

Health Care Reform Laws And Their Impact On Individuals With Disabilities (Part 2)

ONE STRONG VOICE:
Disabilities Leadership Coalition
Of Alabama

Montgomery, Alabama
December 8, 2010

Allan I. Bergman

**PATIENT PROTECTION AND
AFFORDABLE CARE ACT P.L. 111-148
March 23, 2010**

**HEALTH CARE and
EDUCATION AFFORDABILITY
RECONCILIATION ACT
P.L. 111-152
March 30, 2010**

SELECTED HEALTH CARE REFORM ISSUES

- Medicare changes
- Medicaid acute care changes
- Medicare and Medicaid emphasis on expensive populations
- Medicare and Medicaid prevention and wellness initiatives
- Medicaid long term services and supports changes
- CLASS Act

Medicare Coverage

- 8 million individuals under age 65 with disabilities; 17% of Medicare population
- 35% < 100% FPL
- 21% between 100 – 149% FPL
- 11% between 150-199%
- 33% 200% or > FPL

MEDICARE PART B CHANGES TO INCENTIVIZE PREVENTION AND WELLNESS

- Annual wellness visits and personalized prevention plans for beneficiaries
- Eliminates cost sharing for prevention services and exempts prevention services from any deductibles
- Providers will be paid 100% of actual charges or fee schedule rates
- Effective January 1, 2011

PREVENTION/WELLNESS IN MEDICARE

- Provides beneficiaries access to a comprehensive health risk assessment and creation of a personal prevention plan and provides incentives to Medicare and Medicaid beneficiaries to complete behavior modification programs; effective January 1, 2011.

ADDITIONAL MEDICARE REFORMS

- Effective January 1, 2011 provides a 10% bonus payment to primary care physicians and to general surgeons practicing in health professional shortage areas
- Reduces annual market basket rate updates for providers, January 1, 2011; for hospital services, January 1, 2014
- Reduces federal subsidies to Medicare Advantage plans, January 1, 2011

MEDICARE INDEPENDENCE AT HOME PROJECT

- For beneficiaries with 2 or more chronic conditions including congestive heart failure, diabetes, peripheral arterial disease, stroke, Alzheimer's disease and other dementias, pressure ulcers, hypertension, neurodegenerative diseases (such as ALS, MS and Parkinson's Disease or other conditions specified by the Secretary of HHS

MEDICARE INDEPENDENCE AT HOME PROJECT, cont.

- Unable to perform 2 or more activities of daily living, such as bathing, dressing, grooming, transferring, feeding or toileting
- Have utilized Part A Medicare benefits within the past year for hospital, emergency room, skilled nursing or rehabilitation services
- Care coordination for very high cost folks

MEDICARE PART D, PRESCRIPTIONS

- Between now and 2020 eventually eliminates the “doughnut” hole, which is a total drugs cost of \$2,830 in 2010
- \$250 rebate if one reaches the doughnut hole in 2010
- Creates a 50% discount on brand name drugs in doughnut hole, January 1, 2011
- Increases low income premium subsidies
- Mandates coverage of barbiturates, benzodiazepines and tobacco cessation

MEDICARE-MEDICAID DUAL ELIGIBLES

- Effective October 1, 2010 creates a new office within the Centers for Medicare and Medicaid Services (CMS) called the Federal Coordinated Health Care Office to improve care coordination for individuals who are dually eligible for Medicare and Medicaid
- 8.8 million dually eligible in 2009 with total federal & state spending of \$250 billion

DISPROPORTIONATE SHARE HOSPITALS (DSH)

- Reduces Medicaid DSH payments by \$14 billion between 2014 and 2019
- Reduces Medicare DSH payment by \$22 billion between 2014 and 2019

MEDICAID FACTS for 2009

- 67 million beneficiaries
- \$364 billion, estimated federal costs
- 41% of births in the United States
- 28% of children in the United States
- 24% of beneficiaries account for 70% of total Medicaid spending
- 4% of beneficiaries account for 50% \$\$
- 8.8 million people who are dually eligible
- 46% of total Medicaid \$\$ spent on duals, who are 13% of the beneficiaries

MEDICAID EXPANSION on Jan. 1, 2014

- States are mandated to provide Medicaid coverage to all individuals under 65 up to 133% of Federal Poverty
- CHIP reauthorized until 2015
- CBO estimates by 2019, 16 million more individuals will have health insurance through Medicaid and the Children's Health Insurance Program (CHIP)

MEDICAID EXPANSION on Jan. 1, 2014

- Can be a reduced benefits package
- Federal Medical Assistance Percentage (FMAP) is 100% for newly eligible beneficiaries through 2016
- FMAP is 95% in 2017; 94% in 2018; 93% in 2019; and 90% thereafter

NEW MEDICAID STATE PLAN OPTION

- Effective January 1, 2011, states may choose to permit beneficiaries with at least two chronic conditions, one condition and risk of developing another or at least one serious and persistent mental health condition to designate a provider as a health home
- Federal match for two years of 90%

MEDICAID PAYMENT INCREASE

- During 2013 and 2014 States are required to increase payment rates to primary care physicians to Medicare levels
- FMAP for these services will be 100%
- Intended to improve access to primary care services for all Medicaid beneficiaries

MEDICAID AND PREVENTION

- The federal government will provide a 1% increase in the Federal Medical Assistance Percentage (FMAP) rate to those states that choose to provide preventative services and immunizations that are recommended by the U.S. Preventive Services Task Force
- Effective January 1, 2011

MEDICAID PREVENTION GRANTS

- 5 year grants to states, beginning 2011, for incentives to beneficiaries for:
 - Tobacco cessation, weight reduction and control, cholesterol, blood pressure reduction, diabetes onset reduction or improved management of diabetes
 - States can provide sub-grants to Medicaid providers, community-based or faith-based organizations

Long Term Services And Supports

MEDICAID And The new CLASS Act

COMMUNITY FIRST CHOICE MEDICAID STATE PLAN OPTION

- Section 1915 (k)
- An attempt to reduce the “institutional bias” in Medicaid long term services
- Has been attempted since ADAPT’s (American Disabled for Attendant Programs Today) early attempts at MiCASA in the early 1990’s

COMMUNITY FIRST CHOICE, cont.

- Provides comprehensive home and community based services (HCBS) for individuals with disabilities who are eligible for a Medicaid “institutional level of care”
- States who choose this must make community-based attendant services and supports available to all eligible individuals and is an entitlement to HCBS

COMMUNITY FIRST CHOICE

- Services and supports to assist individuals with disabilities with activities of daily living, instrumental activities of daily living, and health related tasks through hands-on-assistance, supervision, or cueing
- States who choose this new Medicaid state plan option will receive an additional 6% federal match rate for this program

COMMUNITY FIRST CHOICE, cont.

- Eligibility based on functional need
- Allows states to have eligibility up to 300% of SSI
- Services to be provided at home or in a community setting
- Excludes room & board, assistive technology devices and services (except emergency back up systems), medical supplies and equipment, & home modifications

COMMUNITY FIRST CHOICE, cont.

- Covers help to acquire, maintain and enhance skills needed for individual to acquire ADL's, IADL's and health related tasks
- Covers back up systems or mechanisms, such as beepers or other electronic devices
- Covers voluntary training on how to select, manage and dismiss attendants

COMMUNITY FIRST CHOICE, cont.

- Other permissible services include:
- Institutional transition costs (rent and utility deposits, bedding, kitchen supplies)
- Needs identified in the PCP that would increase independence or substitute for paid human assistance
- States must provide consumer controlled services, statewide, and in the most integrated setting appropriate

COMMUNITY FIRST CHOICE, cont.

- States must have a development and implementation council; majority of PWD, elderly individuals and their reps.
- States must establish a comprehensive Q.A. system incorporating feedback from consumers, families, and providers
- During first year, states must maintain same level of expenditures as previous years
- Effective October 1, 2011.....Plan now...

CHANGES TO MEDICAID HCBS STATE PLAN OPTION UNDER SECTION 1915 (i)

- This is not the traditional state HCBS waiver, which is 1915 (c)
- This state plan option was authorized in the Deficit Reduction Act of 2005 but only Iowa had chosen to implement it because of too many barriers that now have been removed

CHANGES TO MEDICAID HCBS STATE OPTION UNDER SEC. 1915 (i), cont.

- Income eligibility criteria now are the same as other HCBS programs, allowing individuals to qualify with incomes up to 300% of the SSI level, which today is \$2,022 per month
- States now may waive “comparability” requirements allowing states to target certain populations
- States may get approval for up to 5 years

SERVICES AUTHORIZED UNDER 1915 (i)

- Case Management
- Homemaker
- Home Health Aide
- Personal Care
- Adult Day Health
- Habilitation, including supported employment
- Respite Care
- Day Treatment or Other Partial Hospitalization
- Psychosocial Rehabilitation Services
- Clinic Services
- Other.....

CHANGES TO MEDICAID HCBS STATE OPTION UNDER SEC. 1915(i), cont.

- Expands the list of services that can be funded to the identical list in HCBS waiver
- Did not and does not require institutional level of care and cost neutrality as is the case in the HCBS Waiver
- Requires person centered plan and self directed services and budgets
- A major opportunity for HCBS for individuals with psychiatric disabilities, TBI, mild intellectual disabilities, etc.

STATE MEDICAID LONG TERM SERVICES BALANCING INITIATIVES

- To provide incentives for states that continue to spend a major portion of Medicaid long term services dollars in institutional settings to expand the dollars that are spent in home and community based services and supports
- Targeted to states that have 50% or less of their dollars in HCBS

STATE MEDICAID LONG TERM SERVICES REBALANCING INITIATIVE

- States that choose to do this must within 6 months adopt:
 - Adopt a single point of entry
 - Case management services
 - A standardized assessment instrument for determining eligibility
 - A system for monitoring capacity, and
 - A data collection infrastructure

STATE MEDICAID LONG TERM SERVICES REBALANCING INITIATIVE

- Federal match to each state that is eligible and chooses to participate will be increased
- States with only 25% or less of its budget in HCBS will receive a 5% FMAP increase
- States with between 26% and 50% of its budget in HCBS will receive a 2% FMAP increase

STATE MEDICAID LONG TERM SERVICES & REBALANCING INITIATIVE

- 24 states in FY'09 expended less than 25% of their Medicaid LTS&S expenditures on community-based services;
- Conversely, those 24 states spent more than 75% of their Medicaid LTS&S expenditures on nursing homes

The 24 QUALIFYING STATES

- Alabama
- Arizona
- Connecticut
- Delaware
- Florida
- Hawaii
- Illinois
- Indiana
- Kentucky
- Maine
- Maryland
- Michigan
- Mississippi
- Nebraska
- New Hampshire
- New Jersey
- North Dakota
- Ohio
- Pennsylvania
- Rhode Island
- South Dakota
- Tennessee
- Utah
- Wyoming

MEDICAID SPOUSAL IMPOVERISHMENT PROTECTIONS FOR HCBS RECIPIENTS

- Medicaid permits spouses of nursing home residents to keep 50% of the couple's assets, up to a ceiling ranging from \$22,000 to \$110,000 as determined by the state
- The monthly maximum income allowance for the spouse is about \$2,700

MEDICAID SPOUSAL IMPOVERISHMENT PROTECTION FOR HCBS RECIPIENTS

- The new law provides for the same level of spousal impoverishment protections for spouses of individuals receiving HCBS services
- It is intended to help avoid spousal bankruptcy, splitting families apart, providing incentives for divorce, lawsuits and other family conflicts

ADDITIONAL MEDICAID LTS BENEFITS

- Money Follows the Person Rebalancing Demonstration Grants will continue through 2016 with \$10 million per year (for people institutionalized over 90 days)
- Funding will increase for Aging and Disability Resource Centers jointly funded by the Administration on Aging and the Centers for Medicare and Medicaid Services; \$10 million/year, 2010-2014

States Eligible for MFP FY'10 Planning and FY'11 Demonstration Grants

- Alabama
- Alaska
- Arizona
- Colorado
- Florida
- Idaho
- Maine
- Massachusetts
- Minnesota
- Mississippi
- Montana
- Nevada
- New Mexico
- Rhode Island
- South Dakota
- Tennessee
- Utah
- Vermont
- West Virginia
- Wyoming

MEDICAID FUNDS FOR TRAINING OF HCBS DIRECT SUPPORT WORKERS

- Authorizes funding of \$10 million over three years for new training of direct support workers providing long term services and supports
- Creates a demonstration project of \$5 million to develop training and certification programs for personal or home care aids

COMMUNITY LIVING ASSISTANCE AND SUPPORTS (CLASS) Act

- First developed in 2005 by Senator Edward Kennedy
- To take the burden off of Medicaid growth
- To prevent families from impoverishment in order to access Medicaid
- To recognize that access to commercial long term care insurance was very limited with current market share at 2-3%

CLASS Act, cont.

- The CLASS Act creates a new national long term care insurance program to assist adults who have or who develop functional impairments to remain independent, employed, and engaged in their community.
- Enrollment is open to working adults and is financed by voluntary payroll deductions
- Automatic enrollment with “opt-out” for workers age 18 and over

CLASS Act, cont.

- The program prohibits medical underwriting and pre-existing condition exclusions, which are common barriers to access, in addition to cost, to commercial long term care insurance.
- Requires a 5 year vesting period in order to obtain benefits
- Determination of eligibility and size of benefit based on level of functional need based on ADL's or IADL's

CLASS Act, cont.

- Eligibility performed by state disability determination centers
- Unable to perform two or more ADL's; e.g., eating, bathing, dressing, etc., or
- Individuals who have an equivalent cognitive disability that requires supervision or hands-on assistance to perform those activities

CLASS Act, cont.

- Use of the benefits is not means tested and has no asset restrictions like the Medicaid program
- Beneficiaries will receive a cash benefit averaging about \$75 per day (based upon level of impairment) with no lifetime limit and these dollars are not counted as income for either SSI or SSDI

CLASS Act, cont.

- The CLASS Act has its foundation the goal to empower beneficiaries by providing a flexible cash benefit that can be used to meet an individual's unique needs for services and supports
- Monthly premiums will increase with age and there will be a push to enroll young working adults with and without disabilities

CLASS Act, cont.

- Secretary of HHS has responsibility
 - CLASS Independence Advisory Council, including people with disabilities
 - Personal Care Attendants Workforce Advisory Council
- Separate CLASS Independence Trust Fund
- Effective date: January 1, 2011

CLASS Act, cont.

- Design and Regulations by HHS:
 - Enrollment process for workers
 - Process for paying premiums
 - Eligibility for cash benefits
 - Benefit payment procedures
 - Public education and enrollment
- Internal Revenue Code:
 - Deductions for premiums paid
 - Low income credits
 - Employer administrative cost credit

CLASS Act, cont.

- States are required to:
 - Assess ability of PC services providers to serve as fiscal agents, employers, and providers of employment-related benefits to PC workers for CLASS
 - Designate or create such entities
 - Ensure that such entities will not negatively impact or impede consumer control

TRANSITION FROM SCHOOL TO ADULT
LIFE IN THE COMMUNITY USING
MEDICAID WAIVER FUNDING AND
RECEIVING FEDERAL MATCHING
FUNDS TO CREATE A SEAMLESS
SYSTEM OF SUPPORTS AND TO
PREVENT REGRESSION AND LOSS OF
MAJOR FISCAL INVESTMENT

CURRENT MEDICAID WAIVERS

- Section 1915 (b) Freedom of Choice Waiver
- Section 1915 (c) Home and Community Based Services (HCBS) Waiver
- Section 1115 Research and Demonstration Waiver

1915 (c) HCBS WAIVER 10/1/09

- Case management services
- Homemaker services
- Home health aide services
- Personal care services
- Adult day health services
- Habilitation services
- Respite care services
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services
- Other services requested and approved

EXPANDED HABILITATION SERVICES

- Effective October 1, 1997
- Prevocational services: teaching tasks such as compliance, attendance, task completion, problem solving and safety
- Not tied to employment outcomes within one year

EXPANDED HABILITATION SERVICES

- Supported employment services, which facilitate paid employment, that are:
- (A) Provided to persons for whom competitive employment at or above minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

SUPPORTED EMPLOYMENT, cont.

- (B) Conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and,
- (C) Defined as any combination of special supervisory services, training, transportation, and adaptive equipment that the State demonstrates are essential for persons to engage in paid employment and that are not normally required for nondisabled persons engaged in competitive employment

SUPPORTS WAIVERS, 1/2001 CMS LETTER

- Waivers cannot have two distinct types of service recipients
- No more waivers within waivers in response to the Olmstead decision
- Support waivers can and do impose an overall dollar limitation on the amount of services that may be authorized for waiver participants; and can be below average institutional costs
- Can exclude costly residential services

SUPPORTS WAIVER CHARACTERISTICS

- Target population; require level of care of an “institution”
- Dollar limit; on total amount of HCBS that may be authorized
- Services: in general, personal assistance, daytime and employment services and other ancillary services (therapeutic)
- Service planning/authorization
- Quality assurance

SELF DIRECTION

- Refers to service practices that grant individuals significant authority over managing their benefits:
 - An individually based budget
 - A person centered plan driven by individual needs and preferences
 - Selection of and managing providers
 - Specialized means to process payments to providers

ARRAY OF SUPPORTS USED IN 17 STATES IN 2007

- Case management/Service coordination
- Support brokers
- In-Home Services
- Respite
- Day Supports
- Health-related
- Supported employment
- Transportation
- Person directed goods and services
- Equipment/supplies
- Vehicle repair/modifications
- Clinical services
- Environmental accessibility adaptations
- Financial management services
- Family/caregiver training
- Other

SUPPORTS WAIVERS WELL SUITED FOR TRANSITION FROM SCHOOL TO...

- A process and funding stream with federal matching dollars to assure that students with disabilities exit school with functional skills and the supports to work and to maintain those skills in adult life rather than going home to sit on a waiting list
- Opportunity for multiple party collaboration for improved outcomes and ROI on special education services

IDEA Transition Amendments of 2004

“The term ‘transition services’ means a coordinated set of activities for a child with a disability that:

- Is designed to be within a **results-oriented** process, that is focused on improving the **academic and functional** achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including.....

IDEA Transition amends. of 2004, cont.

postsecondary education, vocational education, **integrated employment** (including supported employment) continuing and adult education, adult services, **independent living, or community participation;**

- Is based on the individual child's needs, taking into account the child's **strengths, preferences and interests;** and,

IDEA Transition amends of 2004, cont.

- Includes instruction, related services, **community experiences**, the development of **employment and other post-school adult living objectives**, and, if appropriate, **acquisition of daily living and functional vocational evaluation.**”

FOR ADDITIONAL INFORMATION

Allan I. Bergman
President

**HIGH IMPACT Mission-based Consulting
and Training**

757 Sarah Lane

Northbrook, IL. 60062

(773) 332-0871

aibergman@comcast.net