American Rescue Plan Act

Reinvesting in Medicaid Home and Community-Based Services, Rehabilitative Services, Targeted Case Management, Home Health, and Personal Care Services

The COVID-19 pandemic has made providing Medicaid home and community-based services (HCBS) more challenging. The American Rescue Plan Act of 2021 (ARP), signed into law on March 11, 2021, provides relief to HCBS programs with scheduled, enhanced federal financing participation to offset state expenditures.[1]

Definition of HCBS

The ARP definition of HCBS includes a host of Medicaid services and programs that are typically referenced by the Centers for Medicare and Medicaid Services (CMS). The ARP definition also appears to broadly include Medicaid targeted case management (TCM), rehabilitative services, home health, and personal care services, which are utilized by many Medicaid participants who are not typically viewed as part of HCBS populations.

Typically, CMS views HCBS services as part of the broader category of long-term services and supports. These typical HCBS services are included in the ARP definition: home health care; personal care services; various 1915 HCBS waiver types; HCBS services incorporated into 1115 waivers, such as managed long-term services and supports (MLTSS); and the Program of All-Inclusive Care for the Elderly (PACE).[2] Generally, the largest long-term care populations that receive these traditional HCBS services are individuals with physical disabilities; older adults; individuals with developmental disabilities; and individuals with severe mental illness.

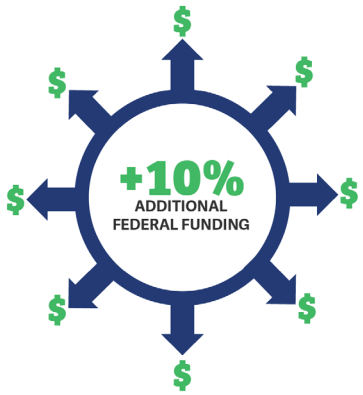
ARP Enhanced Federal HCBS Funding

The ARP provides additional federal funding through a ten percent increase to the federal medical assistance percentage (FMAP) applied to Medicaid HCBS expenditures from April 1, 2021 to March 31, 2022. The FMAP increase may be added to other FMAP increases, including enhanced FMAP for the Families First Coronavirus Response Act, except that FMAP may not exceed 95 percent for any state. Based on Congressional Budget Office (CBO) estimates, the enhanced FMAP could increase federal funding for Medicaid by $12.7 billion.[3] State savings resulting from the FMAP increase must be reinvested in HCBS services and programs.

The FMAP increase for HCBS services includes all Medicaid rehabilitative services, TCM services, home health, and personal care services, seemingly regardless of whether the services are associated with other HCBS or long-term care services. While recipients of HCBS may receive rehabilitative services to address different physical or behavioral health conditions and they often also receive Medicaid case management services, many more Medicaid beneficiaries who are not recognized as part of the typical long-term care population also receive rehabilitative services and TCM. Home health and personal care services also apply to a broader population than typical HCBS, such as services for adults and children who need assistance to regain their health during recovery of an acute medical condition, injury, or illness, and services for children receiving the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit.

Other recipients of Medicaid rehabilitative services and TCM include children in foster care; youth involved in juvenile justice systems; individuals requiring crisis behavioral health services; individuals receiving substance use disorder-related services; infants and toddlers at risk of developmental delays; and students receiving school-based special education services.

Since states have options for whether to provide Medicaid rehabilitative services, TCM, home health, and personal care services under specific conditions, the populations receiving these services can vary significantly and total state expenditures for these services also vary significantly per capita.



1 American Rescue Plan Act of 2021, Section 9817 Additional Support for Medicaid Home and Community Based Services During the COVID-19 Emergency

2 Two examples of typical CMS HCBS definitions include: 1) 2017 DHHS Report to President and Congress: The Money Follows the Person (MFP) Rebalancing Demonstration, https://www.medicaid.gov/sites/default/files/2019-12/mfp-rtc.pdf, 2) CMS Division of Tribal Affairs LTSS Technical Assistance Center training LTSS Models, Home and Community-Based Services, https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/LTSS-TA-Center/info/hcbs

3 The CBO scored an earlier proposed FMAP increase of 7.35 percent with a cost of $9.3 billion. Proportionately, the ARP's FMAP increase of 10 percent equates to a cost of $12.7 billion, though this may be somewhat overstated if more states reach the 95 percent FMAP cap; "Cost Estimate," Congressional Budget Office, February 14, 2021, https://www.cbo.gov/system/files/2021-02/EnergyandCommerceReconciliationEstimate.pdf

Reinvestment of HCBS State Savings

The ARP requires that states reinvest state savings attributed to the FMAP increase for HCBS. This reinvestment may either be a direct increase in spending on HCBS, such as increased rates or volume of services, or the implementation of activities to improve it. The ARP does not specify whether and how plans to make these investments need to be shared, reviewed, or approved in advance by federal authorities, but, depending on the proposals, amendments to Medicaid state plans and waivers may be necessary. The timeline for when these reinvestments must occur has not been announced yet.

Because the ARP definition of HCBS is broad and includes many different Medicaid populations, the state options for how to reinvest these savings are equally broad. For instance, it is not specified whether savings resulting from specific types of Medicaid services or programs can be reinvested into other unrelated areas.

Several steps can be taken now by states to prepare for reinvesting the HCBS savings:

1. Estimate savings from the enhanced FMAP and develop reporting for ongoing tracking.
2. Create a plan for developing policy proposals for reinvestment, including mechanisms for evaluating and estimating the impact of any spending proposals. Consider if and how to engage communities in planning efforts.
3. Based on reinvestment proposals, identify where updates will be needed to Medicaid state plans, HCBS waivers, or other state and local laws, regulation, and guidance.
4. As reinvestment proposals are accepted, develop and track implementation and communication plans, including tracking of actual reinvestment spending to determine if federal ARP obligations will be met.

Example of Similar Federal Requirements

As an example of how similar federal requirements have been administered in the past, the Fostering Connections to Success and Increasing Adoptions Act of 2008 expanded eligibility for Title IV-E adoption assistance and required states to reinvest any Title IV-E savings. The original law required that savings be spent for services under Titles IV-E or IV-B of the Social Security Act. In 2014, the Preventing Sex Trafficking and Strengthening Families Act modified these provisions by adding these requirements:

- *Requirement to use an approved methodology to calculate savings*
- *Requirement to annually report the methodology used, the amount of any savings, and how such savings are spent (separate from other Title IV-E or Title IV-B spending)*
- *Requirement regarding which specific services could be purchased with savings with a focus on post-adoption or post-guardianship services*
- *Requirement that the savings would supplement and not supplant federal or non-federal funds*

The U.S. Department of Health and Human Services (HHS) later clarified there was no time limit for such spending and that Federal Fiscal Year (FFY) 2015 would be the first annual reporting period.[4]

4 "Adoption Savings Calculation Methodology," Administration for Children and Families, May 22, 2015, https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1506.pdf