

## **Policy Analysis: Potential Medicaid Reform and its Impact on People with Disabilities in New Jersey**

*Information for this Policy Analysis is based upon a preliminary report from the National Governor's Association, analyses for the Georgetown University Health Policy Institute's Center for Children and Families, and analyses from the Kaiser Commission on Medicaid and the uninsured.*

### **Background**

Medicaid, a joint federal-state program pays for a broad range of health and long-term care services for low income populations. Participation in Medicaid is voluntary for States, but since 1982 every state has opted to participate.

States choosing to participate in Medicaid have substantial flexibility with respect to defining a benefits package and establishing eligibility criteria.

States are required to cover certain types of individuals or eligibility groups under the Medicaid plans (Mandatory Beneficiaries) and have the option to choose to cover other groups (Optional Beneficiaries).

States are required to cover certain services (Mandatory Services) for all mandatory and optional beneficiaries. States have the option to choose to cover other services (Optional Services). Most long-term care spending, other than nursing home care, is optional. (See Appendix below for a listing of Mandatory and Optional Beneficiaries and Mandatory and Optional Services)

New Jersey has an expansive Medicaid program, in that, it has chosen to cover most optional beneficiaries and to cover most optional services for all beneficiary populations.

### ***Medicaid Financing and Expenditures***

Medicaid is an individual entitlement to eligible beneficiaries (if they meet eligibility and income thresholds) and an entitlement to states. The federal government must provide matching funds to a state for all expenditures incurred for covered services on behalf of eligible beneficiaries.

The Federal Financial Participation Rate (FFP) is determined annually for each state by a formula that compares the State's average per capita income level with the national average.

- New Jersey's FFP is 50%

Medicaid spending in states is the second largest component of states' budget (comprising 15% of States spending). The largest component is elementary and secondary education (comprising 36% of spending for States).

New Jersey's State-financed Medicaid expenditures as a share of total state spending was 14.8% in 2002. New Jersey's state-financed Medicaid expenditures were the ninth highest in the country.

A looming risk to Medicaid is the cost of long term care, hospital care, prescription drugs, and other expenditures that are particularly important for the elderly and people with disabilities.

### ***Growth in Medicaid Expenditures***

Currently, the elderly and disabled comprise 70% of Medicaid expenditures even though they only comprise 25% of all enrollees.

Medicaid spending growth for the elderly and people with disabilities has occurred because of: increased participation in Medicaid, rising health care (especially prescription drug) costs; aging of the baby-boomers affecting disability rates; medical technology; and increased participation in the Home and Community-Based Waiver Service programs.

### **Federal Efforts to Constrain Growth**

President Bush's FY 2006 budget proposals included restructuring of the federal Medicaid program, including significant cuts to the program. (For more information on President Bush's FY 2006 Medicaid proposals go to <http://www.abcdnj.org/pubs.html> and read: *Medicaid Reform FY 2006 Budget*.)

In response to the President's proposed budget, Congress put forward a budget resolution that reduced the cuts to \$10 billion over five years.

In order to develop proposals for the cuts, Secretary Leavitt of the U.S. Department of Health and Human Services announced the formation of a Medicaid Commission. The Commission will provide recommendations on options to achieve the \$10 billion in Medicaid savings over five years by September 2005.

In addition, by December 2006, the Commission will develop proposals for long term issues including: 1) eligibility, benefit design and delivery; 2) expanding the number of people covered while recognizing budget constraints; 3) long term care; quality of care and 4) beneficiary satisfaction; 5) and program administration.

### ***National Governors Association (NGA) Proposal***

The NGA has put forward its own proposal for Medicaid reform. Their proposal includes provisions based upon the Governors' concerns about the extensive growth in Medicaid funding by States. Many advocates are concerned that some of these proposals will negatively impact beneficiaries, especially the elderly and people with disabilities.

Proposal: Prescription Drugs

NGA believes that a multi-pronged approach is needed to reduce Medicaid expenditures for prescription drugs. The savings proposals, NGA believes, should affect drug manufacturers, retail pharmacists, and increase state utilization management tools that decrease inappropriate prescribing and utilization. The NGA proposes modifications of the President's proposals for prescription drugs including:

- Giving states additional tools such as tiered co-pay structures to encourage greater utilization of generic drugs;
- Using closed formularies to drive beneficiary utilization and decrease costs similar to that that will be used by Medicare Part D plans;
- Increasing the minimum rebates that states collect on brand name and generic prescription drugs to ensure lower total costs; and
- Allowing states to join multi-state purchasing pools and to continue to combine Medicaid with other state-funded health care coverage to improve leverage.

***ABCD Analysis:***

- It is critical that states maintain and enhance their ability to negotiate the best possible prices with the pharmaceutical industry. New Jersey should bundle all of its prescription drug purchases under Medicaid, State employee health benefits and criminal justice system to improve leveraging with the pharmaceutical industry.
- A closed formulary, similar to that used by Medicare Part D plans, would harm people with disabilities and the elderly. In the FY' 06 budget New Jersey, due to strong advocacy in the disability community, created a wrap-around program for dual eligibles so that prescriptions not covered by the Part D plans would be covered by the State.

Proposal: Asset Policy:

NGA believes that the President's approach to changing the rules regarding penalties for individuals who transfer assets in order to become eligible for Medicaid long term care should be encouraged. The President's proposal would begin the penalty period on the date that the individual enters the nursing home or becomes eligible for Medicaid, which ever is later. NGA believes that other similar approaches should be explored around assets transfers to prevent estate planners from moving to alternate schemes. NGA would like to allow states the ability to "opt-out" of federal guidelines for assets transfers if the state can prove that existing policies would meet the intent of the law. Other options proposed by NGA are:

- Increase the look-back period from three years to five years (or longer); and
- Limiting the amount and types of funds that can be sheltered in an annuity, trust, or promissory note.
- Resource threshold and indexed in future years, below which assets transfers would be exempted, as well as policies in place to protect individuals with dementia or others at risk of being exploited.

Proposal Reverse Mortgages:

NGA supports a proposal that would create an incentive and a new allowance for individuals to pursue reverse mortgages in order to pay for long-term care services. Under this proposal, any person who obtained a reverse mortgage would be able to shelter \$50,000 in equity from their house without incurring penalties.

Proposal: Cost Sharing:

Under current law, co-payments are prohibited for children and pregnant women and does not allow co-payments for family planning and emergency care. In addition, federal Medicaid law mandates that providers must provide the service regardless of the individual's ability to pay a cost share.

NGA proposes a "new vision" for cost sharing, similar to the State Child Health Insurance Program (S-CHIP). According to the proposal, states should have broad discretion to establish any form of premium, deductible, or co-pay for all populations, for all services. Financial protections, similar to S-CHIP, would be put in place to ensure that beneficiaries would not be required to pay more than 5% of total family income. States would have broad latitude to waive these types of cost-sharing for any populations or services that it determines would be negatively impacted by such policies.

***ABCD Analysis:***

National research has demonstrated that if out-of-pockets costs are too high and/or are imposed for individuals at too low an income, they can impede access to care and create financial burdens for families. The research demonstrated that:

- Premiums disproportionately impacted those with the lowest income, but also led to disenrollment among those with incomes above 150% of poverty.
- Charging premiums to low-income people deters them from enrolling in coverage and thereby increases the ranks of the uninsured.
- Cost sharing led to unmet medical need and financial stress, even when amounts were nominal or modest.

In New Jersey, proposals have been included in each of the past three proposed budgets to include co-pays for Medicaid services. In each year, advocates successfully fought the proposals.

Benefits Package Flexibility:

NGA proposes to give states flexibility to offer a different level of benefits to certain Medicaid populations. The proposal includes the ability to set benefit limits and cost sharing amounts, do employer buy-in programs, eliminate retroactive eligibility periods and establish different benefit packages for different populations or in different parts of the state. According to the proposal, for the more medically fragile populations, changes in the benefit package should be made to encourage more chronic care management and other services that can improve health care outcomes and reduce costs.

***ABCD Analysis:***

Many advocates are concerned that benefits package flexibility would substantially limit the services provided to people with disabilities and the elderly. The proposal does acknowledge that some beneficiaries need a comprehensive benefit package. However, since medically frail individuals are the most costly, under this proposal, a state could reduce its benefits to this population in an effort to cut costs.

**Comprehensive Waiver Reforms:**

NGA believes that reforms are needed to increase the ease with which states get current waivers, expand the ability to seek new types of changes, and change the federal statute to eliminate the need for many waivers altogether.

The most commonly waived portions of Medicaid statute are those requiring that beneficiaries have freedom of choice of providers, that services be comparable, state-wide, and consistent with respect to amount, duration, and scope. NGA proposes that federal statute be changed to allow states to innovate in these areas through state plan amendment changes rather than through waivers. NGA would also like 1915 © waivers (Home and Community-based Services waiver) should also be administered through the state plan amendments. Other NGA proposals include: streamlining the waiver process, allowing budget neutrality to be waived at the state's option; automatically converting a waiver to a state plan after the first renewal of the waiver; and allowing states to receive easy approval to try an approach already tested successfully in other states.

***ABCD Analysis:***

Currently, Medicaid long-term care has an institutional bias. People with disabilities have the right to live in the most integrated setting appropriate to their needs. Changes must be made to the Medicaid statute to eliminate the institutional bias so that states will no longer need to apply for waivers.

Many advocates are concerned that waiver reform, as proposed by President Bush and others, would have the effect of creating a block grant program for Medicaid. Changing the entitlement nature of Medicaid would have significant negative impacts of people with disabilities and the elderly.

*Proposal Judicial Reforms:*

NGA believes that court system should not be involved in the state Medicaid program. Court decisions remain in place for decades and institutionalize the policies of elected officials who have long since left office. NGA believes that federal reforms are needed to constrain the ability of judicial decrees in Medicaid cases that clearly impede state innovation and reform.

***ABCD Analysis***

This proposal will have a chilling effect on the due process rights of beneficiaries. The courts have, and should continue to play an important role in protecting beneficiaries and providers from states' efforts to constrain the program.

**Conclusion**

Medicaid provides important acute health care and long term care for people with disabilities. Any proposals to change Medicaid must be analyzed for its potential negative impact on this population.

New Jersey has a fairly expansive Medicaid program that must be maintained for people with disabilities.

Some of President Bush's and the NGA's proposals for Medicaid will hamper New Jersey's ability to provide important services to people with disabilities. Other proposals have the possibility of providing the State with flexibility to expand services.

Prior to the State supporting either the President's or NGA's proposals, more analysis is needed on specific proposals' impact on people with disabilities in New Jersey.

## Background Information on Medicaid

### Examples of Mandatory Beneficiaries and Mandatory Services

Mandatory Beneficiaries	Mandatory Services
Children under age 6 and pregnant women below 133% of poverty	Hospital services
Children ages 6-18 below 100% of poverty	Physician services
Parents with incomes below their State's AFDC income limit prior to welfare reform	Nursing home care (for those age 21 and higher)
Elderly and persons with disabilities on SSI	Early periodic Screening and diagnosis Treatment (EPSDT) for children
Foster care children	Laboratory and x-ray services

States must cover mandatory beneficiaries with mandatory services. States also have the option to cover mandatory beneficiaries with optional services. States, if they choose optional beneficiary categories must cover these beneficiaries with mandatory services, and may choose optional services for them as well.

### Examples of Optional Beneficiaries and Optional Services

Optional Beneficiaries	Optional Services*
Children above mandatory income levels (Age 6 and over with family incomes more than \$15,260 in a family of three)	Prescription drugs
Children under age 6 and pregnant women with annual incomes above 133% of poverty level (\$20,755 for a family of three).	Physical Therapy
Working Parents above mandatory levels	Home health care (for those <u>not</u> eligible for nursing home care)
Elderly and persons with disabilities with annual income above the SSI income limit (74% of poverty level)	Home and community based services
Medically Needy (individuals with catastrophic medical expenses, including those needing nursing home care).	Prosthetics and durable medical equipment
	Vision and dental services.
	* Optional for populations other than children

There are numerous other optional services including respirator care for ventilator-dependent individuals, benefits for individuals with disabilities who work, clinic services and other rehabilitative services.