

Medicaid and Title IV-E

**Overview:
Title XIX for
Title IV-E Adoption Assistance**

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AAICAMA Learning Series: Teleconference February 23, 2010

The Association of Administrators of the
Interstate Compact on Adoption and Medical Assistance (AAICAMA)

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Questions

- *What is Medicaid?*
- *How are title IV-E eligible children eligible to receive Medicaid?*
- *Federal law and the right to receive Medicaid—can state policy affect the receipt of Medicaid?*

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Medicaid Facts

- Medicaid was established in 1965
- Medicaid is a partnership between the Federal government and the states- jointly funded (FMAP), operated by the states, and overseen by the Centers for Medicare & Medicaid Services (CMS)
- Medicaid is a major source of funding for medical and health-related services for limited income families and individuals

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Medicaid Eligibility

- Medicaid eligibility is by "category". Title IV-E eligible children are referred to as "categorically eligible" to receive Medicaid as "mandatory categorically needy"

Citations: The Federal law on this subject can be found in the United States Code (U.S.C.), the Social Security Act (SSA), and the Code of Federal Regulations (C.F.R.) at the following citations:

- 42 U.S.C. 673 (b)(1) [found also at Section 473 (b)(1) of the Social Security Act]
- 42 U.S.C. 1396a (10)(A)(i)(I) [found also at Section 1902a (10)(A)(i)(I) of the Social Security Act]
- 42 C.F.R. 435.145

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Medicaid Eligibility

Federal law:

- "For purposes of subchapter title XIX of this chapter, any child who is described...*(as a Federal adoption assistance recipient)* is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of Aid to Families with Dependent Children... in the state where such child resides."

Cite: 42 U.S.C. 673 (b)(1) for adoption assistance and 42 U.S.C. 672 (h)(1) for foster care

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Categorical Eligibility

The effect of the Federal law:

- The AFDC look-back provision to title IV-E means title IV-E eligible children are treated like AFDC eligible children were for the purposes of Medicaid eligibility—automatic (categorical) eligibility.

Note: This remains true after P.L. 110-351, *Fostering Connections to Success and Increasing Adoptions Act of 2008*.

- States must provide Medicaid to title IV-E eligible children for whom foster care maintenance payments are made, a valid adoption assistance agreement exists, or a subsidized guardianship under an active title IV-E waiver or subsidized relative guardianship exists for which assistance payments are made.

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Medicaid Eligibility & the Constitution

- The Constitution of the United States is supreme over all other law *
- This principle is known as "Federal Supremacy" and its origin is found in the Supremacy Clause of the U.S. Constitution

Cite: The U.S. Const. art. VI, cl. 2.

** Congress can legislate otherwise*

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Eligibility & Federal Supremacy

The effect of the Federal law:

- Federal law trumps state law, policy, and practice. The receipt of Medicaid by otherwise eligible children cannot be delayed or denied due to state law, policy, or practice.

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Questions

- *Which state is responsible for the provision of Medicaid for title IV-E eligible children in interstate cases?*
- *Which state is responsible for Medicaid when the child is in a Residential Treatment Facility (RTF/RTC)?*

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Medicaid & Residency

- *State of residence.* Medicaid is received through a child's state of residence.

Cite: 42 C.F.R. 435.403 (g)

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Residency

The effect of the Federal law:

- For children receiving title IV-E, the state of residence is defined as the state where the child "lives". The physical presence of a title IV-E eligible child in a state usually * triggers state responsibility for the provision of Medicaid to the child.

* *Temporary absences from the state*

Cite: 42 U.S.C. 1392a (16)

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Residency

- Further clarifications: The state of residence is required to provide Medicaid to children receiving IV-E adoption assistance, *even if it is not the state making the title IV-E payment.*

Cite: 42 U.S.C. 673 (b)(1) or Section 473 (b)(1) of the Social Security Act

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Residency

The effect of the Federal law:

- Residence is the controlling factor in determining responsibility for the provision of Medicaid.
- Title IV-E foster care and guardian assistance: State of residence provides Medicaid, however, maintenance payments must be made in order for the child to be eligible to receive Medicaid.
- Title IV-E adoption assistance: State of residence provides Medicaid, however, maintenance payments do not have to be made for a child to be eligible to receive Medicaid.

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Residency & RTFs

- The CMS defines "living" to include a stay in a Residential Treatment Facility (RTF/RTC).
- The state in which the RTF is located is responsible for the provision of Medicaid to title IV-E eligible children for the length of their treatment.

Note: The same applies for schools and in-patient care.

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Questions

- *Is there any limit to what states must provide under Medicaid?*
- *What Medicaid services must states provide?*
- *What Medicaid services can states elect to provide?*
- *How can a placement professional secure a Medicaid service for a title IV-E eligible child if the service is not covered in the resident state's State Medicaid Plan?*

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Medicaid Services

- There are two broad categories of Medicaid services:
 - Mandatory services
 - Optional services

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Mandatory Services

- Physician services
- In-patient and out patient hospital
- Medical and surgical dental
- EPSDT
- Laboratory and x-ray
- Family planning services and supplies
- Rural health clinic services

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Optional Services

- Optometrists' Services
- Psychologists' Services
- Private Duty Nursing
- Clinic Services
- Dental Services
- Occupational Therapy
- Speech, Hearing and Language Therapy
- Prescribed Drugs
- Eyeglasses
- Diagnostic Services
- Screening Services
- Preventive Services
- Rehabilitative Services
- Emergency Hospital Services
- Nursing Facilities Services for Under Age 21

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Medicaid Coverage

- There are limits to state responsibility for the provision of Medicaid.

*Cite: 42 U.S.C. 1396a (Social Security Act, Section 1902) and
42 U.S.C. 1396d (Social Security Act, Section 1905)*

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Medicaid Coverage

The effect of the Federal law:

- States must provide Medicaid to eligible children through age 18 and states must provide federally defined "mandatory" Medicaid services.
- States can choose to provide Medicaid up to the age of 21 for children under their programs and decide which optional services they wish to provide.

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EPSDT

- EPSDT: Early and Periodic Screening, Diagnostic and Treatment Services
- Provides: Preventive, comprehensive health services for Medicaid-eligible under age 21
- Created: In recognition of the fact that children have unique medical needs and cannot be treated as "little adults"

Cite: 42 U.S.C. 1396d (Section 1905(r) of the SSA)

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EPSDT

The effect of the Federal law:

- States must provide medically necessary treatment detected through a health screen "whether or not such services are covered under the state plan".

Cite: 42 U.S.C. 1396d

Note: This obligation is limited to mandatory and optional services potentially covered by Medicaid. States must also make necessary exceptions to across-the-board limits in amount, duration, and scope of covered services.

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Securing Medicaid Services

- EPSDT provides a mechanism for children to receive MEDICALLY NECESSARY services allowed under Medicaid, even if not included in a state's Medicaid plan.
- EPSDT may provide an avenue for securing services when the State Plan of the "resident state" does not provide a necessary service and/or provides different coverage than is available through the adoption assistance state.

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Questions

- Are title IV-E eligible children guaranteed Medicaid receipt in interstate cases?*
- What is the process for title IV-E eligible children to receive Medicaid in an interstate case?*

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Receiving Medicaid Services

The effect of the Federal law:

- Federal law directs states to protect the interests of special needs adopted children in interstate cases.
- This protection has come to be the ICAMA. The mechanisms of ICAMA ensure the interstate receipt of Medicaid in the new state of residence for title IV-E adoption assistance eligible children.

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Receiving Medicaid Services

The adoption assistance agreement:

- Is a contract between the adoption assistance state and the adoptive family
- Obligates the adoption assistance state to the payments, services, and assistance terms of the agreement

Cite: 42 U.S.C. 675 (3) (Section 475 of the SSA)

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Receiving Medicaid Services

The effect of the Federal law:

- The language used in the adoption assistance agreement is important in determining state Medicaid responsibility if the State Medicaid Plan in a new state of residence does not include a needed service and/or the same Medicaid services as are available through the adoption assistance state.

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