Fundamentals of the Working Families Tax Cut Legislation Section 1915(c)(11) Home and Community-Based Services Waiver Authority

Division of Long-Term Services and Supports
Medicaid Benefits and Health Programs Group
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CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

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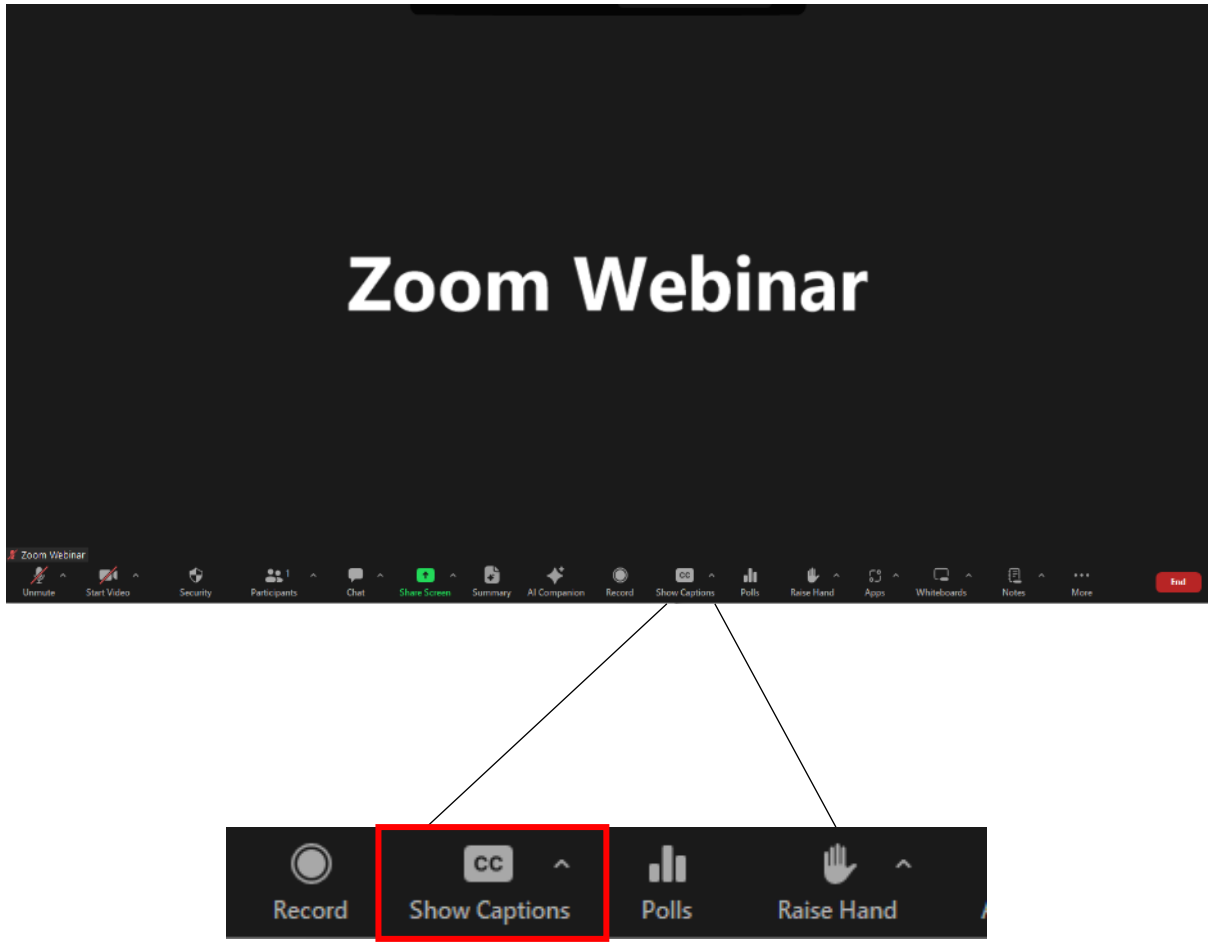

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Welcome from CMS

Presentation Objectives

This presentation will cover:

- An overview of the new 1915(c)(11) Home and Community-Based Services (HCBS) waiver;
- Conditions for waiver approval and ongoing requirements;
- Considerations for 1915(c)(11) waiver design;
- 1915(c)(11) parallels and new opportunities; and
- Comparison of 1915(c)(11) to other related HCBS authorities.

Overview of the 1915(c)(11) HCBS Waiver

Overview of the 1915(c)(11) HCBS Waiver (1 of 2)

- Enacted July 4, 2025, Section 71121 of the Working Families Tax Cut (WFTC) legislation added paragraph (11) to Section 1915(c) of the Social Security Act, creating what the Centers for Medicare & Medicaid Services (CMS) refers to as the 1915(c)(11) waiver.
- Allows states to design programs that provide “upstream” access to HCBS, providing a pathway for states to deliver HCBS before individuals reach an institutional level of care (LOC) (i.e., the level of care provided in a hospital, nursing facility, or an Intermediate Care Facility for Individuals with Intellectual Disability [ICF/ID]). By providing support earlier, states can promote cost-effective care and improved outcomes.
- Individuals who might not meet institutional LOC and who may now be eligible for HCBS under the 1915(c)(11) could include:
  - Children with complex and varied support needs,
  - Individuals with Intellectual or Developmental Disabilities (I/DD) on waitlists and with needs below institutional LOC,
  - Individuals with behavioral healthcare needs, and
  - Older adults with support needs below institutional LOC.

Overview of the 1915(c)(11) HCBS Waiver (2 of 2)

- Permits states to:
  - Waive certain Medicaid state plan requirements, such as statewideness and comparability of services; and
  - Limit the number of individuals receiving HCBS under the waiver.
- Available to all states, D.C., and U.S. territories.
- Initial waivers will be approved for a 3-year period and, upon state request and compliance with CMS requirements, may be renewed for additional 5-year periods.
- CMS can start approving 1915(c)(11) waiver applications beginning July 1, 2028.

1915(c)(11) Eligibility Requirements

In order to be determined eligible for the 1915(c)(11) waiver, individuals must meet the eligibility requirements as established by the state:

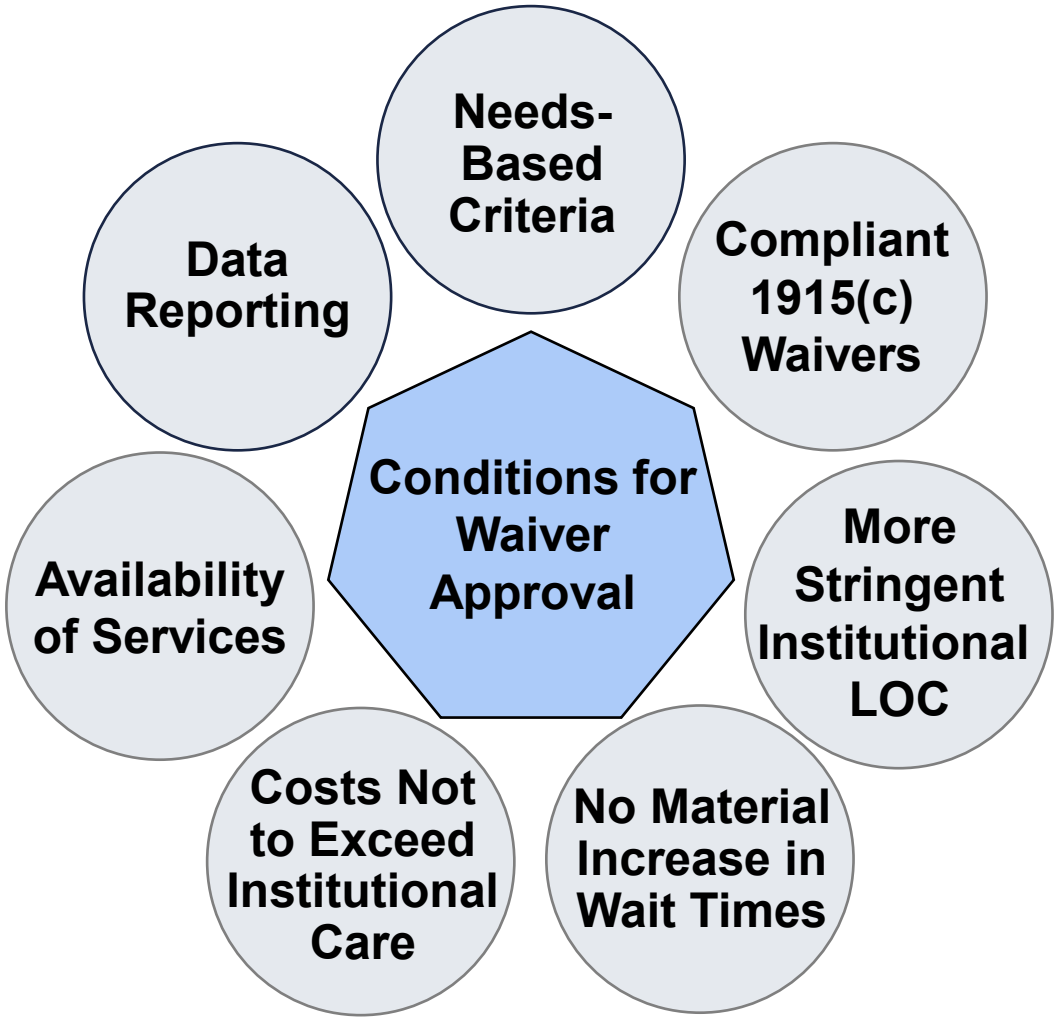
- **Medicaid eligibility:**
  - Is eligible for Medicaid under one of the Medicaid eligibility groups covered in the state plan in the state in which the individual resides.
- **Needs-based criteria:**
  - Meets state-defined minimum needs-based criteria.
- **Target group:**
  - Meets the state-defined target group requirements.
  - States may include one or a combination of the following target groups: Aged or disabled, individuals with I/DD, persons with mental illness(es), and any subgroup of these populations.

Conditions for 1915(c)(11) Waiver Approval

Conditions for 1915(c)(11) Waiver Approval (1 of 2)

As a condition of waiver approval, the state must:

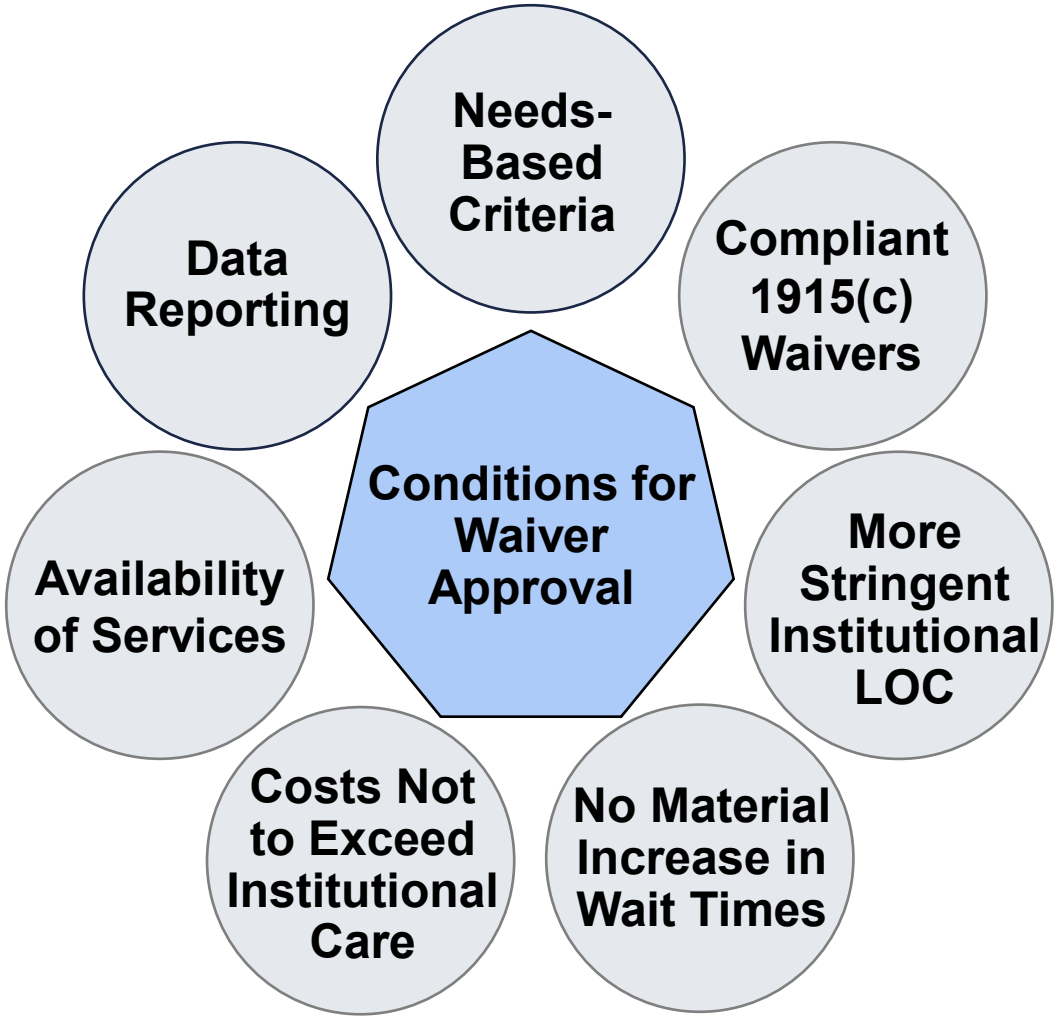
- Establish needs-based criteria for determining eligibility,
- Ensure that when they submit the 1915(c)(11) application, the state's existing 1915(c) waivers are compliant with Medicaid requirements,
- Demonstrate that 1915(c)(11) waiver needs-based criteria are less stringent than institutional needs-based LOC criteria, **and**
- Demonstrate that the 1915(c)(11) waiver will not result in a "material" increase in average wait time for individuals with an institutional LOC to receive HCBS.



Conditions for 1915(c)(11) Waiver Approval (2 of 2)

Additionally, the state must:

- Attest that the 1915(c)(11) average per capita expenditure will not exceed the state's institutional care average per capita expenditure,
- Provide the number of individuals to whom the state will make 1915(c)(11) services available, and
- Comply with reporting, monitoring, and program integrity requirements.



1915(c)(11) Needs-Based Criteria

States must establish and use needs-based criteria to determine an individual's eligibility for the 1915(c)(11) waiver.

- The minimum needs-based criteria for 1915(c)(11) must be less stringent than institutional LOC needs-based criteria.
- Individuals do not have to meet an institutional LOC to receive services under Section 1915(c)(11).
- The needs-based criteria are functional criteria and are not individual characteristics, such as age or diagnoses, which are target group categories.
- A state may not restrict a 1915(c)(11) waiver to only individuals who do not meet an institutional LOC or impose an upper limit on its needs-based criteria.
- States must perform eligibility evaluations for each individual enrolled under a 1915(c)(11) waiver on at least a yearly basis.

Ongoing Requirements

1915(c)(11) Data Reporting Requirements

The state agrees to provide CMS with data from the preceding year no less frequently than annually.

These data will include:

- The costs of 1915(c)(11) services, broken down by service,
- The length of time individuals received each type of HCBS provided under the 1915(c)(11) waiver,
- A comparison between the cost of services for individuals receiving 1915(c)(11) services, individuals meeting institutional LOC and receiving waiver services, and individuals receiving institutional care**, and**
- The number of individuals who have received 1915(c)(11) HCBS during the preceding year.

Considerations for 1915(c)(11) Waiver Design

Considerations for 1915(c)(11) Waiver Design (1 of 2)

1915(c)(11) provides expanded access to HCBS by not requiring individuals to meet institutional LOC. States should consider the following when designing the new waiver:

Question	Considerations
How can the 1915(c)(11) waiver be used to enhance the HCBS landscape in the state?	States could allow "upstream" access to HCBS, helping individuals obtain support before reaching an institutional LOC for identified target group(s) including new populations.
How many people will the state serve with the 1915(c)(11) waiver?	As part of the waiver application, states must provide the number of individuals to whom the state will make 1915(c)(11) services available.
Will the waiver be implemented statewide or is there a specific geographic area(s) of the state that will be served with the new waiver?	States continue to have the ability to waive statewideness and can focus on select geographic areas with the 1915(c)(11) waiver.
Could a broad needs-based waiver be developed across multiple target groups (+65 age, younger adults with disabilities, people with behavioral health needs, etc.)?	States may elect to use the 1915(c)(11) waiver to provide HCBS to various target groups by using needs-based eligibility criteria instead of institutional LOC.

Considerations for 1915(c)(11) Waiver Design (2 of 2)

1915(c)(11) provides expanded access to HCBS by not requiring individuals to meet institutional LOC. States should consider the following when designing the new waiver:

Question	Considerations
How can this new waiver be used to focus on a specific issue, such as individuals with early-stage dementia, high hospitalization rates, and individuals with I/DD on waitlists with needs below an institutional LOC?	States also may consider risk factors in conjunction with the minimum needs-based criteria for participant eligibility determinations for the 1915(c)(11) waiver. The needs-based criteria must be less stringent that the state's institutional LOC.
Would the 1915(c)(11) waiver be used to provide HCBS for individuals transitioning from an institution, which includes individuals with needs at an institutional LOC and those with needs below an institutional LOC?	States may choose to allow participants with conditions that require HCBS for health stabilization to be served with the new waiver.

Examples for Utilizing 1915(c)(11) Waivers (1 of 3)

Target Group: Children with various disabilities/diagnoses/conditions

The state elects to target this 1915(c)(11) waiver to children with various conditions who meet the established needs-based criteria. In order to meet the minimum needs-based criteria for this state's 1915(c)(11) waiver, children must require assistance with at least two major life activities. Major life activities include, receptive and expressive language, self-care, learning, mobility, social skills, and health and safety.

Examples of potential participants may include:

- Children with Autism Spectrum Disorder who require assistance with communication, behavioral support, and community integration; or
- Children with Serious Emotional Disturbance who require behavioral support and assistance, such as redirection, cueing, and crisis intervention.

NOTE: Each state must establish needs-based criteria that are less stringent than needs-based criteria for an institutional LOC within that state. Since each state is responsible for establishing LOC criteria, it is important to note that an individual who is below institutional LOC in one state and eligible for 1915(c)(11) services may not meet the minimum needs-based criteria requirements in another state.

Examples for Utilizing 1915(c)(11) Waivers (2 of 3)

Target Group: Individuals with behavioral health conditions, developmental disability, or both

The state elects to target this 1915(c)(11) waiver to the individuals listed above who meet the established needs-based criteria. In the examples below, individuals must require assistance with at least two major life activities in order to meet the state's minimum needs-based criteria. Major life activities include self-care, receptive and expressive language, learning, mobility, capacity for independent living, and economic self-sufficiency. The waiver is limited to specific geographic regions of the state where emergency department utilization was significantly greater for individuals in this target group.

Examples of potential participants may include:

- Adults with Traumatic Brain Injury who need assistance with cueing, emotional regulation, and managing daily routines; or
- Individuals with a developmental disability and a suspected but undiagnosed mental health disorder who require assistance with meal preparation, medication management, and traveling in the community.

Examples for Utilizing 1915(c)(11) Waivers (3 of 3)

Target Group: Older adults (ages 65+)

The state elects to target this 1915(c)(11) waiver to older adults who meet the established needs-based criteria. Older adults must require assistance with at least three major life activities to meet the minimum needs-based criteria for this state's 1915(c)(11) waiver. Major life activities include self-care, receptive and expressive language, learning, mobility, capacity for independent living, and economic self-sufficiency.

Examples of potential participants may include:

- Older adults with Parkinson's Disease or history of a stroke who require assistance with mobility, balance, and fall prevention; or
- Older adults with multiple chronic conditions and limited mobility who require assistance with housekeeping, meal preparation, and standby support for bathing and toileting.

Provider Considerations

States should consider the following for 1915(c)(11) HCBS providers:

- States opting to administer 1915(c)(11) waivers and other Medicaid HCBS programs will need to have mechanisms in place to ensure against duplication of services and payment to providers.
- State Medicaid programs can still include the cost of benefits within the provider rate, and providers may use their own reimbursement to purchase benefits from an outside entity/third party.
- Providers' capacity, especially in the context of the wait times requirement, for delivering services to new populations; contract changes and procurement factors for managed care organizations; and implications of the assessment process for determining needs-based eligibility.
- States also should consider the time, capacity, and expertise required to conduct person-centered planning, particularly for providers that are new to Medicaid HCBS.

1915(c)(11): Parallels and New Opportunities

1915(c)(11) Parallels and New Opportunities (1 of 2)

Existing Section 1915(c) requirements applicable to 1915(c)(11):

- HCBS settings requirements and person-centered service planning requirements.
- States can control costs by managing the number of participants served and by waiving statewideness (i.e., states can target geographic areas).
- The same services allowable under Section 1915(c) will be allowable under Section 1915(c)(11).
- Evaluations for eligibility for 1915(c)(11) waivers occurring at regular intervals.
- Compliance with waiver assurances and sub-assurances related to quality oversight, monitoring, discovery, remediation, and improvement.
- Quality improvement strategy (QIS), including performance measures, for administrative authority, needs-based criteria, qualified providers, service planning, health and welfare, and financial accountability.

1915(c)(11) Parallels and New Opportunities (2 of 2)

New Opportunities:

- Assist in addressing care needs to prevent unnecessary institutionalization by providing access to early intervention for those who are at institutional LOC.
- Cost effectively deliver HCBS by delaying the need for or preventing future institutionalization.
- Improve community integration by supporting transitions from institutions to the community for individuals at or below institutional LOC.

Comparison of 1915(c)(11) to Other Related HCBS Authorities (1 of 2)

	1915(c)(11) HCBS Waiver	1915(c) HCBS Waiver	1915(i) State Plan HCBS
Level of Need	Needs-based criteria	Institutional LOC	Needs-based criteria
Serves Individuals Not at Institutional LOC	Yes	No	Yes
Limits on Number Served	Yes	Yes	No
Requirements that may be Waived at the State's Option	• Comparability • Statewideness	• Comparability • Statewideness	• Comparability
Cost Neutrality	Yes	Yes	No

Comparison of 1915(c)(11) to Other Related HCBS Authorities (2 of 2)

	1915(c)(11) HCBS Waiver	1915(c) HCBS Waiver	1915(i) State Plan HCBS
Target Groups	• Aged and/or Disabled • I/DD • Mental Illness and/or • Any Above Subgroup	• Aged and/or Disabled • I/DD • Mental Illness and/or • Any Above Subgroup	• Age • Diagnosis • Disability and/or • Medicaid Eligibility Group
Financial Eligibility	• Medicaid eligible under state plan. State option: Institutional income & resource rules may be used for the medically needy. • State option: For those at institutional LOC and whose eligibility will be based on their participation in a 1915(c) waiver, income up to 300% of SSI Federal Benefit Rate (FBR).	• Medicaid eligible under state plan. State option: Institutional income & resource rules may be used for the medically needy. • State option: For those whose eligibility will be based on their participation in a 1915(c) waiver, income up to 300% of the SSI FBR.	• Medicaid eligible, income up to 150% Federal poverty level. • State option: Income up to 300% of the SSI FBR & meets eligibility requirements for (even if not receiving services under) a 1915(c) waiver or 1115 demonstration.

Summary (1 of 2)

- The 1915(c)(11) waiver provides a pathway to deliver HCBS for individuals without requiring an institutional LOC while continuing to allow states to determine the number to be served and state wideness.
- States will be required to develop, and have approved by CMS, needs-based eligibility requirements, assess wait times, attest to average per capita expenditure for individuals in an institution, and conduct monitoring, reporting, and quality assurance activities.
- States are still subject to Section 1915(c) requirements such as person-centered service planning and standards to mitigate conflict of interest.

Summary (2 of 2)

- CMS will continue to offer technical guidance and plans to provide an update to the current 1915(c) application template and technical guide to include information on the 1915(c)(11) option.
- CMS can begin approving applications on the statute's effective date, July 1, 2028, and intends to open applications prior to this date to ensure states' submissions can be reviewed as early as possible.

Resources

Statutory Language

- Full Text: WFTC Section 71121 Expanding Access to Care: https://www.congress.gov/bill/119th-congress/house-bill/1/text#d3245e39515
- Assurances for health and welfare safeguards: Section 1915 of the Social Security Act: https://www.ssa.gov/OP_Home/ssact/title19/1915.htm

Other resources

- Working Families Tax Cut Legislation: https://www.medicaid.gov/resources-for-states/working-families-tax-cut-legislation
- Quality in Home and Community Based-Services Authorities Part 1: https://www.medicaid.gov/medicaid/home-community-based-services/downloads/quality-hcbs-part1.pdf
- All-State Medicaid and CHIP Call, January 2026: https://www.medicaid.gov/resources-for-states/downloads/covid19allstatecall01272026.pdf
- CMS Home & Community Based Services Training Series: https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-training-series

Questions?

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