

# Strengthening the HCBS Grievance Process

Dan Young



# Housekeeping

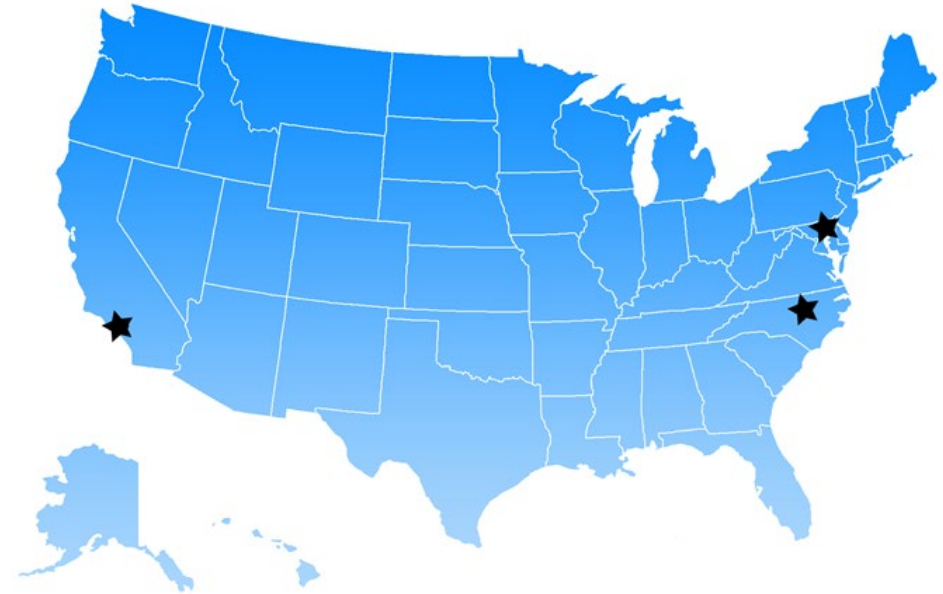
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# About the National Health Law Program

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- National non-profit organization committed to improving health care access, equity, and quality for underserved individuals and families
- State & Local Partners:
  - Disability rights advocates – 50 states + DC
  - Poverty & legal aid advocates – 50 states + DC
- National Partners
- Offices: CA, DC, NC
- [www.healthlaw.org](http://www.healthlaw.org)
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# NHeLP's Equity Stance: Our Goal

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Every member of our staff defends the fundamental right of all individuals to health. Staff in every role strive to approach their work—internal and external—with an equity lens.

Our goal is to continuously examine the health care system and to advocate for health laws and policies that counteract structural barriers, institutional power dynamics, and examples of overt discrimination and implicit bias that create health inequity.

<https://healthlaw.org/equity-stance/>

# Introduction

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- CMS finalized [HCBS Access Rule](#) (May 2024)
- HCBS changes:
  - Strengthen oversight of person-centered planning
  - Meet nationwide incident management system standards for monitoring HCBS programs
  - Collect data on and then increase compensation for direct care workers
  - Report on waiting lists in section 1915(c) waiver programs and service delivery timeliness
  - Establish a standardized set of HCBS quality measures
  - Public reporting of quality, performance, and compliance measures.
- Grievance processes must be in place by December 31, 2027
  - ([enforcement delayed](#) from July 2026)

# HCBS and Grievances

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- Home and Community Based Services (HCBS)
  - Intended to allow people with disabilities to live at home
  - Avoid institutional care
  - Reduce costs for states
- HCBS that are not timely and high quality, put beneficiaries at risk
- Grievances processes should give beneficiaries ways to flag problems and get issues resolved quickly

# Federal Grievance Requirements

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- Applies to Fee-for-Service HCBS
- Must allow oral/written filing with guidance and accommodations
- Access to records/evidence
- Resolution within 90 days max
- Non-retaliation protections
- Records available for CMS review



# Advocate Recommendations

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- Push for shorter timelines
- Independent audits with public posting
- Outreach in plain language
- Integrated entry points (hotline, ombuds office)
- Ensure appeal rights if unresolved

# Critical Incident Management

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- New federal definition includes abuse, neglect, exploitation, misuse of restraints, medication errors, unexplained deaths
- States must:
  - Use electronic incident tracking systems by July 2029
  - Identify unreported incidents
  - Achieve 90% compliance by July 2027

# Distinguishing Systems

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- Grievances:
  - Service setting, service planning, service quality issues
- Critical Incidents:
  - abuse, neglect, medication errors, deaths
- Appeals:
  - disputes over eligibility or service authorization

# Integrated Approach

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- **Problem:** beneficiaries often confused about which system to use
- No-wrong-door model: one entry point routes issues to grievance, appeal, or incident system
- Features: hotline, online chat, multiple reporting pathways, retaliation protections, coordinated data sharing

# Recommendations for Integration

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- Allow direct reporting of critical incidents
- Review grievances for unreported incidents
- Use grievance filing date as appeal request date
- Train intake staff to triage complaints correctly

# Hypothetical Cases

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- In California, the HCBA Waiver provides care management services to Nursing Facility eligible individuals of any age
- **Grievance scenario**
  - A waiver recipient disagrees with the characterization of their disabilities on their Plan of Treatment
- **Appeal / Fair Hearing scenario**
  - A waiver recipient is denied a Personal Emergency Response System even though they meet the criteria for this service
- **Critical Incident scenario**
  - A waiver recipient is hospitalized because they are prescribed the wrong medication

# Hypothetical Cases, continued

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- **Grievance, Appeal/Fair Hearing, or Critical Incident?**

1. A waiver recipient is unhappy with the Waiver Agency case manager assigned to them, and comments the case manager has made about the way they organize their supplies
2. A waiver recipient is told they no longer meet the level of care for the Waiver and will be terminated
3. A waiver recipient disagrees with the characterization of their disabilities on their Plan of Treatment

# Hypothetical Cases, continued

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- **Grievance, Appeal/Fair Hearing, or Critical Incident?**
4. A waiver recipient is denied a Personal Emergency Response System even though they meet the criteria for this service
  5. A waiver recipient has money stolen from them by a direct care worker
  6. A waiver recipient's direct care worker is constantly late and misses numerous shifts. Due to this the waiver recipient can't get out of bed, develops a pressure sore, and is hospitalized

# State Oversight & Advocacy

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- States must describe grievance systems in 1915(c) waiver applications
- Advocates can:
  - [Submit comments](#) during waiver renewals
  - Push for advisory groups with beneficiary participation
  - Recommend clear timelines, accessibility, and anti-retaliation enforcement
- Grievance processes description is found in Appendix F-3

# 1915(c) Waiver Applications

## Appendix F: Participant-Rights

### Appendix F-3: State Grievance/Complaint System

a. **Operation of Grievance/Complaint System.** *Select one:*

- No. This Appendix does not apply
- Yes. The state operates a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under this waiver
- **Operational Responsibility.** Specify the state agency that is responsible for the operation of the grievance/complaint system:

DDRS operates a separate complaint process system through BDS (IC 12-11-1.1).

DDRS also employs a statewide waiver ombudsman per IC 12-11-13, independent of BDS, for the benefit of individuals with a developmental disability who are receiving services under the waiver and who wish to file a complaint.

- **Description of System.** Describe the grievance/complaint system, including: (a) the types of grievances/complaints that participants may register; (b) the process and timelines for addressing grievances/complaints; and, (c) the mechanisms that are used to resolve grievances/complaints. State laws, regulations, and policies referenced in the description are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

# 1915(c) Waiver Applications, continued

## (a) TYPES OF GRIEVANCES/COMPLAINTS INDIVIDUALS MAY REGISTER

Bureau of Disabilities Services (BDS), a bureau within DDRS, accepts complaints from any person or entity, when such complaints are related to individuals receiving HCBS services that are coordinated and administered by the DDRS. BDS will investigate allegations of violations of state and federal code, requirement, or regulation. Complaints not specific to the BDS are referred to the appropriate entity (agency/division/authority):

- Complaints alleging fraudulent billings or falsified time records will be researched through claims management and referred to the Surveillance and Utilization Review (SUR) Unit, as appropriate, for follow-up or action within four (4) business days.
- Systemic complaints may be referred to internal FSSA investigators or the Attorney General's office for consumer protection.

## (b) and (c) PROCESS, TIMELINES, & MECHANISMS FOR ADDRESSING GRIEVANCES/COMPLAINTS

The DDRS complaint process is not a prerequisite or substitute for the individual's right to request an appeal. In order to give the system an opportunity to work, BDS encourages complainants with individual-specific issues to approach their case managers to try to resolve the issues first. If this has not produced the desired outcome, BDS will initiate a complaint investigation.

BDS forwards complaints to the QA/QI contractor who reviews and categorizes the complaints as urgent, critical, or noncritical. The QA/QI contractor assigns a quality assurance/quality improvement specialist (QA/QI Specialist) to investigate the case within identified timeframes.

Complaint investigation activities include:

- Conducting site visits to the individual's home or day program site;
- Conducting one-on-one interviews with the individual and/or their staff, guardians, family members, and any other people involved in the complaint; and
- Requesting and reviewing documentation from involved providers.

# States' Implementation Progress

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- 13 states have an [approved 1915\(c\) waiver](#) since 7/01/2024 with a grievance process description
  - CA, FL, IN, IA, KS, KY, NE, NY, ND, PA, TN, VA, WA
  - States with more than one approved waiver are using the same language in each application
- Wide variation in details of grievance process description
- Open-ended definition of grievances
  - CA, IN, KS, KY, NY, TN, WA
- List of accepted grievances
  - FL, NE, IA, ND, PA, VA

# States' Implementation Progress, continued

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- Grievance response timelines
- Tiered responses - IN, KY, NY, PA, VA, WA
  - Health, safety, or welfare is at risk
    - Urgent, immediate, expedited
    - Response within one business day
    - Resolution 48 hours to 30 days
  - No immediate impact to health and welfare
    - Critical, timely, standard
    - Response within 2 business days to 7 days
    - Resolution 30 to 60 days
- Single timeline - CA, IA, KS, NE, ND, TN
  - Specify when an investigation must conclude and a resolution is issued

# What Advocates Are Saying

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- States have multiple approved waivers – some waivers have grievance processes, some do not.
- States need to do a better job promoting and messaging to beneficiaries about the grievance process.
  - Case managers are responsible for most communication
  - Member handbooks
- Not much is known about protections from retribution.

# Conclusion

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- HCBS grievance systems = opportunity to strengthen quality, accountability, and protections.
- States must act before December 2027 deadline.
- Advocates should push for integrated, user-centered systems.

# Resources

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- David Machledt, [\*Strengthening The Home and Community-Based Grievance Process\*](#), NHeLP, (Sep. 2025).
- Jennifer Lav and David Machledt, [\*Overview of Key Home and Community-Based Services \(HCBS\) Provisions in the Medicaid Access Rule\*](#), NHeLP, (Sep. 2024)
- Elizabeth Edwards, [\*Commenting on § 1915\(c\) HCBS Waivers: A Guide for Common Issues\*](#), NHeLP, (Sep. 2024).

# Contact Information

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