



## ALLOW SERVICE MEMBERS TO RETAIN THEIR EARNED PRIORITY FOR RECEIVING MEDICAID HOME AND COMMUNITY BASED SERVICES WAIVERS

### BEST PRACTICES

**SUBJECT:** States can provide supplemental financial support, during critical transition periods, to assist transitioning or separating Service members and their family members with special needs, by facilitating the families' ability to earn the same Medicaid Home & Community Based Services (HCBS) priorities afforded to every state resident.

**PRINCIPLES:** States could apply current state policy to allow reasonable participation in state Medicaid HCBS and other waiver programs:

- (1) States may allow active duty Service members to use their state of legal residence (i.e. where they pay taxes, vote, register their vehicles, hold a driver's license, etc.) to register their family member with special needs for a Medicaid HCBS waiver.
- (2) States may consider modifying one of their existing waiver categories (such as individuals with critical need), to include military families transferring into the state or transitioning out of the military back to their home state, in order to expedite services through Home and Community Based Services.

### BEST PRACTICE EXAMPLE:

- (1) The following Illinois language supports programs that assign priority based on a simple waiting list and allows active duty Service members to use their state of legal residence to maintain their earned priority:
  - *IL House Bill HB5697 2014(b) Sec 10: A dependent, who is a legal resident of the State, having previously been determined to be eligible for developmental disability services provided by the Department of Human Services, including waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act, shall retain eligibility for those developmental disability services as long as he or she remains a legal resident of the State, regardless of having left the State due to the military service member's military assignment outside the State, and as long as he or she is otherwise eligible for such services. (c) The Department of Human Services shall permit a dependent who resides out-of-state to be placed on the waiting list for developmental disabilities services if the dependent left the State due to the military service member's military assignment outside the State... (d) For dependents who received developmental disability services and who left the State due to the military service member's military assignment outside the State, upon the dependent's return to the State and when a request for services is made, the Department shall... resume services if the individual remains eligible."<sup>1</sup>*

- (2) The following Florida language supports programs that assign priority based on level of need and

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<http://www.ilga.gov/legislation/fulltext.asp?DocName=09800HB5697enr&GA=98&SessionId=85&DocTypeId=HB&LegID=80909&DocNum=5697&GAID=12&Session>

allows active duty families to use their state of legal residence to register their special needs family member for Medicaid HCBS waiver when they return to the state. This provision can assist these families in gaining access when returning to the state while on active duty, and also when they return to the state upon separation or retirement from the military. The Service member must retain Florida as the state of legal residence (also called domicile) during the absence from the state to retain eligibility:

- Florida Statute F.S. 393.065... (5) *Except as otherwise directed by law, ... the agency shall assign and provide priority to clients waiting for waiver services in the following order: (a)Category 1, which includes clients deemed to be in crisis as described in rule .... Within categories 3, 4, 5, 6, and 7, the agency shall maintain a wait list of clients placed in the order of the date that the client is determined eligible for waiver services. (6) The client, the client's guardian, or the client's family must ensure that accurate, up-to-date contact information is provided to the agency at all times. The agency shall remove from the wait list any individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or becomes domiciled outside the state.*<sup>2</sup>

(3) The following Florida language supports programs that assign priority based on level of need and allows active duty families, having to move to Florida as part of a permanent change of station move, to transfer into the state using an existing state priority waiver category:

- Florida House Bill 5003 Section 9 (2) *The agency shall allow an individual who meets the eligibility requirements of s.393.065 (1), Florida Statutes, to receive home and community-based services in this state if the individual's parent or legal guardian is an active-duty military service member and, at the time of the service member's transfer to Florida, the individual was receiving home and community-based services in another state.*<sup>3</sup>

However as currently written, this statute is less likely to benefit military families, since few are able to actually receive HCBS waiver services in the state where previously assigned. An alternative which is more likely to help the intended audience is to replace the requirement from "receiving" services to "enrolled in" home and community-based services in another state.

## Medicaid Definitions

There is often confusion about when a service member's family is considered a legal resident or domiciled, because they are often assigned out of state on military orders; but retain their home state residence. This confusion should be alleviated in any language pertaining to Medicaid HCBS for military family members.

**PRINCIPLES:** The terms "legal residence" and "domicile" are essentially interchangeable. In brief, they

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<sup>2</sup> [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0300-0399/0393/Sections/0393.065.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0393/Sections/0393.065.html)

<sup>3</sup> <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName= h5003er.docx&DocumentType=Bill&BillNumber=5003&Session=2014>

are used to denote that place where a military family has their permanent home and to which, whenever they are absent, the family has the intention of returning. The Soldiers' and Sailors' Civil Relief Act provides that no change in a service member's State of legal residence/domicile will occur solely as a result of being ordered to a new duty station.<sup>4</sup>

**BEST PRACTICE EXAMPLE:**

- Washington State Substitute House Bill 2363, 2014 Sec 1(b): *“Legal resident” means a person who maintains Washington as his or her principal establishment, home of record, or permanent home and to where, whenever absent due to military obligation, he or she intends to return.*<sup>5</sup>

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<sup>4</sup> Department of Defense Form 2058, State of Legal Residence Certificate

<sup>5</sup> <http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Session%20Laws/House/2363-S.SL.pdf>