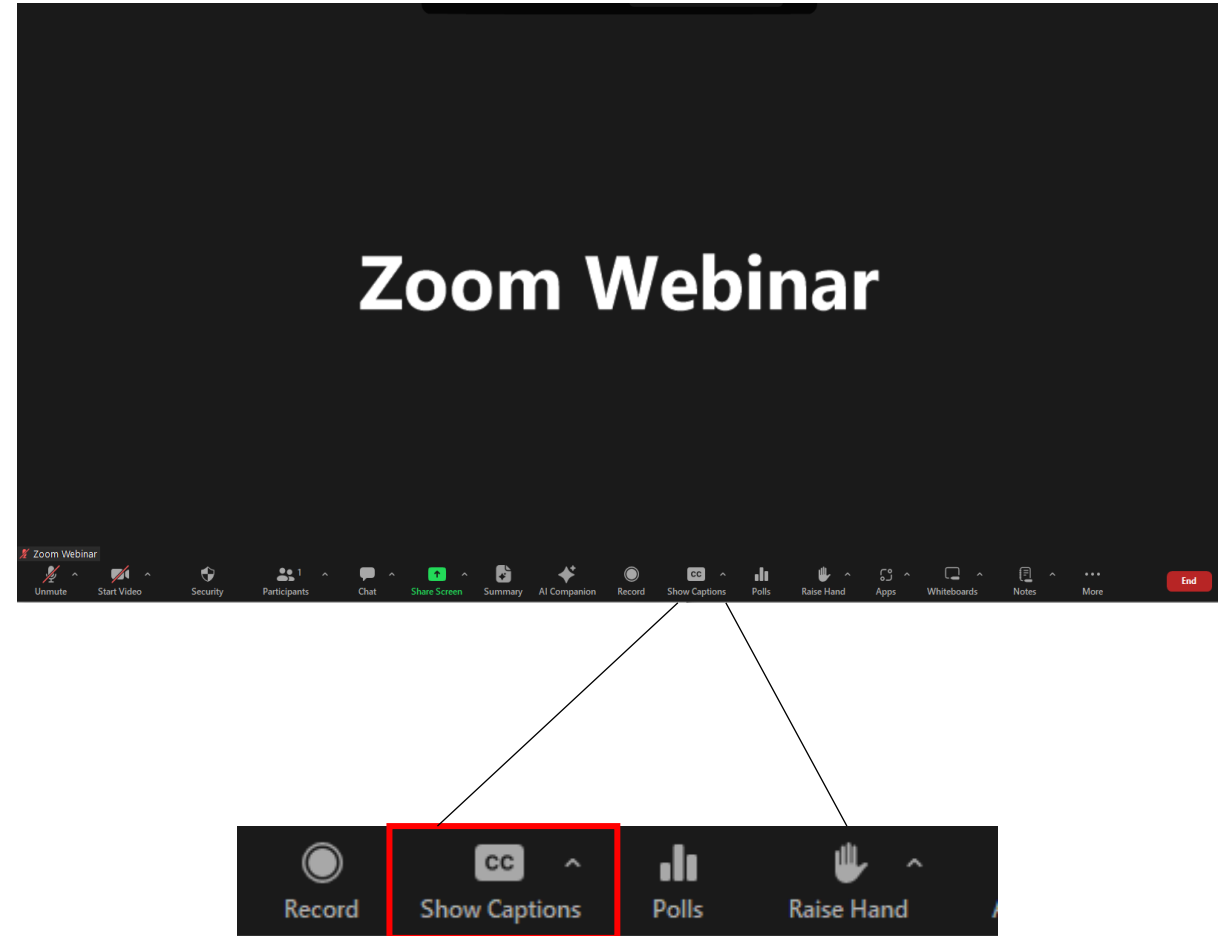


1915(i) State Plan Home and Community-Based Services (HCBS): Requirements for Independent Evaluation of Eligibility and Assessment of Needs

**Division of Long-Term Services and Supports
Medicaid Benefits and Health Programs Group
Centers for Medicaid and CHIP Services**

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Presentation Objectives:

This webinar will provide:






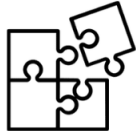





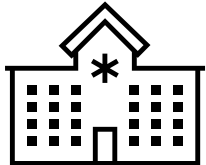
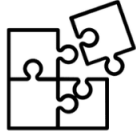
- A brief overview of the 1915(i) Home and Community-Based Services (HCBS) State Plan Benefit;
- An overview of the requirements for independent evaluation and determination of 1915(i) eligibility;
- An overview of the requirements for independent assessment of needs;
- Discussion about mitigating conflict of interest during the independent evaluation of needs;
- Strategies for independent evaluation of 1915(i) eligibility and independent assessment of needs;
- State approaches to independent evaluation and determination of 1915(i) eligibility and independent assessment of needs; and
- Quality considerations and monitoring of 1915(i) eligibility and assessment of needs.

Overview of the 1915(i) State Plan HCBS Benefit

1915(i) State Plan HCBS Overview

- The 1915(i) State Plan HCBS benefit was added to the Social Security Act through the Deficit Reduction Act of 2005 and was later amended by the Affordable Care Act of 2010.
- 1915(i) provides states with the option to cover HCBS through their Medicaid state plans rather than through a 1915(c) waiver.
- 1915(i) requires participants to meet a state-defined needs-based criteria, not an institutional level of care as required under a 1915(c) waiver.
- Final regulations for 1915(i) were published on March 17, 2014.
- Since many of the 1915(i) provisions share regulatory and policy guidance with 1915(c) HCBS waivers, the 1915(c) HCBS Technical Guide is a resource for states for both authorities.

Comparison of 1915(i) and 1915(c) Requirements

	Financial Eligibility	Requirements that May Be Waived/ Disregarded	Limits on Number of People Served	Target Groups	Program/ Benefit Eligibility	Services
1915(i) State Plan HCBS	 Medicaid eligible, up to 150% FPL. +State Option: Up to 300% SIL & eligible under a §1915(c) waiver or §1115 waiver	 Comparability	 Not Allowed	 Age, Diagnosis, Disability, and/or Medicaid Eligibility Group.	 Needs-Based Criteria	 HCBS-Statutory, Extended State Plan, and Other
1915(c) HCBS Waiver	 Medicaid eligible. Use institutional income and resource rules for the medically needy State Option: Up to 300% SIL	 Comparability  Statewideness	 Allowed	 Aged and/or disabled. Intellectual disability and/or developmental disability. Mental illness. Any above subgroup.	 Institutional Criteria	 HCBS-Statutory, Extended State Plan, and Other

FPL: Federal poverty level; SIL: Special income level

1915(i) State Plan HCBS Requirements (1 of 2)

- A process that excludes coverage for room and board (42 CFR § 440.182(d));
- Minimum needs-based criteria for benefit eligibility that are less stringent than institutional level of care criteria (42 CFR §§ 441.715(a) and (b));
- **A process to determine individual eligibility for the 1915(i) benefit, including application of needs-based criteria and, if applicable, verification of target group eligibility, through an independent evaluation of each individual according to the regulatory requirements contained at 42 CFR § 441.715(d)*;**
- **For each individual determined eligible, an independent assessment of needs, which may include the results of a standardized functional needs assessment, in order to establish a person-centered service plan (42 CFR § 441.720)*.**

* Focus of today's presentation

1915(i) State Plan HCBS Requirements (2 of 2)

- A process to ensure that the HCBS are provided in accordance with a person-centered service plan and are delivered in home and community-based settings as defined in regulation (42 CFR § 441.725 and 42 CFR §§ 441.710(a)(1) and (2));
- Adequate and reasonable provider standards to meet the needs of the target population (42 CFR § 441.730); and
- A quality improvement strategy for the benefit (42 CFR § 441.745(b)).

Overview of the Requirements for Independent Evaluation and Determination of 1915(i) Eligibility

Independent Evaluation and Determination of Eligibility for the 1915(i) State Plan HCBS (1 of 2)

Reference note: 42 CFR § 441.715(d) Independent evaluation and determination of eligibility

Eligibility for the 1915(i) State Plan HCBS benefit must be determined through an independent evaluation of each individual.

The independent evaluation needs to comply with the following requirements:

- 1) Is performed by an agent that is independent and qualified as defined in 42 CFR § 441.730.
- 2) Applies the needs-based eligibility criteria that the state has established, and the general Medicaid eligibility requirements.

Independent Evaluation and Determination of Eligibility for the 1915(i) State Plan HCBS (2 of 2)

- 3) Includes consultation with the individual and, if applicable, the individual's representative.
- 4) Assesses the individual's support needs.
- 5) Uses only current and accurate information from existing records and obtains any additional information necessary to draw valid conclusions about the individual's support needs.
- 6) Evaluations finding that an individual is not eligible for the State Plan HCBS benefit are treated as actions defined in 42 CFR § 431.201 and are subject to the Fair Hearing requirements of 42 CFR § 431 subpart E.

Independent Evaluation and Determination of Eligibility – Redeterminations

Reference note: 42 CFR § 441.715(e) Periodic redetermination.

- Independent reevaluations of each individual receiving the 1915(i) State Plan HCBS benefit must be performed at least every 12 months, to determine whether the individual continues to meet 1915(i) eligibility requirements.
- Redeterminations must meet the requirements of independent evaluations.

Independent Evaluation and Determination of Eligibility – Adding a New Medicaid Eligibility Group

- Under the 1915(i) State Plan HCBS benefit, states can establish a new Medicaid eligibility group.
- Please note that Medicaid eligibility determinations can only be performed by the State Medicaid Agency (SMA) or a government agency delegated by the SMA in accordance with 42 CFR § 431.10.
 - Eligibility determinations for the group described in 42 CFR § 435.219 or § 436.219 (which includes a 1915(i) eligibility evaluation) must comply with 42 CFR § 431.10.
 - Non-governmental entities can support administrative functions of the eligibility determination process that do not require discretion including, for example, data entry functions, IT support, and implementation of a standardized 1915(i) eligibility evaluation tool.
 - States should ensure that any use of a tool by a non-governmental entity involves no discretion by the non-governmental entity and that the development of the requirements, rules, and policies operationalized by the tool are overseen by the state agency.

Overview of the Requirements for Independent Assessment of Needs

Independent Assessment of Needs (1 of 6)

Reference note: 42 CFR § 441.720(a) Independent Assessment: Requirements.

For each individual determined to be eligible for the 1915(i) State Plan HCBS benefit, the state must provide for an independent assessment of needs, which may include the results of a standardized functional needs assessment, in order to establish a service plan. In applying the requirements of section 1915(i)(1)(F) of the Social Security Act, the state must:

- 1) Perform a face-to-face assessment of the individual by an agent who is independent and qualified as defined in 42 CFR § 441.730, and with a person-centered process that meets the requirements of 42 CFR § 441.725(a) and is guided by best practice and research on effective strategies that result in improved health and quality of life outcomes.

Independent Assessment of Needs (2 of 6)

- i. The face-to-face assessment may include assessments performed via telehealth, or other information technology medium, if the following conditions are met:
 - A. The agent performing the assessment is independent and qualified as defined in 42 CFR § 441.730 and meets the provider qualifications defined by the state, including any additional qualifications or training requirements for the operation of required information technology.
 - B. The individual receives appropriate support during the assessment, including the use of any necessary on-site support-staff.
 - C. The individual provides informed consent for this type of assessment.

Independent Assessment of Needs (3 of 6)

- 2) Conduct the assessment in consultation with the individual, and if applicable, the individual's authorized representative, and include the opportunity for the individual to identify other persons to be consulted, such as, but not limited to, the individual's spouse, family, guardian, and treating and consulting health and support professionals responsible for the individual's care.
- 3) Examine the individual's relevant history including the findings from the independent evaluation of eligibility, medical records, an objective evaluation of functional ability, and any other records or information needed to develop the person-centered service plan as required in 42 CFR § 441.725.

Independent Assessment of Needs (4 of 6)

- 4) Include in the assessment the individual's physical, cognitive, and behavioral health care and support needs, strengths and preferences, available service and housing options, and if unpaid caregivers will be relied upon to implement any elements of the person-centered service plan, a caregiver assessment.
- 5) For each service, apply the state's additional needs-based criteria (if any) that the individual may require. In addition to meeting the eligibility, including needs-based criteria for the 1915(i) State Plan HCBS benefit, individuals are also required to be assessed to need and receive at least one home and community-based service under the 1915(i) State Plan benefit.

Independent Assessment of Needs (5 of 6)

- 6) Include in the assessment, if the state offers individuals the option to self-direct any State Plan HCBS, any information needed for the self-directed portion of the person-centered service plan, as required under 42 CFR § 441.740(b), including the ability of the individual (with and without supports) to exercise budget and/or employer authority.
- 7) Include in the assessment, for individuals receiving habilitation services, documentation that no Medicaid services are provided which would otherwise be available to the individual, specifically including, but not limited to, services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973, or the Individuals with Disabilities Education Improvement Act (IDEA) of 2004.

Independent Assessment of Needs (6 of 6)

- 8) Include in the assessment and subsequent person-centered service plan, for individuals receiving 1915(i) HCBS State Plan services documentation that no 1915(i) State Plan HCBS are provided which would otherwise be available to the individual through other Medicaid services or other federally-funded programs (such as Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)).
- 9) Include in the assessment and subsequent person-centered service plan, for individuals receiving HCBS through a 1915(c) waiver documentation that HCBS provided through the state plan and waiver are not duplicative.
- 10) Coordinate the assessment and subsequent person-centered service plan with any other assessment or service plan required for services through a Section 1115 Demonstration waiver or 1915(c) HCBS waiver.

Independent Assessment of Needs Checklist

- Perform a face-to-face assessment of the individual by an agent who is independent and qualified.
- Conduct the assessment in consultation with the individual, authorized representative, and others the individual chooses.
- Examine the individual's relevant history such as findings from the independent evaluation of eligibility and any other records or information needed to develop the person-centered service plan.
- For each service, apply the state's additional needs-based criteria (if any) that the individual may require.
- Include in the assessment the individual's physical, cognitive, and behavioral health care and support needs, strengths and preferences, available service and housing options, and their caregiver's needs.
- Include any information needed for the self-directed portion of the person-centered service plan, if applicable.
- Include documentation that no Medicaid services or 1915(i) State Plan HCBS are provided which would otherwise be available to the individual through other Medicaid services or other federally-funded programs such as EPSDT or IDEA of 2004.
- Include documentation that HCBS provided through the state plan and waiver are not duplicative.
- Coordinate the assessment and subsequent person-centered service plan with any other assessment or service plan required for services through a Section 1115 Demonstration waiver or 1915(c) HCBS waiver.

Independent Assessment of Needs - Reassessments

Reference note: 42 CFR § 441.720(b) Independent Assessment: Reassessments.

The independent assessment of needs must be conducted at least every 12 months and as needed when the individual's support needs or circumstances change significantly, in order to revise the person-centered service plan.

Mitigating Conflict of Interest During Independent Evaluation of 1915(i) Eligibility and Independent Assessment of Needs

Mitigating Conflict of Interest Under 1915(i) State Plan HCBS (1 of 6)

Reference note: 42 CFR § 441.730(b) Conflict of Interest Standards.

1915(i) regulations require states to define conflict of interest standards that ensure the independence of individual and agency agents who conduct (whether as a service or an administrative activity) the independent evaluation of eligibility for State Plan HCBS, who are responsible for the independent assessment of needs for HCBS, or who are responsible for the development of the person-centered service plan.

Mitigating Conflict of Interest Under 1915(i) State Plan HCBS (2 of 6)

Evaluators of eligibility, independent assessors of needs, and those that develop person-centered service plans cannot be:

- 1) Related by blood or marriage to the individual, or to any paid caregiver of the individual.
- 2) Financially responsible for the individual.
- 3) Empowered to make financial or health-related decisions on behalf of the individual.
- 4) Holding financial interest, as defined in 42 CFR § 411.354, in any entity that is paid to provide care for the individual.
- 5) Providers of State Plan HCBS for the individual, or those who have an interest in or are employed by a provider of State Plan HCBS for the individual.

Mitigating Conflict of Interest Under 1915(i) State Plan HCBS (3 of 6)

*For the independent assessment of needs and the development of the person-centered service plan **ONLY**:* When the state demonstrates that the only willing and qualified agent to perform independent assessments and develop person-centered service plans in a geographic area also provides HCBS, the state:

- Must devise conflict of interest protections (safeguards) including separation of agent and provider functions within provider entities, which are described in the State Plan for medical assistance and approved by the Secretary
- Ensure that individuals are provided with a clear and accessible alternative dispute resolution process.

Mitigating Conflict of Interest Under 1915(i) State Plan HCBS (4 of 6)

Minimum safeguards to mitigate and address potential problems related to providers performing assessments, developing person-centered service plans, and providing HCBS:

- a. Full disclosure to participants and assurance that participants are supported in exercising their right to free choice of providers and are provided information about the full range of 1915(i) services, not just the services furnished by the entity that is responsible for performing the assessment of needs and developing the person-centered service plan;
- b. An opportunity for the participant to dispute the state's assertion that there is not another entity or individual that is not that individual's provider to perform the assessment of needs or develop the person-centered service plan through a clear and accessible alternative dispute resolution process;

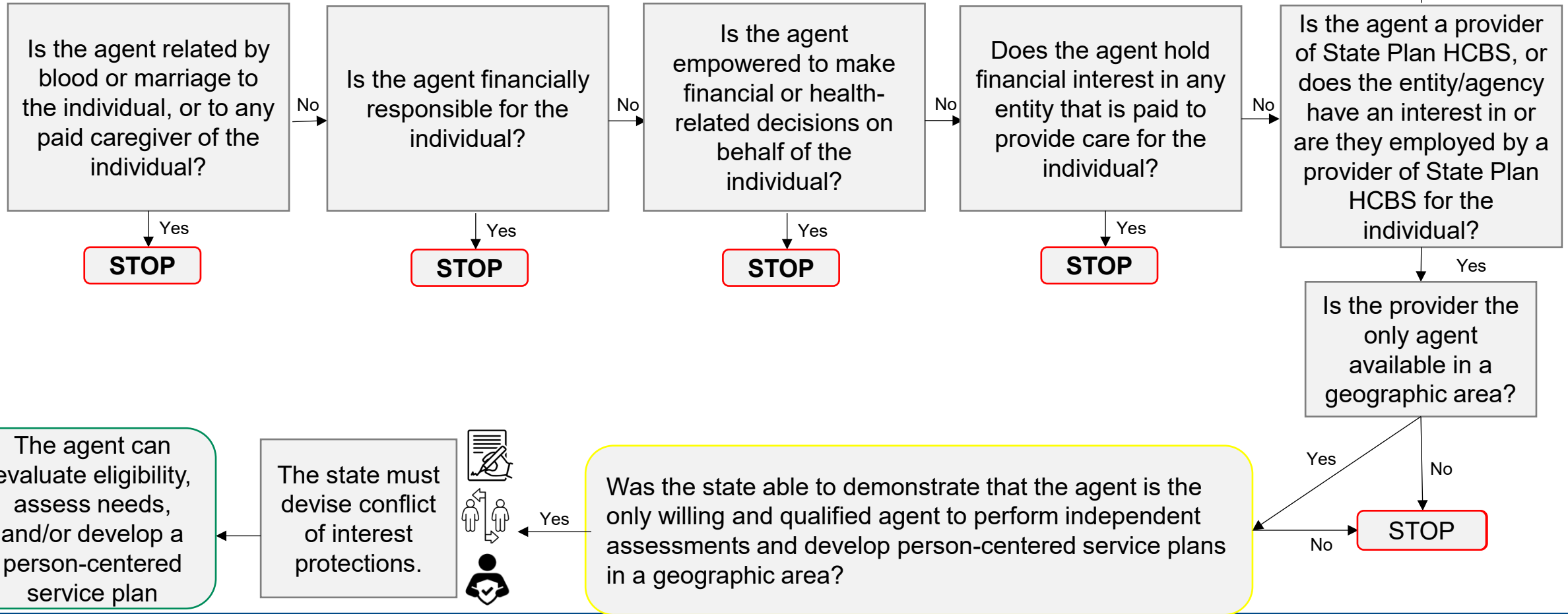
Mitigating Conflict of Interest Under 1915(i) State Plan HCBS (5 of 6)

- c. Direct oversight of the process or periodic evaluation by a state agency;
- d. Restricting the entity that performs the assessment of needs or develops the person-centered service plan from providing services without the direct approval of the state; and
- e. Requiring the agency that performs the assessment of needs or develops the person-centered service plan to administratively separate the plan development function from the direct service provider functions.

Mitigating Conflict of Interest Under 1915(i) State Plan HCBS (6 of 6)

Agent = person or entity responsible for the independent evaluation, independent assessment, and the person-centered service plan.

The agent can evaluate eligibility, assess needs, and/or develop a person-centered service plan.*
*See note on slide 13.



Strategies for Independent Evaluation of 1915(i) Eligibility and Independent Assessment of Needs

Strategies for Independent Evaluation of 1915(i) Eligibility and Independent Assessment of Needs

- Understand and assess independence across structure, function, and regulation.
- Implement a planned and consistent communications strategy that ensures that stakeholders know what independent evaluation and assessment means and how the state is ensuring that independence.
- Include input from individuals receiving services and their families through transparent information sharing gathered through data, mapping and surveys.
- Establish safeguards consistent with federal requirements including ensuring that the choices offered to the participant regarding who develops and monitors the plan are not also a provider of their HCBS.
- Include HCBS measures on independent evaluation of eligibility and independent assessment of needs within your quality improvement plan.

State Approaches to Independent Evaluation and Determination of 1915(i) Eligibility and Independent Assessment of Needs

State Approaches to Independent Evaluation and Determination of Eligibility and Independent Assessment of Needs (1 of 2)

- Development of plain language guidance and materials to support the understanding of independent evaluation and determination of eligibility and assessment.
- Allowing managed care organizations to have a responsibility for assessment.
- Establishment of criteria for qualified staff who may be responsible for completing the independent evaluation of 1915(i) eligibility and assessment of needs when the benefit is targeted to individuals with behavioral health needs to include:
 - a licensed behavioral health clinician;
 - a licensed registered nurse; or
 - a social services worker.

State Approaches to Independent Evaluation and Determination of Eligibility and Independent Assessment of Needs (2 of 2)

- Independent evaluator and assessor staff, could have additional qualifications such as:
 - demonstrated interviewing skills which include the professional judgment to probe as necessary to uncover underlying concerns of the applicant;
 - demonstrated ability to establish and maintain empathetic relationships;
 - experience in conducting social and health assessments;
 - knowledge of human behavior, family/caregiver dynamics, human development and disabilities;
 - awareness of community resources and services;
 - the ability to understand and apply complex service reimbursement issues; and
 - the ability to evaluate, negotiate and plan for the costs of care options.

Quality Considerations and Monitoring Independent 1915(i) Eligibility and Assessment of Needs

Quality Considerations and Monitoring Requirements

42 CFR § 441.745(b) Quality improvement strategy: Program performance and quality of care

- States must develop and implement an HCBS quality improvement strategy that includes a continuous improvement process and measures of program performance and experience of care. The strategy must be proportionate to the scope of services in the State Plan HCBS benefit and the number of individuals to be served.
- In 2014, CMS revised the quality oversight structure for section 1915(c) HCBS waiver programs which also applies to the 1915(i) State Plan HCBS benefit.
- In 2022, CMS released a draft HCBS Quality Measure Set
 - HCBS Measure Set SMDL.
- Overall, states must have a quality improvement strategy that incorporates the monitoring, remediation, and improvement of the independent evaluation of eligibility and assessment of needs to ensure HCBS programs fully honor and support each person to make free choices about their lives.
- Ensuring Access to Medicaid Services (CMS-2442-F)

Summary

- The 1915(i) State Plan HCBS benefit allows states to offer home and community-based services, historically only available through a 1915(c) waiver, through the Medicaid State Plan.
- Eligibility for the 1915(i) State Plan HCBS benefit must be determined through an independent evaluation of each individual.
- For each individual determined to be eligible for the 1915(i) State Plan HCBS benefit, the state must provide for an independent assessment of needs, which may include the results of a standardized functional needs assessment, in order to establish a person-centered service plan.
- The state must define standards to mitigate the potential for conflict of interest that ensure the independence of individual and agency agents who conduct (whether as a Medicaid service or an administrative activity) the independent evaluation of eligibility for the 1915(i) State Plan HCBS benefit, who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the person-centered service plan.

Resources (1 of 2)

- CMS Baltimore Office Contact—Division of Long-Term Services and Supports: HCBS@cms.hhs.gov
- To request Technical Assistance: <http://hcbs-ta.org>
- [1915\(i\) of the Social Security Act](#)
- Regulations: [eCFR: 42 CFR Part 441 Subpart M -- State Plan Home and Community-Based Services for the Elderly and Individuals with Disabilities](#)
- [1915\(i\) Home and Community Based Services \(HCBS\) State Plan Option: Requirements for Needs-Based Criteria and State Option to Target Benefit \(Medicaid.gov\)](#)
- Information on HCBS Quality: [Measuring and Improving Quality in Home and Community-Based Services | Medicaid](#)

Resources (2 of 2)

- Reframing Approaches to Quality Management in HCBS From the Individual's Perspective (Medicaid.gov)
- Conflict of Interest Part 2 - Medicaid HCBS Case Management
- Quality in Home and Community Based-Services Authorities Part 1 (Medicaid.gov)
- Conflict of Interest in Medicaid Authorities (Medicaid.gov)
- Mitigating Conflict of Interest in Case Management (Medicaid.gov)
- Ensuring Access to Medicaid Services (CMS-2442-F) Final Rule

Questions?

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