

## 42 C.F.R. § 441.715

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### Needs-based criteria and evaluation.

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- (a) *Needs-based criteria.* The State must establish needs-based criteria for determining an individual's eligibility under the State plan for the HCBS benefit, and may establish needs-based criteria for each specific service. Needs-based criteria are factors used to determine an individual's requirements for support, and may include risk factors. The criteria are not characteristics that describe the individual or the individual's condition. A diagnosis is not a sufficient factor on which to base a determination of need. A criterion can be considered needs-based if it is a factor that can only be ascertained for a given person through an individualized evaluation of need.
- (b) *More stringent institutional and waiver needs-based criteria.* The State plan HCBS benefit is available only if the State has in effect needs-based criteria (as defined in paragraph (a) of this section), for receipt of services in nursing facilities as defined in section 1919(a) of the Act, intermediate care facilities for individuals with intellectual disabilities as defined in § 440.150 of this chapter, and hospitals as defined in § 440.10 of this chapter for which the State has established long-term level of care (LOC) criteria, or waivers offering HCBS, and these needs-based criteria are more stringent than the needs-based criteria for the State plan HCBS benefit. If the State defines needs-based criteria for individual State plan home and community-based services, it may not have the effect of limiting who can benefit from the State plan HCBS in an unreasonable way, as determined by the Secretary.

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