

Medicaid Home-and-Community-Based Waiver Programs in New York State

Medicaid home and community-based services [HCBS] are available through waiver programs to groups of individuals who would be eligible for Medicaid if institutionalized and, but for the services, would be institutionalized in a hospital or nursing facility. Under section 1915(c) of the Social Security Act, the federal government grants waivers of requirements that are otherwise applicable to Medicaid "state plan" services.

Congress enacted section 1915(c) of the Social Security Act in the Omnibus Reconciliation Act (OBRA) of 1981. Until then, comprehensive long-term care services through Medicaid were available only in institutional settings. Although mandatory home health services and optional personal care services were available as Medicaid benefits before OBRA 1981, states had largely restricted their use and limited the amount of services - New York being an exception with its personal care program and the Lombardi or Long Term Home Health Care Program (LTHHCP), which was established by Chapter 895 of the New York Laws of 1977 (but no longer exists). In fact, Congress reportedly modeled 1915(c) waivers in part on New York's experience with the Lombardi program.

In waiver programs, CMS waives key requirements that apply to Medicaid "**state plan**" services - those provided to all Medicaid recipients in the state. State plan services are either "mandatory" or "optional," meaning that a State may elect to include them in the state plan. Once elected by a state, an optional service must still comply with all of the federal requirements. For a waiver, however, waivers of the "statewideness" or "comparability" requirements of federal Medicaid law allow states to create waiver programs that target only a particular population -- limited by age, diagnosis, or geographic area of the state, or that limit the number of waiver slots available. Waiver of the financial eligibility requirements allow states to include individuals who would normally not meet Medicaid's income/resource guidelines.

Waivers have grown nationally with the momentum to "rebalance" long term care services from institutional care to care in the communities. However, they are not the only Medicaid home care services -- Medicaid programs offer "state plan" services which are part of the state's statewide Medicaid plan, offered to all people of all ages and diagnoses in the state, if eligible. Unlike waiver services, state plan services may not have a waiting list. New York State has long led the nation in these two state plan services: personal care (also known as home attendant services in NYC) and certified home health care program (CHHA) services.

People enrolled in the waivers below may still access State Plan services like any other Medicaid recipient. These include personal care and GDPAP.

This training outline by the Evelyn Frank Legal Resources Program provides background, with statutory and regulatory references, about the various Home and Community Based Waiver Programs in New York State. **WARNING: This manual has not been updated.**

Older cites may be correct, but more updated cites in this article.

Related Links and Documents on Waivers in New York

Note that many of these waivers have been or will be in 2015 or later "carved into" Medicaid managed care, so that managed care plans will be required to provide the waiver services to members who qualify. Advocates are raising concerns that plans lack the expertise and resources to provide these niche services to vulnerable members.

1. [Traumatic Brain Injury \(TBI\) waiver](#)
2. [Nursing Home Transition & Diversion waiver](#)
3. OPWDD waivers
4. [Community First Choice](#) and other New Federal Options for Waivers
5. [New Children's Home and Community Based Services](#) began on April 1, 2019 through the consolidated 1915(c) Children's Waiver, consolidating former 1915 waivers including:
 - ◆ [Care at Home](#) waivers for children with physical disabilities
 - ◆ OMH Waiver for Children and Adolescents with Serious Emotional Disturbance
 - ◆ [Bridges 2 Health \(behavioral health\)](#)
6. [Long Term Home Health Care Program \(Lombardi/ LTHHCP, includes AIDS LTHHCP\) \(NOW CLOSED\)](#)

Background on Waivers - Federal Law Requirements and Trends - See Cynthia Shirk, [Rebalancing Long Term Care: The Role of the Medicaid HCBS Waiver Program](#), Georgetown University National Health Policy Forum, 2006

[GIS 07 MA/018](#) (elimination of transfer penalty in all waiver programs)¹.

1. Traumatic Brain Injury (TBI) Waiver

- NOTE: The mandatory transition of this waiver to Managed Long Term Care and managed care has been postponed to **Jan. 1, 2022** (per NYS Budget enacted April 1, 2018. At that time, services in this waiver for participants who do not have Medicare will be required to join Medicaid managed care plans and receive TBI waiver services through the plans. *Contact Traci Allen*. See more [here](#). See [DOH Webpage on Transition of NHTD and TBI waivers to MLTC and managed care](#)
- [DOH Fact Sheet on TBI waiver](#) - not updated with new contact info for NYC - see below
- [DOH webpage on TBI Waiver](#) includes links to:
 - ◆ [TBI Waiver Manual and Reference Guides](#)
 - ◆ [Traumatic Brain Injury Program and Nursing Home Transition and Diversion Program Housing Program Guidelines, October 2019 \(PDF\)](#) - click on [main](#)

[webpage](#) for all attachments

- **WHERE TO APPLY -- TBI and NHTDW waivers are administered by RRDCs or Regional Resource Development Centers.** See [RRDC list](#) on DOH website for contact info in every region.
 - ◆ **Westchester Independent Living Center (WILC)** is the **RRDC for NYC and the Lower Hudson Valley** for both the NHTD and TBI waivers.
- **NYC:** Make referrals by phone to **718-816-3555**
- **Lower Hudson Valley - 845-228-7457 ext. 1130** (voice), **914-259-8036 (VP)**. (see **list of counties in [RRDC list](#)** on DOH website).
- [DOH webpage on TBI Waiver](#) includes links to:
 - ◆ [TBI Waiver Manual and Reference Guides](#)
 - ◆ [Traumatic Brain Injury Program and Nursing Home Transition and Diversion Program Housing Program Guidelines, October 2019](#) (PDF) - click on [main webpage](#) for all attachments
- Description of services available under TBI waiver - in [F.R.E.E. Family Residences & Essential Enterprises, Inc. website](#) (one of many providers of TBI waiver services in NYS)
- [Home and Community Support Services \(HCSS\) Letter](#) (Apr. 29, 2009, requiring providers of Home and Community Support Services (HCSS) in the waiver to be licensed home care services agency (LHCSA))
- [GIS 07 MA/018](#) (elimination of transfer penalty in all waiver programs)
- [GIS 12 MA/013](#) - reinstates spousal impoverishment protections in the Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs, in addition to Lombardi (thus repealing [NYS DOH GIS 08-MA-024](#), Aug. 26, 2008 which eliminated spousal protections in TBI and NHTDW waivers). See more at [Spousal Impoverishment Protections Available in All 1915 Waiver Programs](#)

2. New York State Transition & Diversion Waiver (NHTDW)

- **Westchester Independent Living Center (WILC)** is the **RRDC for NYC and the Lower Hudson Valley** for both the NHTD and TBI waivers.
 - ◆ **NYC:** Make referrals by phone to **718-816-3555**
 - ◆ **Lower Hudson Valley - 845-228-7457 ext. 1130** (voice), **914-259-8036 (VP)**. (see **list of counties in [RRDC list](#)** on DOH website).
 - ◆ **see list of all regions and contact info in [RRDC list on DOH NHTD webpage](#).**
 - ◇ [RRDC list and contact information](#)
 - ◇ [RRDC regions map](#)
- [NHTDW Program Manual](#) and [DOH webpage on NHTDW](#)

- In 2015, [Mobilization for Justice](#) and Patterson Belknap Webb & Tyler LLP filed a class action lawsuit titled *Bagley et al. v. New York State Department of Health et al.*, 1:15-cv-04845-FB-CLP (E.D.N.Y.). The lawsuit alleged, among other things, that the Department of Health (DOH) designed and administered the NHTD Waiver Program in New York City in number of problematic ways that made it hard for qualified applicants to receive services. In 2024, a proposed settlement was agreed to that, if approved by the Court, will result in some changes in administration of the NHTD waiver.
 - ◆ Read about the lawsuit and settlement here
 - <https://mobilizationforjustice.org/nhtd/>
 - ◆ NYS Dept. of Health issued this [Administrator Letter \(DAL\) No. 24-10](#) as part of the Settlement:
- NHTDW/TBI Housing Subsidy - [Traumatic Brain Injury Program and Nursing Home Transition and Diversion Program Housing Program Guidelines, October 2019](#) (PDF)
 - click on [main NHTDW page](#) and scroll down to dropdown for RESOURCES FOR HOUSING.
- NOTE: The mandatory transition of this waiver to Managed Long Term Care and managed care has been **delayed indefinitely after being** postponed to **Jan. 1, 2022** (announced per NYS budget 4/2018). Participants who do not have Medicare will then be required to join Medicaid managed care plans and receive TBI waiver services through the plans. Those with Medicare will be transitioned to MLTC.
 - Assembly bill [A07598/ S.5535](#) - proposes *delaying the transition of TBI and NHTD waiver populations to managed care plans. For info contact [Traci Allen](#)*. See more [here](#).
- ◆ See [DOH Webpage on Transition of NHTD and TBI waivers to MLTC and managed care](#)
- [Application for a Â§1915\(c\) Home and Community-Based Services Waiver \(Revised\)](#)
- [GIS 07 MA/018](#) (elimination of transfer penalty in all waiver programs)
- [GIS 12 MA/013](#) - establishes spousal impoverishment protections in the Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs, in addition to Lombardi. See more at [Spousal Impoverishment Protections Available in All 1915 Waiver Programs](#)
- [NHTDW Waiver Complaint Process and Contacts](#)
- Info from local contractors providing NHTDW: [Access Home Care](#) // [Center for Disability Rights](#) // [Elder Choice](#) (Syracuse)

3. **Home and Community-Based Services Waiver- administered by OPWDD- Office for People with Developmental Disabilities (formerly OMRDD)**

- THE HCBS WAIVER IS BEING OVERHAULED INTO THE "**People First Waiver**" - See [this webpage](#) for developments, including videos, message boards, sign up for e-mail information, monthly updates, etc.
- The [NYS DOH webpage](#) provides a brief description of the HCBS Waiver and which individuals can apply to enroll.

- To enroll in the HCBS Waiver, contact the Eligibility Coordinator at the Developmental Disabilities Regional Office that covers the county where the individual lives or search for a provider agency that provides "service coordination" in the county where the individual lives by using the OPWDD Provider Directory.
- GIS 07 MA/018 explains that there is no transfer penalty, or "look-back" period, for HCBS Waiver applicants.

*****NOTE:** Individuals who have Medicaid do not need to be enrolled in the HCBS Waiver in order to receive OPWDD services, however OPWDD does need to determine them "eligible" for OPWDD services. The eligibility review process starts at one of OPWDD's five Developmental Disability Regional Offices (DDROs). Each DDRO provides services to a specific county or group of counties. Certain documents, including reports from assessments conducted by qualified practitioners to support a qualifying diagnosis of "developmental disability," must be submitted to the DDRO to receive an eligibility determination, and an individual must be given notice and appeal rights.

- FAQs about the OPWDD eligibility process can be found on the OPWDD website.
- OPWDD provides both community and residence based services that are furthered explained on the OPWDD website. Service providers can be found by using the OPWDD Provider Directory.
- For information on eligibility and applying for services, contact the Eligibility Coordinator at the Developmental Disabilities Regional Office that covers the county where the individual lives or search for a provider agency that provides "service coordination" in the county where the individual lives by using the OPWDD Provider Directory.

4. **Community First Choice Option (CFCO)**

NYS DOH

Website https://www.health.ny.gov/health_care/medicaid/redesign/community_first_choice_option/

NYS DOH Directive 19 ADM-01 - Community First Choice Option (Feb. 2019) (Attachments to ADM [available here](#))

Gene Coffey,

The-Medicaid-Long-Term-Services-And-Supports-Provisions-In-The-Senate's-Patient-Protection-A
National Senior Citizens Law Center, January 2010

NSCLC, Advocates Guide to Medicaid Long Term Services and Supports, Sept. 2012

Community First Choices Option in NYS (Leah Farrell, CDRNYS)

Leading Age info on Community First Choice

5. **New Children's Home and Community Based Services** began on April 1, 2019 through the consolidated 1915(c) Children's Waiver. Waiver consolidates various

1916(c) individual waivers listed below and others listed on this [DOH webpage about the children's transition](#).

This brochure is [available online](#). Translated versions in Arabic, Chinese, French, Haitian-Creole, Italian, Korean, Russian, Spanish, and Urdu will be available in the coming weeks (per DOH release 4/18/19).

See [DOH webpage about the children's transition](#) with many resources. Also see [19ADM-02 - Consolidated Children's Waiver and Medicaid Case Processing Requirements \(PDF\)](#)

- [Attachment \(PDF\)](#)

These are some of the children's waivers being consolidated:

1. **Care at Home for Children with Physical Disabilities** - Levels I & II - Resources from pre-consolidation program below

- [Resource Directory for Children and Young Adults with Special Needs](#) (DOH website)
- [NYS DOH GIS 12 MA031 - Consolidation of Care at Home \(CAH\) III, IV and VI model waivers into a new 1915\(c\) waiver known as the OPWDD Care at Home Waiver](#) (PDF, 11KB, 1pg)
- [NYS DOH Resource Directory for Children and Young Adults with Special Health Care Needs](#) - descriptions of state programs and services and eligibility criteria
- [Care at Home Medicaid Waiver for Developmentally Disabled Children \(Office for People with Developmental Disabilities \[OPWDD\]\)](#)
- [Care at Home \(CAH I/II\) Program for Physically Disabled Children](#)
- [Children's Home & Community Based Services Manual](#)
- [Care at Home Case Management Waiver Program for Children - state directives in \[http://www.health.state.ny.us/health_care/medicaid/publications/index.htm\]\(http://www.health.state.ny.us/health_care/medicaid/publications/index.htm\)](#)
 - ◆ [GIS 15 MA/016 - LDSS-639 Disability Team Review Certificate and the Care at Home Waivers III, IV and VI PDF](#)
 - ◆ [GIS 15 MA/002 - Care at Home III, IV and VI Waivers: Policy Updates Regarding Waiver Eligibility](#)
 - ◆ [GIS 15 MA/018 - Care At Home I/II Waiver Renewal](#)
 - ◆ [12MA031 - Consolidation of Care at Home \(CAH\) III, IV and VI model waivers into a new 1915\(c\) waiver known as the OPWDD Care at Home Waiver](#)
 - ◆ GIS 09 OLTC/004 (April 2009);
 - ◆ GIS 10 OLTC/002 (palliative care now available),
 - ◆ 90-ADM-20 (May 30, 1990); 92 LCM 170 --
 - ◆ [DOH - Care At Home: A Manual for Parents](#) (Currently under revision)
 - ◆ [NYC HRA Leaflet on Care at Home Program](#)

◆ Care at Home Program Complaint Process

2. . **OMH Waiver for Children and Adolescents with Serious Emotional Disturbance**

- State website and here

3. . **Bridges to Health (B2H) Waiver**

- B2H Program Manual (July 2009)
- B2H eligibility and info- NYS DOH website
- List of B2H Integration Agencies
- NYC pamphlets and info

6. **Long Term Home Health Care Program (Lombardi/ LTHHCP, includes AIDS LTHHCP) --CLOSED**

- **GIS 16 MA/011 - Closing the Long Term Home Health Care Program (LTHHCP) PDF CLOSED!!!**
- As of April 1, 2013, this program is no longer an alternative to Managed Long Term Care for "dual eligibles" (have Medicare and Medicaid) adults age 21+ who need Medicaid home care services in New York City and other counties in which enrollment in MLTC is otherwise mandatory for this population. The State has received approval from CMS to require all LTHHCP/Lombardi recipients in mandatory counties to enroll in MLTC plans. Additionally, those who are not dual eligibles and who are subject to mandatory enrollment in mainstream Medicaid managed care must enroll in those plans to receive home care services, and leave the Lombardi program. See MICSA Alert from NYC HRA regarding this mandatory transition.
- 02 OMM/ADM-4 (May 28, 2002)(Notice and Fair Hearing Procedures for the LTHHCP);
- 11-LTC-ADM-01 - Long Term Home Health Care Program Waiver Renewal (continuation of spousal protections, some new services within waiver)(April 26, 2011)

Long Term Home Health (Lombardi) Program Complaint Process

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<http://health.wnyc.com/health/entry/129/>