Practice Question

Non-Temporary Absence

AAICAMA receives many questions from states and families about circumstances that affect a child’s assistance agreement and/or eligibility for and receipt of Medicaid. The goal of this publication is provide ICAMA Professionals with a library of responses to these questions and cites to the law or policy on which the responses rely.

NON-TEMPORARY ABSENCE

Is it considered a temporary stay for Medicaid purposes when a title IV-E recipient is placed interstate in an in-patient psychiatric facility, residential treatment facility or boarding school etc.? 

No, attendance at an out-of-state school or placement in an out-of-state inpatient psychiatric or medical facility of a title IV-E adoption assistance recipient is NOT considered a temporary stay for the purposes of Medicaid. These types of more lengthy stays are considered a permanent change of residency (i.e., a ‘move’) for the time period that the title IV-E recipient is attending school or receiving treatment in an inpatient facility. This is true for all categories of title IV-E: foster care and guardianship and adoption assistance.

The responsibility for Medicaid rests with the resident state. Except for stays considered temporary, children receiving title IV-E are considered residents of the state where they are physically present. 

Examples:

—Title IV-E recipients are physically present (sleeping, eating, i.e. ‘living’) while they are attending school in the state and physically present in a state while they are receiving care in an inpatient psychiatric or residential treatment facility located in the state.

—Title IV-E recipients who divide their time between multiple homes (e.g. in one state for extended periods of the year and in another state for the rest of the year) are considered a resident of the state in which the home is located while they are living there.

In all cases, it is a matter of judgment as to whether a stay is considered temporary. If a child will be out-of-state for an anticipated and/or extended period of time, there is a good argument for considering this a ‘move’ (i.e., a change in residency). Deeming a lengthy stay ‘permanent’ is expedient and efficient for both states involved and the title IV-E eligible child.

For cases of disputed residency, the state where the child is physically located is the state of residence and obligated to provide Medicaid.

Note: For state-funded adoption assistance recipients, residency is defined differently under Medicaid. It is defined as a physical presence in and intent to stay in the state and/or follows that of the adoptive parent. As a result, all out of state stays are considered temporary for state-funded adoption assistance recipients when the child’s residency differs from that of the adoptive parent. 

1Example: spending school vacations with relative, etc. Cites: 42 U.S.C. 1396a (a (16)) and 42 CFR 435.403. For both federal, title IV-E and state-funded adoption assistance recipients, if a stay is considered temporary, the responsibility for providing Medicaid remains with the state in which the child normally lives/the state in which the child’s parents reside.

2Cites: 42 CFR 435.403 (g): for individuals receiving federal adoption assistance under title IV-E, the state of residence is the state where the child lives. For a clarification of the definition of the word, ‘lives’, please see: CMS Letter of Clarification, AAICAMA, July 30, 2001. (See attached document.)

3Cite: 42 CFR 435(h)(3) For other than title IV-E recipients, ‘residency’ is defined by the rules governing residence under the AFDC program found at 45 CFR 233.40.
Practice Question
Non-Temporary Absence

What to remember about temporary absences:

If an adoption assistance (state-funded or title IV-E), title IV-E foster care, or GAP recipient needs Medicaid during a temporary absence from their state of residence, the resident state remains responsible for providing the Medicaid, NOT the state in which the child is temporarily physically present.

Remember: Temporary absence = resident (home) state responsibility for Medicaid

Examples of temporary absences:

- Summer vacation spent with a relative
- Visits to a family’s second/vacation home
- A two week SAT course
- Scheduled medical treatment (e.g., chemotherapy) lasting a set period (a week, a month) over a six month period
- Weekends with a noncustodial parent
- Winter break spent with family friends
Ms. Liz Oppenheim  
Program Director  
American Public Human Services Association  
810 First Street, N.E., Suite 500  
Washington, D.C. 20002-4267

Dear Ms. Oppenheim:

I am responding to a request from members of the Association of Administrators of the Interstate Compact on Adoption and Medical Assistance, Inc. (AAICAMA) for clarification on questions related to the Medicaid program that have been raised by state adoption program specialists. The questions focus on a state's responsibility for providing Medicaid to children receiving title IV-E adoption assistance in interstate situations and redeterminations of eligibility for Medicaid for children receiving adoption assistance through both state-funded programs and the title IV-E program. I regret the delay in this response.

Our responses to the case examples submitted to us by AAICAMA are as follows:

1. State's Responsibility for Providing Medicaid

Case Example: A child is receiving title IV-E adoption assistance from state A. The adoptive family lives in state A. The child is placed and admitted to any of the following out-of-state institutions: (1) an in-patient psychiatric facility, or (2) a boarding school, or (3) a residential treatment facility in state B by adoptive parents.

Question #1: Is the child eligible to receive a Medicaid card from state B in the case example above?

Response: Yes. The child is eligible to receive Medicaid from state B. For the purpose of Medicaid eligibility, the state of residence is where the Medicaid-eligible individual who is under a title IV-E adoption assistance agreement or who receives title IV-E foster care maintenance payments physically lives. For individuals of any age who are receiving Federal payments under Title IV-E of the Social Security Act, the state of residence for purposes of Medicaid is where the child lives. Section 9529 of the Consolidated Omnibus Budget Reconciliation Act and the legislative history clearly specifies that "children who are receiving adoption assistance or foster care payments...are considered to be residents of the state in which they are placed even if this is not the state making the title IV-E payment." Prior to the enactment of this law, the state making the payment was also the state which provided Medicaid coverage, and children were being denied access to coverage because providers were often unwilling to accept out-of-state Medicaid cards.

The Health Care Financing Administration (HCFA) was renamed to the Centers for Medicare & Medicaid Services (CMS). We are exercising fiscal restraint by exhausting our stock of stationery.
Question #2: Which state would be responsible for providing Medicaid if state A in our case example in Question #1 arranged the placement, but the child was not in the custody of state A?

Response: In the case example, state B would be responsible for providing Medicaid. For purposes of Medicaid eligibility, the state of residence is the state where the Medicaid-eligible individual who is under a title IV-E adoption assistance agreement or receives title IV-E foster care maintenance payments resides. There are specific conditions in the regulations governing state residence for purposes of Medicaid that supersede the general residency rules. When more than one rule exists then the state may decide which exception takes priority. (See State Medicaid Manual, Transmittal No 22, April 1988, Section 3230.) We note, however, that the state residence rule governing individuals receiving title IV-E payments (42 CFR 403.403(g) overrides the other provisions of 42 CFR 435.403, because it is compelled by statute (see question #1).

II. Redeterminations REPLACED BY NEW POLICY

Question #3: What is the requirement regarding redetermination of Medicaid eligibility for children who are categorically eligible to receive Medicaid because they are receiving title IV-E adoption assistance, and (2) children who are receiving state-funded adoption assistance, and are being provided Medicaid under the option to provide Medicaid provided in section 4902(a)(10)(A)(ii)(VII)?

Response: As with other Medicaid-eligible children, redeterminations must be performed for these children at least annually, or when there is a reported change in circumstances that may affect eligibility. The Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration) issued a State Medicaid Director's Letter on April 7, 2000, that sets forth guidance on the conduct of redeterminations. However, if the state has elected to provide continuous eligibility for children (section 1912(e)(12) of the Social Security Act), coverage must be provided without regard to changes in circumstances that may affect eligibility for the guaranteed period of coverage chosen by the state, unless the child ages out of eligibility for continuous coverage.

III. Other Issues

Question #4: Can interstate agreements be used to facilitate a policy of reciprocity with respect to children covered under state adoption assistance agreements?

Response: Yes, interstate agreements can be used to provide coverage for children under the optional eligibility group at section 1902(a)(10)(A)(ii)(VII) of the Social Security Act if the agreement is made for the general purpose of facilitating program administration.
I hope this clarification is helpful to you. If you have any questions, please contact Monica Harris of my staff at (410) 786-3335.

Sincerely,

[Signature]
Richard Chambers
Acting Director
Family and Children’s Health Programs Group
Center for Medicaid and State Operations

cc:
Elaine Ryan
Executive Director, APHSA