

Legal Basics: Medicaid 101

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

- 1) Medicaid provides basic health care coverage.
- 2) Medicaid coverage is available to persons who otherwise cannot afford coverage.
- 3) Certain coverage groups are particularly important to older adults.
- 4) Separate eligibility rules apply to most home and community-based services (HCBS) and to nursing facility services.
- 5) Special financial rules protect couples when determining eligibility for HCBS and nursing facility coverage.
- 6) Medicare Savings Programs are administered through Medicaid and help to make Medicare more affordable.

Medicaid: Program Basics

Medicaid Basics

- Medicaid is not Medicare
 - Enacted in 1965; same year as Medicare
 - Title 19 of the Social Security Act
- Medicaid eligibility depends on financial need
- Medicaid is an entitlement
 - Generally, no enrollment caps or waiting lists

Medicaid Programs Vary Significantly from State to State

- Medicaid is a joint federal/state program
- Federal law and policies lay out basic requirements
- States have significant flexibility in developing their programs
 - Different eligibility criteria
 - Financial eligibility
 - Populations covered
 - Different benefit packages
 - States may seek waivers of federal laws and rules (e.g. waivers under sections 1115, 1915, 1135, etc.)

Medicaid Coverage

Required Medicaid Benefits

- Physician services
- Hospital services (inpatient and outpatient)
- Nursing facility services
- EPSDT
- Laboratory and x-ray services
- Home health services
- Transportation to medical services

Optional Medicaid Benefits

- Physical, occupational, speech therapy
- Dental
- Vision
- Hospice
- Home and Community Based Services (HCBS)

Medicaid Eligibility

Who Does Medicaid Cover

- Medicaid covers 86 million individuals as of February 2023
- There has been an 41.5% increase in adult enrollment in Medicaid from February 2020-December 2022
- 7.2 million adults age 65+ are enrolled in Medicaid
- Medicaid pays for 6 in 10 nursing home residents
- Medicaid plays a critical role in providing supplemental coverage for older adults of color

Medicaid Coverage Populations

- **Mandatory Coverage Groups**
 - Children
 - People who are pregnant
 - Certain parents or caretakers
 - Persons with disabilities
 - **Older persons (65 and over)**
 - **Medicare Buy-In Groups (Medicare Savings Programs)**
- **Optional Coverage Groups**
 - **Medicaid Expansion**
 - ages 18 – 64 or up until someone gains Medicare coverage
 - 41 states (including DC) have adopted Medicaid expansion
 - **Medically Needy (with a share of cost)**

Major Eligibility Pathways for Older Adults

- Each category has different eligibility criteria including different income and asset limits
 - SSI – Related
 - Aged and Disabled
 - Medically Needy

SSI-Related Eligibility

- Supplemental Security Income (SSI)—federal program for older adults and persons with disabilities living in poverty
- \$914/month income (about 75% FPL) and \$2,000 assets
- Most SSI recipients automatically eligible for Medicaid
 - 8 states, known as “209(b)” states, can use different criteria than SSI rules as long as they are no more restrictive than rules states had in place in 1972 – accordingly can be a little more restrictive

SSP-Related

- A number of states provide a State Supplemental Payment (SSP) to supplement SSI
- Mandatory Medicaid eligibility extends to persons receiving an SSP

Expanded Aged & Disabled

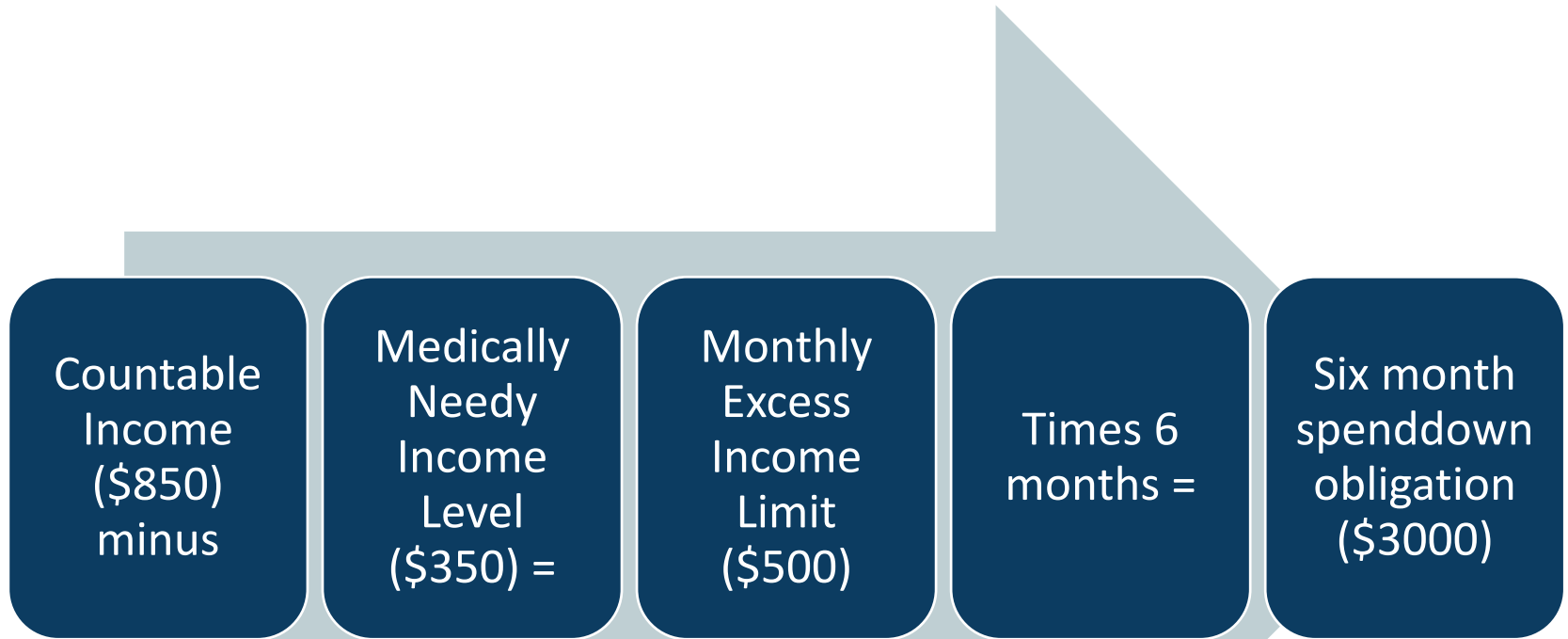
- States can use higher income and asset limits than the SSI limit up to 100% FPL
 - 9 states cover between 75% - 99%
 - 19 states cover at 100% FPL
 - Disregards can expand higher – e.g. California covers up to 138% FPL for the aged and disabled program
 - 12 states have an asset limit over SSI's \$2,000 limit

Source: <https://www.kff.org/report-section/medicaid-financial-eligibility-in-pathways-based-on-old-age-or-disability-in-2022-findings-from-a-50-state-survey-issue-brief/>

Medically Needy

- Spend down (or share of cost) allows an older adult above the income limit to become eligible for Medicaid coverage *after* they have spent down the excess income.
- Very complex, but can be best option for an older adult with high medical expenses (particularly LTSS expenses)

Medically Needy: Example Maryland



More on Spend Down

- Doesn't have to be directed towards a current Medicaid covered service
 - For example, service not covered by Medicaid
 - Health insurance – like dental
 - Old health care bills (but not too old!)
 - Coverage of "old" bills is especially useful for bills incurred right before eligibility, when non-coverage caused by confusion/mistakes of beneficiary or representative

Medically Needy: Advocacy Tip

- Being over eligibility limits by just a couple dollars can result in large spend down or share of cost
- Tip: Reduce Countable Income
 - Purchase dental or vision insurance
 - For couples, split the budget group, i.e., apply for only one spouse

Date of Eligibility

- Date of application or, at state option, the first day of that month
- Retroactive eligibility up to three months prior to month of application, if applicant met eligibility requirements for month(s) in question
 - Some states have sought waivers to eliminate retroactive coverage (e.g. Florida)

Dual Eligibles

Dual Eligibles Overview

- Individuals dually enrolled in Medicare and Medicaid
 - Full duals—individuals who are enrolled in Medicare and eligible for full Medicaid benefits
 - 9.13 million individuals are full duals
 - Partial duals—individuals who are enrolled in Medicare and eligible for a Medicare Savings Program only
 - 3.37 million individuals are partial duals
- Learn more: [NCLER Legal Basics: Dual Eligibles](#)

Medicare Savings Programs

Program	Assistance Provided	% of FPL	2023 Income Limit* Single/Married	2023 Resource Limit Single/Married
Qualified Medicare Beneficiary (QMB)	Parts A and B premiums, co-insurance, deductibles, and co-pays	100%	\$1,235/\$1,663	\$9,090/\$13,630
Specified Low-Income Medicare Beneficiary (SLMB)	Part B premiums	100-120% FPL	\$1,478/\$1,992	\$9,090/\$13,630
Qualified Individual (QI)	Part B premiums	120-135% FPL	\$1,660/\$2,239	\$9,090/\$13,630
Qualified Disabled Working Individual (QDWI)	Part A premiums	Up to 200% FPL	\$4,945/\$6,659	\$4,000/\$6,000

MSPs: Advocacy Tip

- Important to ensure clients are enrolled in MSP even if eligible for full Medicaid benefits
 - MSPs offer additional protections against improper billing from Medicare providers
- Learn More: [NCLER Legal Basics: Medicare Savings Programs](#)

Long-Term Services and Supports

Nursing Facility (Institutional LTSS)

- Required benefit under Medicaid
- Must meet medical level of care
- Covers:
 - Skilled Nursing (Institutional or private duty)
 - Help with Activities of Daily Living (ADL) (bathing, eating, meal prep, household chores)
 - Supplies (wheelchairs, adult diapers, etc.)
- Medicare only covers limited stays in a nursing home

Nursing Facility Medicaid Eligibility

- May or may not have "income cap"
 - Without cap, resident must spend income except for small monthly personal needs allowance
 - "Income cap" states generally set limit at three times the federal SSI rate: \$2,742 in 2023 ($\$914 \times 3 = \$2,742$)
- Must spend most income on care minus small monthly personal needs allows (between \$30-\$200)
- There are many complex rules around assets and topics such as asset transfers, community spouse resources, and personal spending allowances

Home and Community-Based Services (HCBS)

- Optional Medicaid benefit
- Allows individuals otherwise eligible for nursing home services to instead receive LTSS in the community
- Enrollees get needed support services and full Medicaid coverage

HCBS Programs

- States can implement HCBS programs through “waivers” or state plan
- Rebalancing from institutional to community care
- Can take many forms: adult day health care, personal care attendant, assisted living, case management, meals, home accommodations, etc.
- Fairly recent definition for “community-based” setting to promote integration with broader community
- Learn More: [NCLER Legal Basics: Medicaid LTSS](#)

HCBS Financial Eligibility

- Generally subject to income cap of \$2,742
- Enrollee may also be obligated to make post-eligibility payment of income towards health care expenses

Spousal Impoverishment Protections

- Applies always to nursing facility benefit and is mandatory for HCBS through September 2027(at state option thereafter)
- Allows community spouse to maintain higher amount in resources
 - Up to \$148,620 in 2023
- Allows community spouse to maintain income up to specific amounts
 - \$2,465 – \$3,715.50 in 2023

Spousal Impoverishment Resource Protections

- State sets Community Spouse Resource Allowance from \$29,724 to \$148,620 in 2023
 - "Community spouse" can keep $\frac{1}{2}$ of joint resources up to \$148,620
 - Or, can keep minimum as set by state from \$29,724 to \$148,620

Spousal Impoverishment Income Protections

- Community spouse can obtain some of resident's income as necessary to raise total income to amount set by state between \$2,465 to \$3,715.50
- Community spouse can keep all of his or her own income, no matter how much

Delivery of Medicaid Benefits

- Medicaid Fee-for-Service
- Medicaid Managed Care
 - 40 states contract with managed care plans
- Medicaid Managed Long-Term Services and Supports
 - 25 states operate Medicaid managed long-term services and supports

Medicaid Unwinding

- Medicaid redeterminations and terminations were paused during the pandemic
- States must begin redeterminations as of April 2023
 - Process is called “unwinding”
- Estimated 7.8 million – 24.4 million people could lose coverage
 - Source: [KFF 10 Things to Know About the Unwinding of the Medicaid Continuous Enrollment Provision](#)

Unwinding Resources for Older Adults

- States have up to 14 months to complete redeterminations, though some states may end sooner
 - States may deprioritize some populations, like older adults, for later in the unwinding period
- Medicaid and Medicare dual-eligibles may lose Medicare subsidies and Medicaid services
 - See [Justice in Aging resources on PHE and Medicaid unwinding](#)
 - Includes updated tip sheet for people receiving [Part D Low Income Subsidy](#) (LIS or “Extra Help”)

Questions

Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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