



Allow Service Members to Retain Their Earned Priority for Receiving Medicaid Home and Community-Based Services Waivers

Best Practices

Subject:

States can provide supplemental financial support during critical transition periods to assist transitioning or separating service members and their family members with special needs by facilitating the families' ability to earn the same Medicaid Home and Community-Based Services priorities afforded to every state resident.

Principles:

States could apply current state policy to allow reasonable participation in state Medicaid HCBS and other waiver programs.

- States may allow active-duty service members to use their state of legal residence, where they pay taxes, vote, register their vehicles, hold a driver's license, etc., to register their family member with special needs for a Medicaid HCBS waiver.
- States may consider modifying one of their existing waiver categories, such as individuals with critical need to include military families transferring into the state or transitioning out of the military back to their home state, to expedite services through Medicaid Home and Community-Based Services.

Best practices examples

- The following Illinois language allows active-duty service members to use their state of legal residence to maintain their earned priority:
 - Illinois House Bill HB5697 2014(b) Sec 10:
 - *A dependent, who is a legal resident of the State, having previously been determined to be eligible for developmental disability services provided by the Department of Human Services, including waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act, shall retain eligibility for those developmental disability services as long as he or she remains a legal resident of the State, regardless of having left the State due to the military service member's military assignment outside the State, and as long as he or she is otherwise eligible for such services. (c) The Department of Human Services shall permit a dependent who resides out-of-state to be placed on the waiting list for developmental disabilities services if the dependent left the State due to the military service member's military assignment outside the State... (d) For dependents who received developmental disability services and who left the State due to the military service member's military assignment outside the State, upon the dependent's return to the State and when a request for services is made, the Department shall... resume services*

if the individual remains eligible.¹

- The following Florida language supports programs that assign priority based on level of need and allows active-duty families to use their state of legal residence to register their special needs family member for the Medicaid HCBS waiver to use when they return to the state. This provision can assist families in gaining access when returning to the state while on active duty and when they return to the state upon separation or retirement from the military. The service member must retain Florida as the state of legal residence, also called domicile, during the absence from the state to retain eligibility:
 - Florida Statute F.S. 393.065... (5)
 - *Except as otherwise directed by law, ... the agency shall assign and provide priority to clients waiting for waiver services in the following order: (a)Category 1, which includes clients deemed to be in crisis as described in rule Within categories 3, 4, 5, 6, and 7, the agency shall maintain a wait list of clients placed in the order of the date that the client is determined eligible for waiver services. (6) The client, the client’s guardian, or the client’s family must ensure that accurate, up-to-date contact information is provided to the agency at all times. The agency shall remove from the wait list any individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or becomes domiciled outside the state.²*
- The following Florida language supports programs that assign priority based on level of need and allows active-duty families, having to move to Florida as part of a permanent change of station move, to transfer into the state using an existing state priority waiver category:
 - Florida House Bill 5003 Section 9 (2)
 - *The agency shall allow an individual who meets the eligibility requirements of s.393.065 (1), Florida Statutes, to receive home and community-based services in this state if the individual’s parent or legal guardian is an active-duty military service member and, at the time of the service member’s transfer to Florida, the individual was receiving home and community-based services in another state.³*

However as currently written, this statute is less likely to benefit military families, since few are able to actually receive HCBS waiver services in the state where they were previously assigned. An alternative, which is more likely to help the intended audience, is to replace the requirement from “receiving” services to “enrolled in” home and community-based services in another state.

Legal status within the state

Often, confusion exists about when a service member’s family member is considered a legal

¹Illinois General Assembly, House Bill HB569, <http://www.ilga.gov/legislation/fulltext>.

²The 2015 Florida Statutes, Florida Statute F.S. 393.065, <http://www.leg.state.fl.us/Statutes/index>

³Florida House of Representatives, Bill 5003, Section 9, <http://www.myfloridahouse.gov>

resident or domiciled because they are frequently assigned out of state on military orders, but he or she retains the home state residence. References to state legal status should be made clear when it pertains to Medicaid HCBS for military family members.

Principles:

“The terms ‘legal residence’ and ‘domicile’ are essentially interchangeable. In brief, they are used to denote that place where [a military family] has their permanent home and to which, whenever [they] are absent, has the intention of returning. The Soldiers and Sailors Civil Relief Act provides... that no change in a [service member’s] state of legal residence or domicile will occur solely as a result of being ordered to a new duty station.”⁴

Best practices example

- State of Washington Substitute House Bill 2363, 2014 Sec 1(b):
 - *‘Legal resident’ means a person who maintains Washington as his or her principal establishment, home of record, or permanent home and to where, whenever absent due to military obligation, he or she intends to return.*⁵

⁴ Department of Defense Form 2058, State of Legal Residence Certificate, <http://www.dtic.mil/whs/directives/forms/eforms/dd2058.pdf>.

⁵ Substitute House Bill 2363, Certificate of Enrollment, <http://apps.leg.wa.gov/documents/billdocs>.