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California's protection and advocacy system

THE NURSING FACILITY/ACUTE HOSPITAL WAIVER: THE BASICS

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1. What are Home and Community-Based (HCBS) Waivers?

Home and Community-Based (HCBS) Waivers are programs that offer Medi-Cal services to a limited number of people with disabilities to help them live at home instead of in a nursing facility. People with all types of disabilities are eligible as long as they would qualify for admission to a nursing facility, subacute facility, or acute hospital. They are called "Waivers" because they *waive* certain federal Medicaid rules in order to provide different or more services than the State offers to other Medicaid (Medi-Cal) eligible people. The rules that are waived allow the State to:

- provide home and community-based services to a limited number of people, rather than all eligible Medi-Cal recipients in the State (statewideness);
- offer home and community based services that are not offered under the Medi-Cal State Plan (regular Medi-Cal) (comparability); and,
- provide Medi-Cal HCBS services to people who otherwise would not be eligible because their family or spouse's income is too high.

The HCBS Waiver discussed here is the HCBS Waiver that is administered by the State Department of Health Care Services (DHCS), called the Nursing Facility/Acute Hospital (NF/AH) Waiver. This Waiver is new as of January 1, 2007, and it combines three waivers administered by DHCS – the (1) Nursing Facility A/B, (2)

Subacute, and (3) In-Home Medical Care (Acute) Waivers. For more information about the HCSB Waivers administered by DHCS, go to: <http://www.dhcs.ca.gov/formsandpubs/publications/Pages/HCBSWaivers.aspx>.

2. What has changed in the new NF/AH Waiver?

The new Waiver combines the Nursing Facility A/B, Subacute, and In-Home Medical Care Waivers into one HCBS Waiver called the Nursing Facility/Acute Hospital Waiver (NF/AH Waiver). The NF/AH Waiver began on January 1, 2007. To view the NF/AH Waiver go to: http://www.dhcs.ca.gov/formsandpubs/publications/Documents/NFAHWaiverAmended_07-2007.pdf.

In the new Waiver, the State fixed some of the problems with the previous NF A/B Waiver. These include:

- EXPANDED NUMBER OF SLOTS, ADDED MORE SERVICES: Senate Bill SB 643 (Statutes of 2005) required the State to add 500 new slots to the NF A/B Waiver, of which 250 are to be reserved for people transitioning out of institutions. The NF/AH Waiver adds these slots, to bring the total capacity of the NF/AH Waiver to 2876 in 2009 (See Question 8). This is a small increase, but it will at least help to reduce the current waitlist, which has about 420 people statewide. Senate Bill SB 643 also adds “habilitation” and “community transition services” as new services. These are explained further in Questions 9 and 10.
- EXPANDED WHO CAN SERVE AS CASE MANAGERS: In the previous waivers, case managers¹ were limited to nurses and Home Health Agencies. This was very problematic for people who need case management to help them with hiring and firing their attendants, managing their attendants’ timesheets and payroll, money

¹ The waiver uses the term “case management” to refer to the types of services that may also be called “care management” or “service coordination.” To avoid confusion, this document will use the term “case management.”

management assistance, etc. The NF/AH Waiver includes “non-profit agencies” as qualifying case management and habilitation providers, which allows supported living agencies and independent living agencies to provide these services.

3. Who is eligible for the NF/AH Waiver?

The new NF/AH Waiver has three separate “levels of care” and each one has different criteria for eligibility.

- Nursing Facility A/B: Eligible individuals must be Medi-Cal eligible and otherwise require care in a NF Level A (pursuant to tit. 22 CCR §§ 51120 and 51334) or Level B (pursuant to tit. 22 CCR §§ 51124 and 51335) for at least 180 days. In order to be eligible for the “Distinct Part NF” rate (which is a higher rate specifically for individuals in “distinct part” nursing facilities such as Laguna Honda), individuals must meet the care needs in Welfare and Institutions Code section 14091.21(b)(1)(F) and tit. 22 CCR sections 51124 and 51335, and reside in a distinct part NF for at least 30 days.
- Nursing Facility Subacute: Eligible individuals must be Medi-Cal eligible and otherwise require care in a Subacute NF (pursuant to tit. 22 CCR § 51124.5) or Pediatric NF (pursuant to tit. 22 CCR § 51125.6) for at least 180 days.
- Acute Hospital: Eligible individuals must meet criteria for care in a hospital for at least 90 consecutive days and have a “traumatic or acquired neuromuscular impairment and/or a complex debilitating illness.” Applicants must meet criteria in tit. 22 CCR sections 51344 and 51173.1, in addition to other specific criteria set forth in the NF/AH Waiver application.

4. What is the HCBS IHO Waiver?

In December 2006, the State applied for a second HCBS Waiver for 210 people who were previously on the NF A/B and Subacute Waivers but whose costs exceeded cost-neutrality. The HCBS IHO Waiver is limited to serving people at the NF Distinct Part or

Subacute levels of care, who have been receiving services in an acute hospital for 36 months or more, and have a need for physician-ordered services that exceed what the NF/AH Waiver can fund for the individual's level of care. This Waiver has an aggregate cost-cap. To view this Waiver, go to:

http://www.dhcs.ca.gov/formsandpubs/publications/Documents/IHOWaiverAmended_7-2007.pdf.

5. What Services are Offered in the Waiver?

The NF/AH Waiver offers:

- case management
- personal care (attendant care)
- habilitation
- home and facility respite
- community transition services
- environmental accessibility adaptations
- home health aide services
- personal emergency response systems
- private duty nursing
- transitional case management
- medical equipment operating expenses.

6. Who can Provide NF/AH Waiver Services?

Most services can be provided by: A registered nurse, either hired by a Home Health Agency or as an individual nurse provider; a HCBS Benefit Provider; a Professional Corporation; or a Non-Profit Agency. Providers must meet certain Standards of Participation that are explained in the Waiver application, available at end end of the Waiver document at:

http://www.dhcs.ca.gov/formsandpubs/publications/Documents/NFAHWaiverAmended_07-2007.pdf

Interested providers can contact IHO at (916) 552 – 9105 or email to: IHOWaiver@dhcs.ca.gov.

7. What is the cost-cap for Waiver Services?

The NF A/H Waiver uses an *individual*, instead of an *aggregate*, cost-cap. That means that an individual's budget for purchasing all Medi-Cal State Plan and Waiver services cannot be more than what it would cost the Medi-Cal program to keep that person in an institution. If it would cost the Medi-Cal program more than the institutional cost, then the person can either accept fewer home and community-based services, or will be determined ineligible for the Waiver. An aggregate cost-cap allows the State to balance out the expenses of higher and lower-need recipients, as long as the total cost to the Medi-Cal program is cost-neutral.

The costs that are figured into determining whether an individual's services are within their cost-cap include: In-Home Supportive Services (IHSS), home health services, EPSDT supplemental services (for children under 21), adult day health care, durable medical equipment, medical supplies, non-emergency transportation, and all Waiver services. Medicare Part D drug costs are not included in this calculation.

The 2009 maximum allowable costs for each waiver (per person per year) in the NF A/H Waiver are as follows:

Waiver	2009 Maximum Allowable Costs for each Waiver
NF-A	\$29,548
NF-B (Adult)	\$48,180
NF B, Distinct Part	\$77,600
NF B Pediatric	\$101,882
NF Subacute (Adult)	\$180,219
NF Subacute, (Pediatric)	\$240,211
Hospital	\$305,283

8. How many people can be on each Waiver?

The State determines how many slots it will request for each HCBS Waiver. According to the NF A/H Waiver, each Waiver will have the following number of slots:

Waiver Year	Maximum Number of Waiver Slots				
	Nursing Facility A/B	Nursing Facility Subacute	Acute Hospital	HCBS IHO	Total
2009	1460	952	300	164	2876
2010	1570	1002	300	-----	2872
2011	1680	1052	300	-----	3032

The Subacute and Acute Hospital Waivers both have available slots currently, respectively 161 and 230. The Nursing Facility A/B Waiver currently has a waitlist of approximately 419 people. **It is really important to get on the waitlist so that as the waitlist moves, you or your client will be closer to the top. In addition, advocates will be able to demonstrate the need for more slots based on the number of people on the waitlist.**

9. What is Case Management?

According to the NF A/H Waiver, Case Management services “are designed to assist waiver participants in gaining access to needed services, regardless of the funding source, to ensure the participant’s health and safety and support of his/her home and community-based program.” Case managers work on assessing needed services and the number of hours requested, and developing and updating of the participant’s plan of treatment, as well as overseeing the implementation of the services in the plan of treatment and evaluation of the effectiveness of those services. Case management responsibilities include: Assessing, care planning, locating, coordinating, and monitoring services; and may also include monitoring and training attendants.

In the NF/AH Waiver, case management providers will include, for the first time, non-profit agencies, which can include supported living and independent living services agencies that serve people under the Developmental Disabilities Waiver, as well as Independent Living Agencies.

10. What is Habilitation?

Habilitation is a service in the NF A/H Waiver and is authorized by SB 643. According to the NF A/H Waiver, habilitation services can be provided in or out of the participant's home and are:

“designed to assist the participant in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the person's natural environment”

and includes training on:

“the use of public transportation; personal skills development in conflict resolution; community participation; developing and maintaining interpersonal relationships; personal habits; daily living skills (cooking, cleaning, shopping, money management) and community resource awareness such as police, fire, or local services to support independence in the community.”

Habilitation also includes assistance with: Locating, using and caring for service animals; selecting and moving into a home; locating and choosing suitable housemates; locating household furnishings; settling disputes with landlords; managing personal financial affairs; recruiting, screening, hiring, training, supervising, and dismissing personal attendants; dealing with government agencies; self-advocacy; building and maintaining a circle of support.

In the NF/AH Waiver, habilitation providers will include non-profit agencies, which can include supported living and independent living services agencies that serve people under the Developmental Disabilities Waiver, as well as Independent Living Agencies.

11. What are Community Transition Services?

Community Transition Services are new in the NF A/H Waiver and are authorized pursuant to SB 643. These are one-time moving expenses for individuals transitioning from a nursing facility to their own home. Allowable expenses include: Security deposits; household furnishings and moving expenses; set-up fees or deposits for utilities; services necessary for health and safety, such as pest eradication or one-time cleaning prior to move-in; home accessibility adaptations; and activities to assess, arrange for, and procure needed resources. The lifetime maximum allowable cost for Community Transition Services is \$5000. This amount will be factored into the individual's cost-cap for the year in which the services are used.

12. How can I get on the Waiver?

To apply for any of the Waivers (and to be placed on the waitlist), you must call DHCS In-Home Operations (IHO) at 916-552-9105 or 213-897-6774, or email to: IHOWaiver@dhcs.ca.gov. Ask for the Nurse of the Day, to whom you can make the referral. You will be sent the HCBS Waiver Questionnaire. Or, you can download the Questionnaire at:

<http://www.dhcs.ca.gov/formsandpubs/publications/Documents/IHOWaiverApp.pdf>. Complete and return the Questionnaire to IHO. IHO will send you a letter confirming that you have been placed on the waitlist or someone will contact you to set up a date and time for an in-person meeting. At the meeting, a nurse from IHO will review your care needs and will explain the "Menu of Services" from which you can choose the Waiver services that you prefer that are within your cost-cap. It is really important to have a friend, family member, or advocate at this meeting, as IHO will discuss many things and ask for your decision about your service options. It is also really important to be prepared by talking to an advocate before your meeting. You can do so by calling Disability Rights California at 1-800-776-5746 or getting in touch with your local independent living center.

13. What can I do to advocate for more and better HCBS Waiver services?

While the NF A/H Waiver has made some important, but limited changes to the Waiver, advocates have been pushing the State to make significant changes to the Waivers to enable more people to leave or avoid institutions. We believe that the State is obligated to do this in order to comply with the *Olmstead* decision. The State held a stakeholders' meeting in November 2006 but a promised second meeting has not yet been scheduled. To be kept up to date with this process and Disability Rights California's advocacy efforts, please contact Brandon.Tartaglia@disabilityrightsca.org. Some issues identified as critical to making the Waivers more effective include:

- A. INCREASE THE NUMBER OF SLOTS: Expand the NF A/B Waiver to reflect the number of people in California who are in nursing facilities. Estimates show that about 100,000 people live in nursing facilities in this State and that a large percentage of them would prefer to get out and live in their homes or in the community. A Nursing Facility Waiver with only 1,460 slots is shamefully insufficient and we believe that the State needs to use real estimates of the need for Waiver slots and make many more available.
- B. REALISTIC COST-CAPS: Although the cost-cap for the NF A/B Waiver has increased to \$48,180, it is still significantly less than the current average cost of a nursing facility, which is about \$56,000 per year. This means that many people who could benefit from Waiver services, and who could be served with the amount that it would otherwise cost the Medi-Cal program to place them in a nursing facility, are denied Waiver services. The reason given is that the nursing facility budget and the Waiver budget line items within the DHCS budget are separate, so that even when nursing facility rates increase, waiver rates do not increase. This problem perpetuates the institutional bias in the Medi-Cal program and needs to be changed.
- C. FLEXIBLE ELIGIBILITY: Eligibility for the current Waivers is determined by a rigid "level of care" determination. This means

that people who have specific needs that are not considered in the regulations defining each level of care (NF-A, NF-B, Subacute, etc.) are either denied Waiver services, or are placed at a lower level of care than they need to purchase a sufficient amount of services. The Waivers need to allow for flexible eligibility determinations so that such individuals are not forced into institutions unnecessarily, or left at home with inadequate services.

- D. AGGREGATE COST-CAP: Another way that the Waiver can meet the needs of people who need higher and lower cost services is by using an *aggregate cost-cap*. The NF A/H Waiver has an individual cost-cap, which means that if a particular person has care needs that cost more than the cost-cap for his or her level of care, then he or she will be denied HCBS Waiver services. An aggregate, instead of an individual, cost-cap, would allow higher and lower cost recipients to balance each other out. So far, DHCS has refused to consider doing this.
- E. ALLOW FOR LOCAL ADMINISTRATION: Currently, the Waivers discussed here are administered by In-Home Operations at the Department of Health Care Services. One of the reasons given for the low number of slots is that IHO's staff is too small to administer a larger Waiver. Some other Waivers, like the Developmental Disabilities, MSSP and AIDS Waivers, are administered at the local level by community organizations and/or non-profit agencies. This allows for better contact with clients, local prioritization for slots, and program structure tailored specifically to the needs of particular communities.
- F. TBI WAIVER: The State of California has no Waiver specifically for people with Traumatic Brain Injury (TBI). These individuals often have needs similar to people with developmental disabilities, but if their injuries occur after age 18, they are not eligible for those services. Thus, people with TBI are often left without adequate and appropriate services, as programs for TBI are limited. The State should apply for a new HCBS Waiver to

address the needs of people with TBI, as many other states have done.

- G. SINGLE POINT OF ENTRY: Under the current system, individuals can easily be admitted to nursing facilities within a matter of days, but the process for getting on a Waiver may take months, or even years. Other states have created a single point of entry system, where people are evaluated for both Waivers and nursing facilities at the same time, and people are offered a choice. To do this, the State would need to allow for retroactive approval of Treatment Authorization Requests (TARs) for Waiver services, just as it does for nursing facility placement. Other states' programs have had a lot of success in helping people avoid placement in a nursing facility by approving and providing Waiver services just as quickly as institutional placement.
- H. NEED TO COORDINATE NF WAIVER AND OTHER SERVICES FOR PEOPLE WITH DEVELOPMENTAL AND MENTAL HEALTH DISABILITIES: There is a lack of coordination between the various systems in California that serve people with physical disabilities, developmental disabilities, and psychiatric disabilities. There needs to be better coordination among these systems so that people who have a combination of disabilities can get the services they need from multiple systems working together.
- I. CONSUMER-FRIENDLY MATERIALS AND OUTREACH: The application, assessment, and service determination processes are very complicated and not explained very well, either in IHO's written materials or at face-to-face meetings. DHCS should create written information, both on its website and in print, that explains the process for getting on the Waiver, what services are available, how to find service providers, and consumers' rights. DHCS should also do outreach to individuals in institutions and hospitals to make sure that they know about HCBS Waivers and have an opportunity to apply for them.