



Medicaid for Title IV-E and Non-Title IV-E AA

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Making Medicaid Happen:  
Title XIX for  
*Title IV-E*  
Adoption Assistance



## Medicaid Presentation Points

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- Medical assistance and placement success - data and statistics
- Medicaid - facts, eligibility, supremacy of Federal law, residency
- Medicaid services - types, limitations, EPSDT
- Receiving Medicaid services - differences between title IV-E populations; ICAMA
- Questions and Answers
- Open discussion - State practice



Question...

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*How important is the receipt of Medicaid  
to the title IV-E population?*



## Data and Statistics

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*Quote: 'Most of the children who enter foster care have been exposed to conditions that undermine their chances for healthy development. Research indicates that children and youth in foster care are in worse health than those who are homeless or those living in the poorest sections of our inner cities. They have a higher likelihood of chronic medical problems, lifelong psychiatric and behavioral issues, as well as permanent physical, cognitive and developmental disabilities than children in the general population.'*

*A Case for Action for Children and Youth with Disabilities in Foster Care, A Project of United Cerebral Palsy and Children's Rights, 2006 (Multiple citations)*



## Data and Statistics

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*Quote: 'Whether they experience maltreatment that results in disabilities, or are victims of maltreatment because of their disabilities, children who enter foster care with special needs, on average, already have experienced more than 14 different environmental, social, biological and psychological risk factors before coming into care.'*

*A Case for Action for Children and Youth with Disabilities in Foster Care, A Project of United Cerebral Palsy and Children's Rights, 2006 (Multiple citations)*



## Data and Statistics

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Quote: *“While there have not been systematic national studies of the prevalence of disability among children in foster care, individual studies in various states and localities have highlighted a range of potential challenges. These studies have found the following:*

- *40% born low birth weight or premature*
- *80% prenatally exposed to substances*
- *30-80% with at least one chronic medical condition [e.g. asthma, HIV, TB]*
- *30-50% with dental decay*
- *25% with three or more chronic health problems*
- *30-60% with developmental delays*
- *50-80% with mental and behavioral health problems*
- *20% fully handicapped*
- *30-40% receiving special education services.’*

*A Case for Action for Children and Youth with Disabilities in Foster Care, A Project of United Cerebral Palsy and Children’s Rights, 2006 (Multiple citations)*



## Questions

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- 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?



## Medicaid Facts

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- 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.



## Medicaid Eligibility

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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*



## Medicaid Eligibility

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### 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*



## Medicaid and Title IV-E Payments

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### More on the Federal law:

(b)(1) For purposes of title XIX, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 406 (as in effect as of July 16, 1996) and deemed to be a recipient of Aid to Families with Dependent Children under part A of this title (as so in effect) in the State where such child resides.

(2) For purposes of title XX, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this title and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2), and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued),

(B) with respect to whom foster care maintenance payments are being made under section 472, or

(C) with respect to whom kinship guardianship assistance payments are being made pursuant to subsection (d).

*Cite: 42 U.S.C. 673 (3)(A)(B)and (C)*



## Mandatory Eligibility

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### *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 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 title IV-E assistance payments are made.



## Frequently Asked Questions

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- Is a child Medicaid-eligible if the AA agreement includes a zero maintenance payment?
- Do AA payments have to be made in order to receive Medicaid?
- Does a child become ineligible for title IV-E AA or Medicaid if placed in a PRTF or residential school?



## Medicaid Eligibility & the Constitution

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- 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*



## Eligibility and Federal Supremacy

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*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.



## Questions

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- 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 Psychiatric Residential Treatment Facility (PRTF?)



## Medicaid & Residency

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State of residence.

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

*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'<sup>1</sup>. The physical presence of a title IV-E eligible child in a state usually<sup>2</sup> triggers state responsibility for the provision of Medicaid to the child.

<sup>1</sup> *Cite: 42 C.F.R. 435.403(g)*

<sup>2</sup> *Temporary absences from the state*  
*Cite: 42 U.S.C. 1392a (16)*



## Residency

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*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)*



## Residency

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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*



## Residency

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*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 under the IV-E provision for automatic Medicaid eligibility. Other Medicaid residency policies apply for non-IV-E children, based on the child's circumstances, who may be Medicaid eligible under other categories.
- **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 under the IV-E provision for automatic Medicaid eligibility.



## Residency and PRTFs

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- The CMS defines 'living' to include a stay in a Psychiatric Residential Treatment Facility (or school, psychiatric hospital, or psychiatric unit of general hospital).
- The state in which the PRTF is located is responsible for the provision of Medicaid to title IV-E eligible children for the length of their in-patient treatment.



## Questions

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- 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 Medicaid State Plan?



## Medicaid Services

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There are two broad categories of Medicaid services:

- Mandatory services
- Optional services



## Mandatory Services

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



## Optional Services

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- Optometrists' services
- Psychologists' services
- Private duty nursing
- Clinic services
- Dental services and dentures
- Occupational therapy
- Speech, hearing and language therapy
- Physical therapy
- Other medical/remedial care by licensed practitioners
- Prescribed drugs
- Eyeglasses
- Diagnostic services
- Screening services
- Preventive services
- Rehabilitative services
- Prosthetic devices
- Hospice care
- Nurse practitioner services
- Nursing facilities services for under age 21
- Personal care
- Targeted case management



## Medicaid Coverage

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There are some 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)*



## Medicaid Coverage

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- *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 optionally provide Medicaid up to the age of 21 to correspond to the age to which the state's eligibility program(s) is provided\* and decide which optional services to provide.

\*Note: States must provide Medicaid to eligible title IV-E recipients under the age of 21.



## EPSDT

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- EPSDT: **E**arly and **P**eriodic **S**creening, **D**iagnostic and **T**reatment 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)*



## EPSDT

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*The effect of the Federal law:*

States must provide medically necessary treatment, 'whether or not such services are covered under the state plan'.

*Cite: 42 U.S.C. 1396d*

Note: This obligation applies 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.



## EPSDT

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- **Early** - Assessing a child's health early in life so potential diseases and disabilities can be prevented or detected in the early stages when they can be most effectively treated.
- **Periodic** - Assessing a child's health at key points in her/his life to assure continued healthy development.
- **Screening** - Using tests and procedures to determine if children being examined have conditions requiring closer medical (including mental health) or dental attention.
- **Diagnostic** - Determining the nature and cause of conditions identified by screenings and those that require further attention.
- **Treatment** - Providing services needed to control, correct, or reduce physical and mental health problems.



## Securing Medicaid Services

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- 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 requires states to determine medical necessity on a case-by-case basis and to provide covered services regardless of limitations included in the 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.



## Questions

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- 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?



## Receiving Medicaid Services

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- Title IV-E Adoption Assistance
- The ICAMA: The Interstate Compact on Adoption and Medical Assistance
- ICAMA Form 6.01

*Cite: 42 U.S.C. 675 (3)(B)*



## Receiving Medicaid Services

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### *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.



## Receiving Medicaid Services

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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, including Medicaid.

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



## Receiving Medicaid Services

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*The effect of the Federal law:*

The language used in the adoption assistance agreement is important in determining state Medicaid responsibility if the Medicaid State 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.