
CHAPTER 2

Division Has Broadened Access to the Adult Waiver

The Division changed its eligibility standards and the way it assesses persons applying for the Adult Waiver to enable people with a greater range of disabilities to qualify. After briefly using a more stringent set of standards, the Division in 2001 modified both the standards and its assessment process to admit applicants with higher levels of functioning.

Weston principles guide the Division policy to serve a broad range of clients.

These changes enabled remaining State Contract program clients, who had been unable to qualify under the more stringent criteria, to transition to the Adult Waiver. This transition was necessary for them to continue receiving services because the Division eliminated the State Contract program in favor of using only the waiver to fund services. The Division cites the Weston Consent Decree as the state's commitment to continue services to this group of clients. Further, admitting people with a greater range of disability to the waiver is consistent with the Division's mission to provide services to all individuals with developmental disabilities, and with its policy to use only the waiver to provide these services.

Decisions such as these have significant effects and warrant consideration by policy makers outside of the Division. Establishing a broader range of people as eligible for the waiver is important because the number of people served is a major determinant of total program costs. Further, by admitting people to the waiver, the Division is defining them as "at-risk of institutionalization" and therefore subject to the provisions of the U.S. Supreme Court's Olmstead decision.

To Qualify for the Waiver, Adults Must Be Wyoming Citizens Who Meet Both Financial and Clinical Eligibility Requirements

State Medicaid rules define a resident as someone who resides in Wyoming on a permanent and voluntary basis, and federal

Medicaid law does not allow states to set length-of-residency requirements. Residency will not be denied solely because a client is homeless. The Division does not accept waiver applications from persons who reside in other states or transfers from developmental disability programs in other states.

As for financial eligibility, state Medicaid programs must cover people who receive Social Security Administration's Supplemental Security Income (SSI) which provides a financial safety net for disabled, blind, or aged individuals who have low incomes and limited resources. Wyoming Medicaid rules expand this minimum by providing HCBS services to clients with incomes at or less than 300 percent of the maximum SSI benefit.

Clinical Eligibility Has Changed

Clinical eligibility is a state policy decision.

Requirements for clinical eligibility are important because they determine the range of people whose conditions qualify them for services. Medicaid gives states flexibility to determine clinical eligibility for waiver services. Since this determination is a policy decision that affects total program costs, as well as one about which confusion exists, we carefully reviewed the Division's procedures.

States set their own waiver eligibility criteria with minimal federal direction

Waiver eligibility standards must be the same as those at the institutions from which clients are being diverted.

Federal law and regulation specify only the general eligibility requirements for optional Medicaid home and community services (HCBS), such as being blind, aged, or disabled. States are permitted to use additional health and functional criteria to specify who, within the general eligibility group, receives services. To establish clinical eligibility for HCBS, states define the level of care that would qualify an individual for services in a hospital, nursing facility, or ICF/MR, and apply the same criteria to individuals who wish to be served in a community-based setting.

Although Medicaid allows states great flexibility in establishing waiver programs, it is firm in holding that the level-of-care criteria for waivers must be the same as that for the institutions from

which waiver recipients are being diverted. This reflects the federal government's primary purpose for the waiver: to offer an alternative to institutionalization. It means that for Wyoming's Adult Waiver, eligible participants must otherwise require the level of care provided in the state's only Intermediate Care Facility for People with Mental Retardation (ICF/MR), the Wyoming State Training School (WSTS). Eligibility criteria for the Adult Waiver and the WSTS must be the same.

Division Has Had Three Versions of Waiver Eligibility Criteria Since 1991

Related Condition

A severe, chronic disability manifested before age 22 that is attributable to cerebral palsy, seizure disorder or any other condition other than mental illness that is closely related to mental retardation and requires similar services.

The first Wyoming Adult Waiver criteria were broad, requiring that waiver beneficiaries be 21 years or older with disabilities manifesting before age 22 that are likely to continue indefinitely. Further, the first criteria required persons to be determined mentally retarded by a licensed psychiatric professional or have a related developmental disability (see "Related Condition" description at left). In addition, beneficiaries had to have substantial functional limitations in three or more of the following areas of major life activity: self-care, language, learning, mobility, self-direction, independent living, and economic self-sufficiency.

ICAP Service Score

The Service Score reflects the level of care, supervision or training needed by individuals at home, or in educational and human service programs. The score is based on maladaptive (socially unacceptable behavior) and adaptive behavior (meets community expectations for personal independence, maintenance of physical needs, acceptable social norms and interpersonal relationships).

These criteria stayed in effect until 1999, when the Division significantly changed them by adding numerical assessment scores that limited eligibility. These scores were commonly called the "70/70" rule, which referred to a full-scale intelligence quotient (IQ) of 70 or below and Inventory of Client and Agency Planning (ICAP) Service Score of 70 or below (see ICAP Service Score explanation at left). A Division official said these more stringent criteria were instituted to contain numbers of potentially eligible people.

The latest change to the Adult Waiver clinical eligibility criteria occurred in 2001, when the state received Medicaid approval for "additional clinical eligibility targeting criteria to facilitate serving an increased number of individuals." This change removes the 70 IQ/70 ICAP Service Score requirements from consideration, as long as applicants demonstrate functional limitations in three or more of the areas of major life activity.

The Division determined that the "70/70" criteria were overly conservative.

The Division determined that the 1999 criteria were overly conservative because some developmentally disabled people without behavioral problems would be ineligible for services.

Although not explicitly stated in all of these Division statements of waiver eligibility, there are implicit requirements that the individuals accepted onto the waiver require ICF/MR level of care, and 24-hour-a-day supervision. All waiver participant files must include a formal statement that waiver applicants have these needs.

Wyoming definitions are similar to other states' and to the federal definition

Other states and the federal government define developmental disabilities much as Wyoming does in its waiver application. These definitions also include the functional limitations in three or more of the same areas of major life activity used in the Wyoming criteria. However, states differ in how they make the determination that potential waiver participants have these functional limitations.

Division Interprets Its Assessment Tool In a Way That Broadens Eligibility

Eligibility is determined with Service Score or Domain Scores.

We found that the way the Division assesses people applying for the waiver increases their likelihood of qualifying. First, as discussed above, the Division modified its eligibility criteria so persons with IQs and ICAP Service Scores above 70 could qualify *if* they demonstrated functional limitations in three or more of six areas of major life activity¹. Second, it adopted scoring practices for assessing people in those functional areas; these practices have also had the effect of broadening eligibility.

ICAP experts emphasize that how a state uses the ICAP is a policy decision. While offering suggestions for its use, they say they realize states may want to use the test differently depending on their preferences and programs.

¹ The Division lists seven areas of major life activity in its eligibility criteria, but it scores on only six. The area "economic self-sufficiency" is not scored due to federal directive, according to Division officials.

ICAP Domain Scores used to assess functional deficits

The Division uses ICAP Domain Scores to determine whether a person has deficits in three functional areas. Domain Scores are based on the extent to which a person is able to accomplish major life activities according to social and community expectations, and they are intended to measure a person's adaptive behavior. The Division uses three of four possible ICAP Domain Scores, plus a person's mobility and mental retardation, to determine deficits in functional areas.

An ICAP assessment determines deficits in functional areas.

- Self-care deficits are determined through the Personal Living Domain score
- Language deficits are determined through the Social/Communication Domain Score
- Learning/cognition deficits are determined present if the person is mentally retarded
- Mobility deficits are determined present if the person does not walk, and
- Self-direction and Independent Living deficits are determined through the Community Living Domain Score.

Division uses a scoring approach that widens eligibility

In making functional limitation determinations, the Division compares the Domain Scores of individuals assessed for the waiver with those of non-developmentally disabled people of the same ages up to the age of 41. According to experts, Domain Scores adjusted for age need not exceed the age of 17 because after that, differences between people's abilities have more to do with personal interest and less with functional capacity. Thus, comparing a developmentally disabled person to a normal functioning person of the same age, who has acquired skills and knowledge through education and life experience, measures a difference in self-motivation and interest rather than in functional capability (see Appendix C).

The Division compares waiver candidates to normal-functioning adults of the same age up to age 41.

By using Domain Scores that are age adjusted to 41 as criteria for assessed scores, the Division is expanding the definition of who is eligible for the waiver. This scoring approach allows some people with higher scores to show deficits in functional areas.

Division's use of ICAP Service Score can broaden eligibility

Although the Division has expanded eligibility to be less reliant on the ICAP Service Score, this score is still used and can qualify persons who primarily have socially unacceptable behaviors. In computing the ICAP Service Score, maladaptive behavior problems (socially unacceptable behaviors) are weighted more heavily than these behaviors are in alternative ICAP scores available to determine eligibility. This score can be used to qualify persons whose functional disabilities stem primarily from socially unacceptable behaviors rather than developmental disabilities. For this reason, experts suggest using caution when making the policy decision to use the Service Score to determine eligibility.

The Broad Independence Score is suggested for eligibility.

Division may move towards suggested use of the ICAP

ICAP experts suggest using another ICAP score, the Broad Independence Score, which is the composite of four Domain Scores, to determine eligibility. They say it is more reliable than either the Service Score or the individual Domain Scores. The Division states that the Broad Independence Score "is the most accurate representation of the person's overall functional abilities," and has indicated it may be moving toward using this score.

Division Broadened Waiver Eligibility to Admit Less Challenged People

The waiver needed to cover clients served by the State Contract program, which was eliminated.

The Division broadened eligibility to allow people with milder disabilities to qualify for the waiver. Initially, the intent was to move onto the waiver less severely disabled people who had been served by the State Contract program, which was funded entirely by the state. This group represented what the Division terms as the "traditional Wyoming developmentally disabled clientele." Providers we interviewed confirmed that they would have lost existing State Contract clients when that program ended if the criteria had not changed so these clients could be admitted to the waiver.

**State Contract Clients
Who Transitioned to
the Current Waiver**

FY 1991	1
1992	22
1993	3
1994	6
1995	7
1996	9
1997	5
1998	3
1999	1
2000	6
2001	48
2002	54
2003	2
Total	167

Our analysis of Division data shows that many State Contract people did transition to the waiver after the stringent “70/70” criteria were relaxed. Of the 167 current waiver participants whose data indicates they were also State Contract clients, 62 percent moved onto the Adult Waiver since the 2001 eligibility change (see box to the left). Division officials say that many more State Contract clients transitioned to the waiver in the early 1990’s, but current Division data did not show this.

Division officials maintain clinical eligibility is still stringent

Despite taking steps to broaden eligibility, Division officials maintain that current clinical eligibility criteria limit the waiver to people with the age-adjusted capacity of a seven year-old. Our analysis confirms that three-quarters of current waiver participants do have a cognitive equivalent of a seven year-old or less.

However, a good portion of those added since the 2001 eligibility change have higher functional levels. For example, of waiver participants who have come onto the waiver recently (between FY ’01 and ’03), our analysis of Division data shows:

- 37 percent have a Service Score greater than 70, and
- 40 percent have a cognitive age above that of a seven year-old, using the ICAP Broad Independence Score.

The Adult Waiver is not just for those with mental ages of a 7-year old.

When all current Adult Waiver participants are considered, 24 percent have ICAP Service Scores higher than 70. Their scores range from the age-adjusted capacity of an eight year-old to that of a twelve year-old. Seven current Adult Waiver clients have an age-adjusted capacity above that of a twelve year-old.

Division Went Solely With the Waiver to Capture Federal Matching Funds

The Division eliminated the State Contract program so it could use only the Medicaid waiver to provide services to developmentally disabled adults. Its purpose in doing this was to provide services using a funding source that could better meet the state’s obligations under the Weston Consent Decree. By funding services through the State Contract program rather than the waiver, the state was foregoing the federal match for those dollars.

The Weston Consent Decree encouraged federal participation.

Weston Consent Decree principles imply seeking federal funding to augment the state's resources, and perhaps a concentration on waiver use. One principle says that the state should strengthen its community service system by seeking partnerships at the federal, state, and area levels. Weston principles also call for a "single integrated means of provision of support to all Wyoming citizens with mental retardation."

Another benefit to the waiver-only approach, according to an expert in the field, is that it avoids inherent problems in financing community services that can occur with multiple funding streams and service requirements. This approach also facilitates providing services that clients choose, which is a major goal in the field of developmental disability services.

Access to more services can increase costs

Wyoming offers a single waiver for developmentally disabled adults that provides clients with up to 21 services. Medicaid requires states to provide all people enrolled in a specific waiver with the opportunity to access all needed services covered by that waiver. Thus, waiver participation has the potential to increase costs, as clients add the services they need or want. For example, we were told that most State Contract clients and their families wanted to transition to the waiver because it offered more services. Further, we found that the service costs for former State Contract clients who transitioned to the waiver did increase.

Some clients increase costs when transitioning to the Adult Waiver.

From the data, we can comment with confidence on only 70 current waiver participants who are former State Contract clients. These individuals transitioned to the Adult Waiver in FY '01 and '02, and we found that their costs changed in the first year after transition. The changes in their IBAs ranged from a decrease of \$10,869 to an increase of \$36,992, but averaged an increase of approximately \$4,800 per client. While the state is responsible for only about 40 percent of the Adult Waiver costs, adult clients tend to stay on the waiver for life, which may be 50 years or more. Thus, eligibility decisions can have long-term funding consequences, and small initial increases in individual budgets can be compounded over the years.

Serving Adults with All Levels of Disability Through the Waiver Can Create Legal Obligations

Olmstead says states must provide community rather than institutional services, if it can reasonably do so.

Since 1991 when the waiver was implemented in Wyoming, it has been a Division policy to use it both to de-institutionalize people in response to Weston and to serve those people who were never institutionalized, including those served by the State Contract program. This policy choice has significant implications because the U.S. Supreme Court ruled in Olmstead that states must provide services to persons with disabilities in community settings rather than in institutions, if those services are desired and can be reasonably accommodated. Since Medicaid equates eligibility for the waiver with eligibility for ICF/MR institutional services, the Division's policy defines all waiver recipients as being at-risk of institutionalization, in the absence of home and community-based services.

The issue of entitlement to community-based services is still being litigated.

Having more eligible people can increase the number of persons waiting for services, and expose the state to lawsuits. As of November 2003, twenty-five states faced lawsuits from people with developmental disabilities who were waiting for home and community-based services. These suits aim to establish that Medicaid beneficiaries with disabilities should have the same entitlement to community services that they have to institutional services. Although some courts have found that eligibility for ICF/MR services does entitle one to home and community services, the issue is still being litigated and is not settled.

Wyoming Adults Must Be Waiver-Eligible To Get Division-Supported Services

Apart from legal ramifications, how Wyoming determines waiver eligibility is also a critical policy choice, because it in effect defines a threshold above which developmentally disabled adults receive *no* Division-supported services. The Division has stated an objective to "assure that all individuals with developmental disabilities in Wyoming, *including* those at-risk of institutionalization (LSO emphasis), have access to a choice of coordinated services that enhance their lives, foster self-

The Division funds a broad population with a funding mechanism limited to those at-risk of institutional care.

sufficiency, and maintain them in the least restrictive and most cost-effective environment.” Yet to serve this broad population, the Division relies upon a funding mechanism limited to supporting those at-risk of institutionalization. This implies either that many less challenged individuals will have no Division supported services, or that developmentally disabled adults in Wyoming receiving services are, by definition, at-risk of institutionalization.

Other states have not relied exclusively on the waiver to fund services for developmental disabled adults. Some, including South Dakota, Kansas, Utah, and Nebraska, have state-funded programs to serve disabled people who are less disabled and do not qualify for waiver services. For example, South Dakota has a state-funded program for people who can generally live on their own except for a few intermittent supports.

Other states do not rely solely upon the Medicaid HCBS waiver.

Relying exclusively upon a single waiver to serve all developmentally disabled adults can deny services to people who do not qualify but who have some level of need. It can also give waiver participants access to services they may not need. Some states use the approach of broadening eligibility standards to serve people with a wider range of disabilities, but they control utilization (and therefore costs) by limiting the amount of services provided in a waiver. Still another approach is to design multiple waivers for developmentally disabled adults that offer different packages of services.

Recommendation: The Division should investigate alternative programs to support different disabled populations and seek broad input into this policy-making process.

The decisions of whom to serve and how to serve them through this large publicly-funded program are significant policy issues. The Division interprets state commitments through the Weston Consent Decree to serve all developmentally disabled adults in the state, “regardless of their funding eligibility or participation

The Division has led the state to serve all developmentally disabled adults through a single HCBS waiver.

in any particular government program” (a Weston principle). To this point, the Division has led the state to serve these individuals through a single, comprehensive Medicaid HCBS adult waiver. In 2001, the Division made related changes in waiver eligibility criteria and assessment practices so that clients traditionally served by the state would qualify. From what we heard, people who provide services for developmentally disabled adults and those who advocate on their behalf approve of these policies.

A broad range of state policymakers should be involved in these policy discussions.

However, a broad range of state policy makers beyond Division officials and advocates need to be involved in considering both the benefits and the potential alternatives to these policy decisions. In considering alternatives to serving developmentally disabled adults through the existing Adult Waiver, policy makers might also consider possible coordination with state’s other long-term care waivers for adults². The Legislature has twice indicated its interest in studying the continuum of long-term care through the Joint Labor, Health and Social Services Interim Committee (Laws 1999, ch. 20 and Laws 2001, ch. 184). Through such an open process, the Department of Health would receive formal input as well as broader understanding about the policies that guide Division services to developmentally disabled adults.

² These are the Long Term Care for Elderly and Physically Disabled Age 19 and Over Waiver, the Assisted Living Facility (ALF) Waiver, and the Acquired Brain Injury (ABI) Waiver.

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