



Helping Medicaid's "Medically Needy" Stay at Home

NASUAD's 2011 HCBS Conference
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September 13, 2011

Protecting the Rights of Low-Income Older Adults



NSCLC



National Senior Citizens Law Center

The National Senior Citizens Law Center
advocates nationwide to promote the
independence and well-being of
low-income elderly and disabled
Americans.

Overview

- Medicaid, the Medically Needy, and HCBS—why have this discussion?
 - Complicated eligibility rules can discourage access
 - CMS interested in facilitating eligibility
 - ACA targeted Medically needy in HCBS spousal impoverishment mandate
- Just the Medically Needy?
 - ACA’s Medicaid expansion and the new Medicaid eligibility rules
 - Important developments relating to Medicaid eligibility for HCBS
 - ACA authorized new “categorical” eligibility group for 1915(i) recipients
 - ACA’s Community First Choice Option eligibility rules tricky
 - CMS issues letter on Medicaid HCBS and ACA’s maintenance-of-effort (MOE) mandate
- Moving forward
 - New Medicaid eligibility rules beginning in 2014



Medicaid's "Categorical" Populations

- **Mandatory Categorical Populations**
 - Supplemental Security Income (SSI) recipients.
 - 209(b) eligibles—Individuals 65 years old or older or with disabilities who meet Medicaid income and resource requirements in effect as of January 1, 1972.
- **Optional Categorical Populations**
 - Individuals 65 years old or older or with disabilities who meet state Medicaid resource requirements and have income at or below 100% of the federal poverty level (FPL).
- **Services**
 - Mandatory include, among others, inpatient hospital services, nursing facility services, and home health services
 - Optional services include, among others, personal care services, physical therapy services, and other services (1915(i) benefit, Community First Choice benefit)



Medicaid's "Medically Needy"

- **Medically Needy**
 - **Medically needy individuals**
 - Individuals 65 years old or older or with disabilities who:
 - Meet state Medicaid resource requirements
 - Have income above the state's limit but high medical expenses
 - **Services**
 - More limited guarantee, but most states extend full Medicaid package to Medically Needy
 - **Eligibility**
 - Available income – Medically Needy Income Level = Spenddown
 - Example:
 - Applicant's monthly income is \$1,000 and state's MNIL is \$400
 - Spenddown is \$600



Medicaid's Coverage for LTSS

- **Special income level for Medicaid coverage of nursing facility services**
 - 300% of SSI federal benefit rate (\$2,022 a month in 2011)
 - Special deeming rules apply
- **HCBS Waiver programs**
 - States may offer categorical eligibility to individuals “who would be eligible . . . if they were in a medical institution. . . .”
 - 300% of SSI federal benefit rate (\$2,022 a month in 2011)
 - Special deeming rules apply
 - States are authorized to extend spousal impoverishment protections to enrollees who qualify as categorically eligible



Medically Needy Enrollees and LTSS

- **Nursing facility services**
 - Generally easy to qualify for through spenddown
 - Personal maintenance allowance very limited (commonly \$30 a month)
- **HCBS waivers**
 - Individuals not categorically eligible must meet spenddown
 - Spousal impoverishment protections not available



Categorically Needy v. Medically Needy HCBS waiver enrollees

- **Example #1: Mary Smith**
 - Available monthly income is \$2,000
 - Her state offers HCBS waiver coverage up to 300% of SSI
 - Waiver monthly personal maintenance allowance is \$1,500
 - Mary meets clinical eligibility criteria
- **Mary's initial qualification and post-eligibility treatment of income**
 - $\$2,000 < \$2,022$ (Mary is automatically eligible)
 - Mary is permitted to keep \$1,500 of her income to meet her needs in the community



Categorically Needy v. Medically Needy HCBS waiver enrollees, continued

- **Example #2: Jane Doe**
 - Available monthly income is \$2,000
 - Her husband's monthly income is \$1,500
 - Her state offers HCBS waiver coverage up to 300% of SSI
 - Waiver monthly personal maintenance allowance is \$1,500
 - State extends spousal impoverishment protections to enrollees
 - Jane meets clinical eligibility criteria
- **Jane's initial qualification and post-eligibility treatment of income**
 - \$2,000 < \$2,022 (Jane is automatically eligible)
 - Post-eligibility treatment of income
 - \$338 deducted from Jane's income to raise her husband's income to minimum monthly maintenance allowance of \$1,838
 - \$1,500 is deducted from Jane's income for her own personal maintenance allowance



Categorically Needy v. Medically Needy HCBS waiver enrollees, continued

- **Example #3: Bob Jones**
 - Available monthly income is \$2,050 a month
 - His state offers HCBS waiver coverage up to 300% of SSI
 - Waiver monthly personal maintenance allowance is \$1,500
 - Bob's state offers coverage to medically needy, and MNIL is \$350
 - Bob meets clinical eligibility criteria
- **Bob's qualification for HCBS waiver services**
 - Bob must incur \$1,700 in uncovered medical expenses each month in order to qualify for the waiver
 - For HCBS waiver enrollees who qualify as medically needy, there is no post-eligibility treatment of income



Categorically Needy v. Medically Needy HCBS waiver enrollees, continued

- **Example #4: John Brown**
 - Available monthly income is \$2,050 a month
 - His wife's monthly income is \$700
 - His state offers HCBS waiver coverage up to 300% of SSI
 - Waiver monthly personal maintenance allowance is \$1,500
 - John's state offers coverage to medically needy, and MNIL is \$350
 - John meets clinical eligibility criteria
- **John's qualification for HCBS waiver services**
 - John must incur \$1,700 in uncovered medical expenses each month in order to qualify for the waiver
 - John's wife's income will not be deemed available to him
 - No post-eligibility treatment of income for medically HCBS enrollees, and no application of spousal impoverishment protections



CMS and Medically Needy HCBS waiver enrollees

- CMS has informed states that they may facilitate financial eligibility of HCBS waiver applicants who will qualify as medically needy
- States may impose an income disregard that qualifies individuals as categorically eligible
- Louisiana one of the first states to adopt authority



Expansion of spousal impoverishment protections to HCBS recipients

- ACA mandates that, beginning in 2014, spousal impoverishment protections be extended to all HCBS waiver enrollees, HCBS state plan benefit and Community First-Choice recipients, and *medically needy*
- Can John Brown's spouse (Example #4) receive protections if their state has not adopted authority?



The Medically Needy and Money Follows the Person

- Money Follows the Person (MFP) offers states special federal financial assistance to transition Medicaid-enrolled institutionalized individuals to the community
- Special challenges faced by prospective participants who qualified under medically needy category in institutions
- Married institutionalized Medicaid enrollees who qualify as medically needy may be screened as single individuals upon their transition to the community through MFP
 - [State Question]: Q12. Will the person who transitions lose their institutional eligibility status
 - **A12.** *No, the person who transitions will not lose their institutional eligibility status. . . . [T]he statute expressly waives the income and resource eligibility rules (Section 1902(a)(10)(C)(III)) in order to permit a State to apply institutional eligibility rules to individuals transitioning to community-based care.*



Eligibility issues facing ACA options

- **HCBS State Plan Benefit**
 - Added to Medicaid by Deficit Reduction Act of 2005
 - Original framework did not authorize new categorical group
 - ACA added categorical group for HCBS State plan benefit recipients
- **Community First Choice benefit**
 - Medicaid enrollees with incomes at or below 150% of the FPL may qualify without demonstrating a need for institutional care; enrollees with incomes above 150% of FPL but below 300% of SSI must meet institutional level of care
 - Can the medically needy qualify?
 - Intent to authorize new categorical group?



CMS, HCBS, and the ACA's MOE mandate

- The ACA requires that states not modify their Medicaid “eligibility standards, methodologies, or procedures” until their health insurance exchanges are fully operational
- CMS issues guidance to states on their discretion to modify HCBS waiver programs in lieu of MOE mandate



ACA's Medicaid Expansion

- ACA requires that states extend Medicaid in 2014 to all individuals who:
 - Have incomes that do not exceed 133% of the FPL (\$29,326 for a family of four in 2010)
 - Are under 65 years of age
 - Are not pregnant or receiving SSI
 - Are enrolled in or eligible for Medicare Part A, or enrolled in Part B
- No asset test for eligibility
- Individuals in this category offered only “benchmark” coverage, which is generally:
 - Standard BC/BS preferred provider option for federal employees in the state
 - Health plan that is generally available to state employees of state
 - Coverage offered by largest commercial, non-Medicaid HMO in state
- States will receive enhanced federal Medicaid reimbursement for
 - 100% from 2014 through 2016
 - 95% in 2017
 - 93% in 2019
 - 90% in 2020 and beyond
- Projected to cover 16 million uninsured



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