



**Research Report**

***Arkansas Community and  
Employment Supports Waiver  
1989-90 through 2020-21***

**January 20, 2022**

**Prepared for  
Representative Julie Mayberry and the  
Aging and Legislative Affairs-House  
Children and Youth Subcommittee**



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## OVERVIEW

The Arkansas Department of Human Services (DHS) - Division of Developmental Disabilities Services (DDS) administers a Home and Community Based Services (HCBS) Medicaid funded waiver for clients with intellectual or developmental disabilities (IDD) called the Arkansas Community and Employment Supports Waiver.<sup>1</sup> The HCBS waiver program is authorized in §1915(c) of the Social Security Act, and the program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries who meet federal institutional level of care criteria, to live in the community and avoid institutionalization.”<sup>2</sup>

In 2020-21, the number of federally authorized slots for the HCBS waiver had grown to 5,483, and the program served 4,972 recipients. There were, however, an additional 3,241 individuals on the waiting list as of July 1, 2021 for waiver services. The annual expenditures for the waiver reached \$307.3 million in 2020-21, with an average plan of care cost of \$61,804.

Arkansas’s Community and Employment Support (CES) Waiver program’s most recent waiver application to the Centers for Medicaid & Medicare Services (CMS) provides the following description of the CES Waiver program.

“The goals of the CES Waiver are to support beneficiaries in all major life activities, promote community inclusion through integrated employment options and community experiences, and provide comprehensive care coordination and service delivery under the 1915(b) PASSE Waiver Program. Support of the person includes:

- (1) Developing a relationship and maintaining direct contact,
- (2) Determining the person's choices about their life,
- (3) Assisting them in carrying out these choices,
- (4) Development and implementation of a [Person Centered Service Plan] PCSP in coordination with an interdisciplinary team,
- (5) Assisting the person in integrating into his or her community,
- (6) Locating, coordinating and monitoring needed developmental, medical, behavioral, social educational and other services,
- (7) Accessing informal community supports needed, and
- (8) Accessing employment services and supporting them in seeking and maintaining competitive employment.”<sup>3</sup>

“All CES Waiver beneficiaries are assigned to a Provider-led Arkansas Shared Savings Entity (PASSE), which is a full-risk organized care organization responsible for providing all services to its enrolled members, except for non-emergency transportation in a capitated program, dental benefits in a capitated program, school-based services provided by school employees, skilled nursing facility services, assisted living facility services, human development center services, or waiver services provided through the ARChoices in Homecare program or the Arkansas Independent Choices program. The PASSE also provides care coordination services administratively through the § 1915(b) Waiver. All services must be

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<sup>1</sup>DHS - DDS Website, <https://humanservices.arkansas.gov/divisions-shared-services/developmental-disabilities-services/ces-waiver/> and email from Melissa Stone, Director, DHS – DDS, received on January 5, 2021.

<sup>2</sup> Application for 1915(c) HCBS Waiver: AR.0188.R05.07 – Dec 01,2020 (as of Dec 01, 2020), [https://humanservices.arkansas.gov/wp-content/uploads/Waiver\\_CES\\_AR0188R0507.pdf](https://humanservices.arkansas.gov/wp-content/uploads/Waiver_CES_AR0188R0507.pdf), 1.

<sup>3</sup> 1915(c) Waiver Application, 5.

delivered based on a person-centered service plan (PCSP), which is based on an Independent Assessment by a third party vendor, the health questionnaire given by the PASSE care coordinator, and other psychological and functional assessments.”<sup>4</sup>

Clients on the CES waiver waiting list who already receive core Medicaid services through the Medicaid State Plan are currently being enrolled in a PASSE, and begin receiving care coordination by the PASSE. As these clients are placed in a CES waiver slot, the care coordinator will continue working with them to create a PCSP under the CES Waiver.<sup>5</sup>

## CES WAIVER SERVICES

The CES Waiver provides the following array of services to eligible individuals:

- Care Coordination - includes collaborating on care planning and goals, medication management, and service coordination through a person-centered service plan (PCSP)
- Respite - temporary direct care and supervision for a client due to the absence of the primary giver or to provide a break for the caregiver
- Supported Employment –helps clients reach their goals of working in integrated workplaces for pay; services include career planning, support at a work site, and job coaching
- Supportive Living - services and activities to help clients live in their own home, with family or in a setting such as an apartment or provider-owned group home
- Community Transition Services – help with set-up expenses for clients who are transitioning from an institutional or provider-operated living arrangement, such as an intermediate care facility or group home, to a living arrangement in a private home where the client or client’s guardian is directly responsible for his or her own living expenses
- Supplemental Support –provides for additional support if unforeseen needs arise to avoid disrupting the client’s services or placement<sup>6</sup>

## HISTORY OF THE CES WAIVER

According to DHS - DDS, the federal Centers for Medicare and Medicaid Services (CMS) approved a HCBS demonstration waiver in 1988 to allow Arkansas to implement a pilot program to provide alternatives to institutional care. Arkansas’s application for this waiver was in part a response to the class action suit, *Baldrige v. Clinton*. This case involved institutionalized persons diagnosed with mental illness and developmental disabilities in the custody of DHS, who were also identified as receiving inadequate treatment, care and/or training or being inappropriately placed by appropriate professionals.<sup>7</sup> The original eleven counties that participated in the waiver were: Pulaski, Nevada, Clark, Drew, St. Francis, Sebastian, Craighead, Washington, Union, Howard, and Miller. There were approximately 95 individuals

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<sup>4</sup> 1915(c) Waiver Application, 5.

<sup>5</sup> 1915(c) Waiver Application, 12.

<sup>6</sup> Fact Sheet - The Community and Employment Support (CES) Waiver for Arkansans with Developmental or Intellectual Disabilities, found at [https://humanservices.arkansas.gov/wp-content/uploads/CES.Waiver\\_Fact\\_Sheet\\_110520\\_.pdf](https://humanservices.arkansas.gov/wp-content/uploads/CES.Waiver_Fact_Sheet_110520_.pdf).

<sup>7</sup> [https://law.justia.com/cases/federal/district-courts/Baldrige\\_v\\_Clinton](https://law.justia.com/cases/federal/district-courts/Baldrige_v_Clinton) 674 F. Supp. 665 (E.D> Ark. 1987) and Home and Community Based Services (HCBS) Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021.

served during this pilot phase, and the services they received included the following: case management, supportive living, and adaptive equipment.<sup>8</sup>

In 1990, the Alternative Community Services (ACS) waiver was implemented as a 1915 (c) HCBS waiver and allowed the program to be offered on a statewide basis. “HCBS waiver services [were] are delivered through private providers who are certified by the DDS Quality Assurance Section. The providers must first meet DDS certification requirements and then enroll with Medicaid as HCBS waiver provider before the provider can deliver services.”<sup>9</sup>

Effective August 22, 2017, an amendment to the ACS waiver was approved and the name was changed to Community and Employment Supports (CES) waiver. In addition, Act 775 of 2017 created “an innovative approach to organizing and managing the delivery of services for Medicaid beneficiaries with high medical needs” including those with intellectual and developmental disability.<sup>10</sup> This organized care delivery is provided by Provider-Led Arkansas Shared Savings Entities (PASSEs). Beginning on October 1, 2017, PASSEs became responsible for CES waiver recipients’ care coordination and on March 1, 2019, the PASSEs became responsible for both care coordination and provided all other services under a full-risk MCO (Managed Care Organization) model.<sup>11</sup>

## AVAILABLE SLOTS AND WAITING LIST

In the first year of implementation of the demonstration waiver, 1989-90, Arkansas served 95 people. By 1993-94 the program was serving approximately 454 people at which time the number of slots available for the program was frozen due to funding issues. In 1996-97, DDS began to maximize their general revenue funding by reallocating \$1,000,000 of the funds formerly allocated to supported living arrangements to the ACS waiver program. By June of 1998, 900 individuals were added to the waiver through the reallocation of supported living arrangement general revenue funding.<sup>12</sup>

The Governor recommended and the legislature approved an additional \$2,000,000 in general revenue for the waiver in FY1999-2000 and an additional \$1,850,000 for FY2000-2001. This increase in funding resulted in an increase in the unduplicated count of individuals served growing from 1,535 in 1998-99 to 2,513 in 2000-01 or an increase of 978, but the demand for services was still growing.<sup>13</sup>

According to DHS - DDS, “On June 25, 2003, a lawsuit *Tessa G v Arkansas Department of Human Services* was filed challenging the waitlist and the application process for the home and community based waiver program. As a result of this lawsuit and agreement between parties, the application process for the ACS Waiver waitlist was changed to allow for determination of categorical eligibility to be established at the time of application. Additional funding was secured under [for] FY 2003-04 and additional slots were added to the ACS Waiver with the 5 year renewal application to CMS for the program. This

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<sup>8</sup> HCBS Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021, page 1.

<sup>9</sup> Application for 1915(c) HCBS Waiver: DRAFT AR41.00.00 - July 1, 2014, page 3 of 141,

<http://arr.blr.arkansas.gov/Portals/0/Rules/ARR/Entities/160/Rules/10576/Final/1915%20application.pdf>.

<sup>10</sup> Provider-Led Arkansas Shared Savings Entity (PASSE) Model Waiver Application, Effective date 3/1/2019,

[https://humanservices.arkansas.gov/wp-content/uploads/Waiver\\_PASSE\\_AR0007R0001.pdf](https://humanservices.arkansas.gov/wp-content/uploads/Waiver_PASSE_AR0007R0001.pdf), page 5.

<sup>11</sup> PASSE Model Waiver, effective date 3/1/2019, page 5.

<sup>12</sup> HCBS Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021, page 1.

<sup>13</sup> HCBS Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021, page 2.

funding was applied to the waitlist that was in place on July 1 of 2003. Tessa G was offered a slot during processing of the list.”<sup>14</sup>

Act 50 of 2017, allowed “Tobacco Settlement Funds to be used to reduce the waiting list for the Alternative Community Services Waiver Program” and this change became effective on and after January 26, 2017.<sup>15</sup> According to DHS – DDS, “\$8.5 million dollars was reallocated to expand the program through an additional 500 regular waiver slots.”<sup>16</sup>

December 1, 2020, an additional 600 slots were made available as a result of a premium tax paid by each PASSE entity for operating as an insurance company in the State of Arkansas. Half of the PASSE premium tax is required by state law to go towards reducing the CES Waiver waiting list. The 600 regular slots and an additional 100 slots set aside specifically for children in the custody of the Division of Children and Family Services (DCFS) utilizes approximately \$15 million of PASSE premium tax proceeds each year.<sup>17</sup>

Table 1 below provides the chronological history of waiver slots that have been federally approved and used by the state, and the number of individuals on the waiting list. Due to the passage of time, there are some data elements that are not available. According to DHS – DDS, the “Point-in-Time (PIT) number is the number of slots that we have set as [a] limit of recipients at any point during a waiver year and will be different from the total approved slots. PIT numbers are used for budgetary management of the program.” The number of federally authorized slots have increased to 5,483 in the most recently completed reporting year, 2020-21. The waiting list count has ranged from a low of 799 in 2006-07 which is the most recent year for which data is available, to a high of 3,507 in reporting year 2019-20. According to DDS, 3,204 individuals were on the waiver waiting list as of December 1, 2021.

The federally authorized slots reported below include slots authorized and reserved for DHS – Division of Children and Family Services (DCFS) to be used exclusively for children in foster care. The Division reports the practice of reserving slots for DCFS has been in place approximately five years. Three hundred of the 2020-21 federally authorized waiver slots and point in time slots were reserved for DCFS.

<b>Fiscal Year/ Reporting Year (1)</b>	<b>Federally Auth. Waiver Slots</b>	<b>Point-in-Time (PIT) Auth. Waiver Slots</b>	<b>Waiting List Count (2)</b>	<b>Count Date</b>	<b>Unduplicated Count</b>
1989-1990	Not Available	Not Available	Not Available	Not Available	95
1990-1991	Not Available	Not Available	Not Available	Not Available	198
1991-1992	Not Available	Not Available	Not Available	Not Available	522
1992-1993	Not Available	Not Available	Not Available	Not Available	477

<sup>14</sup> Tessa G V Arkansas Department of Human Services cv-00493 E.D> Arkansas, <https://www.clearinghouse.net/detail.php?id=11577>, and HCBS Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021.

<sup>15</sup> Summary of General Legislation, 91<sup>st</sup> General Assembly of the State of Arkansas, 2017 Regular Session, Page 87.

<sup>16</sup> HCBS Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021, page 2.

<sup>17</sup> Email from Melissa Stone, Director of the DHS - Division of Developmental Disabilities Services, received January 5, 2021, and email from DHS – DDS Director, Melissa Stone, January 5, 2022.



**Table 1. Community Employment Supports Waiver Slot and Waiting List History  
1989-90 through 2020-21**

Fiscal Year/ Reporting Year (1)	Federally Auth. Waiver Slots	Point-in-Time (PIT) Auth. Waiver Slots	Waiting List Count (2)	Count Date	Unduplicated Count
1993-1994	Not Available	Not Available	Not Available	Not Available	454
1994-1995	Not Available	Not Available	Not Available	Not Available	1,851
1995-1996	Not Available	Not Available	Not Available	Not Available	1,796
1996-1997	Not Available	Not Available	Not Available	Not Available	480
1997-1998	Not Available	Not Available	Not Available	Not Available	1,045
1998-1999	Not Available	Not Available	Not Available	Not Available	1,535
1999-2000	2,398	Not Available	Not Available	Not Available	2,084
2000-2001	2,997	Not Available	Not Available	Not Available	2,513
2001-2002	2,997	Not Available	Not Available	Not Available	2,486
2002-2003	2,997	Not Available	Not Available	Not Available	Not Available
2003-2004	2,997	Not Available	Not Available	Not Available	2,960
2004-2005	3,598	3,480	Not Available	Not Available	3,367
2005-2006	3,598	3,497	Not Available	Not Available	3,356
2006-2007	3,598	3,506	799	06/28/2007	3,342
2007-2008	3,898	3,748	921	07/03/2008	3,544
2008-2009	4,108	3,998	1,197	07/01/2009	3,818
2009-2010	4,108	3,988	1,429	07/01/2010	4,004
2010-2011	4,203	4,083	1,770	06/30/2011	3,992
2011-2012	4,263	4,143	Not Available	Not Available	4,132
2012-2013	4,263	4,125	Not Available	Not Available	4,152
2013-2014	4,263	4,143	Not Available	Not Available	Not Available
2014-2015	4,263	4,183	2,887	07/01/2015	4,126
2015-2016	4,183	4,170	2,995	07/01/2016	4,109
2016-2017	4,303	4,183	3,246	07/21/2017	4,303
2017-2018	4,803	4,723	2,811	07/01/2018	4,429
2018-2019	4,863	4,743	3,243	07/01/2019	4,755
2019-2020	4,883	4,761	3,507	07/01/2020	4,788
2020-2021	5,483	5,263	3,241	07/01/2021	4,972

(1) Data for federally authorized slots, PIT waiver slots, and unduplicated counts are presented on a State Fiscal Year basis for the years, 1990-91 through 2015-16, and are provided on a "Reporting Year" basis (September 1 – August 31st) for 2016-17 through 2020-21.

(2) The waiting list counts are point-in-time counts for the dates that are provided in the column entitled "Count Date".

Note: The federally authorized and PIT slots reported above **include** slots authorized and allocated to the DHS – Division of Children and Family Services to be used exclusively for children in foster care.

Sources:

- Ms. Regina Davenport, DHS - Division of Developmental Disabilities Services Assistant Director, Tier 2 & Tier 3 Services for years 1989-90 through 2017-18.
- DHS - Division of Medical Services provided via email from Mr. Mark White, Deputy Director and Chief of Staff, Legal, and Legislative Affairs, for years 2018-19 through 2020-21.

There is a wide range of ages for both those that are receiving services and those that are on the waiting list for services. Table 2 below provides age breakdowns for both those receiving services and those

waiting to receive services. Over 87% of those receiving services are in the adult age category of 18-64. While for those on the waiting list, the child age category of 5 to 17 comprises 47% of the total and the 18 to 64 adult category comprises 49%.

Age Category	Open Waiver Slots	% of Total	Waiting List	% of Total
Birth to 4	19	0.42%	114	3.54%
5 to 17	304	6.67%	1,512	46.94%
18 to 64	3,985	87.39%	1,565	48.59%
65 and Older	252	5.53%	30	0.93%
<b>Total</b>	<b>4,560</b>	<b>100.00%</b>	<b>3,221</b>	<b>100.00%</b>

Source: Provided via email by DDS - Director Melissa Stone, January 13, 2021.

## WAIVER COSTS

Table 3 below provides the average plan of care cost per participant and the total waiver expenditures for the period 1989-1990 through 2020-21 as reported by DHS – DDS and the DHS – Division of Medical Services (DMS). The total expenditures reported below are the expenditures for waiver services only and do not include the Medicaid State Plan medical services that were provided to the waiver recipients. The average plan of care cost per waiver recipient has grown significantly since its inception, and has ranged from \$4,973 in FY1989-90 to \$61,804 in FY2020-21. The total annual cost of the waiver increased to \$307.3 million by Reporting Year 2020-21.

Fiscal Year/ Reporting Year (1)	Average Plan of Care Cost	Total Waiver Expenditures	Federal Share	State Share
1989-1990	\$4,973	472,464	Not Available	Not Available
1990-1991	9,147	1,811,095	Not Available	Not Available
1991-1992	9,181	4,797,477	Not Available	Not Available
1992-1993	16,593	7,915,065	Not Available	Not Available
1993-1994	24,132	10,995,861	Not Available	Not Available
1994-1995	8,809	8,376,747	Not Available	Not Available
1995-1996	10,709	12,029,128	Not Available	Not Available
1996-1997	26,029	12,493,872	Not Available	Not Available
1997-1998	15,980	16,698,808	Not Available	Not Available
1998-1999	14,347	22,022,814	Not Available	Not Available
1999-2000	16,186	33,732,457	Not Available	Not Available
2000-2001	18,271	45,914,734	Not Available	Not Available
2001-2002	33,160	53,527,576	Not Available	Not Available
2002-2003	Not Available	Not Available	Not Available	Not Available
2003-2004	21,174	62,672,678	Not Available	Not Available
2004-2005	24,263	62,672,678	48,646,532	14,026,145
2005-2006	24,771	83,129,844	61,324,886	21,804,958
2006-2007	27,343	91,379,608	67,045,219	24,334,390

<b>Fiscal Year/ Reporting Year (1)</b>	<b>Average Plan of Care Cost</b>	<b>Total Waiver Expenditures</b>	<b>Federal Share</b>	<b>State Share</b>
2007-2008	32,074	113,669,630	82,910,628	30,759,002
2008-2009	33,612	128,332,028	103,255,950	25,076,078
2009-2010	35,277	141,248,004	114,665,130	26,582,874
2010-2011	39,309	156,921,359	111,994,774	44,926,585
2011-2012	41,034	169,552,584	119,890,632	49,661,952
2012-2013	43,020	178,617,017	125,335,561	53,281,456
2013-2014	Not Available	Not Available	Not Available	Not Available
2014-2015	45,985	189,734,837	134,484,052	55,250,785
2015-2016	51,072	209,854,000	146,897,800	62,956,200
2016-2017	54,165	222,617,385	155,142,056	67,475,329
2017-2018	53,785	238,212,647	168,821,303	69,391,344
2018-2019 (2)	58,417	277,774,537	195,858,826	81,915,711
2019-2020 (2)	59,209	283,492,356	215,652,635	67,839,721
2020-2021 (2)	61,804	307,290,409	237,934,964	69,355,445
(1) State Fiscal Year basis for the years, 1990-91 through 2015-16, and are based on "Reporting Years" (September 1 – August 31st) for 2016-17 through 2020-21.				
Sources:				
- Ms. Regina Davenport, DHS - Division of Developmental Disabilities Services Assistant Director, Tier 2 & Tier 3 Services for years 1989-90 through 2017-18.				
- Estimate of DDS Waiver Costs for PASSE Program prepared by Milliman, actuary for DHS, and was provided via email by Melissa Stone, Director, DHS - DDS, for years 2018-19 through 2020-21.				

## CHALLENGE FOR DELIVERY OF WAIVER SERVICES

One of the concerns expressed by DHS – DDS is a shortage of direct care workers available to serve waiver clients. The DHS – DDS provided the following assessment of the current availability of direct care staff.

“Currently, Arkansas has an unemployment rate of 3.7%.<sup>18</sup> The steady decline in available direct care workers directly impacts the ability of providers to provide care under the HCBS model. In 2017, approximately 40,560 workers were employed as direct care workers in Arkansas. In 2020, this number had decreased to 38,730.<sup>19</sup> While on the surface, this decrease in available workers may appear small, competition for available trained workforce is shared across various providers of direct services including but not limited to Nursing Homes, Intermediate Care Facilities, Home Health agencies and HCBS service providers. PHI National, a leading organization that focuses on workplace research and strategy has estimated that within a ten year span (2018 – 2028), there would be approximately 69,700 job openings in Arkansas in the direct care worker field.”<sup>20</sup>

<sup>18</sup> U.S. Bureau of Labor Statistics, <https://www.bls.gov/eag/eag.ar.htm>.

<sup>19</sup> PHI- Workforce Data Center, <https://phinational.org/policy-research/workforce-data-center/#states=05>.

<sup>20</sup> HCBS Waiver Summary prepared by DHS – Division of Developmental Disabilities Services, November 2021.

## RECENT DEVELOPMENTS

On December 14, 2021, Governor Hutchinson announced that he had approved DHS – DDS to immediately submit a waiver amendment to the Centers for Medicare & Medicaid Services (CMS) to increase the Point-in-Time number of waiver slots by an additional 200 slots to be funded by existing revenue. According to DHS, the cost of these 200 additional slots will be \$13.5 million with \$3.8 million to be funded by state funds, and \$9.7 million with federal funds.

In addition, he announced that he had also authorized the Department to request the necessary special language and budget adjustments during the upcoming fiscal session to allow DHS to use \$37.6 million of the \$60 million in additional general revenue provided to DHS for FY2021-22 to ensure the 3,204 individuals on the waiting list as of December 1, 2021 will be served. The Department of Human Services will have to submit an additional waiver amendment to CMS to add these additional slots. The Governor further indicated that this plan, pending CMS approval, would allow DHS - DDS to begin serving additional individuals starting on July 1, 2022, with the total 3,204 additional slots to be fully funded and authorized by June of 2025.<sup>21</sup>

In addition, Melissa Stone announced the Department also plans to pursue additional efforts to expand the network of providers to provide CES waiver services. First, DHS-DDS requested a waiver from CMS on December 14, 2021, to allow a training component to replace the one year experience requirement for direct care workers that provide services to waiver clients. In addition, the Department is working with CMS to use \$87 million in American Rescue Plan Act (ARPA) funds to help Home and Community Based providers, including CES waiver providers, stabilize their workforce by using the funds for recruitment, training and retention efforts. DHS hopes this infusion of funds will result in an increase in the number of direct care workers available to serve the expanded number of CES waiver clients.<sup>22</sup>

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<sup>21</sup> Governor Asa Hutchinson's press conference held on December 14, 2021 and email from Ms. Melissa Stone, Director of the DHS – DDS, received January 5, 2021.

<sup>22</sup> Governor Asa Hutchinson's press conference held on December 14, 2021 and email from Ms. Melissa Stone, Director of the DHS – DDS, received January 5, 2021.