

MEDICAID CHANGES & PREVIEW OF COMING ATTRACTIONS

Charlie Robinson, Board Certified Elder Law Attorney
Special Needs Lawyers, PA
Clearwater, Florida



CURRENT MEDICAID "SYSTEM"

- Entitlement
 - ICP
- Guaranteed match currently 55% Federal-45% State of Florida
- Represents 1 of 6 health care dollars in the US
- Major source of financing to allow states to take care of health and long term care needs of low income residents



MEDICAID AND ITS MANY FLAVORS

- ICP-
 - nursing home entitlement no wait list



**STATEWIDE MEDICAID MANAGED CARE- 2
MEDICAID WAIVER PROGRAMS**

- SMMC-MMA
 - Managed Medical Assistance
- SMMC-LTC
 - Long Term Care
 - Two waivers
 - Managed Care Waiver
 - Home and Community Based Services Waiver (HCBS)



HCBS WAIVER

- State allowed to provide HCBS to individuals who would otherwise meet the nursing home level of care
- Limited to amount of funding by Florida legislature so typical wait list is over 40,000



**WAIT LIST PRIORITY-
3 CATEGORIES NOT NEEDING SCREENING**

1. Individual 18-20 with chronic debilitating disease or condition That generally make the individual dependent upon 24 hour per day medical, nursing or health supervision or intervention.
2. Nursing facility resident who wants to transition to community based services and who has resided in a skilled nursing facility for at least 60 days
3. Protective services referral from DCF Adult Protective Services Act as high risk and placed in an ALF



APPLICANTS PRIORITIES 1-8 BASED ON SCREENING- RULE 59G-4.193

- Form 701S scoring based on ADL and IADL deficits
- 1-5 based on 701S
 - 5= nursing home level of care
- 6 for individuals "aging out" of certain DCF community and home care programs
- 7 "imminent risk" of institutionalization who meet the following
 - Unable to perform self-care
 - No capable caregiver
 - Lack of funds still not imminent risk
- 8 Adult protective high risk referrals



LAWSUIT AND ADEQUACY OF LTC SERVICES ATTY. NANCY WRIGHT

- Case settled on 12-23-2016
- MCOs will be required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.



MEDICAID RULES ILLOGICAL AND TRANSITORY

- Spousal refusal now being monitored
- Personal Service Contracts for millions for a 90 year old
- Rules are often based on tenuous theories
- Block grants are coming by state and federal consensus and all rules are up for grabs



STRATEGIES THAT VIOLATE DCF RULES

- Personal Care Trusts
- Attorney trust accounts
- If it's too good to be true....



WHAT ARE PROPOSED MEDICAID FINANCING CHANGES?

- Block Grant based on
 - Current spending or
 - Per capita cap
- Eliminate both entitlement and guaranteed match to achieve budget savings/make federal spending more predictable
- These and the points that follow are taken from the KFF Issue Brief January 2017



HOW WOULD A BLOCK GRANT WORK?

- State receives preset amount of Medicaid funding
 - Base year (2016) established
 - Cap increase by inflation or inflation plus percentage
 - Amount has to be less than projected under current system
- If costs exceed cap state can
 - Increase state spending or
 - Reduce enrollment or services
- Watch out if recession or increase in health care costs



HOW WOULD A PER CAPITA CAP WORK?

- Funding per enrollee capped
- Base year of per enrollee spending determined
- Increase by preset formula
 - Inflation or
 - Inflation plus a percentage
- State receives sum of per enrollee in each group times number of enrollees in each group
- Per enrollee spending set to increase slower than projected under current law
- Not addressed: increase in health costs or technology changes



WHAT DETAILS MUST WE KNOW TO UNDERSTAND THESE PROPOSALS?

- How will these proposals be affected by repeal and replace ACA efforts?
- States that adopted Medicaid expansion
 - January 2014-September 2015 \$93 billion federal funds to expansion group enrollees
 - First quarter 2016 covered 14.4 million adults
 - 11.2 million were newly eligible
- States that didn't adopt expansion will have lower spending base



WHAT ARE THE FEDERAL SAVINGS TARGETS?

- State will have more administrative flexibility
- The price of flexibility may be high
 - 2016 House budget cuts 40%
 - Enrollment cuts of 25-35% from caps
 - Caps plus repeal= up to 50% federal cuts



CBO ESTIMATES WILL REQUIRE STATES

- To reduce payments to providers
- Curtail eligibility for Medicaid
- Reduce level of coverage or
- Increase state budget to pay more than current state share



HOW WOULD BASE POINT OR STARTING PERIOD BE SET?

- Block grant or per capita cap sets a base year of Medicaid financing for states
 - What payments or populations to include or exclude



WHAT NEW FLEXIBILITY WOULD STATES BE GRANTED?

- Medicaid reform proposals often tied to promises of additional flexibility for users
- Currently Medicaid balances
 - Core requirements and standards with
 - State flexibility
 - All states offer additional coverage for children and
 - Additional benefits not required by law
 - Spousal refusal
 - IRA doesn't count
 - Intent to return home
 - Pooled trust for 65+



ADDITIONAL FLEXIBILITY

- Increase premiums or cost sharing
- Reduce benefits and impose work requirement
- These would apply primarily to adults and not elderly and disabled where most of the money is spent
- Any federal oversight/accountability of states to feds?



WHAT ARE THE IMPLICATIONS OF A BLOCK GRANT OR A PER CAPITA CAP?



IMPLICATION 1, LOCK IN HISTORIC SPENDING PATTERNS AND VARIATION IN MEDICAID SPENDING ACROSS STATES

- Significant variation in Medicaid spending among states due to a number of factors
 - State policy decisions
 - State revenues
 - Health care markets
 - Demographics and demand for Medicaid services
- Result may be uniformity among states with results creating winners and losers



IMPLICATION 2. SAVE FEDERAL DOLLARS BUT LESS RESPONSIVE TO CHANGING PROGRAM NEEDS

- Epidemic like zika
- Natural disaster like Hurricane Katrina
- New treatments (drugs for hepatitis C)
- Current Medicaid can respond



IMPLICATION 3 CAPPING AND REDUCING FEDERAL DOLLARS COULD SHIFT COSTS TO

- States
 - Medicaid costs grow at a slower rate than private health insurance
- Beneficiaries
- Providers
- Federal reductions put most vulnerable populations at risk
 - Poor children
 - Elderly
 - Disabled
 - Nursing homes and long term care providers



WOULD STATES NEED TO CONTRIBUTE STATE DOLLARS FOR MEDICAID?

- Some proposals could require state matches up to the cap
- Others show no matching requirements



EVALUATING MEDICAID BLOCK GRANT AND PER CAPITA CAP PROPOSALS- TOP 5 QUESTIONS

• Author Mara Youdelman National Health Law Program

1. Would Medicaid funding in Florida stay the same for one year, five years, ten years?
2. Will Florida be able to cover the same number of categories and persons as now covered?
3. Are mandatory and optional services the same?
4. Are current enrollee protections maintained?
5. Will Florida continue to get less funding because we didn't elect expanded ACA funding?



THE FAILED SYSTEM GETTING WORSE

- With many programs suffering significant cuts, the aging services budget will grow by about nine million dollars if not vetoed.
- We celebrate this as a victory for the aging services community but is it a victory?
 - Assuming the additional funding takes 10% off wait lists for services, when will the 90% waiting receive necessary services?
 - Have we kept pace with the needs of the boomer tsunami?



AGEISM

- A person on the wait list is described by their current list of chronic illness or disability problems
- Do we see this person as a real human being who was a mom who attended little league games, bridge club member 40 years, winner of dance contests, avid reader and splendid cook


