

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+

DSS-4037EL (Rev. 9/89)

Transmittal No: 95 LCM-70

Date: July 10, 1995

Division: Health and Long Term
Care

TO: Local District Commissioners

SUBJECT: Home and Community-Based Services Waiver for Persons with
Traumatic Brain Injuries (HCBS/TBI Waiver)

ATTACHMENTS: Attachment I: Definitions of HCBS/TBI Waiver Services
(available on-line)

Attachment II: HCBS/TBI Waiver Letter of Introduction to
Social Services Districts (available on-line)

Attachment III: List of Regional Resource Development
Specialists (not available on-line)

Attachment IV: HCBS/TBI Waiver Notice of Decision;
Authorization/Reauthorization (DOH-3932) (not available
on-line)

Attachment V: HCBS/TBI Waiver Notice of Decision:
Denial (DOH-3932A) (not available on-line)

Attachment VI: HCBS/TBI Waiver Notice of Decision;
Termination (DOH-3933) (not available on-line)

The purpose of this memorandum is to inform you of the Home and Community-Based Services Waiver for Persons with Traumatic Brain Injuries (HCBS/TBI Waiver) and to describe its current status. This waiver is an important initiative to assure that individuals with traumatic brain injuries (TBIs) are reintegrated into, or can remain in, the community. In addition, the waiver has the potential to achieve significant Medical Assistance (MA) savings due to its focus on the provision of non-institutional care.

I. Background of the HCBS/TBI Waiver

From April 1992 through March 1993, MA payments totaling \$58 million were made to nursing facilities (NFs) for approximately 750 individuals with TBIs. Many individuals with TBIs have remained in an institutional setting due to the lack of community-based services and supports. Approximately 600 of these individuals were in out-of-state facilities.

On March 23, 1994, the Health Care Financing Administration (HCFA) approved the New York State Department of Social Services (the Department) application under Section 1915(c) of Title XIX of the Social Security Act for a three year, Home and Community-Based Services Waiver for Persons with Traumatic Brain Injuries (HCBS/TBI Waiver). This waiver is one component of a comprehensive strategy developed by New York State to repatriate and de-institutionalize individuals with TBIs who reside in NFs either in or out-of state and to offer an alternative to NF placement for others currently living in the community who are at significant risk of NF placement. The HCBS/TBI Waiver is designed to provide the necessary services and supports to achieve these objectives.

The New York State Department of Health (DOH) is administering the HCBS/TBI Waiver under a Memorandum of Understanding (MOU) with the Department. Within the DOH, responsibility for the HCBS/TBI Waiver is located in a specialized HCBS/TBI Waiver Management Unit in the Bureau of Standards Development.

II. Description of the HCBS/TBI Waiver

A. Target Population

An individual participating in the HCBS/TBI Waiver must:

1. have a diagnosis of traumatic brain injury (TBI) or a related diagnosis; and
2. be eligible for MA; and
3. be certified as disabled; and
4. be between the ages of 18 and 65; and
5. be assessed as needing care in a NF; and
6. be able to be served with the funds and services available under the waiver and the MA state plan; and
7. choose to participate in the waiver.

The waiver will primarily serve individuals with TBIs who have been injured after their 22nd birthday. Individuals injured before their 22nd birthday may participate in the waiver if they cannot be enrolled in the Home and Community-Based Services Waiver for Persons with Developmental Disabilities (HCBS/OMRDD Waiver). However, it is fully expected that the HCBS/OMRDD Waiver will have the capacity to meet the needs of individuals injured before the age of 22. The HCBS/OMRDD Waiver is discussed in 92 INF-33, 92 LCM-170, 93 LCM-62, and 94 LCM-137.

In its first year of operation, the HCBS/TBI Waiver can serve up to 225 individuals. In each of the subsequent two years of the waiver, up to 225 additional individuals will be served for a maximum total of 675 individuals over three years.

B. Waiver Services

Under the waiver, waiver participants will be eligible to receive existing MA services and thirteen additional MA services. These additional services are:

1. service coordination;
2. independent living skills training and development;
3. structured day programs;
4. substance abuse programs;
5. intensive behavioral programs;
6. community integration counseling;
7. therapeutic foster care;
8. transitional living programs;
9. home and community support services;
10. environmental modifications;
11. respite care;
12. special medical equipment and supplies; and
13. transportation.

Attachment I briefly defines each of these services.

Two waiver services, therapeutic foster care and transitional living programs, will not be offered to waiver participants during the initial phase of waiver implementation. These two services will be available at some time in the future, pending establishment of rates by the DOH and approval by the State Division of the Budget (DOB).

C. Individual Enrollment Process

The individual enrollment process for the HCBS/TBI Waiver is similar to the enrollment process outlined in 92 LCM-170 for the HCBS/OMRDD Waiver. The individual chooses a service coordinator who assists in the development and compilation of all documentation needed to establish the individual's eligibility for the waiver. The individual and the service coordinator develop a comprehensive service plan describing the supports that will be provided by any informal caregivers such as family or friends, the services that will be provided under the existing MA program and any other federal or state program, and the specific waiver services that will be furnished.

If the individual has not been determined to be MA eligible and/or certified as disabled, the service coordinator will complete a Letter of Introduction, similar to the introductory letter in 93 LCM-62 for the HCBS/OMRDD Waiver, that can be presented to your district. The Letter of Introduction for the HCBS/TBI Waiver is found in Attachment II. As in the HCBS/OMRDD Waiver, the service

coordinator will be responsible for contacting your district to schedule appointments for the MA eligibility and/or disability determinations and for entering this information in the appropriate boxes at the bottom of the Letter of Introduction. MA eligibility determinations for waiver applicants are discussed in D. below and on the next page of this LCM.

When the information needed to establish the individual's eligibility for the waiver and the service plan have been compiled, an application packet is assembled and submitted for approval or disapproval. In some DOH defined regions of the State, Regional Resource Development Specialists (Attachment III) have been deployed to serve as advocates and aides in seeking and developing services for persons with TBIs. If the waiver applicant lives in a region served by a Regional Resource Development Specialist, the application packet is first sent to that individual for review and a preliminary decision about approval. The packet is then sent to the HCBS/TBI Waiver Management Unit in the DOH's Bureau of Standards Development for final approval or disapproval. If the waiver applicant lives in a region that does not have a Regional Resource Development Specialist, the application packet is sent directly to the HCBS/TBI Waiver Management Unit for review and the approval or disapproval determination.

D. MA Eligibility Determinations

Since home and community-based services for persons with TBIs are provided pursuant to a waiver under Section 1915(c) of Title XIX of the Social Security Act, certain applicants are entitled to have their MA eligibility determined in accordance with the spousal impoverishment provisions. Spousal budgeting will be applicable to any participant in the waiver who is married to a person (community spouse) who is not:

1. in receipt of home and community-based waiver services; or
2. in and expected to remain in a medical institution or NF for at least 30 consecutive days; or
3. in receipt of or expected to receive a combination of services described in 1. and 2. for at least 30 consecutive days; or
4. a participant in the HCBS/TBI Waiver.

If the applicant is determined to be MA eligible under the spousal impoverishment budget and is accepted for participation in the HCBS/TBI Waiver, the month of enrollment in the waiver will be the effective month for purposes of MA eligibility. The first day of the month of enrollment in the HCBS/TBI Waiver is the effective date that is to be entered on the Department client notice.

It is important to note that in cases where the applicant is not living with his or her spouse and does not want to make his or her income and resources available to the spouse, the applicant will be allowed to have eligibility determined under community budgeting procedures. Under community budgeting, the applicant's income is compared to the MA income level for one or the Public Assistance Standard of Need, whichever is higher. Resources are compared to the MA resource standard for a household of one.

For a single applicant (or non-institutionalized spouse), community budgeting procedures must be used to determine the applicant's eligibility for MA. Please note that these individuals may have a "spenddown" every month to become eligible for MA. Your district may need to work with the applicant's service coordinator to determine which medical bills will be used to meet the spenddown amount.

A separate issue that may affect MA eligibility for an applicant are the federal transfer of resource provisions. As directed by 89 ADM-45, "Transfer of Resource Provisions Under the Medical Assistance Program", persons who have been determined to have made prohibited transfers do not receive MA coverage for NF care or for home and community-based waiver services. These services include the waiver services provided under the HCBS/TBI Waiver.

E. Notices of Decision (NODs)/Client Notices

1. Initial Authorization

The HCBS/TBI Waiver Management Unit in the DOH will be responsible for informing each waiver applicant that the applicant's participation in the waiver has been approved. If participation is approved, the DOH will issue a standard Notice of Decision (NOD) to the waiver applicant authorizing participation in the waiver. The DOH-3932 (Attachment IV) is the standard authorization NOD.

2. Denial

The kind of notice that will be issued, and the locus of the responsibility for issuance of this notice, will depend on the reason for the denial.

If participation in the waiver is denied due to a determination by your district that the waiver applicant is ineligible for MA or is not disabled, your district will be responsible for informing the applicant of this determination. You should use the appropriate Department client notice(s), usually the DSS-3622 "Notice of Decision on Your Medical Assistance Application," and/or the DSS-4141, "Notice of Medical Assistance Disability Determination." Copies of the appropriate client notice should be sent to the applicant's service coordinator and to the HCBS/TBI Waiver Management Unit in the DOH.

If the waiver applicant is not offered the choice of HCBS/TBI Waiver services as an alternative to NF care or is denied the waiver services or approved waiver providers of his or her choice, the HCBS/TBI Waiver Management Unit in the DOH will be responsible for informing the applicant of the denial decision. Denial for any of these reasons entitles the waiver applicant to a conference with the DOH and/or a fair hearing by the Department. In such situations, the DOH will issue a

standard NOD to the waiver applicant informing the applicant of the denial and the applicant's conference and fair hearing rights and will provide representation at any fair hearing that is held. The DOH-3932A (Attachment V) is the standard denial NOD.

If the waiver applicant is denied participation in the waiver because he or she does not have a TBI or a related diagnosis or is inappropriate for NF care, the HCBS/TBI Waiver Management Unit will continue to be responsible for informing the applicant of the denial decision. In these situations, conference and fair hearing rights do not apply and the DOH-3932A will not be issued by the DOH.

3. Termination

The kind of notice that will be issued, and the locus of the responsibility for issuance of the notice, depends on the reason for the termination. Basically, the guidelines outlined in 2. Denial apply. If participation in the waiver is terminated due to loss of the waiver participant's MA eligibility, your district should issue the appropriate client notice with a copy to the participant's service coordinator and a copy to the HCBS/TBI Waiver Management Unit in the DOH. If participation in the waiver is terminated for a reason unrelated to the participant's MA eligibility but which entitles the participant to a conference with DOH and/or a fair hearing by the Department, the DOH will issue a standard termination NOD. The DOH-3933 (Attachment VI) is the standard termination NOD.

4. Reauthorization

Participation in the HCBS/TBI Waiver must be reauthorized annually, at a minimum. The DOH-3932 (Attachment IV) is also the standard NOD that will be issued by the DOH to inform each waiver participant that participation has been reauthorized.

F. Reimbursement

MA reimbursement will be available for all thirteen waiver services. Entities and individuals seeking to provide one or more waiver services must meet certain standards, apply to the DOH for participation in the waiver, be approved by the Department, and enroll in the Medicaid Management Information System (MMIS).

MA payment to approved providers for waiver services will be made through MMIS as follows:

1. For environmental modifications and special medical equipment and supplies, payment will be made for the cost of the modification and/or the piece of equipment and/or kind of medical supply.

2. For waiver transportation, excluding transportation provided by individuals for which the payment mechanism has yet to be determined, payment will be made at the current approved rate the provider receives for MA transportation in each social services district.
3. For all other waiver services, excluding therapeutic foster care and transitional living programs for which rates have yet to be established and approved, payment will be made at statewide rates established by the DOH and approved by the DOB for each waiver service.

Waiver services are funded at 50/25/25, Federal/State/Local share.

III. Status of the HCBS/TBI Waiver

A. Individual Enrollment

Individual enrollment began in late June, 1995. As the volume of applications grows, your district may experience an increased number of requests from service coordinators to assist in the development of service plans in addition to requests for determinations of MA eligibility or disability. Individuals participating in the waiver are exempt from MA co-payment requirements.

B. Provider Enrollment

In Fall 1994, Computer Sciences Corporation (CSC) provided regional training sessions on completion and submission of MA claims for approximately 250 potential providers of HCBS/TBI Waiver services. To date, the HCBS/TBI Waiver Management Unit in the DOH has received approximately 80 applications from potential providers. At this time, 64 of these applications have been approved by the Department. The MMIS enrollment process for approved providers began in February, 1995.

C. Systems Modifications

Modifications must be made in the Welfare Management System (WMS) and MMIS to discretely identify HCBS/TBI Waiver participants, the waiver services they are receiving, and the MA costs associated with these services. A systems project has been initiated to establish a new category of service (COS) for waivers in general, a new speciality code to specifically define the type of waiver (i.e. HCBS/TBI Waiver) and a new recipient restriction/exception code to identify each HCBS/TBI Waiver participant and exempt the participant from co-payments and, also, from Medical Assistance Utilization Thresholds (MUTS).

When this project is completed, your district will be notified of the new recipient restriction/exception code and any instructions for entering this code into the WMS for waiver participants. In the interim, the following procedures will be applicable for co-payments and MUTS:

1. Co-Payments

On a quarterly basis, each waiver participant will receive a "Dear Medicaid Provider" letter. This letter can be presented to any MA provider and will indicate that the participant is exempt from MA co-payments. The letter will also include claiming instructions for providers to insure that co-payments are not deducted from MA payments to providers.

The Department will be responsible for providing standard claiming instructions for the "Dear Medicaid Provider" letter and for transmitting this information to MA providers in a future issue of Medicaid Update. The HCBS/TBI Waiver Management Unit in the DOH will be responsible for developing a process for issuance of the quarterly letters to waiver participants.

2. MUTS

Until further notice, waiver participants will be subject to the established threshold limits for physician/clinic, pharmacy, laboratory, mental health clinic and dental clinic services. If a waiver participant needs services in excess of the established limits, an increase may be requested by completing the Threshold Override Application (TOA).

We will keep you informed of future issues or developments concerning the HCBS/TBI Waiver. We urge you to work collaboratively with potential waiver participants, their families, service coordinators, and providers of waiver services to support this initiative. If you have any questions, please direct them as follows:

- A. For general questions about the waiver: Joan E. Johnson, 1-800-343-8859, extension 3-3827, User ID OME300; or Anne Church, 1-800-343-8859, extension 4-9248, User ID 73U015.
- B. For questions about MA eligibility determinations: Wendy Butz, 1-800-343-8859, extension 4-9141, User ID AW7420.
- C. For questions about a specific waiver service, the individual enrollment process, or a specific waiver provider: Bruce Rosen, Director, HCBS/TBI Waiver Program, Bureau of Standards Development, New York State Department of Health, (518)-486-1433.

Richard T. Cody
Deputy Commissioner
Division of Health and Long Term Care

ATTACHMENT I
DEFINITIONS OF HCBS/TBI WAIVER SERVICES

Service Coordination: an intervention which provides primary assistance to the waiver participant in gaining access to needed waiver and State Plan services, as well as other local, state and federally funded educational, vocational, social, medical and any other services.

Independent Living Skills Training and Development: services provided in the waiver participant's residence or in the community and directed at the development and maintenance of the participant's community living skills and community integration. May include assessment, training, and supervision of, or assistance to, an individual with self-care, medication management, task completion, communication skills, interpersonal skills, socialization, sensory/motor skills, mobility, community transportation skills, reduction/elimination of maladaptive behaviors, problem solving skills, money management, and ability to maintain a household.

Structured Day Programs: services provided in a congregate non-residential setting to improve or maintain the waiver participant's skills and ability to live in a non-institutional setting. May include tasks identified in Independent Living Skills Training and Development.

Substance Abuse Programs: interventions provided in a non-residential setting or in the community to reduce/eliminate the use of alcohol and/or drugs by the waiver participant. May include technical assistance to existing community support systems, such as Alcoholics Anonymous, to enable the existing systems to appropriately meet the needs of waiver participants.

Intensive Behavioral Programs: services provided in the waiver participant's residence or in the community to eliminate/reduce a participant's severe maladaptive behavior(s).

Community Integration Counseling: services provided in the waiver participant's residence or in the community to assist the participant to more effectively manage the stresses and difficulties associated with living in the community.

Therapeutic Foster Care: services provided in a supervised residential setting to improve and support the waiver participant's ability to live in the community. May include an assessment, training, and supervision of, and assistance with an individual's self-care, medication management, communication skills, interpersonal skills, socialization, sensory/motor skills, mobility, community transportation skills, problem solving skills, money management, and ability to maintain a household.

Transitional Living Programs: services of limited duration, provided in a temporary residence with up to 24 hour support and supervision, to improve the waiver participant's ability to be as independent as possible in the community.

Home and Community-Support Services: services provided in the waiver participant's residence and in the community to maintain the participant's health, safety, and welfare. May include assistance, training, and supervision with activities of daily living, heavy household tasks, companion services and socialization.

Environmental Modifications: physical adaptations to the waiver participant's residence and primary vehicle to ensure the participant's health, safety and welfare.

Respite Care: services, provided primarily in the waiver participant's residence, to provide short-term relief for caregivers of participants who are unable to care for themselves.

Special Medical Equipment and Supplies: devices, controls, or appliances to increase the waiver participant's ability to perform activities of daily living or to perceive, control or communicate with the environment. May include durable and non-durable medical equipment not available under the State Plan.

Transportation: services to enable the waiver participant to access waiver and other non-medical community services and resources.

