

START-UP / USA

Self-Employment Q and A: Medicaid Home and Community Based Services

Medicaid is a state-federal program that provides health care to eligible low income individuals. When states participate in Medicaid, the state contributes part of the funding, and the federal government contributes part. The federal government provides guidelines for the program, but each state establishes its own requirements. In addition, states can elect to provide “optional” services. The specific services that are available and whether a person with a disability is eligible for these services is state specific and will vary depending on where an individual lives in the United States.

Medicaid Waivers may be one of the tools that individuals with disabilities can use to support self-employment. While not every individual with a disability will be able to use a Waiver for self-employment, those individuals who are already receiving services, or who are eligible to become Waiver participants should explore the possibility in their states. This Q and A provides an overview and examples of how individuals with disabilities have used Medicaid Waivers to support self-employment.

Question: What is a Medicaid Waiver?

Answer: The Social Security Act authorizes Waivers that allow states flexibility in operating their Medicaid programs. The three most common Medicaid Waivers are Research and Demonstration Waivers, Freedom of Choice Waivers, and Home and Community-based Services Waivers. This Q and A will focus on the use of Home and Community-Based Services Waivers, or “Waivers” for short. Waivers allow states to offer services that are above and beyond what the state Medicaid program offers.

The services in each Waiver must assist individuals to live in the community rather than in Medicaid funded institutional settings, such as nursing homes or institutions for people with intellectual/developmental disabilities. Each state decides if it will offer one or more Waivers. If a state chooses to offer Waivers, the state must submit a request to the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services. CMS is the federal agency that oversees the Medicaid program, and every Waiver must be approved before a state can implement it. Each Waiver request involves asking CMS to “waive” some of the rules that usually apply to Medicaid so the state can create a particular set of services with flexible rules to meet the needs of certain people in that state.

Question: How does CMS determine if a Waiver should be approved or denied?

Answer: The state Medicaid agency has to submit a request to CMS asking for approval of each HCBS Waiver it is proposing, and in that request the state must provide a detailed list of who can be eligible for the Waiver, and what services will be available to allow people to live in their own homes and communities. As a result of this flexibility in designing Waivers, there is a great deal of variance from one Waiver to another.

When CMS reviews a state's proposed Waiver, it looks for specific information. First, the state must identify a target group(s) of people (e.g. aged, physically disabled, people with HIV or brain injuries, developmentally disabled, etc.) who are currently or potentially eligible to receive Medicaid funded long-term care services and supports from Medicaid funded institutions. Second, the state must identify a specific set of long-term care services and supports that are necessary for participants to live independently in the community, rather than in institutional facilities. Third, the state must detail the specific Medicaid eligibility groups (each group has its own financial eligibility criteria) that a Waiver participant must fit. Finally, the state must address other assurances that can affect service delivery including: development of unique individualized plan, fiscal accountability and cost effectiveness, and use of certified qualified providers.

Question: Can a Medicaid Waiver provide money to an individual with a disability to start a business?

Answer: No, a Waiver does not provide funding directly to an individual that can be used to support the development of a business. What a Waiver can do is provide services that support the individual to become self-employed and/or run a small business. The use of a case study example might illustrate how a Waiver can facilitate or support self-employment as an employment outcome.

Nick owns and operates Nick's Copy Service, which provides copying, shredding, and general office services to businesses in his local community. This business has been successfully in operation since 2003. Due to his developmental disability, Nick receives personal support services through his state's developmental disability Medicaid Home and Community Based Services (HCBS) Waiver.

Prior to owning his business, the Waiver-funded personal support staff assisted Nick to spend his days participating in various non-paid activities in and around his community. This included such activities as going to the movies or the mall, or running errands. Nick and his mother believed that he could have meaningful employment and enjoy the benefits of earnings. So, they pulled together a team, identified an ideal career for Nick, and determined that self-employment was the best path.

The team utilized a mixture of funds to pay for the start-up of Nick's business. The funds included support from Vocational Rehabilitation (VR) for equipment and Social Security's Plan for Achieving Self Support (PASS) for rent and remodeling expenses. His business is physically located within another previously established business in his community. This larger business provides a source of steady work for Nick as well as natural support. As the owner of the business, Nick is responsible for completing the various jobs that come in and conducting other miscellaneous business tasks (i.e., going to the post office for stamps).

Now, instead of his direct support staff assisting Nick to participate in non-paid community activities, they provide Nick with the same type of support to participate in his business. This business allows him to earn an income. Like many business owners,

Nick receives additional support from a family member, in his case his mother, who provides assistance with the bookkeeping and marketing for the business. The Waiver services that continue to provide Nick support are just as critical for Nick's success as the other resources he utilized, including Vocational Rehabilitation, his Social Security PASS, and his family support. It is this combination of supports and services that made it possible for Nick to reach his goal.

Question: Is an individual with a disability automatically eligible for Medicaid Waivers in his or her state?

Answer: Many groups of people may be covered by Medicaid Waivers and certain requirements must be met. This may include the individual's age, disability, blind, or aged; the person's income and resources (e.g. bank accounts, real property, or other items that can be sold for cash); and whether he or she is a U.S. citizen or a lawfully admitted immigrant. The rules for counting income and resources vary from state to state and from group to group.

When an individual is exploring self-employment, it is important that he or she identify the potential services under each specific Waiver that is available in the state of residence. This includes the Medicaid financial eligibility criteria that a person must meet to gain and then stay eligible for Medicaid and the Waiver. The individual should obtain a written analysis of his or her particular situation, and ask for copies of the policy or policies that are relevant for the situation.

Question: What services might be funded under a Waiver?

Answer: CMS provides all states with a federal Waiver template that includes a list of services with core definitions that may be funded under a Waiver. The list includes case management services; homemaker services; home health aide services; personal care services; adult day health services; habilitation services (residential, day, prevocational, supported employment, and education); respite care services; day treatment or other services for individuals with chronic mental illness, subject to conditions; and other services. Once a state has identified which services will be offered, a definition must be established for each service. States can use the core definitions provided by CMS or revise the definitions. The definition of the service will clarify the circumstances under which the service can be used.

Waivers for people with developmental disabilities have historically used *Habilitation Services* to provide employment supports. There are several types of habilitation services to include residential, day, prevocational services, supported employment, and education. While Habilitation Services can be included in Waivers that serve other groups of people, for example those with traumatic brain injuries, they are not as commonly found in those Waivers. Each of the Habilitation Services listed above has a core definition that has been provided by CMS. A link to the core definitions in CMS's *Instructional, Technical Guide and Review Criteria* is provided at the end of this Q and A.

The Technical Guide also provides guidance for states in incorporating employment and self-employment into various services. For example, the following guidance is provided by CMS in the Technical Guide:

“Supported employment may include service and supports that assist the participant in achieving self-employment through the operation of a business. However, Medicaid funds may not be used to defray the expenses associated with starting up or operating a business. Assistance for self-employment may include: (a) aiding the participant to identify potential business opportunities; (b) assistance in the development of a business plan, including potential sources of business financing and other assistance in developing and launching a business; (c) identification of the supports that are necessary in order for the participant to operate the business; and (d) ongoing assistance, counseling and guidance once the business has been launched.”

Question: Is there another example of a business that illustrates how a Medicaid Waiver supports self-employment?

Answer: Joe Steffy is the sole owner of Poppin Joe's Kettle Corn and is a 22-year-old entrepreneur with multiple complex developmental disabilities, living in rural Kansas. He was introduced to self-employment at the age of 15 when his father Ray attended the Partners in Policymaking training series. Ray initially believed that Joe would not be able to work in a traditional supported employment job. However, after listening to a “Partners” training presentation on community employment, Ray learned about self-employment as a viable option for Joe. Ray then purchased used “Kettle Korn” equipment and began working with his son to produce and sell popcorn on the weekends.

In 2005, with Joe as the sole owner, the business was formally launched with over \$24,000 in startup capital from VR, a Social Security PASS, and a state grant. Since then, Joe has become eligible for Waiver services in Kansas. The Waiver pays for supports for Joe 25 hrs/week to assist him in problem solving, and in completing tasks that are necessary to fill customer orders. These Waiver services provide Joe the critical supports he needs to keep Poppin Joe's Kettle Corn the successful business that it is.

Joe is a member of START-UP USA's Entrepreneur Leadership Network. He and his family are available to talk with you by phone or email to share Joe's experiences and answer any questions about his path to self-employment. More information about Joe, including his contact information, can be found online and these links are provided under the Resource Section of this Q and A.

Question: What if a person does not have a developmental disability? Are there services that can be funded to support self-employment under a Medicaid Waiver for individuals with other disabilities?

Answer: Waivers that serve people with physical disabilities often don't include “habilitation services” but will very likely include Personal Care Services (PCS), which

provide a person with supports for physical activities. While Personal Care Services are not employment focused the way that “habilitation services” are, states can choose to make those services available in the workplace, which many states have pursued already or are currently exploring. To clarify for states that they can include PCS in the work place, CMS provided the following guidance in the Technical Guide:

“Personal care may be furnished in order to assist a person to function in the work place or as an adjunct to the provision of employment services.”

Glenn Morgan’s spinal cord injury restricts any movement below his neck. He lives in his own home with the assistance of personal care services from a HCBS Waiver in his home state of Hawaii. Glenn explored several employment goals and found that self-employment provided the best means for making the most money given his natural skills. He developed a business plan for Morgan Computer Consulting and successfully acquired startup funding from both Vocational Rehabilitation (VR), and Social Security Administration’s Plan for Achieving Self Support (PASS). The VR and PASS funding provided business start-up expenses and paid for assistive technology in his home that allowed him to operate his computer and work with maximum independence.

Once he had secured start-up funding and technology, Glenn needed to assure that he would have adequate personal care services to assist him to get set up each day to do his work, make physical adjustments throughout the day, and shut down the equipment at the end of each day. The Personal Care Services provided through the Waiver have been as critical to Glenn’s success as the start-up funding and technology. It is the combination of all these supports that has made it possible for Glenn to put his skills to work. Today, Glenn is the exceptionally talented and successful business owner of Morgan Computer Consulting.

Glenn is also a member of START-UP / USA’s Entrepreneurial Leadership Network. He is available to talk by phone or email to share his experiences and answer any questions about his path to self-employment. More information about Glenn, including his contact information can be found online by using the link under Resources.

Question: Are there many states that have self-employment as part of their Waiver Programs?

Answer: Since many states are just now beginning to understand the feasibility of self-employment as a viable option for people, not many Waivers reference self-employment in the various service definitions. The absence of a reference to self-employment in a service definition doesn’t negate the potential use for self-employment support needs. It just means that each individual will need to provide his or her Medicaid case manager with a clear explanation of what the services will be needed and where they will be delivered. Then, the Case Manager can determine whether the intended use of the supports is consistent with the state’s current definition. The critical factor is whether the services that are needed match the service definition.

There are many other services that are funded under Waivers beyond Habilitation and Personal Care Services. Depending on a person's specific need, it might be possible that other Waiver services could help the individual pursue self-employment as an employment goal. Since the supports available through a Waiver are related to a person's disability (i.e. cueing, problem solving, assistance with physical tasks, personal care, etc.), these Waiver-funded services still will be needed no matter how the person spends his or her day. Nick's story presented earlier in this Q and A is a perfect example of this. Therefore, even though a current Waiver service definition doesn't reference self-employment, if the supports to complete activities for a business are consistent with the state's definition of the service, then it may be feasible for the individual to receive those services to support self-employment.

The Waiver lists each service and its definition. If a person is not able to locate his or her Waiver application online, the Center for Personal Assistance Services website found in the list of links at the end of this document provides a contact person for each Waiver. Additionally, some states have incorporated Waiver service definitions in their administrative rules. In some cases those rules provide more details on service definition than what is provided in the Waiver and are therefore a helpful resource.

Waivers are not allowed to fund business start-ups. Instead, Waiver services are designed to provide disability-related support services that are necessary to assure that a Waiver participant can remain healthy and safe in the community. A Waiver will not fund the start-up equipment and other expenses, but it has provided critical support services that make it possible for the business owner's to operate their businesses on a day to day basis. If a Waiver doesn't offer employment supports, keep in mind that Waivers are renewed every 3-5 years. When a Waiver is up for renewal, it is an opportunity for a state to include employment supports, or modify existing Waiver services to provide supports in the work place, is needed.

Question: How can a person determine if Waiver Services can assist him or her to become self-employed?

Answer: There are a number of steps that a person might complete to determine if he or she can use a Waiver to facilitate self-employment as a goal. First, make a list of the specific supports needed, how often they will be needed, and where the supports will be delivered. Second, learn about all the services offered in the state's Waiver(s) and their definitions. Third, work with a Medicaid Waiver case manager to determine if the individual's support needs fit the Waiver services definitions. If a person is denied access to Waiver services that are offered, ask for a copy of the policy, and utilize the Medicaid appeal process. Contact the state Protection and Advocacy agency:
http://www.ndrn.org/aboutus/PA_CAP.htm

Question: Will Self-Employment Income and Business Resources/Assets affect financial eligibility for Waivers?

Answer: Since Waivers are Medicaid programs, an individual has to be Medicaid eligible to be enrolled in a Waiver. When states create Waivers they have to identify the list of specific Medicaid eligibility groups that can access the Waiver. Each Medicaid eligibility group has a different set of financial eligibility criteria.

Some Medicaid eligibility groups, such as SSI-Medicaid and Medicaid Buy-In, are specifically designed to support working. Other Medicaid eligibility groups don't have special rules to support working. If a person is exploring self-employment, it is recommended that he or she:

1. Contact a Medicaid Waiver case manager and/or a Community Work Incentive Coordinator (Benefits Planner) and ask for help clarifying what Medicaid eligibility group that the individual is a part of, and how it's affected by self-employment income and resources.
2. If the individual's current Medicaid eligibility group supports working, get documentation (copies of pertinent policy) about any limitations.
3. If the individual's current Medicaid eligibility group does not support working, find out what other Medicaid eligibility groups can access the Waiver(s) in his or her state. In addition, determine whether any of those other groups have rules that support work, and, if so, whether the individual might be able to change to a Medicaid eligibility group that would provide more support for self-employment.

Question: Is there an example of someone who is self-employed while maintaining Waiver eligibility?

Answer: Glenn, whose situation has been described in this Q and A, was initially worried that his net income from his business and the resources he used in his business might cause him to lose his basic Medicaid and Waiver services. As Glenn explained, "My medical benefits are my life line. Without benefits, I would not be able to get out of the bed in the morning, eat, or do other things I need to do to live my life."

When Glenn first started his business, he set aside his countable income in a Social Security Plan for Achieving Self Support (PASS), which he planned to use to pay for business start-up expenses. The income in the PASS was excluded by both the SSI and Medicaid programs.

Because Glenn has Medicaid through his SSI eligibility, he has been able to use a SSI work incentive called 1619(b) that allows him to maintain his Medicaid eligibility even when his earnings result in his not receiving an SSI check. Under this 1619(b) work rule, Glenn is still considered SSI eligible even when he isn't due a check. He can earn up to a "threshold" amount before his Medicaid eligibility will be questioned.

Each state has its own yearly threshold amount. In Hawaii, where Glenn lives, the 2008 "threshold" is \$30,540. In some cases, 1619(b) allows a person to have a higher,

“individual annual threshold” when they receive an above average amount of Medicaid-funded services. Since Glenn fits the rule that allows an individualized annual threshold, he can actually earn more than Hawaii’s \$30,540/year threshold, and still maintain his Medicaid eligibility. And, as long as he stays eligible for Medicaid under 1619(b) he will maintain both the basic Medicaid services and the Waiver services too.

Glenn also learned that another SSI rule, “Property Essential to Self Support” (PESS) would allow him to exclude both the assets in his unincorporated business and his business account from counting toward the \$2,000 SSI/Medicaid personal resource limit. Since his business assets don’t count toward the personal resource limit, he just has to make sure that his personal countable resources stay under the limit, and then he remains eligible for Medicaid and the Waiver.

With these work incentives in place to support his efforts, Glenn launched a successful business that generates an average \$50,000 per year in gross sales. His particular business allowed him to accumulate operating capital quickly. He purchased a condo that he and his business now co-own in Honolulu. As demonstrated by Glenn’s story, it is possible to be successfully self-employed and maintain critical Waiver services. It is important though to plan for the impact of self-employment on benefits and to get assistance in using the work incentives that have been created to support self-employment.

SUMMARY

Waiver services can provide critical supports for pursuing self-employment. Since each Waiver is unique, when a person is exploring self-employment, it is important that he or she identify the potential services under each specific Waiver in his or her state. The individual must also determine the Medicaid financial eligibility criteria that he or she must meet to gain and then stay eligible for Medicaid and the Waiver. Always obtain a written analysis of the individual’s particular situation, and ask for copies of the policy or policies that are relevant for his or her situation.

RESOURCES:

Centers for Medicare & Medicaid Services (CMS)

<http://www.cms.hhs.gov/>

CMS’s “Instructional, Technical Guide and Review Criteria”

http://www.hcbs.org/files/100/4982/Final_Version_3_4_Instructions_Technical_Guide_and_Review_Criteria_Nov_2006.pdf

Center for Personal Assistance Services: Contact Information and Descriptions for Medicaid Waivers

http://www.pascenter.org/state_based_stats/pick_a_state.php?url=http%3A%2F%2Fwww.pascenter.org%2Fstate_based_stats%2Fmedicaid_waivers_info.php&title=Contact%20Info%20and%20Descriptions%20for%20Medicaid%20Waivers

Community Work Incentive Directory

<https://secure.ssa.gov/apps10/oesp/providers.nsf/bystate>

Discovering My Abilities by Joe Steffy

http://start-up-usa.biz/training/online_seminars/steffy/steffy.cfm

http://www.start-up-usa.biz/elj/joe_steffy.cfm

Glenn Morgan's Story

http://www.start-up-usa.biz/elj/glenn_morgan_casestudy.cfm

Partners in Policy Making

<http://www.partnersinpolicymaking.com>

Sample Application for a §1915 © HCBS Waiver

http://www.srskansas.org/hcp/css/pdf/MRDD_Waiver_Amendment.pdf

Waivers and Demonstrations by States

http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/08_WavMap.asp

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