

Health Care in Motion

Timely, Substantive Updates on Policy Shifts • Actionable Advocacy to Protect Health Care

October 7, 2026

A Thousand Cuts: The Current Threats to Medicaid-funded Home and Community-Based Services

Home and community-based services (HCBS) provide the daily living supports that people with disabilities and older adults need to live their daily lives. Historically, support for HCBS has been broad and bipartisan, and part of a nation-wide consensus that living in a home and community was nearly always better for a person, their family, society, and government than living in a facility like a nursing home. However, recent years have brought a multiprong attack on HCBS and its funding, legal underpinnings, and the value of the services themselves.

Background on HCBS

HCBS Availability in Medicaid

Originally, Medicaid only funded facility-based care, including nursing facilities and (later) intermediate care facilities for people with disabilities. Due to advocacy from individuals and families, most famously the family of [Katie Beckett](#), Congress added HCBS programs that states had the option to implement through Medicaid.

As advocates pushed for more community-based care, and the federal and state governments promoted HCBS over institutional services, Congress added Medicaid HCBS authorities and options. These included Sections 1915(c) (see sidebar), 1915(i), 1915(j), and 1915(k) state plan options. States also provide HCBS through [personal care benefits under the Medicaid state plan and through 1115 waivers](#).

In 1999, the Supreme Court found in [Olmstead v. LC](#) that [unjustified segregation](#) of people with disabilities in institutions constitutes illegal discrimination under the Americans with Disabilities Act. Congress then created programs like [Money Follows the Person](#) to promote transitions from institutions to the community.

Section 1915(c) HCBS Waivers

The most widely used HCBS program falls under [Section 1915\(c\) of the Social Security Act](#). Created in the 1980's, this section allows states to apply for a waiver from CMS to provide services for people with disabilities in homes and communities instead of institutions. The program is designed for people who, if they could not access these services, would require care in a facility. HCBS programs are often known as "HCBS waivers" because of the waiver that states must obtain from the federal government to provide these services.

Today, [most people](#) who receive Medicaid-funded long-term services and supports receive them through HCBS. However, HCBS remain optional for states to offer—while nursing facility care is a [mandatory benefit](#) under the Medicaid statute.

History of Bipartisan Support

For more than 50 years, HCBS and the rights of people with disabilities to receive services in the community have often received bipartisan support. For example, President Richard Nixon signed the Rehabilitation Act of 1973, which included [Section 504](#), a national prohibition on discrimination in federally funded programs against people with disabilities. President Jimmy Carter’s administration issued the [first regulations under Section 504](#), including promotion of services in the most integrated setting. President Ronald Reagan was instrumental in creating the [first HCBS waivers](#). President George H.W. Bush [signed the ADA](#) into law, which extended antidiscrimination protections to state and local governments and created the groundwork for the *Olmstead* decision. President George W. Bush implemented the [New Freedom Initiative](#) to promote community participation for people with disabilities.

Despite their longstanding policy and bipartisan political history, HCBS and community living broadly are facing unprecedented financial and legal attacks.

Financial Challenges

HR 1, the 2025 federal budget reconciliation bill, makes [many policy changes to Medicaid](#) that together mean fewer people will be covered and states will have less money to provide services for the remaining covered people. Throughout the debate over the law, [Members of Congress](#) insisted that HR 1 would “[secure](#)” Medicaid for traditional groups, especially people with disabilities. While HR 1 does not make any direct cuts to HCBS, it creates a financial environment in states where cuts to HCBS are highly likely. The reductions in Medicaid funding will happen [gradually over the next 10 years](#) and, unless changed by a future Congress, will continue to grow in size. These cuts will [exacerbate preexisting pressures](#) on state Medicaid budgets. Since HCBS are optional for states to offer, the increasing financial pressure on states to reduce their Medicaid spending is expected to lead to HCBS cuts.

These predictions are already playing out: researchers at George Washington University have been [tracking cuts to HCBS](#) across the country. The tracker has found proposed and enacted reductions to provider payment rates, eligibility, and benefits, with more cuts expected in future state legislative sessions as HR 1 implementation continues. However, it is not all bad news in all states. Some states were able to enact increases to provider payment rates and make other improvements to HCBS.

Ironically, HR 1 included a provision with the potential to expand HCBS. [Section 71121](#) provides states the option to expand 1915(c) waivers to people who do not meet institutional level of care. It is unlikely that states will take up an expansion of HCBS in the fiscal environment created by HR 1. However, [Georgia’s legislature](#) has passed a law directing their agency to explore this new kind of waiver.

Legal Challenges

The Trump Administration has also begun walking back the long-term consensus on community living. On June 18, 2026, the Department of Justice (DOJ) issued a [legal opinion](#) reversing its prior interpretation of the *Olmstead* decision. In the opinion, DOJ articulated legal arguments that aimed to undermine longstanding understanding of *Olmstead* that unjustified institutionalization of people with disabilities can be unlawful discrimination. One month later, the DOJ Civil Rights Division issued a [notice](#) stating that it would not enforce or use their previous guidance on the *Olmstead* decision.

For more on *Olmstead* and the DOJ opinion, see our [recent issue of Health Care in Motion](#).

This opinion comes at the same time that several states have also been attacking a Biden-era regulation that promoted community living. The 2024 [comprehensive update to the 504 regulation](#) from the Department of Health and Human Services built on the original 1977 regulation by incorporating language from Supreme Court and other decisions that required the provision of community-based services to people with disabilities. In September 2024, 17 states sued the Biden administration in a case then called [Texas v. Becerra](#). On August 31, 2026, the states remaining in the suit (now called Texas v. Kennedy) and the Department of Health and Human Services filed a joint [proposed resolution](#), citing to the DOJ's June legal opinion and seeking to vacate provisions of the rule that require community living. On September 23, the court accepted this resolution and [vacated the these provisions](#).

Disability advocates have [condemned the actions of DOJ and HHS](#), which together signal the federal government's retreat from enforcement of *Olmstead*'s protections for community living. At the same time, [advocates are emphasizing](#) that neither the DOJ opinion nor [the Texas v. Kennedy resolution](#) have changed the the ADA, Section 504, or the *Olmstead* opinion, including the prohibition against unjustified segregation of people with disabilities.

Weaponization of "Fraud"

The Trump Administration and Congress have also targeted HCBS as a source of potential fraud in Medicaid. In multiple hearings, media appearances, and social media posts, Congressional leaders and CMS Administrator Mehmet Oz have described HCBS as inherently fraudulent. When discussing HCBS, Dr. Oz frequently describes it as simple activities like [playing cards](#) and [carrying groceries](#) that family members [should do for free](#). Secretary Kennedy has [shared similar thoughts](#). Throughout 2026, the Administration and Congress have launched a continued campaign of policy and communication attacks on HCBS.

In April, CMS [asked all states](#) to [rapidly re-validate](#) providers considered "high risk" for fraud, particularly HCBS providers, causing potential disruption in services by legitimate providers as states attempt to rush through paperwork. CMS also began [deferring funds](#) that it owes to states, citing fraud and especially fraud in HCBS. The House Committee on Oversight held a [hearing](#) in June focused specifically on fraud in Medicaid waiver programs.

In September, the House Committee on Energy & Commerce released a [report](#) and package of bills focused on fraud. The report specifically targets the growth of HCBS, saying "States have rapidly expanded benefits under HCBS Section 1915(c) waivers, resulting in sky rocketing program costs and leaving Medicaid vulnerable to fraud without proper programmatic safeguards." This is in line with previous [comments](#) from Dr. Oz that have linked the

growth of HCBS to fraud, not to the decades of advocacy and deliberate state and federal policy choices that have supported the deinstitutionalization of people with disabilities. The committee also released [a package of bills](#), including a bill that would require states to submit an annual report to CMS identifying waste, fraud, and abuse in 1915(c) waiver programs.

Disability advocates are [alarmed](#) by the the unsupported claims of fraud in Medicaid and concerned that the claims are being [used to justify cuts to the Medicaid program](#) and [for other political purposes](#).

Next Steps

In the past, the *Olmstead* decision, federal enforcement of community integration, and the national bipartisan consensus on the importance of community living have protected against HCBS cuts when states face fiscal pressure. Advocates fear that, without these backstops, states will look to cut HCBS in response to HR 1. Allegations by the federal government of fraud in HCBS only exacerbate this concern, by fomenting fear that if states continue to support HCBS they could face financial penalties from CMS and scrutiny from Congress. Despite these challenges, some states have taken action to reiterate their commitment to community living. On September 3, 2026, 18 governors sent a [letter](#) to Attorney General Todd Blanche expressing their opposition to the DOJ memo on *Olmstead*. Disability advocates are organizing the [Defend Community Integration Coalition](#) and [urging their state leaders](#) to get involved. While the current Congress and the Administration have abandoned the longstanding and bipartisan national commitment to community living, disability advocates are doing what they have always done—organizing to fight for their rights.

Subscribe to all Health Care in Motion Updates

Health Care in Motion is written by Carmel Shachar, Health Law and Policy Clinic Faculty Director; Kevin Costello, Litigation Director; Elizabeth Kaplan, Director of Health Care Access; Maryanne Tomazic, Clinical Instructor; John Card, Staff Attorney; and Rachel Zacharias, Clinical Fellow. This issue was written with the assistance of Rachel Patterson and Sarah Meek of Patterson & Meek.

For further questions or inquiries please contact us at chlpi@law.harvard.edu.