - Some authorities prohibit HCBS providers from conducting functional needs assessments
  - One authority prohibits HCBS providers from also providing case management
  - One authority prohibits a beneficiary's representative from also acting as the HCBS provider

Conflict of Interest, cont.

- Although conflict of interest standards vary across HCBS authorities, states may elect to implement optional standards
  - One HCBS authority prohibits a beneficiary's representative from also acting as the HCBS provider
  - Many self-direction programs do not need to meet this requirement, but states still elect to do so
- When a state includes an optional conflict of interest standard in their state plan or waiver, they must adhere to that standard

Specialized Safeguards for Self-Direction

Specialized Safeguards for Self-Direction

Authorized Representatives

- Beneficiaries may authorize a representative to assume responsibility for their care
- Every HCBS authority includes safeguards for the use of a representative and the specific safeguards vary
  - Under some authorities, the representative must undergo an evaluation of their ability to self-direct a beneficiary's services
  - Under others, the state must establish policies that describe the authorization process for representatives, the extent of decision-making the representative is authorized to engage in, and the safeguards ensuring that the representative makes decisions on behalf of the beneficiary

Specialized Safeguards for Self-Direction, cont.

Section 1915(j) Assurances

- Section 1915(j) state plan option establishes specific health and welfare assurances that do not exist in other self-directed programs
  - Requirements around monitoring service delivery and budget utilization
  - Continuity of care requirements when a beneficiary transitions to another service delivery model from self-direction
  - Specific I&A supports, such as the requirement that a support broker be available to beneficiaries
- Regulatory language also specifically defines the entity responsible for meeting these requirements (i.e., FMS entities, case managers, support brokers, etc.)

Next Steps

Next Steps

- Obtain Commissioner feedback on areas for further investigation
  - Are unique safeguards needed for self-directed programs to assure beneficiary health and welfare? Should there be more policy infrastructure specific to self-direction?
  - How might state implementation of incident management requirements in the access rule be shaped by the specific safeguards in place for self-directed programs?
- We will return to present findings from state environmental scans

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JANUARY MEETING

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