

University of Texas Estate Planning, Guardianship and Elder Law Conference

“Navigating the Home Care Maze”

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This outline presents the law as of this writing, with the warning that many public benefits in Texas and on a federal level are presently in a state of change. Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication is intended for educational and informational purposes only.

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INTRODUCTORY NOTE BY CO-AUTHOR AND EDITOR CHRISTINA LESHNER

Many clients are looking to provide for care for their loved ones at home, rather than seek placement in a residential facility, an assisted living, or a nursing home. Many clients are surprised when they realize that Medicare does not cover home care, except in very specific situations. Unless a family has its own assets, many clients will need to look to a patchwork of public benefit programs and other resources to pay for home care, which can cost anywhere from \$10-\$30 an hour. This paper is intended to provide the practitioner with an overview of funding sources to pay for home care. No one program will pay for 24-hour care, and practitioners will need to carefully review each program individually and together to ensure that a strategy for one program (e.g., gifting of assets) will not cause a financial eligibility problem for another program.

I. HOME AND COMMUNITY CARE UNDER THE MEDICAID "HCBS WAIVER" PROGRAMS

A. INTRODUCTION AND OVERVIEW

1. Authority and Terminology

The programs in this category are all authorized under the Social Security Act §1915(c), which allows the federal Medicaid program to "waive" the requirement of residing in a nursing home or ICF-IID facility. HCBS stands for Home and Community-Based Services. The "HCBS waiver program" is defined as "A home or community-based service authorized for use in Texas by the Centers for Medicare and Medicaid Services in accordance with §1915 of the Social Security Act."¹ As discussed below, though, there are several distinct programs, with different eligibility requirements and different benefits, that are authorized under the Social Security Act §1915 and therefore fit within the definition of "HCBS waiver program."

Although the handbooks published by Texas Health and Human Services (HHSC) are not law (except to the extent they occasionally incorporate statutes and rules that are law), they are the only sources of authority that matter in 99% of the issues encountered in an elder and disability law practice. Therefore, they are cited frequently in this paper. In fact, the Medicaid for the Elderly and People with Disabilities Handbook is cited so frequently that the paper is not encumbered by its URL with every citation. That URL is <https://hhs.texas.gov/laws-regulations/handbooks/mepd/medicaid-elderly-people-disabilities-handbook>.

Here are URLs of some other essential sources of law and policy:

- All HHSC handbooks (with forms in each handbook): <https://hhs.texas.gov/laws-regulations/handbooks>

¹ Medicaid for the Elderly and People with Disabilities Handbook Glossary

- Case Worker Community Care for Aged and Disabled Handbook: <https://hhs.texas.gov/laws-regulations/handbooks/case-worker-community-care-aged-disabled-handbook>
- Star+Plus Handbook: <https://hhs.texas.gov/laws-regulations/handbooks/sph/starplus-handbook>
- Texas Administrative Code (abbreviated T.A.C. herein): <http://www.sos.state.tx.us/tac/index.shtml>
- Texas Health and Human Services Commission Uniform Managed Care Contract: <https://hhs.texas.gov/sites/default/files/documents/services/health/medicaid-chip/programs/contracts/uniform-managed-care-contract.pdf>

2. Benefits

HCBS Waiver Program beneficiaries are entitled to the same benefits as nursing home Medicaid beneficiaries, except instead of receiving nursing home care, they receive care at home (or in a relatively small number of cases, in Assisted Living Facilities). In general, nursing home Medicaid, and therefore the HCBS Waiver Program, covers most medical and support needs of a beneficiary. A significant exception is dental care.

However, most Medicaid beneficiaries in HCBS Waiver Programs, like most beneficiaries of nursing home Medicaid, are “dual eligibles,” eligible for both Medicare and Medicaid. They receive their Medicaid services through a Managed Care Organization under the general program category “Star+Plus Waiver.” What that means is expressed in the HHSC rules as follows:²

Dual eligible individuals who participate in the STAR+PLUS program receive most acute care services through their Medicare provider and STAR+PLUS Home and Community-Based Services Program through the STAR+PLUS MCO. Dual eligible individuals who participate in the STAR+PLUS program receive most acute care services through their Medicare provider but may receive additional services through their STAR+PLUS MCO. The STAR+PLUS program does not change the way dual eligibles receive Medicare services.

Another way this is sometimes expressed is that dual eligibles receive acute-care services through Medicare (and related coverages such as Medicare Supplement insurance, Medicare Advantage membership, QMB, SLMB, or QI); and they receive *long-term care* (nursing home, Assisted Living Facility, home care) services through the Managed Care Organization (MCO). Therefore, HCBS Waiver beneficiaries who are not dual eligible must select a primary care provider for physician services contracted by their Managed Care Organization; but those who have Medicare are not limited to MCO-contracted physicians because they receive their physician and other acute-care services through Medicare.³ Perhaps the reason the rule quoted above refers to “most” acute care services as coming through Medicare providers is that a limited amount of such services in the form of “nursing facility add-on” and “value-added” services will be through the MCO. Otherwise, for a dual-eligible person, the *only* benefit the HCBS Waiver Program provides is long-term care.

² 1 T.A.C. §353.603(e)(2).

³ Star+Plus Handbook 3111.

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